

INNOVATIVE FORMS OF ACCESS TO JUSTICE

(presented by Dr. Freddy Castillo Castellanos)

DRAFT DECLARATION

Much of the material prepared and revised so far by this rapporteurship has been directed towards setting up a guide of principles on innovative forms of access to justice in the Americas. The feedback received from organizations such as the Institute of Legal Defense (IDL) of Peru and the Due Legal Process Foundation (DPLF), as well as examination of the various proposals consulted allow us to consider the current pertinence of a draft Declaration on Access to Justice that incorporates the basic principles enunciated by this consultative body. Accordingly, available to us is a proposal from the above-mentioned organizations that already includes some of the arguments formulated by this rapporteurship. For the purposes of discussion, I hereby transcribe this draft declaration with some slight additions and alterations made by us:

“We, the States of the Americas represented by the Organization of American States,

Considering that realizing the right to access to justice is an unavoidable step towards strengthening democracy and the rule of law in the region, and reducing social inequality,

Considering that the problem of access to justice in our countries is very complex and is responsible for a variety of institutional, economic, geographical, cultural, linguistic and gender obstacles, and

Considering the great social, cultural and ethnic diversity that enriches us,

We declare the following:

- 1. Access to justice is a human right.*
- 2. Realizing the right to access to justice is fundamental to consolidating the Rule of Law and social justice.*
- 3. Access to justice presupposes development of citizens’ capacity to enjoy their rights. The necessary public policies must not tend towards judicial assistentialism but rather to empowering the citizens.*
- 4. Reform of the judicial system geared towards guaranteeing full access to justice calls for political decisions to be demanded on a priority basis over all spheres of international law.*
- 5. Public policies on access to justice should be designed to include focusing on gender and interculturality, taking into account the reality of each country and the juridical needs of their citizens.*

6. Access to justice guarantees the legitimacy of public institutions and promotes higher levels of governability.

7. Effective independence of the administration of justice must be ensured. Not only independence from other public powers, but also from the factual powers that use all types of pressure to impinge upon freedom of decision.

8. States should sponsor initiatives in conjunction with civil society to put an end to the barriers against access to justice.

9. States will guarantee the right to effective jurisdictional protection.

10. States will prioritize attention to existing vulnerable groups.

11. States recognize the existence of pluriculturalty. The duty of the State to ensure access to justice is not limited to providing a qualified judicial system but rather presupposes recognition and support from special jurisdictions based on the cultural identity of the indigenous people, and coordination mechanisms will be installed to this end. The States will respect common law and the traditional ways of settling disputes as long as they do not violate fundamental rights.

12. The right to access to justice presupposes as a counterpart the right of citizens to access communal instances of settling disputes and/or administering justice.

13. **A juridical culture should be made available that opens a channel for harmonious living by means of conciliation in cases where there is no reason to appeal to judicial measures. And even if they do, attempts should be made to resolve them “in limine litis” through arrangements or reparatory agreements.**

14. **The organs of public administration are also qualified to avoid judicialization of matters that require the decision of a third party. Many fair decisions can and should be made in the administrative sphere. All this without affecting the non-renouncible guarantee that all administrative decisions must be submitted to jurisdictional control.**

15. States shall ensure access to a court translator and anthropological expert when and if necessary.

16. States shall ensure interdisciplinary professional support during all stages of court procedures.

17. Access to justice implies the promotion of alternative methods for dispute settlement other than traditional court procedures, within the framework seeking to promote a culture of peace.

18. Qualification of the judicial system agents must promote a culture of peace and endeavor to eliminate social inequality.

19. Juridical education should be encouraged, so as to allow the population to **know their rights as citizens and thereby facilitate the actual enjoyment of same.**

20. The ethical and juridical qualification of judges must be a permanent concern of society and of the State **and should be conceived in an integral manner. Contents of programs of study or curricula shall be guided by humanistic principles and values.**

21. States will endeavor to provide the necessary funding so as to overcome the logistic, technical and infrastructure limitations which commonly afflict State justice systems.

22. States shall endeavor to provide cost-free legal assistance with interdisciplinary support.

23. States shall promote the lowering of judicial costs.

24. States shall ensure top-quality infrastructure conditions to permit disabled persons to have access to court services.

25. States shall promote proper conditions for the access of vulnerable people whose condition result from migration or internal displacement, and ensure the same degree of material equality as the nationals or natives of each country or region.

26. States shall seek simplification of judicial procedures, reducing process bureaucracy. Emphasis should be given to cases in which people are deprived of their liberty.”