

A CHANGE FOR THE BETTER: AN INSIDE LOOK TO THE JUDICIAL REFORM OF THE DOMINICAN REPUBLIC

Ingrid Suarez

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I. INTRODUCTION

A president above the law. A Legislature that would pass any law, without regard for the impact on its citizens. Corruption and careless government made for a country in economic and political chaos. These were some of the problems in the Dominican Republic prior to 1994 when the Constitutional Reform Act (hereinafter "the Act") was passed. As a result of the Act an independent judiciary was established and the law, instead of corruption, reigns supreme again. This article will discuss the Act and its accomplishments in the Dominican Republic, the country's financial improvement since the act was passed, and the possible effect it may have on other developing countries with weak or non-independent judiciaries.

II. A BRIEF HISTORY OF THE DOMINICAN REPUBLIC

The Dominican Republic is located between the Caribbean sea and the North Atlantic Ocean on the island of Hispaniola.¹ It is an independent nation of Spanish heritage,² with a present population of 8.4 million people.³ The island is about the size of Vermont and New Hampshire combined.⁴ It was discovered by Christopher Columbus in 1492, and became part of the route for Spanish explorers.⁵ In 1697, France acquired the island from Spain and settled on the western portion of the island.⁶ The French named their colony Haiti, and they used it as a port for slave trade.⁷ Almost one hundred years later, in 1793 the Haitians revolted and gained their freedom.⁸

In 1822, the now free Haitians crossed over unto the eastern side and took over the entire island for twenty-two years.⁹ During this period, the Haitian constitution created a Supreme Court as a court of last resort, but with no power

1. *CIA The World Factbook 2000* at <http://www.cia.gov/cia/publications/factbook/geos/dr.html> (last modified Jan. 1, 2000) [hereinafter *CIA*].

2. *Information and Resources from Countries Around the World* <http://www.virtualsources.com/Countries/Latin%20America%20Countries/Dominican%20Republic.htm> (last visited Sept. 9, 2000) [hereinafter *Information and Resources*].

3. *CIA*, *supra* note 1.

4. *Id.*

5. JACINTO GIMBERNARD, *HISTORIA DE SANTO DOMINGO [HISTORY OF SANTO DOMINGO]* 11 (1989).

6. At the end of the Spanish and French war, King Louis XIV of France signed a peace agreement with Spain. *Id.* This agreement gave the French the right to settle on the western part of the island, which was divided by, the Guayubin River. *Id.* The Spaniards agreed to keep the peace as long as none of the French colonists crossed over the line. *Id.* at 104.

7. *Id.*

8. The National Assembly declared that all children of the former African slaves had rights equal to the white people. This caused the rebellion of the slaves. *Id.* at 110.

9. *Id.* at 111.

to consider constitutional issues.¹⁰ Haitian statutes, based on French legislation, were used for all criminal, civil, and corporate matters.¹¹

In 1844, the Dominican Republic gained its independence from the Haitians, and the first constitution of the Dominican Republic was formed.¹² This constitution granted the Supreme Court of Justice the constitutional power to review the lower courts and to maintain uniformity throughout the country.¹³

In 1916, European creditors were threatening force to collect on unpaid debts. To ensure payment of the debts to the American banks, the United States occupied the island for eight years.¹⁴ Under the administration of United States President Woodrow Wilson, the Marines restored order throughout the country. The country's budget was balanced, its debt was diminished, and economic growth resumed. The United States created infrastructure projects, which produced new roads that linked all the country's regions.¹⁵

In 1930, the dictator Rafael Trujillo gained power and controlled the island until his assassination in 1961.¹⁶ During his control, Trujillo promoted economic development from which only he and his supporters benefited.¹⁷ Also, Trujillo maintained a sham separation of powers in which the judiciary and legislative branches were at his complete control.¹⁸ After Trujillo's death, the country was in political turmoil. A series of short-lived provisional governments ensued until a civil war broke out in 1963. Two years later, United States president, Lyndon B. Johnson,¹⁹ sent out the Marines to secure Santo Domingo and restore order.²⁰ The intervention was granted hemispheric

10. Interview with Justice Julio G. Campillo, President of the Dominican History Academy and Supreme Court Justice of the Dominican Republic (July 29, 2000) [hereinafter *Interview with Justice Campillo*]; see also Dr. Julio G. Campillo, *Breve Historia de la Suprema Corte de Justicia* [*Brief History of the Supreme Court of Justice*] (last visited Jul. 31, 2000) <http://www.suprema.gov.do/sci/hscj.htm> [hereinafter *Supreme Court Webpage*]. Note: Justice Campello passed away on June 1, 2001.

11. *Id.*

12. *Supreme Court Webpage*, *supra* note 10.

13. *Id.*

14. *Information and Resources*, *supra* note 2.

15. Occupation by the United States 1916-24, Library of Congress, Federal Research Division, Country Studies, Area Handbook Series, available at <http://rs6.loc.gov/frd/cs/dotoc.html#do0021>

16. *Information and Resources*, *supra* note 2.

17. *Id.*

18. MAIRENI RIVAS POLANCO, OTRA IMAGEN DEL PODER JUDICIAL DOMINICANO [ANOTHER IMAGE OF THE DOMINICAN JUDICIARY] 29 (Suprema Corte De Justicia De La Republica Dominicana 2000).

19. To learn more about the United States intervention in 1965, See Max Hilaire, *International Law and The United States Military Intervention in the Western Hemisphere*, 92 AM. J. INT'L. L. 586 (1998).

20. Victor Grimaldi, *El Diario Secreto de la Intervencion Norteamericana de 1965* [*The Secret Diary of the North American Intervention of 1965*], available at <http://www.rincondominicano.com/historia/abril1965/aintervenciondeabril1965.php>?

approval by the creation of an OAS²¹ sponsored peace force to supplement the United States military.

In 1966, elections began to be held “normally” every four years.²² However, every election since then has been plagued by accusations of fraud or intimidation.²³ In 1994, those allegations²⁴ were so widespread and so convincing that the major political parties entered into a Democracy Pact (Pacto por la Democracia), to avoid civil disturbances such as a *coup d’etat*, strikes and others.²⁵ The pact required the elected president, Joaquin Balaguer, to serve only for a two-year term, instead of four.²⁶ It also summoned the National Assembly²⁷ to make changes²⁸ to various parts of the constitution that affected the country’s judiciary.²⁹ The Organization of American States (OAS)³⁰ backed up the pact with the intent to strengthen the people’s confidence in their institutions. The United States government described the pact as an “acceptable solution” for the Dominican political crisis.³¹ The changes to the constitution were extensive, and had a significant impact on the country.

III. THE 1994 CONSTITUTIONAL REFORM

In 1994, although it was not in full force until 1997, the Dominican Republic’s constitution underwent an extensive series of changes for the purpose of restructuring the country into a true democracy. The changes focused on its values, institutions, and mechanisms to achieve a more open

21. OAS is an organization made up of 35 member states, from North, Central, and South America, Canada, and the Caribbean. It was created to affirm the state’s commitment to common goals and respect for each nation’s sovereignty. Information about the OAS, available at <http://www.oas.org> (last visited on Sept. 13, 2002).

22. “The Dominican Republic has held 10 elections since authoritarianism ended there in 1961. Ordinarily, this would certainly be enough for the country to be considered as a safely democratic one. However, only 4 of the 10 have been both fair and competitive, while the run-ups to, or outcomes of, the others have produced crises, coup d’etat, revolution, renewed authoritarianism, civil war, intervention by the US military, or near-national breakdowns.” Howard J. Wiarda, *Consensus Found, Consensus Lost: Disjuncture in US Policy Toward Latin America at the Turn of the Century*, 39 J. Interamerican Stud. & World Aff. 13, 17 (1997).

23. LARRY ROHTER, *Dominican Republic Votes, With New Blood in the Race*, N.Y. TIMES, May 17, 1996, at A10.

24. To learn more about the 1994 electoral fraud allegations, see Howard W. French, Jr., *Fraud Charged in Dominican Vote*, INT’L HERALD TRIBUNE, May 19, 1994, at News.

25. ROTHER, *supra* note 23.

26. *Id.*

27. The National Assembly is the congress in plenum at the time the constitution was voted on.

28. The 1994 constitutional change is number 36 in the history of the Dominican Republic. Interview with Justice Campillo, *supra* note 10.

29. RIVAS POLANCO, *supra* note 18, at 32.

30. OAS *supra* note 21.

31. *Reform of Constitution*, 94-08 Latin American Newsletters, Ltd., Politics 6 (Oct. 6, 1994)

democracy.³² A democracy flexible and respectful of the rights of minorities, not only based on the law, but on a new way to live and coexist with the citizens, and a more effective interaction between society and the state.³³

Before the 1994 Reform, the three branches of government were said to be independent.³⁴ However, facts have shown that separation of powers has not existed.³⁵ Instead, the executive power has prevailed over the judiciary and legislative branches.³⁶ The president played the primary role of the state, often not even subject to any checks and balances by the other branches of government.³⁷ Among the main amendments to the constitution is the creation of a special council, the National Magistrature Council (Consejo Nacional de la Magistratura), to appoint the Supreme Court justices.³⁸

A. *The Executive Power*

Former president Joaquin Balaguer³⁹ headed the executive branch in 1966. The Constitution at that time allowed him to run for reelection at the end of his four-year term. He was reelected in 1970, and again in 1974, but lost the election in 1978 and 1982. He again ran for president and won, in 1986, 1990 and 1994.⁴⁰ A lack of restraints on reelection permitted Joaquin Balaguer to stay in power for a period of more than 20 years. Moreover, the 1966 constitution did not include any limitations or repercussions on any of the president's actions. Thus, the president was free of any constitutional check.⁴¹

32. A public opinion survey in 1997 defined democracy as "strong, statist, Peron-style, nationalistic, and top-down leadership." Wiarda, *supra* note 22.

33. RIVAS POLANCO, *supra* note 18, at 28.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 29.

39. "Balaguer was born in Villa Bisono on Sep 1, 1907, the son of an immigrant merchant from Puerto Rico. He died on July 14, 2002 at the age of 95. Having published a book of poems at age 14, the intellectual Balaguer went on to receive a law degree before going to Paris and earning a doctorate at the Sorbonne. He entered the diplomatic service of the Dominican Republic and, after a brief career in teaching at the University of Santo Domingo; he served as an ambassador to several Latin American countries. He was part of the Cabinet of dictator Rafael Trujillo during the late 1940s and 1950s, heading several different ministries, and became vice president in 1957. In 1960 he became the figurehead president under Trujillo and was forced into exile after Trujillo's assassination a year later." *Biographies: Joaquin Balaguer Ricardo*, ABC-CLIO, Inc. (1999).

40. *Information and Resources*, *supra* note 2.

41. *Id.*

The 1994 constitution prohibits the consecutive reelection of the president.⁴² This limitation allows the country to have a fresh start every four years, and avoids abuse of power. Presently, the president serves as both chief of state and head of government.⁴³ He has the power to issue decrees, and appoint the cabinet and the governors of the twenty-nine provinces.

B. The Legislative Power

The Legislative power of the Dominican Republic is exercised by a bicameral congress.⁴⁴ The congress is composed of a senate with thirty members, and a chamber of deputies with 120 members.⁴⁵ Both the senate and the chamber are elected by popular vote to serve a four-year term.⁴⁶ Under the old Constitution, the senate, which was influenced by the president, was in charge of electing all the judges, including the Supreme Court justices.⁴⁷ The constitutional reform put an end to that power by the senate.⁴⁸ Congress is now independent of the executive branch, and represents the opinions of the people.⁴⁹ The controlling government party only holds a minority of the seats in both the senate and the chamber of deputies.⁵⁰

The bicameral Legislature plays a vital role in generating policy support, debating proposed measures, and delaying executive initiatives.⁵¹ However, congress cannot unilaterally propose monetary allocations.⁵² It is limited to two ninety-day sessions each year.⁵³ International loans for the public sector, as well as any new taxes, require congress' approval.⁵⁴

Presently, the National Magistrature Council is empowered to designate the Supreme Court justices.⁵⁵ The Council is headed by the president of the country, or in his absence by the vice president, or in his absence by the attorney general.⁵⁶ The rest of the members include: the president of the senate, a

42. CONSTITUCION DE LA REPUBLICA DOMINICANA DE 1994 [DOM. REP. CONST. OF 1994] art. 49.

43. CIA, *supra* note 1.

44. *Id.*

45. *Id.*

46. *Id.*

47. CONSTITUCIÓN DE LA REPUBLICA DOMINICANA DE 1966 [DOM. REP. CONST. OF 1966] art. 23

(1).

48. *Report on situation of Human Rights in the Dominican Republic*, Organization of American States, 104 Inter-Am. C.H.R., Doc. 49 (1999) [hereinafter *Human Rights in the Dominican Republic*].

49. *Id.*

50. *Id.*

51. Interview with Justice Campillo, *supra* note 10

52. *Id.*

53. *Id.*

54. *Id.*

55. *Human Rights in the Dominican Republic*, *supra* note 48.

56. DOM. REP. CONST. of 1994, *supra* note 42, at art. 64 (1).

senator belonging to a party different to that of the senate's president; the president of the chamber of deputies, a deputy belonging to a party different to that of the Chamber's president; the chief justice of the supreme court, and a supreme court justice to serve as secretary.⁵⁷

C. *The Judiciary*

The judicial branch⁵⁸ is led by the Supreme Court of Justice.⁵⁹ It is composed by the Courts of Appeals, and the other courts of lesser jurisdiction, such as the Courts of Land, the Courts of First Instance,⁶⁰ and the Justices of the Peace.⁶¹ The Supreme Court is the highest court of the nation, and it has jurisdiction over the entire country.⁶² Its job is to review the application of the law by the lower courts, as well as the constitutionality of the laws.⁶³ Prior to the 1994 Act, the Supreme Court was not at liberty to declare any laws unconstitutional.⁶⁴ The judiciary was subject to the other two branches of government for any decision it would make.⁶⁵ It was not free to choose its own financial or human resources.⁶⁶ The legislative branch, specifically the senate, appointed the judges and approved the judiciary's budget.⁶⁷ The executive branch appointed the judicial staff and prepared and executed the budget.⁶⁸ The judicial power was so weak, that the Dominican citizens called it the "power without power" [el poder sin poder], or the Cinderella of powers [la Cenicienta de los poderes].⁶⁹

The judiciary had lost the sword of its power and the scales of its justice.⁷⁰ It had drowned in a sea of corruption, inefficiency, extremely long delays, disorganization, and ineptitude.⁷¹ In other words, it was in legal chaos.

57. *Id.*

58. For a graphic description of the judicial branch, please see Section VI, Chart 1 at the end of this article.

59. DOM. REP. CONST. of 1994, *supra* note 42 at art. 64.

60. The Courts of First Instance (Juzgado de Primera Instancia) is equivalent to the Federal District Courts of the United States.

61. The Justices of the Peace (Juzgado de Paz) is equivalent to the Circuit and County courts of the United States.

62. Human Rights in the Dominican Republic, *supra* note 48.

63. *Id.*

64. *Supreme Court Webpage*, *supra* note 10.

65. RIVAS POLANCO, *supra* note 18, at 30.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 29.

70. Rivas Polanco, *supra* note 18 at 29.

71. *Id.* at 30.

The new constitution gives the judiciary autonomy in administration and financial issues.⁷² It orders the creation of the National Magistrature Council,⁷³ whose sole job is to appoint the Supreme Court justices.⁷⁴ It also orders the Council to create a law establishing the rules for the members of the judiciary [Ley de Carrera Judicial].⁷⁵ It allows for constitutional issues to be brought directly before the Supreme Court by the executive branch, the legislative branch, or any interested party.⁷⁶ It also grants the Supreme Court the power to select the judges for the entire nation.⁷⁷ The president is no longer above the law. He is subject to scrutiny by the Supreme Court, whose members are now the watchdogs of the nation.

IV. THE NEW SUPREME COURT OF JUSTICE

The new Supreme Court sits in a two-story building remodeled in 1997.⁷⁸ A picture frame with the Dominican Republic's flag's emblem sits above each justice's desk on the center wall, indicating their respect for their country.⁷⁹ On the left-hand side of the chambers, the scales of justice sits on the center of the bookcase surrounded by codes and law books.⁸⁰ To the right of the office a framed picture of the justices' inauguration ceremony with the former President Leonel Fernandez.⁸¹ This building carries within many years of experience, responsibility, efficiency, wisdom, willingness, and potential to carry out their duties by its current members.⁸²

Under the old constitution, the Supreme Court had the duty to act as trial court for criminal cases against the President, vice-president, senators, deputies, Secretary of State, Supreme Court justices, Attorney General, State Attorneys, and the lower court judges.⁸³ The Court also had the duty to act as a court of last resort for those cases in which the court of appeals acted as a trial court.⁸⁴ It had jurisdiction to hear appeals for annulment of judgments, and had the duty to exercise the highest level of disciplinary authority over all the members of the judiciary, with the ability to impose suspension or destitution, as required by

72. DOM. REP. CONST. of 1994, *supra* note 42, at art. 63.

73. Hereinafter "the Council."

74. DOM. REP. CONST. of 1994, *supra* note 42, at art. 64 (1).

75. DOM. REP. CONST. of 1994, *supra* note 42, at art. 63 (1).

76. DOM. REP. CONST. of 1994, *supra* note 42, at art. 67 (1).

77. DOM. REP. CONST. of 1994, *supra* note 42, at art. 67 (4).

78. Personal perception from my visit to the Dominican Republic on July 2000.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. DOM. REP. CONST. of 1966, *supra* note 47, at §2, art. 67.

84. *Id.*

law.⁸⁵ It also had the power to transfer to a different jurisdiction, either permanently or temporarily, any of the lower court judges, as they saw fit.⁸⁶

The 1994 Act added to these duties the ability to hear constitutional issues presented by the executive branch, congress, or any interested party.⁸⁷ It also gave the Supreme Court the power to create administrative positions necessary to carry out their duties, to select the staff members, and to determine salary and bonuses of the justices and administrative personnel of the judicial branch.⁸⁸

A. Selection of the New Supreme Court Justices

The National Magistrature Council met for the first time in September 1996.⁸⁹ At this meeting they agreed on the procedure to select the justices, and the requirements the candidates⁹⁰ must meet before being nominated.⁹¹ However, the council meetings did not always go smoothly, and by March 1997, the Council could still not agree on issues like the lifetime appointment of the justices.⁹² In a second meeting in March 1997 the Council announced in a national press release that they would accept candidate nominations from its members of society, religious entities, private companies, and political parties.⁹³ The citizens responded to this request by nominating lawyers from every part of the nation.⁹⁴

In April 1997, the Council published a list of 252 names they had received from different entities.⁹⁵ The goal was to choose sixteen justices and two alternates of the highest morals and qualifications.⁹⁶ The Council started their selection process by disqualifying nominees based on an elimination criterion.⁹⁷ Five candidates were disqualified for not accepting their nomination.⁹⁸ Twenty-

85. *Id.*

86. *Id.*

87. DOM. REP. CONST. of 1994, *supra* note 42, at art. 67(1).

88. *Id.* at (7)(8)(9).

89. RIVAS POLANCO, *supra* note 18, at 46.

90. Under Article 65 of the Dominican Republic's constitution to be a supreme court justice, the individual must be a natural born Dominican citizen, be over 35 years of age, must have a juris doctor degree, must be fully capable of exercising their civil and political rights, and must have practiced law or been a judge for at least twelve years. DOM. REP. CONST. of 1994, *supra* note 42, at art. 65.

91. RIVAS POLANCO, *supra* note 18, at 46

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Rafael Alonso, *Sin Salida: El Consejo Nacional de la Magistratura Debe Escoger los Mejores Jueces [Without a choice: The National Magistrature Council Must Choose the Best Justices]*, 7 Gaceta Judicial 4, (May 15 1997).

97. *Id.*

98. *Id.*

three candidates were disqualified for being active members or for previous participation in any political party activity, since this would prejudice the Council's goal of creating a truly independent judicial system.⁹⁹ Six candidates were disqualified for old age or for not having the physical stamina desired by the Council, for the fulfillment of a position with such high responsibilities.¹⁰⁰ The Council also disqualified 122 of the candidates for being known only in a very closed circle of lawyers, not having any specialized legal field, not having any known publications, or for not having a previous appearance before the Supreme Court.¹⁰¹

The Council was left with ninety-six candidates who would obtain one to three points according to an established point system.¹⁰² The maximum points obtainable were thirty-six points.¹⁰³ The points were accumulated according to their legal formation, doctrine, professional, and community services.¹⁰⁴ The legal formation was calculated by reviewing their postgraduate studies, special legal training as professors, or participants in international or national legal symposiums.¹⁰⁵ The points for doctrine were accumulated according to their ideological beliefs in social, economic, political, and legal issues.¹⁰⁶ The professional service points were determined by their work experience, any independent legal research, any dissertations or petitions presented before the Supreme Court, teaching experience in higher education, any official consultant position, and participation in legal projects, investigations, or studies.¹⁰⁷ After all the criteria were considered, the field was narrowed to thirty candidates.¹⁰⁸

The remaining thirty candidates were then required to participate in a nationally televised question and answer session with the Council.¹⁰⁹ This stage lasted approximately five hours.¹¹⁰ After a two-hour deliberation, the Council came back on national television and announced the eleven¹¹¹ men and five

99. *Id.* at 5.

100. *Id.*

101. *Id.*

102. The point system used by the Council was modeled against the point system used in Spain, Costa Rica, and Guatemala to select their Supreme Court justices. Alonso, *supra* note 96.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Alonso, *supra* note 96, at 5.

108. *Id.*

109. Interview with Justice Julio A. Suarez, Justice of the Dominican Republic Supreme Court (Aug. 4, 2000) [hereinafter *Interview with Justice Suarez*].

110. *Id.*

111. After being selected, one of the male candidates declined the position. *Id.* The position was left vacant until the council met again on 2002.

women who would be the new Supreme Court justices.¹¹² The day after the announcement, the Justices were sworn into office. The following day, the Justices took their seats on the Supreme Court.¹¹³

B. *The New Supreme Court Justices*

The Council chose the best fifteen men and women of the Dominican Republic, and handed them the reins of justice. Each of the justices has a very distinct and exemplary background. Here are their stories.

1. Chief Justice Jorge A. Subero Isa

Until the hour of his appointment, Chief Justice Subero was the President of the National Electoral Committee [Junta Central Electoral].¹¹⁴ He was born in 1947, and obtained his Juris Doctor degree in 1970 from Universidad Autonoma de Santo Domingo (UASD). He specialized in civil responsibility and insurance rights.¹¹⁵ He also worked as claims manager for Seguros San Rafael, the largest insurance company in the Dominican Republic.¹¹⁶ From 1979 to 1981, he served as President of the School of Notaries¹¹⁷ [Colegio de Notarios] in Santo Domingo. He was an arbitrator with the National Council of Conciliation and Arbitration of the Chamber of Commerce, and a law professor and founder of the Universidad de Derecho Iberoamericana (UNIBE).¹¹⁸

2. Justice Rafael Manuel Luciano Pichardo

Justice Luciano is assigned as first substitute to the Chief Justice.¹¹⁹ He is also head of the civil division within the Supreme Court. He was born in 1935 and obtained his Juris Doctor degree in 1961 from the University of Santo Domingo.¹²⁰ He then obtained a Postgraduate degree in Penitentiary Sciences from the Catholic University of Chile.¹²¹ He is presently a civil procedure professor at Universidad Iberoamericana (UNIBE) and Universidad Nacional Pedro Henriquez Ureña (UNPHU). He was a practicing attorney for thirty-six

112. *Id.*

113. *Id.*

114. RIVAS POLANCO, *supra* note 18, at 55.

115. *Id.*

116. *Id.*

117. In contrast to the United States, in the Dominican Republic all notaries have a juris doctor degree. Interview with Justice Suarez, *supra* note 109.

118. RIVAS POLANCO, *supra* note 18, at 55.

119. *Id.* at 56.

120. *Id.*

121. *Id.*

years. He was also an arbitrator with the National Conciliation and Arbitration Council of the Chamber of Commerce.¹²² He acted as the legal consultant to the Central Bank and the Reserves Bank of the Dominican Republic. He was the coordinator of the Commission to update the Dominican Civil Code.¹²³ He has authored many articles, tests, and monographs on civil, criminal, and sentencing matters.¹²⁴ Justice Luciano is a very cordial and helpful man who is always in a fast-paced mode.¹²⁵

3. Justice Juan Guilliani Vólquez

He is designated as second substitute to the Chief Justice, and president of the Labor division within the Supreme Court.¹²⁶ Justice Guilliani was born in 1913, and graduated from law school in 1936, from the University of Santo Domingo.¹²⁷ He was a practicing attorney for sixty-one years. On several occasions, he served as senator and deputy of Santo Domingo. He acted as attorney general for two terms.¹²⁸

4. Justice Hugo Alvarez Valencia

Justice Alvarez is the president of the criminal division within the Supreme Court.¹²⁹ He was born in 1923, and graduated in 1945 from the University of Santo Domingo, School of Law.¹³⁰ He practiced law for fifty-two years before being appointed to the Supreme Court. He specialized in traffic accidents and corporate law.¹³¹ He is a former Solicitor General, and a former substitute to the president of the National Electoral Committee [Junta Central Electoral].¹³²

5. Justice Julio Anibal Suarez Dubernay

Justice Suarez forms part of the labor division within the Supreme Court. He was born in 1942, and obtained his juris doctor degree at the age of twenty-five, from the Universidad Autonoma de Santo Domingo (UASD).¹³³ He

122. RIVAS POLANCO, *supra* note 18, at 56.

123. *Id.*

124. *Id.*

125. Personal perception from my meeting with Justice Luciano at the Supreme Court, Dom. Rep. (Jul. 24, 2000).

126. *Supreme Court Webpage*, *supra* note 10.

127. *Id.*

128. *Id.*

129. *Id.*

130. RIVAS POLANCO, *supra* note 18, at 62.

131. *Id.*

132. *Id.*

133. *Id.* at 60.

specialized in labor and employment law, representing the union members and defending wrongfully discharged employees.¹³⁴ He is a man who uses words to solve problems instead of creating them.¹³⁵ He was always the equilibrium and moderation between the fire and wantonness union members and the companies during a strike.¹³⁶ He teaches labor law at Universidad Catolica Madre y Maestra (PUCMM). He is an honorary professor at Universidad Central del Este, and he has participated as a professor in different extracurricular courses.¹³⁷ He is a former president of the Dominican Association of Employment Right and Social Security (Asociación Dominicana del Derecho de Trabajo y la Seguridad Social).¹³⁸ He is also a former president of the Dominican Association of Lawyers (Asociación Dominicana de Abogados).¹³⁹ In 1997, he was proclaimed Distinguished Visitor in San Juan, Puerto Rico, and received the key to the city from San Juan's Mayor Sila Calderón.¹⁴⁰

6. Justice Margarita A. Tavares

Justice Tavares was born in 1924, and graduated in 1947 from the University of Santo Domingo.¹⁴¹ She is a former member of the commission designated by the president for the review and update of the Dominican Civil Procedure Code.¹⁴² She is also a former member of the Senate's Women Advisory Committee.¹⁴³ She is a member of the civil division within the Supreme Court.¹⁴⁴

7. Justice Julio Genaro Campillo

Justice Campillo was born in 1922, and graduated from the Diplomatic and Consular School of the Secretary of State for Foreign Relations in 1941.¹⁴⁵ He obtained his law degree in 1943 from the University of Santo Domingo.¹⁴⁶ He

134. *Id.*

135. Ramon E. Colombo, *Sin Frontera: Dos Abogado de Combate en la Suprema Corte de Justicia [Without a choice: Two Knockout Attorneys in the Supreme Court of Justice]*, 17 *Gaceta Judicial* 17, (Oct. 2, 1997)

136. *Id.*

137. RIVAS POLANCO, *supra* note 18, at 60.

138. *Id.*

139. *Id.*

140. *Distinguen Julio Anibal Suarez (Distinction to Julio Anibal Suarez)*, *Ultima Hora* 27 (Jul. 22, 1997)

141. RIVAS POLANCO, *supra* note 18, at 60.

142. *Id.*

143. *Id.*

144. *Supreme Court Webpage*, *supra* note 10.

145. *Id.*

146. *Id.*

is currently the president of the Dominican Academy of History, and Corresponding Member of the Academies of Histories of Uruguay, Puerto Rico, Colombia, Guatemala, Spain, Venezuela, Paraguay, and an honorary member of the Academy of Portugal.¹⁴⁷ He is a former Council Member of the Directors of the Inter-American Foundation of Lawyers, in Washington, D.C..¹⁴⁸ He was Vice-president of the Association for the Development of Eastern Santo Domingo.¹⁴⁹ As a government official he was a temporary Justice of the Peace (Juez de Paz) of the municipality of Santiago in the Dominican Republic.¹⁵⁰

8. Justice Eglys Margarita Esmurdoc

Justice Esmurdoc was born in 1954, and was a Cum Laude graduate from the University of Santo Domingo, School of Law in 1979.¹⁵¹ She practiced law for nineteen years prior to her appointment. She was a law professor at the Northeastern University of Santo Domingo, and a former Court of Appeals judge in Santo Domingo.¹⁵² She now forms part of the civil division committee within the Supreme Court.

9. Justice Victor Jose Castellanos

Justice Castellanos was born in 1950, and is a Cum Laude juris doctor graduate from Universidad Catolica Madre y Maestra in 1971.¹⁵³ He obtained a family law postgraduate degree from the University of Rio de Janeiro, Brazil, and another postgraduate degree from the University of Rio Piedras, Puerto Rico.¹⁵⁴ He is a professor of the Universidad Catolica Madre y Maestra, School of Law, and is a former director of their Legal Sciences Department.¹⁵⁵ He practiced law for twenty-eight years before being selected for the Supreme Court.¹⁵⁶ He is a former Justice of the Peace and, judge of the Ecclesiastical Court of the Archbishop of Santiago.¹⁵⁷

147. *Id.*

148. *Id.*

149. *Supreme Court Webpage, supra* note 10.

150. *Id.*

151. RIVAS POLANCO, *supra* note 18, at 59.

152. *Id.*

153. *Id.* at 58.

154. *Id.*

155. *Id.*

156. RIVAS POLANCO, *supra* note 18, at 58.

157. *Id.*

10. Justice Julio Ibarra Rios

Justice Ibarra was born in 1934, and obtained his juris doctor degree in 1958 from the University of Santo Domingo, School of Law.¹⁵⁸ He practiced law for thirty-nine years, and is a history professor at the University of Santo Domingo and a law professor at the Universidad Pedro Henriquez Ureña (UNPHU).¹⁵⁹ He served as Attorney General for three years, and is the former sports, physical education, and recreation Secretary of State.¹⁶⁰ He is a member of the criminal justice committee within the Supreme Court.¹⁶¹

11. Justice Edgar Hernandez Mejia

Justice Hernandez was born in 1948, and obtained his juris doctor degree in 1971 from the University of Santo Domingo, School of Law.¹⁶² He obtained a Penitentiary Planning degree from Gendarmerie University in Chile in 1985, and completed a criminal investigation course at the Tegucigalpa Judicial School in Honduras.¹⁶³ He received a postgraduate degree on International Law and Relations in 1994.¹⁶⁴ He is currently a criminal law professor at the Universidad Catolica Madre y Maestra.¹⁶⁵ He is a member of the criminal justice division within the Supreme Court.¹⁶⁶

12. Justice Dulce M. Rodriguez de Goris

Justice Rodriguez was born in 1942, and obtained her juris doctor degree in 1966 from the Universidad Autonoma de Santo Domingo (UASD).¹⁶⁷ She is a former law professor of the Technological University of Santiago (UTESA).¹⁶⁸ She is also a former Justice of the Peace, and a former Attorney General for the Court of Appeals.¹⁶⁹ She is part of the criminal justice division within the Supreme Court.¹⁷⁰

158. *Id.*

159. *Id.*

160. *Id.*

161. *Supreme Court Webpage, supra* note 10.

162. RIVAS POLANCO, *supra* note 18, at 61.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Supreme Court Webpage, supra* note 10.

167. RIVAS POLANCO, *supra* note 18, at 57.

168. *Id.*

169. *Id.*

170. *Supreme Court Webpage, supra* note 10.

13. Justice Ana Rosa Berges de Farray

Justice Berges was born in 1942, and graduated Summa Cum Laude from the University of Santo Domingo, School of Law in 1964.¹⁷¹ She specialized in civil, commercial, and banking law. She obtained a postgraduate degree from the University of Slovenia in Belgium.¹⁷² She was a legal consultant to the Central Bank (Banco Central) and the Dominican Industrial Bank Society.¹⁷³ She is part of the civil division of the Supreme Court.¹⁷⁴

14. Justice Juan Luperon Vazquez

Justice Luperon was born in 1932, and graduated in 1959 from the University of Santo Domingo, School of Law.¹⁷⁵ He practiced law for forty years before being appointed to the Supreme Court.¹⁷⁶ He is a former legal consultant to the Attorney General of the Dominican Republic.¹⁷⁷ He is a former law professor at Escuela Normal de Barahona, in Barahona, Dominican Republic.¹⁷⁸ He is a member of the labor and land committee of the Supreme Court.¹⁷⁹

15. Justice Enilda Reyes Perez

Justice Reyes was born in 1943, and graduated in 1967 from the University of Santo Domingo, School of Law.¹⁸⁰ She is the former head of the Department of Foreign Trade and Investment, Transport and Communications of the National Office of Statistics [Departamento de Comercio Exterior, Transporte, y Comunicaciones de la Oficina Nacional de Estadísticas].¹⁸¹ She was the first woman appointed to preside a criminal court in the Dominican Republic.¹⁸² She is a member of the labor division within the Supreme Court.¹⁸³

171. RIVAS POLANCO, *supra* note 18, at 59.

172. *Id.*

173. *Id.*

174. *Supreme Court Webpage*, *supra* note 10.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Supreme Court Webpage*, *supra* note 10.

180. RIVAS POLANCO, *supra* note 18, at 61.

181. *Id.*

182. *Id.*

183. *Supreme Court Webpage*, *supra* note 10.

C. The Case Process

The Supreme Court hears five different types of cases.¹⁸⁴ First and most common, are those for annulments of a final judgment dictated by a court of last resort.¹⁸⁵ Second, the Supreme Court hears cases involving constitutional issues presented by any interested party, as required by Article 67 of the 1994 constitution.¹⁸⁶ Third, the Supreme Court hears cases as an appeals court, when the court of appeals was the trial court or court of first instance.¹⁸⁷ Fourth, the Supreme Court hears all cases regarding declaratory relief and change of venue.¹⁸⁸ Last, the Supreme Court acts as a trial court for criminal cases against the president or vice-president of the state.¹⁸⁹

The Justices do not have power of discretion to hear cases, therefore every case presented before the Supreme Court is reviewed and heard by the Court, because there is no discretion to hear cases. Only cases not presented according to the local rules are returned to the petitioner for appropriate re-submission.¹⁹⁰ Once a case is received by the Supreme Court Clerk, the Clerk's office sends it to the Chief Justice's office.¹⁹¹ For cases requesting an annulment of final judgment, the Chief Justice signs an order requesting the petitioner to notify opposing counsel within fifteen days.¹⁹² After opposing counsel files their answer with the Supreme Court, the Chief Justice sends an order to the Attorney General requesting their opinion on the matter. After the Attorney General's answer is received, the case is then sent to the appropriate division within the Supreme Court, either the criminal, civil or labor and land division.¹⁹³ The corresponding division sets a hearing and notifies the interested parties so that they may appear before them and orally present their case.¹⁹⁴

After the parties have appeared before the Supreme Court, the Court has three months to render a decision, which can be to remand to a lower court, or deny the petition if the law was properly applied.¹⁹⁵ The decision is rendered after the members of the respective division have met and discussed the case. The order is then prepared by one of the justices or their assistants.¹⁹⁶ The

184. Interview with Justice Suarez, *supra* note 109.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. Interview with Justice Suarez, *supra* note 109.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Interview with Justice Suarez, *supra* note 109.

195. *Id.*

196. *Id.*

justices' assistants are then in charge of circulating the order among the fifteen justices for their signature.¹⁹⁷ A copy of the order with the decision is then mailed by the Clerk to the interested parties.¹⁹⁸

All Supreme Court decisions are published in their now monthly reporter, the *Boletín Judicial*.¹⁹⁹ Before the 1997 installment of the justices, the reporter was only published several times a year, and it was a very small volume.²⁰⁰ The new justices have issued a reporter every month, some of which have been two volumes. The backlog of cases since 1970 has been cleared out, but some of the Supreme Court divisions still have a few cases pending that were filed before 1997.²⁰¹ The labor and land division is the most expeditious one of the three, as it hears cases as they are filed, and does not have any pending cases.²⁰²

V. THE ECONOMY OF THE DOMINICAN REPUBLIC ROSE AS A RESULT OF THE NEW JUDICIARY

As part of the 1994 Reform Act, another change of great impact to the Dominican Republic has been the revision to the Foreign Investment Law.²⁰³ Foreign investments and technology exchanges are a major contribution to the economic growth and social development of the Dominican Republic, insofar as they favor the creation of jobs and foreign exchange, promote the process of capitalization and contribute to efficient methods of production, marketing and administration.²⁰⁴ This law was changed to provide investors, both foreign and domestic, the same rights and obligations regarding investment matters.²⁰⁵ The new law permits the foreign investors to invest in any sector, except the military.²⁰⁶ Previously, foreign investors were only allowed to invest 25 percent of the value, whereas the new law allows 100 percent investment by a foreigner.²⁰⁷ All investments must be registered with the Central Bank within 90 days.²⁰⁸

Lic. Nacyra Cury stated, "the clear rules of the game established by the foreign investment law of 1995, have inspired a trust to invest which, added to

197. *Id.*

198. *Id.*

199. Interview with Justice Suarez, *supra* note 109.

200. *Id.*

201. *Id.*

202. *Id.*

203. DOM. REP. FOREIGN INVESTMENT LAW, 16-95 (1995) [hereinafter FOREIGN INVESTMENT LAW].

204. Interview with Lic. Nacyra Cury de Gonzalez, President of the International Department of the Central Bank (Aug. 1, 2000) [hereinafter *Interview with Cury de Gonzalez*].

205. FOREIGN INVESTMENT LAW, *supra* note 203.

206. *Id.* at art. 2.

207. Interview with Cury de Gonzalez, see *supra* note 204.

208. FOREIGN INVESTMENT LAW, *supra* note 203, at art. 4.

the other attractions of our country, have resulted in an increase of double the direct foreign investment."²⁰⁹

After passing the power to a new generation, and institutionalizing a political democracy, the Dominican Republic now leads the world in economic growth.²¹⁰ In the past three years, the Dominican Republic has had a record setting economic growth. The main sources of economic growth have been tourism, remittances, construction, telecommunications and the free-zone assembly parts.²¹¹ Even though the Act was passed in 1994, it was not implemented until 1997, and the foreign investment data²¹² reflects the effect of this.²¹³

VI. CONCLUSION

Prior to 1994, the Dominican Republic was run by corrupt politicians who lined their pockets at the cost of the citizens. The Supreme Court of Justice, the Dominican Republic's highest court, was unwilling and unable to intervene. The national economy was at a virtual stand still due to little or no foreign investment. The international community would not invest in a country where the court system would not afford them any legal protection. The Dominican people had enough with the corruption. The voice of the people was heard. Clearly, the country had to change something if it was going to turn things around. This something occurred in the form of the 1994 Reform.

The 1994 Constitutional Reform Act had an enormous effect on the country. The Supreme Court of Justice became an independent power. Justices were chosen selectively, judged by their professionalism and credentials only, not by their political affiliations. This brought honor and respect to the country's judicial system.

Another major impact is the effect the 1994 Reform Act had on the international community. The Dominican Republic was once again a player in the international economic market. Investors could now own industry in the country. They could also invest with the surety that the laws would protect their investment. They could expect that should a dispute arise they would receive impartial treatment and equity. This faith of the international community has manifested itself in the form of an economic influx of foreign investment.

209. Interview with Cury de Gonzalez, *supra* note 205.

210. Howard Wiarda, *LEADING THE WORLD FROM THE CARIBBEAN: THE DOMINICAN REPUBLIC*, VII CSIS Hemisphere 2000 4 (Jul. 1999) [hereinafter *Leading the World*].

211. *Id.*

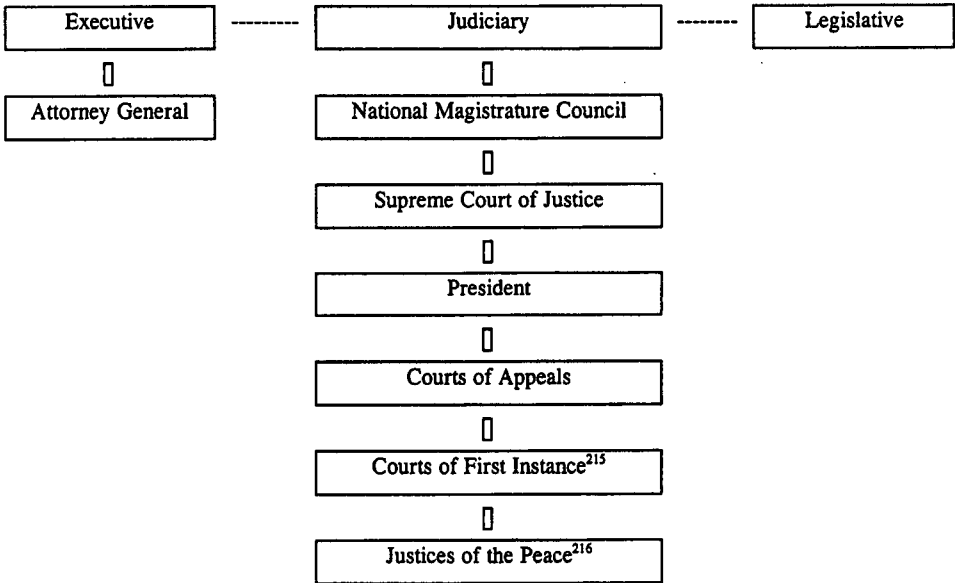
212. For graphical statistics see Banco Central de la Republica Dominicana, *Departamento Internacional, Balanza de Pagos de la Republica Dominicana 1993-1998* (Jun. 2000); and Banco Central de la Republica Dominicana, *Informe de la Economia Dominicana Enero-Diciembre 1999* [Report on the Dominican Economy Jan. – Dec. 1999 (Feb. 2000)]

213. Interview with Cury de Gonzalez, *supra* note 204.

There are many other countries, particularly in Central and South America that have the same problems the Dominican Republic faced prior to 1994. Those countries may need to address the problems in a similar way, as did the Dominican Republic. For those countries the 1994 Constitutional Reform Act may serve as a guide to better their country. They can look to the Dominican Republic for guidance as a leader in reform, and as a leader in democracy in Latin America.

VII. CHARTS

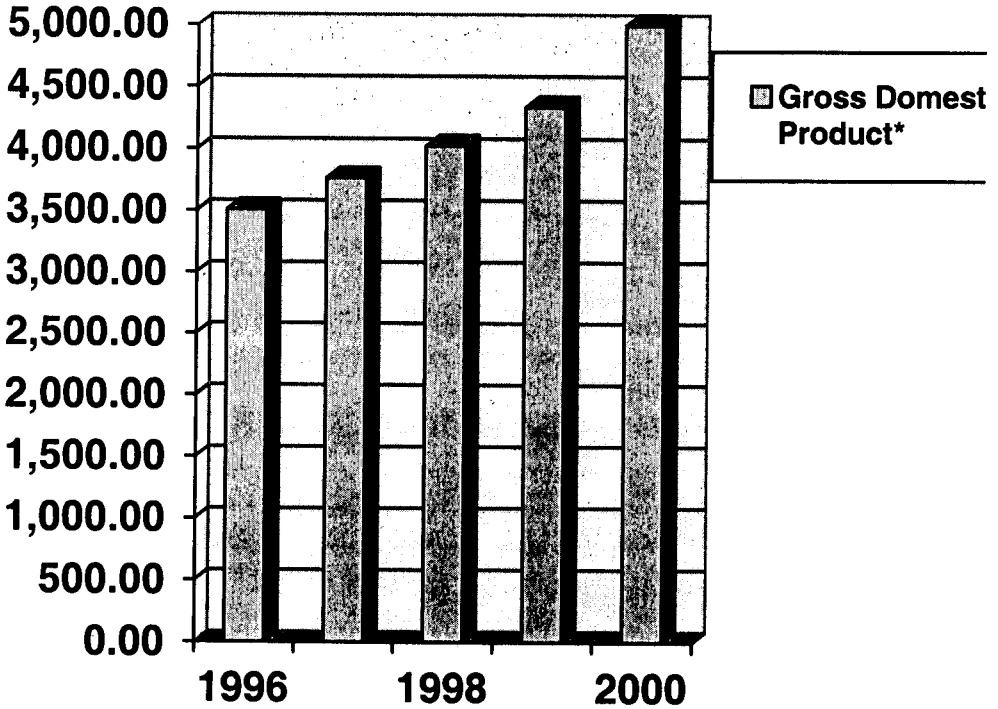
A. An organizational chart of the judicial power²¹⁴



214. *Supreme Court Webpage, supra* note 10.

*B. Economic growth since the 1994 reform act went into effect.*²¹⁵

*Based on Millions of Dominican Pesos.



215. Banco Central de la Republica Dominicana, *Departamento Internacional, Balanza de Pagos de la Republica Dominicana 1993-1998* (Jan. 2000); and Banco Central de la Republica Dominicana, *Informe de la Economia Dominicana Enero-Diciembre 1999* [Report on the Dominican Economy Jan. – Dec. 1999 (Feb. 2000)]; available at <http://www.bancentral.gov.do/pib00-9.html>.