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**AGENCY FOR INTERNATIONAL DEVELOPMENT**  
**PANAMA CITY, PANAMA**

**UNITED STATES GOVERNMENT**  
**MEMORANDUM**

**ACTION MEMORANDUM FOR THE DIRECTOR**

**DATE:** November 1, 1993  
**FROM:** Robert Murphy, ODI *RM*  
**THRU:** Roger Yochelson, Chief ODI  
**SUBJECT:** Revision of Conditions Precedent  
**REF:** Improved Election Administration Project (525-0317)

Problem: Your approval is required to amend a condition to subsequent disbursement contained in the referenced Project Authorization, paragraph 3.D, Suspension of Disbursement. That condition reads as follows: "Except as AID otherwise agrees in writing, disbursements of AID Grant funds may be suspended eight months after the signature of the Project Grant Agreement, unless the Government of Panama provides evidence satisfactory to AID, that it has approved the reorganization plan of the Electoral Tribunal."

The Project Agreement, Section 4.3, establishes the above as a Condition Precedent to Disbursement.

Background: Shortly after taking office the three governing Magistrates of the Electoral Tribunal submitted a reorganization plan to the GOP that would have reduced personnel and reordered the staffing patterns for that organization. The plan was based on a brief assessment carried out by CAPEL. Portions of the plan were rejected by the Ministries of Planning and Finance, which requested additional study and further refinement. As a result, the concept of the reorganization was incorporated early on in the project's design effort and confirmed by later analysis. This concept was continued throughout the design process. However, the design process itself was delayed several times by the Tribunal's need to prepare for the November, 1992 Referendum. The final design, which included provision for the reorganization, was ultimately completed on September 10, 1992, when the Project Agreement was signed. At that point the national elections had been set for May 8, 1994.

Since the initial design effort, various ad-hoc reorganizations have taken place throughout the Tribunal in response to requirements/demands for specific institutional improvements. These have included reorganization of the Division of Information in response to the operational needs of its new information management system and to the request of the Contraloria General's office. This reorganization has occurred all the way down to the provincial level. The Planning Division also has been reorganized to take on greater responsibility for providing planning and logistics support for the 1994 elections and the Public Relations Office was upgraded to handle the increased work caused by those elections. In addition, the Training Office was upgraded and a clearer mandate given to it. Finally, CAPEL and the Tribunal have held a series of three management workshops which looked at the Tribunal's organization and the Tribunal started negotiations with the University of Panama to carry out an organizational assessment. Budget constraints encountered by the Tribunal and preparations for the 1994 elections, however, have intervened and prevented further progress on the reorganization.

In spite of the constraints faced by the Tribunal, it has attempted to satisfy the Condition for a reorganization plan. On August 31, 1993, it presented documentation intended to satisfy the Condition. However, the Mission's review of this documentation revealed that it did not meet the Condition's requirements.

The Mission is now faced with making decisions on what to do about the Condition and whether to continue project funding. In the case of the latter, there is little room for discussion. The overriding purpose of the Project is "To hold free, fair and open general elections in CY 1994." Because of the proximity of the May 1994 elections, preparations for them have reached a critical phase. Personnel of the Electoral Tribunal are fully involved in these preparations that will continue at an accelerated rate until election day. Any interference in those preparations, such as a cessation of Project funding (which would have an immediate affect on the provision of technical assistance and the civic education programs), would be detrimental to the successful implementation of the electoral processes. In view of this, the Mission should not suspend funding.

In terms of the Condition, the Mission could: (a) extend the terminal date for meeting it; (b) delete the Condition from the agreement; or (c) convert it to a covenant. The purpose of the Condition was to get the Tribunal to follow-up on the Magistrates' initial reorganization plan. To a great extent this has been accomplished through all the ad hoc reorganizations that have taken place in the Tribunal's various divisions and offices. What is now needed is an overall plan that assures the continuation of the individual improvements, ties all of them together to create a more efficient total organization and assures the long term viability of the Tribunal. As already noted, because of the closeness of the 1994 elections and the effort required before such an activity, the Tribunal's staff is working overtime on election preparations. The

development of any reorganization plan would require substantial involvement of the Tribunal's leadership and perhaps much of the lower staff. Therefore, requiring the submission of a reorganization plan before the election runs the risk of diverting the organization's attention from its primary task, the election. Alternatively, the terminal date could be extended until after the election. But, given the nearness of the PACD, it is uncertain that the plan would be completed before the end of the Project. Likewise, converting the Condition to a covenant gives no assurance that the reorganization plan would be completed by the Project's termination.

To resolve the problem and to assure that the plan is completed, the Project Committee recommends that the Condition be deleted and in its place an amount of \$30,000 in Project funds be reserved to finance an in-depth administrative assessment that would lead to development of the reorganization plan. The assessment would be completed with the assistance of an independent, highly qualified and experienced group of consultants. In addition, the PACD would be extended three months, until December 31, 1994, to allow time for completion of the assessment. Both actions could be accomplished by issuing the attached Implementation Letter.

Since significant policy issues are not at stake, Delegation of Authority 752 permits the Mission Director to establish and/or amend this Condition Precedent.

Recommendation: That you indicate your approval of the proposed actions as described herein by signing on the appropriate line below as well as the attached Project Implementation Letter and amendment to the Project Authorization. The Regional Legal Advisor has indicated her concurrence with both the proposed changes and the means for approving them, by her clearance shown below.

K. Kelly 11/5/93  
 Approved Date

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 Disapproved Date

Drafted: ODI RMurphy RM  
 Cleared  
 RLA: MVelazquez MV  
 PPEP: RMathia RM 11/1/93  
 PPEP: JFearon JF 11/7/93  
 CONT: HDorcus HD 11/5/93  
 EXO/Cont: VSpiedel VS 11/2/93  
 ODI: RYochelson RY

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