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Excerpts from a Keynote Address

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In most Latin American countries, even after the writing of new democratic constitutions, legal institutions have not been reformed and the arbitrary practices of state agents in police, and other institutions for violence control, continued unchanged. Despite all the advances in the civil society and democratic governance, the poor continue to be the preferred victims of violence, criminality and human rights violations.

Democratic governance has been unable in this continent to implement or to propose reforms for those institutions, as the judiciary, the public prosecutors office and the police. Attempting to expose the dimensions of these setbacks and to discuss the perspectives for reform of the state, in particular the judiciary, this paper deals with the problem of how the rule of law in Latin America can become an effective instrument for the appropriation of rights ' by the majority of the population. The principal issues addressed here are the problems of illegal violence; the ways to institutional reform, including access to justice and to good governance

Crime and Victimization

The growing criminality not only erodes democratic expectations but it also helps to legitimize arbitrary violence, weakening the legitimacy of the political system. We face a paradox which undermines efforts the fight to fight crime: although the fundamental guarantees are well defined by most of the democratic Constitutions, but the exercise of full citizenship is practically non - existent for the majority of the population. These societies based on exclusion - in civil and social rights terms- could be considered "democracies without citizenship". The impact of globalization, coupled with unemployment and the crises resulting from economic adjustment, separates the rich from the poor as never before - "as if they were oil and water."

Poverty and Violence

Those who are most affected by unemployment and most marginalized from the education system are also most likely victims of both arbitrary police repression and common. In fact in most of Latin America's huge metropoli, there is a clear correlation between poor neighbourhoods and death form violent causes, and a clear link exists between exists between living conditions, violence, and mortality rates. Crime usually occurs in the poor neighbourhoods and shanty- towns, where they lack adequate housing, have little access to regular work and have difficulty obtaining the most basic public services. Moreover, the state, particularly those institutions charged with maintaining peace and order, like the police and the judiciary, is rarely present in these environments

which could be described as un-civil societies: there the populations are in their daily life submitted to the control and terror of organized crime and to the arbitrary power of police (the only face of the state that they know), human rights and the rule of law are inexistent, violence prevails.

Uncivil Societies

There is a clear relationship between uncivil behaviour and uncivil public spaces. A uncivil public space is a collective space without quality, which, because its negative characteristics, doesnt favour conviviality. It doesnt offer any possibility of a normal development for social relations and citizenship, and what is much more serious, it creates serious obstacles to social attachments and provokes a predisposition to uncivil behaviour.

Most of the analyses of democratic transitions have taken for granted that the strengthening of civil society during the resistance to authoritarian governments and during political transitions, with the re- building of democratic political institutions would be sufficient to control those forms of incivility. In fact, most democratic governments were not able to implement specific public policies dealing with incivility.

But the rule of law which is discussed here must not be equated with the enforcement of criminal law, precisely because one of the cardinal feature of the criminal law is its discriminatory character. Indeed, the immense majority of those who are punished in society or go to prison in every society in Latin America are, with the exceptions of homicide or other horrendous crimes against persons, the powerless and the underprivileged - exactly those whose protection by the rule of law democracy is intending to guarantee.

It is more than urgent to that the reforms of the State to find alternatives to punishment in attempting to solve problems on crime and repression. I think that this need must be very much present in our minds every time we are concerned by the challenges to reform the judiciary and to strengthen the rule of law.

Torture Continues

The return to democratic constitutionalism did little to eradicate the authoritarian practices present in the state and in society. One major failure of the new democratic states is its incapacity to put an end to the ill treatment of common criminals under arrest, as torture under police investigation and the abominable conditions of prison throughout most of the countries in Latin America -- after political transition.

These practices are in many countries protected the inexistence of systems of accountability: accusations of torture are rarely investigated; when they are, those responsible are even more rarely punished. Such practices are encouraged by legal systems that rely heavily on the written dossier, thus valuing confessions and other declaration by suspects and witness.

Prisons are Overcrowded and Neglected

Prison conditions are characterized by the overcrowding of most of the institutions in the region. Food, health conditions, medical assistance are poor. The management of these establishments in most cases are arbitrary and oppressive and most frequently the internal running of these place are abandoned to the inmates themselves.

The Police Serve to Protect the Elites

Police and other institutions of the criminal justice system tend to act as border guards protecting the elites from the poor, and police violence- as torture - remains cloaked in impunity because it is largely directed against these "dangerous classes" and rarely effects the lives of the well-to-do. Crime -- prevention policies -- especially those proposed during election time by candidates are aimed less at controlling crime and delinquency than diminishing the fear and insecurity of the ruling classes. Elite perceptions of the poor as part of those "dangerous classes" are built by a judicial system that prosecutes and convict crimes committed by poor people, while most crimes of the elites - and in most cases of organized crime remain largely unchallenged .

Besides the practices of torture, mentioned above, police in many countries have been criticized for their policy of "shoot first, ask questions later", summary executions of suspects and criminals" being common practice in the countries of the region. The abuse of deadly force by the police varies from country to country, but its common characteristic is justified as a way tov control ordinary crime in poor neighbourhoods and the victims are from the most vulnerable groups - the poor, the homeless, the Afro descendants.

Rural Massacre

These gross human rights violations under democratic rule are much more visible, thanks to their number and to the media, in urban areas. But police brutality and massacres are too frequent in rural areas of the continent, in special in those areas where rural conflicts, largely over control of the land, indigenous communities or peasants rights.

The repetition of these massacres contribute to their banalization, accompanied by the inexistence of effective measures for investigation of these crime: the criminal justice system has failed to investigate and prosecute numerous cases of rural violent against the poor peasants.

Most frequently peasants, rural workers and indigenous peoples follow under this classification and have not access to the guarantees of the rule of law. Precisely the access to judicial instruments to seek repair for criminal damages, consequence of the frequent rural massacres, are not available for those groups: the law and the police exists just as instrument of oppression and control on behalf of the rural elites.

Access to Justice

I would like to turn now to the question of access to justice. State institutions charged with providing law and order are widely perceived as dysfunctional. A large percentage of Latin American citizens do not believe that their civilian government have implemented, or attempted to implement, the rule of law with equality and impartiality

for all citizens. Formal guarantees enshrined in the constitution and the legal codes are systematically violated, largely because of the glaring gap between what the law says and the way the institutions charged with protecting and implementing the law -- the police and the judiciary -- function in practice.

The judicial system has been widely discredited for its venality, inefficiency and lack of autonomy. It is deficient in every respect: material resources are scarce; judicial procedures are excessive formalistic; judges are insufficiently trained; and too few judges oversee too many cases.

A fundamental component of judicial organizational efficiency is organizational efficiency, which is needed to avoid long delays in clearing cases. In most countries of the region, as the investigative capacity of the police is very limited, a low percentage of investigated cases make it to courts. In most countries, the way the courts function is intimately linked to the hierarchical and discriminatory practices that mark social relationships.

Judiciaries has access to the coercive authority of the state to enforce judgments. This special relation to the rest of the state puts the judiciary in a unique position to support sustainable development, by holding the two other branches, the executive and the legislative accountable for their decisions. Yet judiciaries can play this role only when three conditions are present: independence, the power to enforce ruling and efficient organization. Judicial independence has been repeatedly compromised in many countries, and in no country has the judiciary been immune from political efforts to override its decisions.

To conclude, I must say that it is impossible to have good governance without the rule of law, but new democracies in Latin America continue far from being capable of assuring liberty and justice for all. To make the rule of law a notion with real meaning for the lives of the underprivileged in Latin America it would be impossible to escape the desperate need for social reforms. Legal recognition and exercise of political and civil rights must be particularly stressed in setting where basic human, social, and economic rights are systematically violated.

The shift to neoliberal economic policies has provoked a deepening of inequality which threatens to undermine the legitimacy of the new constitutional regimes. Perhaps the basic condition to overcome the extremely limited content of the rule of law for the non-elites in Latin American democracies is to grapple with the problem of the poor generated by technological competition and increasing globalization .

Civil society organizations and the State have important roles to play in this process of consolidation of the rule of law in Latin America. In the case of the continuing violations of rights under democratic rule, the role of civil society is crucial, because the State alone cannot provide solutions. These emerging movements in civil society have introduced a new dynamism and a capacity for innovation into the States system. Civil societys organizations monitor State compliance with international standards, help promote changes in institutions and challenge institutions in the interest of human rights.

The state -- as defender and promoter of human rights, as the Declaration of Vienna says -- has a critical role to play if Latin American societies are to tackle the growing problem poverty and the associated problems of lawless violence, racial discrimination and obstacle to the access to justice.

Unhappily, in Latin America -- the same could be said about most countries in Africa, Asia and Central Europe -- a severe incompleteness of the State, in special of its legal dimension. Paradoxically, this incompleteness has increased, not decreased, during political transitions and democratic consolidations, at the rhythm of economic crises and antistatist economic policies throughout the last two decades.

Despite all the obstacles which we discussed and analyzed here and the failure of present State institutions to enforce the rule of law, it is important to acknowledge that civilian rule and democracy, with all its limitations, has opened new perspectives for democratic consolidation processes which now necessarily encompasses the appropriation of rights by the underprivileged . Social change and acquisition of rights trigger new demands and aspirations: from this angle democracy is not a static political regime but a moving horizon.

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