

CRITICAL POVERTY: ACCESS TO JUSTICE AND ABUSE OF POWER IN LATIN AMERICA

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INTRODUCTION

The population of Latin American countries afflicted by marginality and critical poverty receive unequal treatment under the law. Economic growth and social inclusion meanwhile foster the effective functioning of the rule of law. This understanding of the Latin American scenario has been recognized from the earliest instruments adopted by the United Nations in the area of crime prevention and criminal justice. Improving the effectiveness of technical cooperation efforts under the aegis of the United Nations is the cornerstone of all policies aimed at improving social equity under the rule of law.

A. The Caracas Declaration

The Caracas Declaration, adopted by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders, can be considered a pioneer in formally bringing together the issues of improving social conditions and the success of crime prevention and criminal justice system policies.

The Caracas Declarations Report of the Sixth UN Congress paragraph 1- P. 3. A/Conf/87/14. Rev 1), noted that: "Crime Prevention and Criminal Justice should be considered in the context of economic development political systems, social and cultural values and social change, and that it is a matter of great importance and priority that programmes for crime prevention and the treatment of offenders should be based in the social, cultural, political and economic circumstances of each country in a climate of freedom and respect for human rights and that Member States should develop an effective capacity for formulation and planning of criminal policy and that all crime prevention policies should be coordinated with strategies for social, economic, political and cultural development" (ob. cit. p. 3).

B. The Global Scene

More than twenty years later, with ever increasing social inequities worldwide, the conceptual framework of the Declaration has become even more relevant. As the UNDP has highlighted, (Human Development Report, 1999, p. 36-37) the disparity of income between the population living in the richest countries and the poorest ones has continued to widen. In 1960, the 20% of the world population living in the richest countries had 30 times the income of the 20% living in the poorest. By 1997 the difference was 74 times higher.

Meanwhile the concern for equity has moved centre stage in human development discourses. The concept of equity has been applied more frequently to disparities of income; nevertheless its implications include human and political rights, equity of access to education, health, justice, the equality of gender, the reduction of poverty and democratic participation, as an eventual part of sustainable development (UNDP, ob. cit., pp. 14-15). The Latin American scenario testifies to the conviction that economic growth cannot be sustained without social equity. (Wolfeshon, James, "Crecimiento con equidad", La Nacion, Buenos Aires, January 26, 2003, section 7, p. 3).

The UNDP Human Development Report (1997, Chapter 2) has detailed how emergent economies have made social and economic progress in the last 30 years comparable to those made by mature economies in the last 100 years. The human deprivation of these developing countries is still the focus of concern.

The media and numerous studies have drawn public attention to the astounding disparities in income: close to 1.3 billion people live with less than one dollar a day. Recently, Bonino (Bonino Emma, "Extender la globalizacion", La Nacion, Buenos Aires, January 26, 2003, section 7, p. 3) ironized on this finding suggesting that "while millions live with less than 1 dollar a day, each bovine born between Finland and the south of Italy, has the right to one dollar of subsidies from the European Union". More than 500 million people do not receive enough food. More than 500 million are chronically malnourished. More than 840 million adults are

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still illiterate, 800 million do not have access to health services and 1.2 billion to safe water.

According to the 1997 figures, two thirds of the world population are not living in even relatively pluralistic or democratic political systems. As many as 40 million refugees and an additional 500 million live in ecologically fragile areas.

In this global context, children and women are suffering the most, according to the UNDP Human Development Report (1997, ob. cit. p. 27; see also Bassiouni, Cherif, "A Global Perspective on Trafficking" in the volume "In Modern Bondage: Sex Trafficking in the Americas", IHRLI, DePaul University College of Law, October 2002, p. 92-97).

Close to 160 million children suffer from malnutrition and more than 110 million are out of school. Finally, more than five million children under five years of age died early, half of them in the post natal period due to illness and malnutrition (UN A/AG- 256 CRP/ Rev 3, p. 10, September 10, 2001).

Life expectancy is another indicator of increasing social inequality among regions. In emerging economies close to a fifth of the population world dies before reaching 40 years of age - four times the proportion of developed economies. In contrast to industrialized nations, infant mortality in poor countries is six times higher. (UNDP- HD Report, ob. cit. p. 28).

As we are all aware, deprivation is not limited to developing countries. More than 100 million in the developed world still live below the poverty line. More than five million are homeless and more than 37 million are jobless (ob. cit. p. 24).

As for increases in the index of criminality, the UNDP Report states that between 1970 and 1980, and regardless of an absence of reliable data for many countries, crime increased 5%, 2.5 times the growth in population. And undoubtedly the poorest inhabitants of the world are more prone to be victimized.

Facing these dire global conditions, the targets fixed by the UN (Millennium Declaration) are essential for concerted action in the coming decades. The realization of these objectives has acquired a new urgency in light of the political instability in Latin America and the challenges posed by organized crime.

C. The Regional Picture

Many studies have sought to establish patterns of significant correlation between high indexes of social inequality and increases in criminality. According to the World Bank, in the Caribbean and Latin America (Freeman Richard, Journal of Economic Perspectives, World Bank 1996) almost three quarters of the population are in conditions of critical poverty; where the indexes of criminal violence associated with social and economic deprivation are consistent. Violence in the family is one of the most serious problems.

According to ECLAC -Economic Commission for Latin America and the Caribbean- (Panorama Social de America Latino, 2000-2001) in the three years from 1997-99, the number of persons in a situation of poverty in Latin America grew from 204 million to 211 million. Of this number 80 million people were indigent. In this context, toward 1999 the incidence of poverty reached 35% of households while the levels of critical poverty were as high as 14%. Of each 100 homes in the region, 35% do not have income to satisfy basic needs, and 14% do not have income to buy a basic food basket. In 1999 the rural poor were 77 million and the urban poor 134 million. Critical poverty affected 43 million people in urban areas, and 46 million in rural areas. It is important to note that urban critical poverty increased 8.5 million in only two years in this period, indicating the tendency to the urbanization of critical poverty.

In 1999, 76 million lived with an income inferior to one dollar a day, lower than the level of average income for critical poverty. 175 million persons, in 1999, that is 36% of the total population earned less than two dollars a day.

Almost 77 million people in Latin America lived in houses with an average of three to four persons per room with possibilities of indigence of 50% and 46% respectively. 165 million do not have access to safe water, 109 of them are poor. Unemployment of the families affects 71% of households. Thirty-nine percent of poor people lived in a home in which the head of the household had less than three years of schooling.

The children under 15 years of age lived in households with a low educational level, reaching 83 million (56% of all children of that age).

In the sector 15-19, more than 18 million work; 22 million do not study or work, one fourth of the age group in the continent.

D. The Drastic Impoverishment of a Latin American Nation: The Argentina Scenario

In Argentina, according to statistics provided by the INDEC (National Institute of census and statistics), in the surrounding metropolitan areas of the city of Buenos Aires, the so-called "conurbano", the index of people living under conditions of extreme poverty reached 59.2% and the index for indigent people climbed to 27.9% (See Graphic number 3, Clarin, January 5, 2003).

Areas of the inland provinces of Argentina such as the Northeast provinces of Corrientes, Misiones, Formosa and Chaco, have even higher proportions: 71.5% and indigence 41.9% (February 1, 2003, La Nacion, Buenos Aires).

Argentina as a whole, according to the Permanent Household Survey (May 2002), now has 19 million poor people - 53% of the total population, earning less than 200 US dollars a month (635.94 Argentine pesos) and 8.4 million indigent people, 24% of the population earning less than 90 US dollars a month (266.36 Argentine pesos). The figures released by the INDEC on February 1st, 2003 show that 20,830,000 inhabitants are poor (57.8%) and 9,960,000 (27.5%) are indigent. In relation to May 2002, when poverty reached the level of 53% of the total population the quantity of poor people grew more than 1,600,000 persons. Between October 2001 and October 2002 6,960,000 persons, almost seven million, were added to the poor and 5,040,000 to the indigent sector. "These are absolute records in the worst period of Argentine history" (La Nacion, Buenos Aires, February 1, 2003, front page and page 1. *Economia y Negocios*). If we add to these figures the present level of unemployment that has increased fourfold in the last decade, and reaches more than 21.5% of the active population, we should expect a marked increase in reported criminality trends. According to statistics prepared by the Ministry of Justice, Security and Human Rights of Argentina, Direction of Criminal Policy, the increase in reported criminality reached 88 % in the last decade. The black figure for non-reported criminality exceeds 50%.

A study made by Argentine economist Eduardo Patricio Pompei, states that for the city of Buenos Aires, in the period 1990/2000, the index of social inequality, measured by the Corrado Gini index, is parallel to the curve in reported criminality (Pompei, Eduardo P. "Delincuencia y situacion socioeconomica en la Ciudad Autonoma de Buenos Aires").

The drastic rise of critical poverty in Argentina - almost two million in five months - from May to October 2002 and more than ten million since 1998 can be explained, in part, by the rise in basic food prices after the abandonment of the decade-long pegging of the national currency to the dollar. (Law 23.928). The currency parity is now mostly fixed by the market at 3.50 pesos to a dollar, approximately (Law 25.561, 7 January 2002).

Many factors can be seen as contributing to the inordinate increase in poverty: inflation without salary or pension adjustment, the growth of unemployment, institutionalized corruption, banking frauds, lack of access to basic social services including education, judicial insecurity and a breakdown in the protection of the constitutional property rights.

The devaluation was a political decision that has been widely contested in thousands of legal cases still pending in the Argentine courts, since the dollars deposited by Argentines in the banks at the parity of one peso to one dollar were converted after the devaluation at the official price of 1.40 peso to a dollar and not to the average market level of approximately 3.50 pesos to a dollar at the time of abandoning the parity.

As much as 70 billion dollars in the banks owned by Argentines depositors were abruptly transformed into pesos creating a precedent of conflict and distrust between property rights guaranteed by the national constitution of Argentina and political decisions of the executive and legislative branches of the Government (Badeni, Gregorio, "Las normas de emergencia y el derecho a la propiedad privada", *Revista del Colegio de Abogados*, No. 56, p. 16-19).

The Argentine political and economic turmoil is the most acute in more than a century. It has become a model for academic researchers to observe the impact of political decisions in relation to social inequality, as well as the role of the judiciary in safeguarding constitutional guarantees and individual rights. Both the public and the media have intensely scrutinized the role of international economic institutions and the Washington consensus in their interactions with Argentine authorities and the economic sectors.

Argentine children and youth have been particularly vulnerable to the effects of the socioeconomic upheavals and inequalities. In Argentina 8,319,000 children live in three million poor households. This implies that 66.6% of all 12.5 millions Argentines under 18 years of age are poor. In some provinces, the proportion of poor minors reaches 80% and in the metropolitan areas of Buenos Aires, the capital, the figures are close to 70%.

In 1998, there were 5.7 millions poor minors. From December 2001, when the number of poor children was 7,000,000, the poverty of children and youth increased at the rate of 250,000 persons per month, reaching in June 2002 the number of 8,319,000, that is 1.3 million in five months.

Until the 1970's when social mobility was accepted as a feature of a large Argentine middle class society, poverty seemed a less pressing issue to address. (Clarín, June 9, 2002, p. 9) Only five percent of households were considered poor. In the eighties, the figures increased to 12%; and grew with the hyperinflation of 1989-90. From 1994 onwards, unemployment, salary decreases and economic recession drove poverty levels higher. In 1998, one of each four households was poor. By the end of 2001, 30% of households were poor and today four out of every ten households are poor.

Already in 1999, Lee Haeduck in a socioeconomic study "Poverty and income distribution in Argentina" reported that 36.1% of Argentines were under the line of poverty, 3,180,000 could not afford a basic diet. Additionally 8.6% of the population was indigent, that is under the line of poverty.

E. Social Equity and Crime Prevention

The close interrelations between social equity and crime prevention were given explicit recognition in paragraph 25 of the Vienna Declaration on Crime and Justice, when asserting that comprehensive crime prevention strategies at the international, national regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, education and justice policies.

Regardless of different conceptualizations of justice in society, as an international community we depart from the principles outlined in the UN Declaration of Human Rights. And as the philosopher Rawls theorized: (Rawls, John, "A Theory of Justice", Harvard University Press, 1999, Cambridge, Mass, USA, p. 53): "First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all".

F. Ameliorating Poverty through the Rule of Law

While the importance of legal institutions to business and investments has received much attention in academic circles, fewer writings have explored how the rule of law works for or against the improvement of poverty conditions. (Anderson, Michael, Access to Justice and Legal Process. Making legal institutions responsive to poor people in L.C.D.). "The rule of law provides essential preconditions for a prosperous economy organized on market principles, ensures life and personal security and reduces political risks to investors, cuts down transaction costs and fosters the development of markets in land, labour and capital. The 1997 World Development Report concluded that markets cannot exist without effective property rights and that effective property rights depend upon three conditions: a) protection from theft, violence and other acts of predation, b) protection from arbitrary government actions and c) a reasonably fair and predictable judiciary.

Anderson identifies the following situations in which the absence of the rule of law contributes to poverty: unchecked abuses of political power; unchecked violence by police, prison officers and other public officials having its greatest impact upon the poor and corruption in its various forms and manifestations

requiring the poor to pay a premium for public goods and basic services such as access to water, education, health care, medicines, travel and official information.

It is also important to acknowledge how, in countries where extreme human rights abuses prevail, a culture of fear displaces the proper role of a culture of legality and leads the poor to use scarce resources to act on self-protection.

These factors are not just impacting upon poverty. They are part of its creation and a most fundamental aspect of its existence.

In addition, the poor are more likely to be humiliated and subjected to arbitrary treatment and intimidation by public officials.

The poor are also at greater risk of losing their property either by private or public theft. Moreover development projects are identified and approved in situations of undemocratic processes leaving the poor outside the calculus of benefits.

G. Obstacles to the Equitable Functioning of Legal and Judicial Systems

Having spent forty years deeply concerned with the enormity of the difficulties facing Latin American legal and judicial systems, I am grateful that it is now standard to link themes of access to justice and sectoral partiality, justice delay, legislation and cultural disparities in the discourse of socioeconomic inequalities. (David, Pedro - in *Crime and Criminal Policy - Papers in Honour of Manuel Lopez Rey y Arroyo* - Compiled and edited by Pedro R. David, Franco Angeli- Milano, Italy, pp. 251-53. Also, David, Pedro R., *Globalizacion, Prevencion del Delito y Justicia Penal*, Zavalía, Buenos Aires, 1999).

H. Access to Justice

Access to the protection of a juridical system is not effectively granted to the most underprivileged socio-economic and cultural sectors. Ignorance of the judicial system abounds while, the resources of which are primarily centred in urban areas are limited. Legal discourses are not only different from the ones often used by ethnic majorities, but are inaccessible to the public given the insufficient education and the hermetic legal terminology. Protecting human rights is inextricably linked to a sound legal system. For example, preventing ecological and environmental destruction requires judicial review of environmental projects as well as juridical public assistance to bring the disadvantaged sectors affected by the project to find appropriate solutions.

I. Legislation and Culture

Likewise, in many countries official legislation does not adequately respond to actual social processes. Often its formulation and origin are alien to the cultures of the majority. Furthermore, in several countries with substantial indigenous populations, institutional and legal pluralism requires specific solutions for them beyond the unified response given by western legal systems. Moreover the formal juridical system should be integrated and supported by mediation, arbitration, conciliation and community oriented justice measures, duly able to provide for local solutions to pressing problems, always respecting fundamental liberties and human rights.

J. Sectoral Partiality

In so far as development is sustainable, it requires a juridical system acting as an effective instrument of social justice, promoting a healthy and harmonious relationship between state and society, and protecting the most vulnerable social and economic sectors. Perhaps this sectoral impartiality is the most difficult objective to achieve in our present global scenario where states often act as agents of structural inequality.

K. Justice Delay

Another important factor, justice delay, is prevalent even today in Argentina and other countries of the Latin American and Caribbean region and works directly against the rights of the most vulnerable groups of society (David, Pedro R., in *Justice and Troubled Children around the World, Volume II*, Edited by V. Lorne Stewart, N. York University Press, 1981, Chapter 1- Argentina-, pp. 25-26).

The most effective strategy to defeat the rights of the most vulnerable is justice delay due to high litigation costs.

Most of these cases involve disputes over property. It is precisely here where the informal structure of the judiciary can be most effectively manipulated in order to help preserve the status quo with respect to ownership of land and financial disputes. But even in the case of criminal actions, if the accused happens to be a member of the political, social, cultural or economic elite, or can marshal sufficient support among the powerful, the strategy of delay can be effectively applied. The great majority of inmates in Latin American prisons are scapegoats or "poor devils" as Lopez Rey singled out in his perceptive criminological work (Lopez Rey, Manuel, "Criminologia", Chapter X, pp. 173-174, Aguilar, 1978, Madrid, Spain).

L. The Legal System: A Force for the Status Quo?

We can advance the proposition that, *whereas the economic institution tends to act as a force toward social change, the judicial system often works to preserve the status quo*. An analysis of the role structure of the judiciary and the process of recruiting and appointing judges at high levels of the legal system is essential here for understanding how the elites of many countries perpetuate themselves in the face of powerful social forces for change.

M. Reforms to be Implemented

Numerous legal, judicial and institutional reforms are recommended in order "to create an environment conducive to the fight against criminality, promoting growth and sustainable development and eradicating poverty and unemployment" (Vienna Declaration in Crime and Justice, para. 10).

Among them, I have cited in recent works: substantive and procedural legal reforms aimed at greater clarity and simplicity of legal prescriptions and procedural norms; full access to justice, removing obstacles to political, social, cultural, economic and gender inequalities; the establishment of a vast array of arbitration, conciliation and compensation mechanisms to avoid lengthy and costly litigation and judicial procedures; intersectorial and sectorial planning for crime prevention and criminal justice in the context of development; education and training, reforms in legal education; regional and international cooperation in matters of crime prevention and criminal justice, including bilateral and sub-regional agreements. Some are discussed below (See also: Garapon, Antoine: *La Republique Penalisee*. Chapter IV. *Vers une autre Justice Penale?* Hachette, France, 1996).

N. Reengineering of Penal Law

Gerardo Laveaga in a recent contribution (Laveaga, Gerardo, "Hacia la Reingenieria del Derecho Penal Mexicano", *Iter criminis*, N° 4, Oct-Dec 2002, pp. 11-19) proposes a "rediscovery or a reengineering of penal law consisting of depenalization of minor offences; alternatives to deprivation of liberty; procedures for conciliation and victim compensation; democratization of penal laws; and regional harmonization of criminal policies".

O. United Nations Standards and Norms

The use and application of United Nations Standards in Crime Prevention and Criminal Justice, as well as in the area of Human Rights, and its incorporation in law and practice will be pivotal in solving problems of penal reform, the independence of the judiciary to assure institutional and cultural pluralism to make more effective the rule of law in action as well as the persecution and the prevention of corruption and various modalities of organized transnational criminality.

P. Toward the Democratization of Penal Law

As Garcia Ramirez has noted (Garcia Ramirez, Sergio, "Reflexiones sobre Democracia y Justicia Penal", *Volumen de Homenaje al Prof. Barbero Santos*, Salamanca, 2001, p. 304), the penal process is the space for testing, beyond generalities and utterances, the nature of the social state, democratic and law abiding. Law and penal justice are instruments and conditions of democracy, not so much since they include prescriptions for individuals, but mainly because they contain limitations to State power; they contain rights against arbitrary power and force (ob. cit. p. 300).

And Garcia Ramirez added: "Zero tolerance could be positive if it is also applied to unemployment, poverty, lack of health, ignorance and marginality. Moreover, penal justice is somewhat who is the judge applying penal laws" (ob. cit. p. 307).

Q. A Success Story on the Use of Standards and Norms in Crime Prevention and Criminal Justice: The Case of Juvenile Justice Reform in Latin America and the Caribbean

After the ratification of the Convention on the Rights of the Child, the process of legal reform in Latin America taken by Member States adopted three main modalities: for some countries no impact was noticed; for some, only formal and superfluous adjustments to the Convention; and finally, for many others, a profound process of legal reform took or is taking place right now, both in relation to substantive and procedural dimensions.

For those countries making substantive reforms, three well known instruments in juvenile justice were guiding them together with the Convention: The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). The application of these three instruments was decided knowing that, even if they did not have the binding force of the Convention, they nevertheless represented agreements of the international community that were highly relevant for the interpretation of the Convention and for the design of juvenile justice policies (Beloff, Mary, "Infancia, Ley y Democracia en America Latina", Temis, Depalma, Buenos Aires, 1999, p. 88).

The success of disseminating and implementing juvenile justice norms, standards and instruments in Latin America and the Caribbean despite the challenging tasks ahead, was a direct by-product of the political decision of some countries, supported by technical cooperative efforts of the former Crime Prevention and Justice Branch, then Division and now Centre for International Crime Prevention with the support of UNICRI, ILANUD, and of intergovernmental and non-governmental organizations, and various segments of civil society, including the mass media and juvenile sectors.

The role of the UN Congresses in the Prevention of Crime and the Treatment of Offenders should be given prominent recognition, since they provide a unique global forum in addition to regional preparatory meetings for disseminating and implementing norms and standards in crime prevention and criminal justice.

These reforms, many of which were the result of vigorous social mobilization in favour of the rights of the child (Brazil, 1990; Guatemala, 1996) are working towards juvenile justice for the millions of marginalized and destitute children and youth of Latin America and the Caribbean, giving them access to justice and thus better protection of their fundamental rights.

I wish to add that advisory services in the area of crime prevention and criminal justice, including juvenile justice, were continuously provided by the Secretariat under various modalities of technical cooperation for more than a decade to Latin America and the Caribbean countries despite the scarcity of financial resources (David, Pedro R., *Annali della Fondazione: Technical Cooperation Needs and Initiatives*, 1995, p. 196).

R. The Independence and Impartiality of the Judiciary, Prosecution and Criminal Justice Officials

For Latin America countries, both dimensions, the democratic nature of the penal process and the independence and fairness of the judiciary are closely interrelated.

Both are necessary preconditions of the rule of law in society and of full access to justice.

In Latin America, where historical conditions of state abuses of power and violent political and economic groups limited fundamental rights, the judicial system has grown under enormous institutional pressures. (David, Pedro R., *Naciones Unidas, Derechos Humanos y Poder Judicial*, p. 259; *Globalizacion, Prevencion del Delito y Justicia Penal*). Thus the Guidelines for the Independence of the Judiciary have been central in guiding strategies and actions towards the reconstruction of the judicial system after a return to democratic governance.

S. Legal Comprehensive Reforms to Address the Removal of Obstacles Related to the Need for Plurality of Cultures and Legal Systems to Facilitate Access to Justice

In some countries, despite a unified legal official system, there are many different legal cultures and concomitant legal practices.

Many constitutions in Latin America adopted provisions recognizing the rights of indigenous people to territorial jurisdiction and the right to their own norms and procedures (Colombia-1991, art. 246; Perú-1993, art. 139) (See Kalinsky, Beatriz- Justicia, Cultura y Derecho Penal- Ad-Hoc, Buenos Aires, 2000, p. 143-161). However, there are still penal codes discriminating and criminalizing conduct that is in conformity to tribal customs (See David, Pedro R., Sociologia Juridica, Buenos Aires, 1980, Edit Astrea, Chapter X).

T. Legal Reforms Harmonizing and Implementing National Legal Systems with International Treaties, and Standards and Norms

The impact of global and regional tribunals, almost in all areas of law, requires immediate comprehensive legal reform in national systems. Moreover, domestic legislation reform demands a concerted effort by member countries and the international community to make these reforms effective. Of pressing concern is the ratification and the implementation of the Convention Against Organized Transnational Criminality.

U. Technical Cooperation in Strengthening the Rule of Law in Latin America

The Latin America Preparatory Meeting for the Tenth United Nations Congress (A/Conf. 187. RPM 4/1) in discussing Topic I of the Congress, noted that a reliable well functioning criminal justice system was of utmost importance to ensure the rule of law and achieving concomitant social progress and economic development. Efforts toward that goal should address closer community involvement in criminal justice proceedings and provide the general public with information on the operation of criminal justice systems and the importance of criminal law as a means to ensure social stability. The meeting considered important access to justice, improved transparency and expediency of the criminal justice system and its fairness in sanctioning offenders. Implementation of technical cooperation programmes in these aspects was recommended since technical cooperation remained a top priority recognizing that financial constrains forced governments to reduce technical cooperation initiatives.

A key statement of the meeting, expressed the view that domestic laws should, where applicable, incorporate elements from community based judicial systems and from the traditions and customs of indigenous people recognized by convention (No. 169) concerning tribal peoples in independent countries (20-27, June 1989).

V. Restorative Justice

Mediation and conciliation in penal matters has been increasingly used in Latin America countries. The approval by ECOSOC of the UN Basic Principles for Restorative Justice in penal matters will greatly help further progress in many countries that have already established alternative models of conflict resolution or are in the process of doing so.

As Ceretti (Ceretti, Adolfo, 1999) has noted, “mediation introduced a new communicate logic where there was only confrontation and litigiousity, overcoming the dualism of opposition through a symbolic compensation reparation. Self-dignity and integrity both for the victim and the offender can thus be recovered. Mediation and measures of restorative justice represents social equity, beyond the cold formalism of the judicial process”. These measures constitute a fertile approach for facilitating access to justice in Latin America.

W. The Need for Sectoral and Intersectoral Coordination and Planning in Crime Prevention, Criminal Justice and Development

In a paragraph of a Secretariat's paper for the Sixth UN Congress (1980, New Perspectives in Crime Prevention, Criminal Justice and Development, paragraph 42) it is noted that: “Perhaps what is needed most in the future is a new type of professional planner, with criminological as well as planning expertise, since crime is always concerned with human behaviour and thus does not recognize sectoral boundaries. In developing an adequate model for sectoral planning, a logical and humane system which does not rely only on the two extremes of crime and punishment should be conceived, aimed at restoring integrative community mechanisms. The sequence of crime and punishment fits only traditional ideas. A rigid articulation of these two elements in the face of the world today can aggravate existing processes of marginalization and alienation, especially among the poor and the disadvantaged”. On the transition from nomos-centered logic to socio-centred logic, see also Salah, M., “Les contradictions du droit mondiale”, P.U.F., Paris, 2002, pp 87-88.

More than ever, the social exclusion and marginality in Latin America to the rule of law and access to justice require careful attention to find imaginative solutions. Among them “the itinerant judge” of Argelia, the solution of the Barangay system of the Philippines or the Panchayat in India, or the Justice of the Peace in Latin America are examples in the right direction.

X. Regional and International Cooperation and the Role of the United Nations

The Report on the 10th UN Congress on the Prevention of Crime and the Treatment of the Offenders, in the Summary of the General Discussion at the High Level Segment, expressed the following (A-Conf. 187/15, para. 15-16): “shared responsibility and collective action was seen to have several facets”. First each state should guarantee that it is able to play its full role in international cooperation. This required a review of legislation and practice and ensured that cooperation was effective also, within the state, for example among domestic law enforcement agencies. Secondly each state should seek to ensure that it had in place the capacity to provide assistance to other states. Thirdly, states should explore the potential offered by various international instruments and structures for international cooperation. Para. 16, mentions technical assistance as a fourth facet of shared responsibility and collective action.

Y. The Role of Technical Cooperation

In paragraph 22, the Vienna Declaration recognized that the United Nations Standards and Norms in Crime Prevention and Criminal Justice contribute to efforts to deal with crime effectively. It also recognized the importance of prison reform, the independence of the judiciary and prosecution authorities and the international code of conduct for Public Officials. “We shall endeavour - the Declaration continued - as appropriate to use and apply the United Nations standards and norms in crime prevention and criminal justice in national law and practice. We undertake to review relevant legislation and administration procedures, as appropriate, with a view of providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice”.

Z. Objectives of Technical Cooperation Activities

According to our previous discussion, technical cooperation activities in the area of strengthening the rule of law and facilitating access to justice should include, among other aims, the following:

1. Promote and reinforce the self-evaluation capability of the judiciary, including prosecution and crime prevention and criminal justice agencies to detect, identify and solve discriminatory practices and inequitable legal norms violating fairness under the law, thus assuring all vulnerable sectors of society the enjoyment of fundamental rights and freedoms.
2. Harmonize domestic law and implement national legal structures to conform to international conventions on human rights and crime prevention and criminal justice (Convention Against Transnational Organized Crime). Of special importance is the prevention of illicit traffic of women and children.
3. Improve criminal policy - taking into account an intersectoral approach, by which national and regional coordination will be assured between the crime prevention and criminal justice sectors and other development concerns.
4. Improve public confidence in the law and more specifically the penal law by strengthening impartiality, fairness and expediency of the substantive and procedural norms, processes and practices.
5. Improve the recruitment process of legal and judicial officials assuring the highest levels of impartiality competence and integrity and to comply with the standards and norms on the protection of human rights in the administration of justice.
6. Provide access to justice, avoiding unequal treatment of the indigenous population, according to their own traditions and culture, taking into account Res. 190 of the ILO and constitutional prescription and international treaties. In penal law there is a need to review the western oriented principles of penal responsibility to account for the so-called “culturally conditioned mistakes of law” (Art. 15, Peruvian Penal Code of 1991). Moreover full compliance is required for alternative solutions to deprivation of liberty (Art. 10, inc. 2° of Convenio 169 - see Kalinsky, ob. cit., p. 157-61).
7. Reinforce the technical capabilities of crime prevention and criminal justice agencies providing, as needed, specialists, training and equipment.

8. Assist in the development of an information basis for the collection and dissemination of data on the interrelations between criminality and development indicators and the effectiveness of crime prevention and criminal justice agencies.
9. Offer advisory services for the designing and formulation of plans, projects and measures to implement United Nations guidelines, standards, norms and instruments and for the elaboration of multinational, regional and sub-regional strategies to deal with problems of equitable treatment under the law.
10. Design a coordinated and inclusive criminal policy interrelated with social issues to link all national relevant agencies with state and local entities and appropriate non-governmental organizations.
11. Offer advice on ways and means of promoting and strengthening regional and sub-regional cooperation particularly in relation to the harmonization of crime prevention and criminal justice policies in the context of development.
12. Cooperate with UN institutes in the field in their activities so as to achieve closer interrelations between areas of development concern and criminal policy.
13. Provide Member States with advice concerning the design and formulation of UNDP, the World Bank, the Interamerican Bank and other financial agencies of country and regional programmes and projects, in strengthening access to justice and the rule of law.
14. Advise on measures, programmes and project design and implementation at the national and regional level to apply the "Basic Principles on the use of Restorative Justice Programmes in Criminal Matters", the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, The Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules for the Treatment of Prisoners and other UN guidelines, standards and norms as pertinent.
15. Advise on measures and reforms to strengthen or establish judicial review of development projects in order to achieve the targets fixed by the UN Declaration on the objectives of the Millennium (Res. 55/2 GA, 8/9/00).

CONCLUSION

The evidence presented in this paper substantiates the conclusion that the rule of law is a pre-requisite for economic growth and social equity.

Instead of being a by-product of the economic structure of societies in transition, the rule of law is a fundamental factor of economic growth and social justice. Technical cooperation efforts should direct more attention to its unique role, when providing advice on legal and institutional reforms through the dissemination and application of United Nations standards and norms on human rights, crime prevention and criminal justice.

Aristotle, more than 2000 years ago, pursued the idea that "justice and equity are not different values, but two distinct ways to reach the unified value of law" (Radbruch, Gustavo, "Filosofía del Derecho", Revista de Derecho Privado, Madrid, cuarta edición, 1959, p. 47).