

3. Justice, Rule of Law, and Security of the Individual

→ MANDATE

At the Third Summit of the Americas, the Heads of State and Government gave more attention to justice in the Americas. Here the governments concentrated their efforts on ensuring greater access to justice and a more independent judiciary. They also considered new and multidimensional threats to security, such as illegal drug trafficking and related crimes, trafficking and criminal use of weapons, and the general problem of violence in the society. Damage caused by the threat of transnational organized crime to our democracies and to economic and social development of our region calls for urgent measures to strengthen and reinforce mutual judicial assistance and cooperation in the Hemisphere. The countries in the Hemisphere have therefore launched major reforms of their legal systems, especially in the area of criminal justice, government, access, and management of systems to face these new challenges.

Judicial system reforms are complex and long-term, calling for coordinated actions with adequate financing and political support in order to be effective. Although the countries have made great efforts to strengthen the independence of the judiciary, it still suffers from widespread corruption and impunity.



Hemispheric leaders pledged to work to develop public and private programs to protect citizen rights and guarantee prompt, equal, and universal access to justice. In this regard, they face several challenges, such as a shortage of qualified judges, inadequate infrastructure, and red tape that delays proceedings. Several countries have made changes to be able to meet these challenges, including the appointment of human rights ombudsmen and guaranteeing budgets for the judiciary. In addition, the Heads of State and Government agreed to promote extensive exchange of information in order to comply with international human rights rules, reduce the number of pre-trial deten-

tions, institute alternative forms of sentencing for minor crimes and improve prison conditions throughout the Hemisphere.

Notwithstanding the progress, there are still serious shortcomings in the judicial system. For example, a shortage of judges results in an impossibly high case load, rulings are unpredictable, the system is corrupt, processing of trials is drawn out, impartiality is lacking, limited resources are assigned, and there is insufficient training. According to the Andean Commission of Jurists, this situation leads to overcrowding in prisons with an average of 58.2% of prisoners awaiting sentence in the Andean region.

According to the latest table on implementation and monitoring of the Summits, Costa Rica has improved conditions in its prisons by doubling capacity between 1998 and 2002 and creating 3,000 new prison spaces in the same period. Costa Rica also remodeled its prisons and made them more humane, and awarded a contract for construction of a new high-security prison in Pococi, with 1,200 additional spaces.

An *independent judicial system* is vital for a stable democratic society. That is why the Summit of the Americas advocated the search for measures to ensure transparent judicial selection, secure tenure on the bench, appropriate standards of conduct and systems of accountability. But judicial system reforms are complex and long-term, calling for coordinated actions with adequate financing and political support in order to be effective. Although the countries have made great efforts to strengthen the independence of the judiciary, it still suffers from widespread corruption and impunity.

According to the Latinobarómetro, the level of trust in the judiciary is not encouraging. Between 1996 and 2003 the confidence level fell by 13 percentage points. In 1996, 33% of the citizens said they had "some" confidence, while in 2003 only 20% of more than 18,000 persons polled had the same opinion.

Cooperation at the highest level is essential to combat illegal transnational activity. That is why the Fourth Meeting of Ministers of Justice or Attorneys General of the Americas (**REMJA-IV**) was held March 10-13, 2002 in Trinidad and Tobago, as a mechanism for judicial cooperation among the member states. On that occasion, governments were urged to ratify the treaties on mutual legal assistance. There was also progress in developing a hemispheric plan for legal and judicial cooperation to combat various forms of organized transnational crime.

To further strengthen cooperation in this area, the OAS established an Internet-

based network for exchange of information among officials charged with making recommendations on extradition and reciprocal legal assistance to facilitate direct communication and identify common problems in handling cases and matters that should be considered and resolved collectively. There has also been progress in work on cyber-crime and alternative means of dispute settlement. In 2003 the following meetings were held: Central Authorities and Other Experts in Mutual Legal Assistance in Criminal Matters, the Group of Governmental Experts on Computer Crime, and Penal Authorities and Prison Policies, in preparation for the Fifth Meeting of Ministers of Justice or Attorneys General of the Americas (**REMJA-V**), to be held in 2004.

The JSCA has also put at the countries' disposal a model for gathering judicial statistics, and has published "Code and Decode", a manual for generation, collection, dissemination, and harmonization of statistics and judicial benchmarks.

PRISON POPULATION WITH NO SENTENCE

Source: CEJA 2003, International Center for Prison Studies

	PRISONER RATE PER 100,000	% WITHOUT SENTENCE	% OCCUPATION RATE (REGARDING CAPACITY)	YEAR
Argentina	111	57.00%	145.99%	2000
Bolivia	67	75.08%	111.01%	2002
Brazil	137	33.70%	132.02%	2002
Chile	215	40.40%	140.65%	2002
Colombia	130	43.68%	125.33%	2002
Costa Rica	110	30.00%	71.19%	2000
Ecuador	60	69.90%	112.96%	2002
El Salvador	164	48.97%	167.48%	2002
Guatemala	61	56.50%	111.67%	2001
Haiti	51	83.50%	207.60%	1999
Honduras	175	78.50%	219.71%	2002
Mexico	156	41.20%	127.76%	2000
Nicaragua	138	30.80%	149.83%	2002
Panama	359	55.30%	148.14%	2002
Paraguay	75	92.70%	151.00%	1999
Peru	105	67.20%	141.03%	2002
Dominican Rep.	209	82.00%	200.56%	2001
Uruguay	168	72.50%	166.24%	2002

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At the Third Summit of the Americas the leaders reaffirmed the importance of the Justice Studies Center for the Americas (JSCA), established in 1999 in Santiago, Chile as a mechanism to strengthen the judicial branch of government and support the member states in their justice reform processes by facilitating the exchange of information and training of personnel. In 2001 the JSCA launched a follow-up project to make a comparative study of legal systems in the Americas. The JSCA also established a registry of alternative means of dispute set-

tlement (MARC), as recommended by the REMJA-IV, in an effort to concentrate information on this topic at the inter-American level, and related programs in the Hemisphere. Also, since 2001, with funding from the U.S. Agency for International Development (USAID) and the Inter-American Development Bank (IDB), the Center is developing a project to improve the quality of information on justice systems, generating a comprehensive system of data collection and processing to produce judicial statistics and indicators.

The JSCA has also concentrated its efforts on follow-up and evaluation of penal procedure reforms in many of the Latin American countries, including recent cases in the Dominican Republic, Mexico, Colombia and Peru. These reforms seek to

ensure respect for due process, strengthen the impartiality of judges, guarantee the right to defense and presumption of innocence, and use of oral proceedings. They also seek to make criminal prosecutions more efficient, centralizing the conduct of criminal investigations in the Offices of Public Prosecutions, equipping them to properly handle their workload. Over the past three years the JSCA has evaluated implementation of these reforms in 10 countries in the region, and developed methodologies and activities for overcoming the difficulties encountered.

The new forms of transnational organized crime include money laundering and cybercrime. Cybercrime has become a threat that goes beyond national borders and demands international cooperation. This phenomenon includes a series of crimes, including use of computers and information networks to destroy or gain illegal access to data, spread viruses, or commit financial fraud, distribute child pornography, and facilitate terrorist activity. The Ministers of Justice or Attorneys

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General of the Americas established a group of intergovernmental experts to complete several tasks, including preparation of a synthesis of this type of crime and domestic laws, policies, and practices on cybercrime. As for money laundering, with support of CICAD work is underway to develop model legislation for freezing assets linked to terrorism, and classification and treatment of cases of corruption involving foreign officials.

CHALLENGES

The region's justice systems share several common problems: tardy administration of justice, crowded calendars, lack of modern technologies for administration of justice, and inadequate and obsolete legal

procedures. These factors contribute to the high degree of mistrust of all State sectors and discredit the system. In the area of extradition and international legal assistance there needs to be closer cooperation between the States through effective use of multilateral and bilateral agreements to put an end to impunity for crime. Laws and international provisions for judicial cooperation are not strictly applied, which directly benefits organized national and transnational crime. Confronted with this reality, the countries have decided to face the challenges and pool their efforts to strengthen their justice systems, thereby enhancing democracy and well-being in the Hemisphere.

Combating the Drug Problem

→ MANDATE

The complex, transnational nature of the global drug problem requires that countries adopt a comprehensive and balanced approach. In fact, the only viable and effective mechanism for counteracting such a problem is international cooperation within a framework of shared responsibility.

At the Quebec City Summit of the Americas, Heads of State and Government acknowledged and praised the work of the Inter-American Drug Abuse Control Commission (CICAD) in carrying out the First Round of Review (1999-2000) under the Multilateral Evaluation Mechanism (MEM).

This mechanism, which measures progress in the fight against drugs, is the result of a mandate established during the Second Summit of the Americas held in Santiago de Chile in 1998. Governments also reaffirmed their commitment to the Anti-Drug Strategy in the Hemisphere, and recommended that cooperation between CICAD and multilateral development institutions be increased in order to generate new resources in the fight against drugs. Leaders called for the establishment of cooperative, contemporary and comprehensive strategies for dealing with the social, human and economic costs of the drug problem in the Americas.

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Under the CICAD-MEM program, every two years a comprehensive review is made of each country and of the Hemisphere as a whole. The review process produces recommendations that must be implemented by governments. Compliance is checked one year after each review. The MEM evaluates four fundamental aspects of the drug problem in the Hemisphere: institutional strengthening (national plans and strategies against drugs), reduction of demand, reduction of supply (production of drugs, alternative development, and control of pharmaceutical products and chemical substances), and control measures (illicit trafficking in drugs, illicit trafficking of firearms, ammunition, explosives and other materials related to asset laundering). As an outcome of the MEM recommendations, CICAD's current priority is improving performance in the areas of reducing demand and compiling basic statistics. In April 2003, the Chair of CICAD—the Attorney General of Mexico—announced the approval of 14 projects, funded with

US\$1 million, to help countries comply with the MEM recommendations.

Progress has been made in a number of areas, particularly institutional strengthening and the establishment of a joint international legal framework. For example, international conventions such as the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials and the Inter-American Convention on Mutual Assistance in Criminal Matters were ratified by a number of countries in the Hemisphere. Furthermore, almost every country has developed National Plans and have created or strengthened their central coordinating authorities. During the 2001-2002 review period, 21 out of 34 countries established or strengthened national drug observatories through cooperative international efforts, which constitutes notable progress. However, these observatories are facing problems: the scarcity of financial, professional and technical resources; inadequate training in compil-

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ing data; and the lack of uniform methodologies for collecting data to analyze trends.

One of the obstacles facing the Hemisphere is the lack of information on the amount of illicit substances being consumed. Countries have made a great effort to fill this gap: the Inter-American System of Uniform Drug-Use Data (SIDUC) and the Uniform Statistical System on Control of Supply Data (CICDAT) are now being used by 24 and 22 States respectively. CICDAT was established in 1992 and has published annual statistical summaries since 1994. SIDUC began its operations in 1996 by carrying out surveys on drug consumption among patients in emergency rooms and drug treatment centres, and in 2001 it began conducting student surveys. CICAD is also developing a methodology that will permit government to estimate and quantify the human, social and economic cost of the drug problem in their countries. Armed with specific data on the economic impact of drugs in their societies, these countries will be able to make decisions on how to allocate scarce public resources based on much more solid information.

REDUCING DEMAND

The UN Office on Drugs and Crime (UNODC) estimates that some 200 million people around the world consume illicit drugs. Various studies show that illicit drugs, alcohol and tobacco are the most widely used in the Hemisphere. The illicit drugs most in demand continue to be marijuana and derivatives of cocaine chlorohydrate, while new trends include the so-called synthetic drugs such as Ecstasy, ketamines and methamphetamines.

There is also evidence of the illicit use of drugs by injection, a situation that increases the risk of contracting infections such as HIV/AIDS. Furthermore, national strategies have been created and national prevention programs have begun to be implemented with specific target populations, such as students, street children and prison inmates. There is also a significant nursing schools program, which is designed

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With technical assistance from the International Network for the Improvement of Banana and Plantain (INIBAP) and the support of the Vice-Ministry of Alternative Development (VIMDESALT) of Bolivia, CICAD is carrying out a project on the rehabilitation and modernization of Alto Beni organic banana pro-

duction for export markets. It is expected that the project will rehabilitate, modernize and improve the Alto Beni banana plantations over a two-year period (2002–2004), thereby increasing income and employment for more than 500 producer families of the Yungas and discouraging the illegal cultivation of coca.

to prevent the consumption and abuse of drugs, to improve social integration, and to promote health in Latin America and the Caribbean.

REDUCING SUPPLY

According to the most recent MEM Hemispheric Report, there are indications that the illicit cultivation of coca has decreased compared to the previous period: a result of implementing integrated strategies of eradication and alternative development. At the same time, efforts to eradicate the illicit cultivation of coca in Bolivia and Peru have met with increasing difficulty, due to major protests by sectors of the population involved in agriculture. CICAD covers a variety of matters related to monitoring and compliance with laws against drug trafficking, including anti-drug maritime cooperation projects, the control of chemical substances and pharmaceutical products, the establishment of the Andean Community's Regional Anti-drug Intelligence School (ERCAIAD), a technical assistance program in the implementation of port security programs, a pilot project on the concept of community policing, and programs for strengthening the anti-drug capacity of police and customs agencies.

Alternative development has made major strides in the main-producing countries, and has become an important tool for combating illicit cultivation. In response to the demand for drugs and pressure from organized crime—and in the face of poverty,

unemployment, lack of training, market difficulties—many rural inhabitants resort to illicit cultivation. CICAD has been developing and implementing development programs in regions subject to illicit cultivation, in areas that have potential for such cultivation, and/or in areas that are net exporters of labour. These programs generate activities that promote the legal economy and infrastructure, and reduce the possibility of illicit cultivation spreading to adjacent areas.

ASSET LAUNDERING

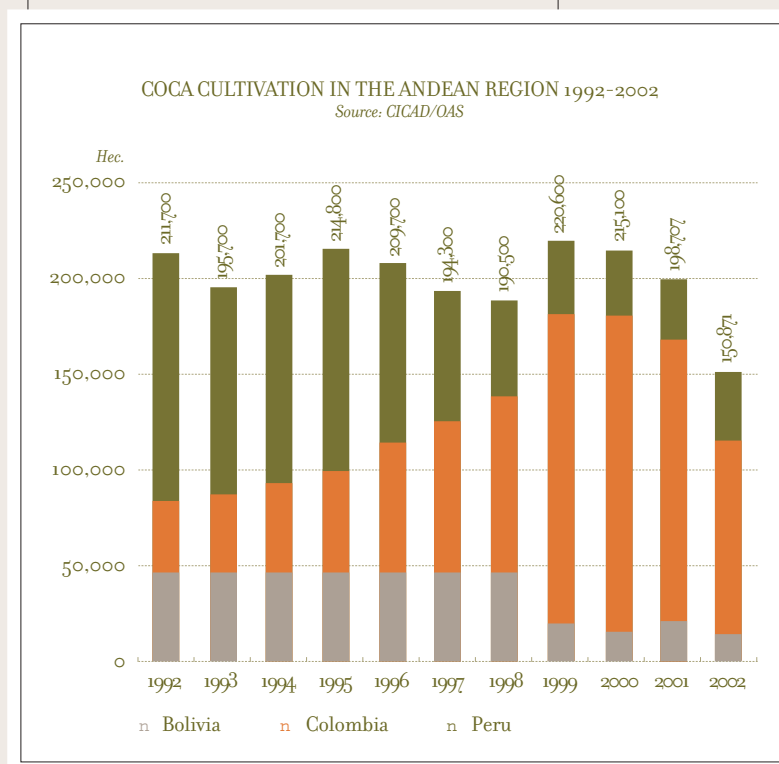
CICAD's Anti-Laundering Unit has been concentrating its activities on creating Financial Intelligence Units, and has been provided with financing from the Inter-American Development Bank (IDB) to support its work. Financial Intelligence Units are tasked with analyzing financial operations in an attempt to uncover asset-laundering activities. Furthermore, a Group of Experts on Money Laundering has been established. That group is currently drawing up penal legislation to combat the financing of terrorism, developing a legislative model for seizing property related to terrorism,

and creating typologies and case studies of corruption among foreign civil servants.

CHALLENGES

In spite of the progress achieved, obstacles have been encountered in some cases due to the lack of financial and technical resources. In January 2003, the results of the second complete round of evaluations were published, covering the period of 2001 through 2002. It was determined that the lack of records and statistical controls in many countries made it impossible to evaluate progress in the implementation of adopted policies, and for this reason work in this area was being expedited. Although countries have made great efforts to counteract the scourge of drugs, the fact remains that drug use is on the rise. Furthermore, groups involved in drug-trafficking are extending their arms-smuggling networks and becoming more sophisticated when it comes to asset-laundering, and interdiction and eradication activities have not achieved the desired results. Major obstacles such as the lack of preferential tariff systems for alternative development programs, high levels of corruption and the different activities of

organized transnational crime have been difficult to overcome. For this reason, the effectiveness of an anti-drug strategy in the Hemisphere will depend on international cooperation within a framework of shared responsibility.



Prevention of Violence

→ MANDATE

In an effort to replace the culture of violence with a culture of peace, the Summit of the Americas process gave priority to violence prevention. In the Quebec City Plan of Action, leaders acknowledged that violence and delinquency are serious obstacles to social co-existence, and to the democratic and socio-economic development of the Hemisphere. Not only do the high rates of delinquency and violence in the region harm people; they also have a negative effect on the potential for development of the societies of the Americas.

Various types of violence have afflicted countries in the Hemisphere, including domestic violence, political violence, common crime, drug-related violence, youth violence, sexual violence, occupational violence, and intra-familial violence, among others. According to figures provided by the Pan-American Health Organization (PAHO), the impact of violence in the region is cause for concern: close to 120,000 people are assassinated each year in the Americas, 55,000 commit suicide, 125,000 die from injuries suffered in automobile accidents, and between 20 and 60 percent of women are the victim of intra-familial violence. PAHO statistics also show that the countries with the highest rate of homicides per 100,000 inhabitants are Colombia, with 65; Honduras with 55; Guatemala with 50; El Salvador with 45; Jamaica with 44; and Venezuela with 35.

In an effort to combat these high rates of violence, on June 23, 2000, the Inter-American Coalition for the Prevention of Violence was established, and is comprised of the OAS, the IDB, PAHO, UNESCO, the World Bank, the Centers for Disease Control and Prevention in the U.S., and the U.S. Agency for International Development (USAID). The Coalition is designed to be a catalyst in the prevention of violence in the

Americas through prevention, research, education and training of human capital. In a comparable effort, the World Health Organization (WHO) published "The World Report on Violence and Health" in 2002. The report contained nine recommendations for the prevention of violence, and called on countries to study and implement these recommendations according to the conditions encountered in each country.

Similarly, within the framework of a joint UN—OAS International Civilian Mission in Haiti, the Special Program for the Promotion of Dialogue and Conflict Resolution within the Unit for the Promotion of Democracy of the OAS developed a training program in conflict resolution for the national police force of Haiti, in order to prevent outbreaks of violence in that country. The program is designed to improve relations between the police force and the community. Furthermore, a pilot



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Among the national initiatives designed to reduce the high levels of violence, El Salvador's case can be highlighted, which has developed an Inter-institutional Plan for children and youth in response to the alarming increase in youth gangs. (The WHO estimates that some 30,000 youth are involved in gang-related activities in El Salvador and Honduras.) Between June 2002 and June 2003, the Secretariat of Community Relations has sponsored 41 citizen consultative meetings and more than 1,000 neighborhood visits in order to learn about the main problems affecting the community and commanding the attention of more than 428 communities at the national level.

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project on mediation was conducted with the judicial authorities of Artibonite, and representatives of NGOs were trained in alternative methods of conflict resolution.

CHALLENGES

The high rates of criminality in the Americas are cause for concern, since violence affects foreign investment, hampers economic growth and development, and undermines the faith of citizens in political and legal systems. Violence can be prevented through political decisions, strengthening oversight in the systems, training police

forces, and designing educational programs. In order to reduce the high levels of violence, up-to-date information and statistics are essential to permit the design of new initiatives. It is essential to involve civil society and other social sectors in this struggle against violence. Although much remains to be done, it should be pointed out that governments, international organizations and communities are showing ever-increasing interest in establishing preventive programs.

