

THE STRUGGLE AGAINST CORRUPTION AND THE SEARCH FOR TRANSPARENCY: A CHALLENGE FOR THE JUDICIARY IN GUATEMALA

By Carlos Esteban Lairos Ochaita
Chief Justice of the Judiciary and the Supreme Court of Justice
(Original Text in Spanish)

It is an honor and a pleasure to address you. Given the constraints of time I am going to summarize my presentation which I will set forth in four parts: background information; challenges; briefly, what we are doing in this respect in Guatemala; and, finally, some thoughts by way of conclusion.

BACKGROUND INFORMATION

Corruption in the delivery of justice is a complex matter, often very difficult to detect, prove and fight against. This is so for a variety of reasons. Let me mention but these: The lack of a culture of complaint and denunciation by the citizenry (especially due to the fear of reprisals); the burdensome mechanisms and procedures that incite to corruption (amongst them, the insufficiency of ‘orality’ or spoken testimony); the existence of staff geared to taking personal advantage of their positions (some judges espouse the notion of independence of the judiciary in order to avoid supervision and sanctions); few or non-existent means to lodge a complaint of corruption; some unscrupulous litigants; the judge’s insufficient involvement in procedural matters; low salaries; the absence of a career stream in the judiciary which would provide job stability and the development of a merit-based system; the lack of effective control systems; biased and unethical communications media; ineffective supervisory agencies; deficient systems support; and the scant use of appropriate technology for case-flow management, among a host of others.

The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society, to which the government of Guatemala and the guerillas subscribed, demonstrates that *the reform and modernization of justice must seek to avoid generating and covering up a system of impunity and corruption*. This is why judicial reform is critical. *Reform should root out inefficiency; eradicate corruption; guarantee free access to justice and impartiality in its delivery; provide an independent judiciary, ethical authorities, and probity in the overall system, as well as modernization.*

Against this backdrop, and based on its own self-determination and convictions as to the pronounced weaknesses of the judiciary, the end of 1996 saw the beginning of the modernization process of the judiciary. It was launched on the basis of a highly participative and inclusive consultation between the several areas of judicial concern and the varied sectors of Guatemalan society. Together, they arrived at a diagnosis with the result of technical studies and pointed to the design of an ambitious blueprint—the Modernization Plan—which targets five component strategies, one of which is **the struggle against corruption**.

OUR CHALLENGES

Within the struggle waged against corruption there are obstacles and challenges we must face and overcome in order to effect improvements in the Judiciary. Among them we can number the following:

