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Final Report

PARAGUAY DEMOCRACY ASSESSMENT

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EXECUTIVE SUMMARY

USAID/Paraguay has been providing assistance, principally in the area of judicial reform, to support a major U S objective of helping Paraguay's transition to democracy following the overthrow of Stroessner in 1989 After four years of this assistance, USAID/Paraguay carried out this assessment to refine its strategy for strengthening Paraguay's democracy

At USAID/Paraguay's request, Checchi and Company Consulting, Inc sent a five-person assessment team to Paraguay for three weeks in May 1995 The purpose of this assessment is to provide USAID/Paraguay with an analysis of democratic institutions and processes in Paraguay and to make recommendations for future actions

Because of time constraints and the expertise of individual team members, the assessment focuses especially on the judiciary, legislature, executive and local government, and the electoral system. Some attention was also given to the civil society (non-governmental organizations, media, universities, labor unions), political parties, and the role of the military. Individual analyses of these topics is found in Annexes A through G The body of the report contains background and summary findings and recommendations

Ruled almost continuously by authoritarian regimes since 1811, Paraguay was almost completely shut off from the outside world during the last 35 years of Stroessner's repressive rule Stroessner was overthrown in a February 1989 coup led by General Rodriguez Following the coup and victory in subsequent elections, the Rodriguez Government initiated Paraguay's transition to democracy

In the six years since the coup, Paraguay has made progress in its democratic development Important building blocks are in place to support continued strengthening efforts The Rodriguez Government contributed to installing democratic guarantees for human rights and basic freedoms Closed newspapers and radio stations were reopened and formerly outlawed political parties began to organize

Municipal elections in May-June 1991 gave local voters their first opportunity to elect their mayors who previously had been appointed by and were responsible to central authorities Constituent Assembly elections were held in 1991 and a new constitution was promulgated in 1992 The Constitution was a major step toward institutionalizing Paraguay's democracy because it moved away from the strong presidential model toward a balance of power between the branches of government

Presidential and congressional elections were again held in May 1993 and were certified as valid by international observers Juan Carlos Wasmosy, representing the Colorado Party, was elected President but the opposition parties won a combined majority in Congress Facing the potential for political deadlock, factions of the Colorado and opposition parties agreed on a governability pact which has provided a basis to share power and reach ad hoc

understandings on key points of the democratic transition such as, for example, making appointments to the new Supreme Court

While an impressive beginning has been made in Paraguay's democratic transition, there are still many and formidable obstacles in the way of further progress Individual analyses in the Annexes point to the more important constraints in each of the areas addressed Those constraints that stand out as common themes are lack of qualified human resources, weak institutions, and pervasive corruption In addition, no list of major obstacles to full democracy in Paraguay can ignore the problem presented by the role played by its military, whose leadership plays a major role in the economy and is enmeshed in the Colorado Party.

Paraguay has one of the lowest education levels in South America In addition to relative neglect of education, the Stroessner regime permitted very little international exchange and exposure The judiciary, legislature, executive, local government, media and NGOs all have important new roles to fill, but the human resources to carry out these new roles are seriously lacking

With its tradition of a strong central executive, Paraguay's judicial, legislative, and local government institutions are notably weak Lack of any merit-based civil service and the tradition of patronage to fill public sector positions have been serious obstacles to institutional strengthening New institutions (Electoral Tribunal, Judicial Council, Departmental Governments) are undeveloped Others (Supreme Court, Congress, labor unions, media, universities, NGOs) have new life and important roles to play All are for the most part inexperienced and ill-equipped to take on these new responsibilities

Corruption has been a way of life for so long in Paraguay that it has conditioned basic values and attitudes. It is a problem throughout the society, in the public as well as the private sectors Nothing short of a sustained and long-term campaign involving all of society will be sufficient to fundamentally change attitudes toward corruption in Paraguay

One of the most intractable problems the country faces is the pervasive influence of the military in government, in the contraband economy, and now in narco-trafficking The military has played a central role in changes of government through most of the nation's history Although lip service is now paid to the need for civilian control over the military, powerful commanders still exert significant control over political and economic affairs

To continue to address these broad constraints as well as the more specific ones noted in the individual analyses, the assessment develops proposed actions in each of the areas examined While options for USAID are mentioned, the team's aim has been to reach some conclusions about needed actions regardless of how or by whom they might be carried out

For the judiciary, actions are suggested to 1) overcome the judiciary's poor image, 2) assist with passage of needed laws, 3) improve access to the system, 4) fight corruption, 5) strengthen decentralization, 6) improve planning, and 7) move toward an accusatorial and

oral process For the legislature, recommended steps include 1) developing staff support for bill drafting, research, and budget analysis and oversight, 2) providing observational and technical training, and 3) making more use of public hearings and the media

Administrative rationalization is proposed for the central and local governments to control corruption First, ongoing decentralization efforts should be supported, 2) the revenue-raising capacity of local governments needs to be developed, and, 3) municipal associations should be strengthened

With regard to the electoral system, improving voter registries through a national registration campaign is proposed while continuing attention is paid to the longer-range effort of upgrading the civil registry Assistance to the newly established Electoral Tribune in organizing and administering elections is urgently needed Civic education as well as voter education should be promoted

Reviewing USAID's Democracy Strategy, the assessment team agrees that USAID should continue to give priority to the judiciary and legislature Strengthening these two branches of government in relation to the executive is critical at this stage of Paraguay's democratic transition Given prior experience assisting these branches in Paraguay, USAID has some comparative advantage which should be exploited

Other donors should be encouraged to take the lead in assisting the Electoral Tribunal organize, train, and equip itself for municipal elections in 1996 and presidential elections in 1998 But if other donors do not come in, USAID may need to give higher priority to this area in its strategy

Other donors also have the larger resources required for modernizing and helping to decentralize the central government and strengthening local governments However, the proposed Decentralization of Health Services activity does make sense for USAID/Paraguay given its small investment and potential for replicability in other Ministries

Targets of opportunity, particularly if low-cost, should be entertained with respect to local government associations, political parties, civil society institutions, and the military but not if their implementation would dilute the focus on the judiciary and legislature

ANNEXES

EXECUTIVE SUMMARY

Paraguay's road to democracy after decades of military rule has not been easy but its accomplishments have been noteworthy Yet, democratic institutions remain underdeveloped and fragile If democracy is to be consolidated and deepened, the institutions that support it will have to be strengthened The judicial system's role in supporting democracy through the efficient and impartial administration of justice is particularly important

Several factors, whose origins can be traced to the beginnings of the Paraguayan nation, have hindered the development of a fair, independent, just, and efficient criminal justice system Even though several attempts have been made to guarantee civil rights to a majority of the citizenry, severe problems still serve to deny basic rights to large sectors of the population For example, limited access to the administration of justice results from illiteracy, indigence, and poor geographic distribution of courts

The achievements since the return of democracy in 1989 have been significant The adoption of the 1992 Constitution is one of the most important achievements in justice reform The Constitutional Convention, composed of representatives from all political sectors, was able to reach consensus on a radical reform of the organization of the State The fact that agreement was achieved is in itself a major sign of progress

The Constitution expanded the size of the Supreme Court from five members to nine, allowing it to constitute itself into specialized chambers of three judges each The ability to resolve cases by three-judge panels should encourage specialization while increasing the Court's ability to process cases Additionally, the Constitution awarded the Court the power to review the constitutionality of legislation although it limited the impact of such rulings to the case at hand, inhibiting the ability of the Court to act as a check on excesses by the other branches of government

In addition to these constitutional reforms, the Congress has enacted major legislative changes to the police subsector It enacted a new organic law for the police which separated it from the armed forces The Congress is now considering an interparty pact to curb participation of the police and the military in party politics

Another constitutional reform was the adoption, in principle, of an accusatorial and oral system for judicial proceedings This will require the enactment of major reforms to the Code of Criminal Procedure and the Law on Organization of the Public Ministry

Judicial independence was strengthened by constitutionally mandating a budgetary assignment of a minimum of 3% of the national budget to the judicial sector (Judiciary, Public Ministry, Electoral Justice, and Judicial Council) Additionally, the term of office of Supreme Court justices was modified from five-year terms to lifetime appointments, thereby decreasing the potential for political interference in the operation of this tribunal Lower court judges are to be selected to five-year terms of office except that they become lifetime appointments if selected to

a consecutive second term Finally, their terms of office will not coincide with presidential terms, further decreasing the potential for politicization of the sector

One of the main problems facing the judiciary is the high level of politicization of its ranks In addition to expansion of the terms of office, the Constitution established a new mechanism for the selection of judges, the Judicial Council (*Consejo de la Magistratura*) This is an independent body which will review applications to vacant positions for judges (*electoral* and ordinary) and prosecutors It will propose pools of three candidates for each vacancy In the case of the Supreme Court, the candidates were proposed to the Senate for their approval and ratification by the executive The new Supreme Court was selected recently through a process whereby all the seats were apportioned among the political parties (four members to the Colorado Party, four to the opposition parties, and the ninth member by consensus of both groups). While this is evidence of politicization of the selection process, it is consistent with the practices of almost every country in the world A similar interparty pact was also arrived at for the selection of the members of the Judicial Council itself

The Judicial Council is now in the process of receiving applications for all of the judge and prosecutor slots and will, thereafter, propose pools of candidates to the Supreme Court Although there are some signs that party affiliation will be considered in making these appointments, the adoption of a merit-based selection system is a major step forward

Another significant step toward a modern criminal justice system was the constitutional establishment of the Public Ministry as an independent body with functional and budgetary independence A proposed organic law for this Ministry would make it the primary accusatorial body for the State and give it substantial authority to investigate and prosecute cases

All of the foregoing normative reforms indicate a commitment to reform of the justice sector This commitment has translated itself into significant budgetary increases to the justice system Although the constitutionally mandated 3% of the national budget has not yet been complied with, the increases have been impressive In 1990, the judiciary received about 5% of the national budget and in 1995, their appropriation grew to 2 36% Perhaps the most significant change has been the increase in the budget of the Public Ministry which grew from 684,000 guaranis in 1991 to 10 billion guaranis this year

Even though the achievements in this sector have been significant, much still needs to be done Most of the problems facing the Paraguayan justice sector are common to the countries in the region an antiquated, slow, and inefficient procedure, a justice system perceived as politicized and corrupt, a passive and impotent prosecutorial body, and, a limited legal defense for indigents These problems are aggravated by social, economic and political trends in the last few years migration to urban centers, increase in crime rates, rapid population growth, lingering land reform issues, and, demands by women for a more significant societal role Finally, narcotics trafficking and public sector corruption have aggravated the problems faced by the justice sector

Central to these problems is the continued reliance on "civil law" procedural models which have been abandoned in several European and Latin American countries (Germany, Italy, Spain, Guatemala, and Colombia) Proceedings in Paraguay are characterized by written pleadings and the secret nature of some of the key stages of the process The investigating judge, rather than performing as an arbiter, as in the US-based adversarial system, acts as an investigating magistrate in the key stages of the criminal proceeding and directs the process The system relies on a conception that all crimes must be brought to trial, thus, eliminating prosecutorial discretion and preventing the State from focusing its prosecutorial resources on the most severe problems Rather than being the main accuser and lead investigator, the prosecutor is relegated to acting as a passive depository of pleadings and a reactive figure Defense counsel is notably absent throughout the most critical stages of the proceedings The result is an obscure, inefficient, lengthy process in which the rights of the accused are routinely violated and the majority of defendants linger in prison while awaiting trial (90 to 95% of all inmates are pretrial detainees, the largest percentage in Latin America)

Most of the leading Latin American jurists recognize that the "civil law" process which predominates in Paraguay is outdated and should be replaced with an adversarial, and oral system for criminal cases The current process, they argue, relies on secrecy and leads to popular distrust, allows for corruption; contributes to delay, and, prevents the State from determining prosecutorial priorities, thus, rendering it impotent to deal with the gravest problems facing the system (for example, organized crime, public corruption, and white collar crime) Adoption of an adversarial system in Paraguay will be the most significant legal change in recent memory This shift, however, will not be easy and will require a great deal of planning, testing and gradual implementation

A major step in the modernization of this sector has been the on-going discussions regarding adoption of an accusatorial system The first step in this direction was the adoption of a constitutional mandate adopting oral proceedings as the primary mechanism for conducting judicial proceedings Thereafter, a series of new codes have been proposed in the Congress and it is expected that some sort of procedural reform will be enacted within the next two years Adoption of such a system may contribute to a more rapid process while also increasing accountability by making trials open to the public

Another factor that affects the administration of justice is its inefficiency in resolving disputes The slowness of the system is a consequence of politicization and lack of resources. The human, technological, and financial resources tend to be limited in almost every institution of the sector Moreover, these few resources are often wasted due to the lack of administrative procedures and systems Thus, for example, it is not uncommon for the judiciary to underspend its appropriation while clamoring for budgetary increases

USAID/Paraguay's assistance to the justice sector dates back to 1990 On balance, the assistance has been very successful Not so much in achieving reforms directly attributable to the project, rather, it has been a key player in promoting the development of a climate in which major reforms are now being discussed openly and have a real chance of success Five years ago few

people would have predicted that the reforms which are being debated would have any chance of passage USAID/Paraguay's role as a catalyst for change should not be underestimated

The current USAID agreement will end in September 1995 We have suggested that USAID consider extending this project, reprogram existing funds, and assist the new Supreme Court and Judicial Council to develop sector strategies The major problem areas which we have identified are 1) poor image, 2) outdated normative structures, 3) absence of popular participation and limited access to services, 4) lack of controls, 5) public sector corruption, 6) organization and centralization; 7) absence of planning and limited coordination; 8) need for adoption of an accusatorial and oral process for criminal trials Of these, the IDB is planning to support reforms, through a $16 to $20 million dollar loan, in all areas except for corruption

USAID/Paraguay has proposed a NAD to support a new democratic institutions development project In the recent review of USAID/Paraguay's Action Plan, it was suggested that USAID narrow its activities to support the changes towards an accusatorial system While we agree with the necessity to narrow the focus of this new project and the importance of emphasizing assistance for the implementation of a new code of criminal procedure, we feel that limiting it to this specific activity is too restrictive We have suggested that A I D consider supporting at least an alternative and complementary activity in the area of corruption while also encouraging the development of alternative dispute resolution mechanisms

I. PURPOSE AND METHODOLOGY

A major U S objective in Paraguay is to help consolidate the transition to democracy following the overthrow of the Stroessner dictatorship in 1989 In support of this objective, USAID/Paraguay has been providing assistance principally in the area of judicial reform After four years of this assistance, USAID/Paraguay carried out this Democracy Assessment to refine its strategy for strengthening democracy and to provide a basis for moving to a second generation of support activities

The purpose of this assessment is to provide USAID/Paraguay with an analysis of democratic institutions and processes in Paraguay and to make recommendations for future investments The assessment analyzes constraints and opportunities for strengthening democracy in Paraguay, assesses effectiveness of ongoing activities, and proposes specific new actions

USAID/Paraguay contracted with Checchi and Company Consulting, Inc to send an assessment team to Paraguay in May 1995 The team and their areas of focus were as follows

Henry Johnson	Team Leader
David Jickling	Executive, Local Government, Media, Universities
Luis Salas	Judiciary, Human Rights, Corruption
Marta Maria Villaveces	Electoral System, Non-Governmental Organizations (NGOs), Political Parties, Military
Francisco Sanchez	Legislature

The team spent three weeks in Paraguay interviewing officials in the Paraguayan public and private sectors, at USAID/Paraguay and the U S Embassy, as well as representatives of international donor agencies Because of the limited time available, most of the interviews were conducted in the capital city of Asuncion However, members of the team did visit three nearby Departments and spoke with departmental and municipal officials and local justices of the peace. Lists of persons contacted and documents consulted are contained in the annexes

Annexes A through G are the individual analyses prepared by the team members Sections I through IV of the report are summaries of background, findings, and recommendations prepared by the team leader While each team member had a separate focus, there was considerable interchange among the team especially with respect to the summary findings and recommendations

Following its scope of work, included as Annex H, the team recommended general courses of action for each area analyzed The team focus has been to reach conclusions regarding needed actions in each area analyzed Recommendations and suggestions regarding USAID's democracy

sector strategy are presented in Section IV, some options for USAID are mentioned in the individual papers However, some conclusions relate to actions that USAID alone cannot implement

The team was conscious of the military as a major constraint and factor in Paraguay's democratization process The team believes that this area requires additional study and was able to give less attention to this topic than its importance deserved

Throughout its assessment, the team was guided by the working definition of democracy developed by the Latin American and Caribbean Bureau of the Agency for International Development, as follows·

"Democracy is a political system that meets three essential conditions meaningful and extensive competition among individuals and organized groups (especially political parties) for the major positions of government power, a high level of political participation in the selection of leaders and policies, at least through regular and fair elections, and a level of civil and political liberties sufficient to insure the integrity of political competition and participation Implicit in this definition is the long-held A I D position that democracy also includes economic participation via a broad-based sharing in economic growth and development "

II. COUNTRY SITUATION

Conditioning the environment for Paraguay's democratic transition are its history and economic and social factors

A. History

Democracy is a relatively new concept for Paraguay Independent since 1811, Paraguay has been ruled almost continuously by authoritarian regimes Its democratic transition began only since February 1989 with the overthrow of General Stroessner

An early formative event in Paraguay's history was the War of the Triple Alliance (1865-1870) In this war, Paraguay engaged the combined armies of Argentina, Brazil, and Uruguay The war, which resulted in the extermination of a large percentage of the adult male population and the destruction of the economy, brought about the emergence of a caudillo elite The war veterans grouped themselves into two political factions: the Liberal Party, supported by Anglo-Argentinean interests, and the *Asociacion Nacional Republicana* (ANR) known as the Colorado Party, supported by Brazil From 1870 to 1936, coups were dominant in Paraguayan politics

Another war, the Chaco War (1932-1935), in which Paraguay defeated Bolivia, further defined the Paraguayan state Dissatisfaction with the Liberal's handling of the war resulted in the emergence of a third political force, the Febreristas, who ousted the Liberals in a coup in 1936 Their reign was not to last and they were ousted by a Liberal coup in 1937

To consolidate their power, the Liberals adopted a new constitution in 1940, the second in the nation's history Its main characteristic was concentration of power in the executive A series of coalitions involving all factions predominated until 1947, when a civil war broke out between the Colorados and an Alliance of Liberals, Febreristas, and Communists The Colorado victory was followed by a period of vengeance and repression against their adversaries and massive migration to Argentina

Another period of coups followed until the emergence of Alfredo Stroessner as Commander-in-Chief of the armed forces in 1953 and his assumption of power in 1954 Since the Constitution of 1940 would have allowed him to rule a maximum of two five-year terms, a new constitution was drafted in 1967 allowing him removing term limits

Stroessner consolidated an alliance between the armed forces and the Colorado Party and became their official presidential candidate from 1954 until his ouster Opposition within the party was swiftly crushed In 1959, some Colorado activists challenged his authority and eventually were either jailed or exiled Many exiles then consolidated themselves into the *Movimento Popular Colorado* (MOPOCO)

After the elimination of all real opposition within the Colorado Party, Stroessner proceeded to organize it along military lines It was organized into branches (*seccionales*) which controlled patronage while watching for potential opposition Access to most public sector jobs, including the judiciary and the army, was limited to Colorado Party loyalists

A force of opposition was the Catholic Church which had begun to complain about human rights abuses in the 1960s In 1969, police raided a church in Asuncion and abused clergy In reprisal, the Minister of Interior was excommunicated The Church became a progressively more vocal opponent of the regime and a proponent of change in favor of Paraguay's oppressed.

The media also began to show opposition to the regime in the 1960's and 70's Radio Nanduti, the most widely heard radio station, issued reports of corruption and after years of government harassment was officially closed in 1967 ABC Color, the nation's leading newspaper, began to report on corruption and was closed by the government by 1984

The government followed a policy of control and infiltration of student movements in the national university In 1985, hundreds of law students organized a public protest against corruption The murder of a law student was followed by violent confrontations in 1986 The student organization was disbanded and a new one, loyal to the regime, was formed

During the 1980s, there was growing discontent within the Colorado Party Increasing disagreement among members led to the formation of divergent factions By 1984, the party had divided into the *"militantes"* (who followed Stroessner unconditionally) and the *"tradicionalistas"* (old-time Colorado adherents) A former adherent publicly denounced corruption in 1986 A massive manipulation of the foreign exchange system was disclosed

Another faction, the *"eticos"*, emerged and called for a dialogue with opposition, non-Colorado members In 1986, this faction publicly opposed another Stroessner term and called for a civilian Colorado candidate in the 1988 elections The regime prohibited further *"etico"* participation in Colorado party politics

Stroessner's most loyal supporters planned to maintain themselves in power after his death by choosing his son, Colonel Gustavo Stroessner, as his successor Feeling pressured by these events and Paraguay's growing isolation internationally, Stroessner turned to his closest supporters to no avail Military leaders became concerned over the split in the Colorado Party and the resulting struggle for power They coalesced behind General Andres Rodriguez, who coordinated the successful coup in 1989 which brought down the Stroessner regime

In May 1993, Juan Carlos Wasmosy became the nation's first freely elected civilian President. He ran as a candidate of the Colorado Party The opposition parties, the Authentic Radical Liberal Party (*Partido Liberal Radical Autentico*, PLRA) and the National Encounter Party (*Encuentro Nacional*, EN) won a majority in both houses of the legislature Together, the PLRA and EN control 55% of the seats in the Senate and 52% in the Chamber of Deputies Analysts

believe that opposition control of the Congress augurs well for political change and diversity in Paraguay

B. Economic and Social Factors

General Conditions

Paraguay has a population of 4 4 million which is growing annually at the rate of 3%, one of the highest rates of population increase in Latin America Fifty per cent of the population is less than 18 years old Paraguay does not have a large indigenous population but its Guarani traditions are strongly rooted Close to one half of the population speaks Guarani as its primary language

Paraguay has a predominantly agricultural economy with a thriving commercial sector Agriculture accounts for about 25% of Gross Domestic Product (GDP) and employs about 40% of the labor force The commercial sector is engaged in the importation of goods from the Far East and the United States for re-export to neighboring countries

Although the country has a vast hydroelectric potential, it lacks significant mineral or petroleum resources The Paraguayan economy, with its established export industries of soybeans, cotton, cattle, timber, electricity, and the lucrative business of re-exporting products made elsewhere, is particularly vulnerable to both the vagaries of weather and the trends of the Argentinean and Brazilian economies

Prior to 1995 GDP growth averaged 5 6% annually between 1960 and 1992, the highest rate in the hemisphere But most of the growth was concentrated during the 1970s, stimulated by construction of the Itaipu hydroelectric dam After 1981, the economy suffered a severe recession and GDP actually declined in 1982-83 Growth resumed in the mid-1980's at levels far below the boom of the 1970s.

Slower growth following completion of the Itaipu Dam was anticipated, but the slowdown was aggravated by poor macroeconomic policy In the early 1980s, the government attempted to avert the post-Itaipu recession through an investment and spending program To finance higher spending, the Paraguayan Government sharply increased external as well as domestic borrowing generating inflation and balance of payments difficulties In a vain attempt to stem these consequences, a distortionary system of multiple exchange rates and fixed interest rates was instituted Exports declined, inflation rose, and savings fell

Following the February 1989 coup, the new government substantially improved macro-economic policy management It unified multiple exchange rates, liberalized the exchange market, and reduced the public sector deficit drastically Tax collection improved and payments from Itaipu increased In December 1991 a new tax code passed that simplified and modernized the tax system and placed greater reliance on the value-added tax Tariffs were lowered and simplified to be more in line with the de facto openness of the economy.

Paraguay also joined the MERCOSUR (a free trade agreement with Brazil, Argentina, and Uruguay) and has complied with its obligations to reduce tariffs to its MERCOSUR partners In principle an ambitious effort at regional integration, in practice MERCOSUR remains an untested concept Even in the most optimistic scenario, tangible benefits to Paraguayans may be some time in coming

Current Issues

The government plays a major role in the Paraguayan economy The total public sector budget represents close to 50% of GDP. Of the $3 3 billion government budget for 1994, 40% was for the central government and 60% for the decentralized agencies and state-owned enterprises

The privatization of state-owned enterprises is a plank in the Wasmosy administration's program But the government's proposal to privatize five entities - the national airline (LAP), the telephone company (ANTELCO), the water company (CORPOSANA), the cement company (INC), and the alcohol company (CAPASA) - has run into opposition from elements in both the Colorado and Liberal parties who favor continued state participation in the economy and who fear loss of jobs for state workers

Paraguay's GDP growth is heavily influenced by agricultural output and the principal exports of cotton and soy Future long-term growth of agriculture is a key issue This sector has also been neglected for many years by the government In the past, the main source of growth has been expansion of area cultivated rather than increases in yields This pattern will need to change because of environmental deterioration Future growth will depend more on intensified use of modern inputs

While Stroessner was in power, his adherents were permitted to accumulate large land holdings Peasants have begun to press for land redistribution leading to confrontations with the military Land tenure is a potentially explosive issue while growing discontent over government neglect and falling crop prices have politicized some Paraguayan peasants

Another daunting task facing the government is regularizing the informal economy which may account for 40 to 60% of GDP. Contraband trade distorts normal economic activity, complicates Paraguay's integration into MERCOSUR, and contributes to the climate of corruption in the country

Paraguay is a major transit point for the flow of narcotics to its neighboring countries as well as the United States and Europe There are continuing reports that Paraguay's liberal banking laws and lagging bank regulation is encouraging the country's growth as an important money-laundering center Narcotics trafficking negatively affects Paraguay's international relations, especially relations with the U S and Europe

Job creation to meet the increasing labor demand is a major challenge facing the government. With the population growth rate near 3%, the labor force, estimated at 1 6 million, increases by approximately 50,000 new entrants annually Historically, excess Paraguayan labor has gone to Argentina and Brazil but these outlets depend on economic and political trends in those countries Meanwhile unemployment and poverty is increasing in Paraguay The government estimated unemployment in the metropolitan area at 6% in 1992 but private observers put the rate at 14%

III. SUMMARY OF FINDINGS

A. Progress

Ruled almost continuously by authoritarian regimes since 1811, Paraguay was almost completely shut off from the outside world during the last 35 years of Stroessner's repressive rule Not only has Paraguay's population had little experience with democracy, it has relatively little awareness of democratic practices

In the six years since Stroessner's overthrow, Paraguay has made progress in its democratic development, including holding elections, at local and federal levels and installing basic freedoms of press and political organization While much remains to be done, important building blocks are in place to support continued strengthening efforts

Following the February 1989 coup, Rodriquez called for presidential and legislative elections within the 90 days established in the 1967 Constitution After winning elections that were reasonably free, the Rodriguez Government contributed to installing democratic guarantees for human rights and basic freedoms Closed newspapers and radio stations were reopened and formerly outlawed political parties began to organize

Municipal elections for mayors and municipal boards were held in May-June 1991 Mayors, previously appointed by the central government and responsible to central authorities, were chosen by local vote.

Constituent Assembly elections were held in 1991 and a new constitution was promulgated in 1992, a major step toward institutionalizing Paraguay's democracy Unlike Paraguay's previous constitutions, the 1992 Constitution establishes a balance of power between the branches of government and abandons the traditional strong presidential (*caudillo*) model

The Constitution follows modern trends in introducing a number of economic, social, cultural, religious, ethnic, and human rights in addition to political freedoms It revolutionizes the normative structure of Paraguay and provides a workable framework for democratic development However, implementation of the reforms is left largely to enactment of future legislation

Elections for president and congress were again held in May 1993 Organization of American States (OAS) international observers were invited and the elections were certified as valid although some irregularities were cited by the OAS. Juan Carlos Wasmosy, the Colorado Party candidate, was elected President while the opposition parties won a combined majority in Congress

With the Colorado Party in control of the executive and opposition parties in control of the legislature, there was a potential for political deadlock To avoid this possibility following the May 1993 elections, the leader of the opposition Liberal Party, Domingo Laino, proposed a "pact of governability" intended as an interparty agreement to reach understandings on fundamental

aspects of administration of the country This pact was accepted by factions of all parties It has provided a basis to share power and to reach ad hoc agreements on key points of the democratic transition such as, making appointments to the new Supreme Court

Progress in each of the areas addressed in this assessment is discussed below

1 The Judiciary

Adoption of the 1992 Constitution was one of the most significant achievements for the justice sector The Constitutional Convention, composed of representatives from all political sectors, was able to reach consensus on radical organizational reform of the state The achievement of consensus was in itself a major sign of progress

The Constitution expands the size of the Supreme Court from five members to nine, giving it the ability to constitute specialized chambers of three judges each A larger Court should increase the Court's ability to process cases The Constitution also provides for the Court to review the constitutionality of legislation

Commitment to an accusatorial and oral system as the primary mechanism for judicial proceedings is a major step in modernization of the judicial sector Enactment of reforms to the Code of Criminal Procedure and the Law on Organization of the Public Ministry will be required A series of new codes have been proposed in Congress, and it is expected that some kind of procedural reform will be enacted within the next two years Adoption of procedural reform is expected to contribute to a more rapid judicial process while increasing accountability by making trials open to the public

The constitutional mandate establishing the Public Ministry as an independent prosecutorial body with functional and budgetary independence is a further significant development A proposed organic law for this Ministry would make it the primary accusatorial body for the state and give it substantial authority to investigate and prosecute cases

Judicial independence is strengthened by mandating a budgetary assignment of a minimum of 3% of the national budget to the judicial sector The term of office of Supreme Court justices is modified from five-year to life-time appointments, thereby limiting potential for political interference in operation of the Court Lower court judges are to be selected to five-year terms of office except that they become life-time appointments if selected to a consecutive second term Initial Supreme Court judicial terms will not coincide with presidential terms, further decreasing potential for politicization

The Constitution also establishes a new mechanism for selection of judges, the Judicial Council (*Consejo de la Magistratura*) This independent body reviews applications for vacant judge and prosecutor positions and proposes candidates to the Supreme Court Adoption of this selection system is an important step in merit-based selection

In addition to constitutional reforms, Congress has enacted police reform A new organic law has the effect of separating the police from the armed forces Congress is now considering an interparty agreement to limit political involvement of the police and the military

These steps indicate commitment from all branches of government to effect major reforms of the justice sector This commitment has been underlined by significant budgetary increases to the sector Although the constitutionally mandated 3% of the national budget has not yet been reached, the increases have been impressive In 1995, the judiciary received 2 3% of the budget as compared with 0 5% in 1990

USAID/Paraguay has been providing assistance for judicial reform since 1992 Principal achievements have been development of an automated jurisprudence data base and a case-tracking system, establishment of a Human Rights Documentation Center to preserve files and documents from the Stroessner regime, drafting of a code of procedure for the labor sector as well as a code of criminal procedure and a criminal code, development of a career-based judicial career law, and training of judges, prosecutors, and lawyers

2 Legislature

Moderate progress has been accomplished in modernizing the legislature since 1989 Legislators have been focusing on ways to organize themselves and function more effectively They have improved staff selection and training, acquired computer equipment, and organized a library Rules of Order amendments for each house are being discussed

Since 1993 when the opposition parties gained control, the legislature is increasingly active It is beginning to exercise oversight of the federal budget and to investigate corruption It is pushing a positive agenda in privatization, the environment, the social sector, and in the strengthening of local government

Some legislators have been more visionary than others in proposing changes to the status quo One proposal, for example, is to establish a multi-disciplinary group of professionals to assist committees in analysis and review of bills Another proposal by the Personnel Director of the Senate would strengthen the Senate's library and archive services

USAID support has helped to train media reporters covering the legislature and generally raise the level of awareness of the need to modernize Legislative staff have been trained, and also through USAID support, legislative committee assistants visited CEAL in Chile to learn new job techniques As a result, an association of legislative employees was formed to stimulate continuing professionalization

These efforts need to be reinforced on a sustained basis to ensure permanent results throughout the legislature Rules of Order need to be established and qualified, permanent, non-partisan staff need to be recruited and trained Lines of communication and coordination with the executive and judicial branches need to be improved

3 Executive and Local Government

The Constitution of 1992 clearly sets the government on a course of decentralization of the public sector Municipalities have, in theory, broad responsibilities and the powers to contribute to the improvement in quality of life of their citizens The Constitution and subsequent legislation have strengthened local government finance and have created an intermediate level of government (the departments) to work with the municipalities in expanding local public services

The Ministry of Health has taken the lead among the central ministries in seeking to decentralize its services It has developed a proposed "National Health System" which seeks to decentralize administration and financing of the system and tailor programs more closely to community needs as expressed through local participation USAID, PAHO, and other international agencies have helped with this process

Similar programs are being discussed for education, public works, and the national water system

Donor programs have been initiated or are being discussed at all levels in public sector modernization and municipal strengthening For example, a proposed $20 million Inter-American Development Bank (IDB) program would focus resources on the legislature, the judiciary, and the legislative liaison of the Office of the President An $18 million municipal loan will support urban property cadasters, pre-investment studies, and technical assistance and training for local government officials and staff These represent major investments in democratic development

While privatization proposals have run into opposition from some elements in both the Colorado and Liberal Parties, Paraguay's stated commitment is to moving from government ownership to privatization. Privatization of the steel plant, railway, river transport, and national airline companies has been authorized In addition, President Wasmosy has pledged to privatize cement production, the alcohol plant, and the Yacyreta electric plant To date, however, only the privatization of the national airline has been accomplished Political parties who favor continued state participation in the economy and who also fear loss of jobs for state workers have opposed wider efforts

4 Electoral System

Four elections have been carried out since the 1989 coup, including·

- presidential and congressional elections in May 1989,
- municipal elections in May-June 1991,
- Constitutional Assembly elections in 1991, and,
- presidential, congressional, and gubernatorial elections in May 1993

While there were irregularities, the elections have generally been accepted as valid and legitimate International observers, including former President Carter, pronounced the May 1993 elections the freest and fairest in the country's turbulent history

An electoral code was approved in 1990 The Constitution of 1992 establishes a new Electoral Tribunal Much work remains to be done in improving the civil registry and electoral lists, in staffing and training and equipping the Electoral Tribunal, especially in the run-up to the May 1996 elections, and in providing civic education

5 Civil Society

NGOs including social and political organizations, labor unions, universities and the press, have proliferated in Paraguay since 1989 Previously operating, if at all, in a reserved, almost clandestine manner, these largely church-affiliated NGO's did not have sanctioned roles in articulating social and political issues In contrast, in preparation for recent elections, NGOs developed civic education programs, prepared pamphlets, and trained electoral personnel NGOs in the civil society currently investigate and publish on social and political issues NGOs have taken the lead in studying social issues and organizing seminars and discussions to influence public opinion and policy

Indirectly, NGOs have also provided opportunities for women to play a larger role in civil society Women have filled more than 30% of NGO director and board member positions

Notable in the nongovernmental sector is a major expansion of the role of the press in overseeing government and shaping public opinion There are two schools of journalism at the national university providing a base for improvement of the media upon which additional initiatives in continuing professionalization of the press can be built

Universities, neglected during the Stroessner period, are only beginning to develop Both major universities have opened branches in interior cities Steps are being taken to develop graduate courses The academic community has begun to establish contacts with colleagues abroad New small universities being created appear to be successful in attracting students

The Unitary Confederation of Workers (CUT), the largest trade union with 50,000 members, has become an important catalyst of popular action at the grass roots While independent trade unionism developed slowly during the long Stroessner dictatorship, since 1989, the government has provided a free environment for trade unionism to operate Appropriate trade laws are on the books although they are not always enforced

6 Political Parties

The political opening and respect for human rights and liberties brought by the 1989 coup, the adoption of a new electoral code, and the promulgation of the 1992 Constitution have provided a framework for political parties to function freely and openly While new parties and movements have emerged (*Encuentro Nacional* and the *Asuncion para Todos Movement*) and have expanded their support and influence, the traditional Colorado and Liberal parties continue to dominate

Following victory by a combination of opposition parties in the legislature in the 1993 elections, factions of all parties have agreed to a dialogue and an attempt to reach agreement on key issues of the democratic transition Agreements have been reached in establishing and appointing members to the Supreme Court, Judicial Council, and Electoral Tribunal These examples of negotiation, compromise, and power-sharing among the parties represent a significant move forward from the former political system of exclusion to a more open and participative one

7 Military

Progress in de-politicizing the military and developing a civil-military relationship appropriate for a stable democracy has been slower than in most other areas of Paraguay's democratic transition The military alliance with the Colorado Party, built during the Stroessner regime, still persists and military control and influence in the political and economic life of the country is pervasive

The Constitution of 1992 and an agreement signed on Independence Day during the team's visit give lip service to eliminating political participation by the military and police while on active service The implementation of these pronouncements in police and military practices remains to be seen

The military urgently needs to define a new mission and role for itself in Paraguay's rapidly changing society Younger officers are ready and open for change Top commanders, conditioned for so long by their roles during the Stroessner period, are a formidable obstacle to change Until they retire, movement toward a more professional military and more responsible civil-military relationship is likely to be very slow

8. Human Rights

Significant progress has been made in the area of human rights since the pattern of repression that characterized the Stroessner regime Important steps were taken by the new government immediately after the coup in 1989 to change Political exiles were allowed to return; political parties, with the exception of the Communist Party, were permitted to contest elections, media closed under the prior government were permitted to reopen, labor unions, long suppressed, enjoy newfound rights, a rapprochement was reached with the Catholic Church, and political prisoners were released

The 1995 U S State Department Human Rights Report for Paraguay points, however, to continuing problems "Principal human rights problems included extrajudicial killings, torture and mistreatment of criminal suspects and prisoners, police and military corruption, detention of suspects without judicial orders, general weaknesses within the judiciary, firings of labor organizers, and military intrusions into the judicial and political systems The Government began efforts to convict and punish those committing human rights abuses during the Stroessner era, and the courts sentenced persons in several such cases in 1994 "

Paraguay's prison system continues to present deplorable conditions Overcrowding and mistreatment of prisoners are the most serious problems The government does permit independent monitoring of prison conditions by interested non-governmental organizations

Members of indigenous groups, as Paraguayan citizens, are entitled to vote, and the percentage of indigenous people who exercised this right has grown dramatically in recent years However, Paraguay has an unassimilated and neglected indigenous population estimated at 75,000 to 100,000 persons, many of whom are still inhibited from fully exercising their political rights

While there are no formal legal impediments, women often face significant obstacles when they seek to participate in government and politics Participation by women in the political system, although improving, is still limited in the male-oriented society of Paraguay Few women serve in the Congress (3 of 45 senators and 2 of 80 national deputies) or the executive branch Two women serve as ambassadors and one, the Secretary for Women's Affairs, serves in the Cabinet

There are a number of human rights groups active in Paraguay These include the Committee of Churches (an interdenominational group that monitors human rights and provides legal assistance) Prodemos (a group linked to the Catholic Church), *Tekojoja* (a group dedicated to protection of children's rights), and the Association of Latin American Lawyers for the Defense of Human Rights (through a local chapter) The government does not restrict the activities of any human rights group

B. Constraints

While the elections of 1989 heralded an era of change, Paraguay's road to democracy is paved with formidable obstacles The individual analyses by the team point to the more important constraints in each of the areas addressed Common themes among these reports are lack of qualified human resources, weak institutions, and pervasive corruption In addition, a special problem for Paraguay is presented by the role played by its military

1 Human Resources

Paraguay has one of the lowest education levels in South America According to a 1992 Harvard International Institute for Development education sector assessment, in 1988 Paraguay had the least investment in primary education as a proportion of national product of any South American country In addition to its relative neglect of education, Paraguay under Stroessner was a largely closed society with very little international interchange and exposure

Paraguayans universally acknowledge the importance of education in their development They realize an effective democracy requires an educated citizenry that can participate politically on the basis of informed opinion Democratic institutions need trained people to effectively carry out their functions

The judiciary, legislature, executive, local government, media, NGOs all have important new roles to fill, but the human resources to carry out these new roles are seriously lacking Efforts to provide international exposure, training, and civic education and to improve the education system generally have been underway since 1989, but the need is enormous

2 Weak Institutions

With its tradition of a strong central executive, Paraguay's judicial, legislative, and local government institutions are notably weak The lack of any merit-based civil service and the tradition of patronage to fill public sector positions have been serious obstacles to institutional strengthening Loyalties of public sector employees have been first to the Colorado Party, secondly to themselves, and only thirdly to the institution

New institutions such as the Electoral Tribunal, the Judicial Council, and the Departmental Governments are have few or nonexistent resources Older ones such as the Supreme Court, much of the judiciary, Congress, labor unions, media, universities, NGOs have new important roles to play but they remain for the most part ill-equipped to take on these new responsibilities The need for institutional modernization and strengthening in Paraguay is great

3 Corruption

Corruption has been endemic in Paraguayan society Smuggling is a national industry "Paraguay is a trampoline for contraband," said Aldo Zucolillo, publisher of ABC Color "It is the paradise of corruption "

Illustrative of the problem of corruption is a scandal that was facing the Government in May 1995 at the time of the assessment team's visit The directorate of the Central Bank became concerned about the lax security over funds held by the Bank and ordered a more active audit and control process A surprise audit by the Bank's internal audit division revealed a substantial shortage of funds The directorate and the President of the Bank have been criminally charged, the treasurer and a section chief have been arrested, and additional arrest warrants have been issued The Minister of Interior has been temporarily relieved of his duties pending clarification of his role in the scandal

Corruption has been part of life for so long in Paraguay that it has conditioned basic values and attitudes It is a problem throughout the society, in the public as well as the private sectors Nothing short of a sustained, long-term campaign involving all of society will be sufficient to fundamentally change attitudes toward corruption

4 Military

One of the most intractable problems the country faces is the pervasive influence of the military in government, in the contraband economy, as well as in narco-trafficking The military has played a central role in changes of government through most of the nation's history From 1936

to 1954, for example, the military installed eight presidents and removed seven, and led the coup that overthrew Stroessner in February 1989. Although lip service is now paid to the need for civilian control over the military, powerful commanders still exert significant control over political and economic affairs

IV. RECOMMENDATIONS

A. Proposed Actions

Summaries of actions proposed in each of the areas examined by the assessment team are as follows

1 Judiciary

a Poor public image The justice system is held in disrepute by Paraguayan citizens First steps in improving this image include selection of a new Supreme Court and Fiscal General, establishment of a Judicial Council, and merit selection of new judges and prosecutors Further actions to address the image problem might include development of a public relations program, training journalists on legal issues and engaging the media in dialogue, improving public knowledge of the legal system through educational campaigns including cooperation with the Ministry of Education to insure texts contain accurate information on legal and constitutional rights and responsibilities, and, establishing an information office to provide feedback to the public on case status in the courts

To the extent the image users have of the judiciary is largely shaped by experience with the lower courts, especially justice of the peace courts, the judiciary might consider targeting these courts with personnel training, infrastructure improvements, better salaries, greater controls and an expansion of jurisdiction

b Needed laws The provisions of the 1992 Constitution require a body of new laws a new law creating the Public Ministry, a Code of Criminal Procedure, a Criminal Code, a new organic law for the courts, and a corrections law. There is an urgent need for coordination between the executive, judiciary, and the Public Ministry to arrive at legislative proposals supported by all implementing institutions A strategy to generate public support and shepherd legislation through Congress is needed. An implementation plan should be developed

c Limited access Establishment of a strong public defender system would improve access to justice for the indigent and expedite case processing

d. Lack of controls· The Supreme Court would improve its image and the integrity of the judiciary if it took additional steps to strengthen regulation and oversight by establishing an internal inspection unit, a mechanism for citizens to file complaints, an improved auditing capability, and administrative procedures and manuals

e Public sector corruption In addition to improved controls over its own personnel, the judiciary and the Public Ministry should take the lead in the fight against public corruption as follows coordinate a strategy with the Controller General's Office which has the best capacity to investigate financial crimes, update criminal code sections dealing with public officials, train

prosecutors and auditors on modern investigative techniques, support NGOs as advocates of the fight against corruption; and train journalists in ethics and investigative journalism

f Centralization Decentralization is needed for a more modern and efficient justice system The following steps could be taken delegation of more administrative authority to regional centers and individual judges, cooperative agreements between the Supreme Court and departmental governors and mayors to share support to local courts, and an organizational study to streamline the system and develop procedures

g Lack of planning and coordination. Pending legislation will resolve some of the problems of planning and coordination, but further inter-agency discussions and implementing actions will be needed

h Accusatorial process A major step in modernization of the criminal justice system is the commitment to move towards an accusatorial and oral process Major implementation steps are needed· agreement between relevant agencies on a common code of criminal procedure, analysis of impact on other legislation, analysis of resource implications, an implementation plan to test the reform; and training for judges, prosecutors, law school faculty, and lawyers

2 Legislature

Recommended steps include

a Committee staff 1) The selection process which is now ad hoc, not in writing, and subject to the whim of each house president should be improved The selection process should be outlined and included in the Rules of Order for each house and criteria should be uniform and standard 2) Job descriptions or scopes of work should be defined and made uniform for similar positions 3) Exposure to legislative staff techniques and practices in other countries should be provided 4) Staff should be technically qualified and non-political While working closely with committee presidents, staff should work with and accept requests from all members of the committees

b. Bill drafting· Units are needed to draft bills for legislators and to provide legal opinions on pending legislation One unit serving both houses is recommended but may not be politically feasible The units should be composed of three attorneys each who are non-partisan and permanent staff

c Research Units with access to GLIN, Internet, and other international electronic databases are needed to provide legislators with background information

d Budget analysis and oversight A unit is needed to provide support to the budget bicameral committee for the budget law, fiscal impact statements on all bills, and periodic information to all legislators on national financial and economic matters

e Constituent relations A unit is needed to provide information to legislators about their districts and information to constituents about the legislature

f Technical services secretariat A secretariat to administer the above units should be created to ensure their professionalism and non-partisanship

g Training Observation trips for legislators and administrative and technical training for staff should continue to be provided

h Public hearings· Use of public hearings should be encouraged because of their value in encouraging citizen participation and explaining the role of the legislature.

i Media The media should be utilized to inform the public about legislative modernization Media representatives should continue to be trained in coverage of the legislature

3 Executive and Local Government

a Corruption Administrative rationalization to provide simpler, more transparent public sector work practices should be supported Programs to increase public awareness of efforts being made in other countries to control corruption should be developed Seminars for the media on techniques of investigative reporting should be sponsored in cooperation with appropriate Paraguayan groups

b Civic education Efforts by private civic education groups to (1) broaden popular participation in the political process (in addition to voting) at all levels of government, and (2) discuss and gain consensus on the proper role of the military in a democratic society should be encouraged and supported.

c Decentralization Continuing decentralization of appropriate central government programs to the departmental and municipal government levels, such as is being done by the Ministry of Health, should be encouraged Revenue raising capacity of local governments should be strengthened. Municipal associations should be strengthened through technical assistance and motivational seminars and opportunities to observe the work of relatively successful systems and associations such as those of Brazil and Ecuador

4 Electoral System

a Civil Registry The civil registry needs continuing attention and improvement. It provides the basis for preparation of the voter registry A board made up of representatives of the political parties, the executive, and the legislature (Mesa) is working on correcting errors in the voter registry at present Preparation of a totally new voter registry implies preparation of a new civil registry which would be too large and expensive a task to be feasible now For the near term improvement in the voter registry can be achieved through a national registration campaign

b Organization of electoral process To maintain an efficient and transparent electoral process is a major undertaking requiring good organization, good management, and trained workers The electoral code is clear in laying out the steps to be taken when election results are questioned It is much less clear on how to organize the overall electoral process Neither the Electoral Tribune nor the legislators concerned are fully aware of the steps to be taken The 1993 election observation team noted the difficulties in interpreting and applying election norms

Implementation of the electoral code provides the opportunity to fill these gaps in the process The draft legislation now under consideration unfortunately does little to clarify the process and to define the specific roles of each organization in the process This area deserves the attention of the international community

c Civic and voter education Civic, voter education campaigns are vital to support future elections They provide the basis for motivating citizens to vote and explain the importance of the electoral process to strengthening democracy in Paraguay Continuing training is needed for officials involved in the election process NGOs such as DECIDAMOS, *Mujeres para la democracia*, and SUMANDO can play a key role in the training of both citizens and election officials

International donors can usefully work with the legislature in supporting needed reforms in the electoral law They can also support the Electoral Tribune in planning and implementing the activities needed to improve the civil and voter registry and in training electoral officials

5 Civil Society

a NGOs Support NGOs as their work relates to democratic development, including judicial reform, legislative development, voter education, local government development and other aspects of civic education

b Labor Continue AIFLD support to the labor movement

c Universities Consider support for university programs related to democratic governance and investigative journalism, with special emphasis on scholarships for advanced studies abroad for faculty members Support efforts to enable broader access to INTERNET

6 Political Parties

The assessment team had very limited opportunity to analyze specific needs of the political parties for assistance in their development In the current highly politicized environment of Paraguay, any external assistance would have to be provided on an equal basis to all parties Political parties appear to have a lower priority in a near-term democratic strengthening strategy for Paraguay, thus the team has not attempted to develop any specific action recommendations

7 Military

Continued movement toward a more professional and democratically responsible military is crucial to success of the democratic transition The US military is implementing training programs to assist with this process USAID is not likely to play a direct role with the military for political and practical reasons But targets of opportunity such as sponsoring an in-country seminar with an NGO in the area of civil-military relations or attendance at a program such as the one at American University should not be overlooked

B. Proposed USAID Strategy

Given its limited resources and mandate from Washington to focus and delimit its efforts under its Democracy Strategy, USAID should give priority first to the judicial sector Without a successful judicial modernization effort that rebuilds faith of Paraguayans in the judicial process, the democratic transition will lack credibility and could fail Efforts in this sector are urgent in terms of the key overall constraints identified in this assessment

USAID has been active in the sector since 1990 and has valuable experience and a comparative advantage that should be exploited The assistance on balance has been successful, not so much in achieving specific targets of the project, as in encouraging a climate in which major reforms are now being discussed openly and have a real chance of success USAID's role as a catalyst should not be underestimated

The current USAID project ends in September 1995 We suggest USAID consider extending the project until the new Supreme Court and Judicial Council develop their priorities and strategies and then reprogram funds accordingly In addition, the IDB is planning a $16 to $20 million loan which will support actions in all areas identified above except for corruption

USAID has proposed a new initiative for judicial reform under the Democratic Institutions Development umbrella project which AID/Washington has recommended be focused on the accusatorial system and judicial training We agree with the need for focus but not with limiting the focus to these activities which are still dependent on pending and uncertain legislation We suggest USAID consider support to a complementary and, if necessary, alternative, activity in the area of corruption which will not be picked up in the proposed IDB program

As a second target area to the judiciary, USAID should also continue to give priority to the legislature which urgently needs strengthening to perform its role as an initiator of legislation and counterweight to the executive The USAID Action Plan proposes assistance to 1) improve staff and member capacity, 2) develop a management information system, 3) institutionalize a legislative research and analysis unit, 4) develop constituency response mechanisms; and 5) attract and coordinate foreign assistance We generally agree with these priorities

Executive branch and local government require larger resources than USAID is likely to have and this sector should therefore be left largely to other donors The UNDP should be encouraged to

follow up on its earlier efforts to reform public sector management IDB is beginning a major project in municipal-strengthening Other donors should be encouraged to coordinate their efforts in the area of local government with the IDB program The proposed Decentralization of Health Services project does make sense for USAID/Paraguay given its relatively small investment, the Mission's experience with the Ministry of Health, and the potential for replication of this activity in other Ministries

USAID could usefully continue to look for limited targets of opportunity in strengthening local government associations It could provide small investments for scholarships and visits by experts to broaden the perspective of those working on local government development and inter-municipal cooperation

The electoral system has functioned more or less satisfactorily in the sense that four elections in the transition have been accepted by the populace Other donors should be encouraged to take the lead in assisting the Electoral Tribunal to organize, train, and equip itself for municipal elections in 1996 and presidential elections in 1998 But if other donors do not come in, USAID may need to give higher priority to electoral activities in its strategy

Targets of opportunity, particularly if low-cost, should be entertained with respect to civil society, political parties, and the military but not at the expense of diluting the focus and priorities outlined above on the judicial and legislative branches of government

An issue is how future proposed USAID assistance for support of democracy should be implemented To date, assistance to the judiciary has been channeled directly through separate agreements with the institutions involved Assistance to the legislature has been provided through a Cooperative Agreement with CIRD, an NGO already certified by USAID, with a demonstrated track record in project management It would be ideal if all assistance for democracy could be packaged and channeled through one PVO

Regardless of whether such a PVO could be found, and the team was not aware of any likely candidate, there may be disadvantages in terms of relations with the new Supreme Court in attempting such an arrangement, at least in connection with proposed assistance to the judiciary The team has no proposal to suggest but recognizes that determining the best method to implement its democratic assistance package poses a management issue for the USAID Mission

The team suggests that this assessment could be used, in its entirety and in its separate pieces, as grist for discussions and further refinement in seminars and workshops with appropriate Paraguayan groups and institutions

ANNEX A

PARAGUAY'S JUSTICE SECTOR

by

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I. OVERVIEW

A. The Judiciary

Paraguay follows a traditional tripartite model of government with three autonomous and coequal branches of government (executive, legislative and judicial) This constitutional equality is not realized in practice and the government is characterized by predominance of the executive branch, a competing legislative branch dominated by opposition parties, and a weak judicial branch

1 Structure and Functions

The judicial branch has four court levels

a. The Supreme Court

The Supreme Court is composed of 9 magistrates appointed to life-terms They can only be removed by impeachment by the Congress or after they reach a mandatory retirement age of 75 The adoption of lifetime appointments is a major step toward judicial independence The Court is organized into specialized chambers of three magistrates

In addition to its role as the highest appellate tribunal, the Supreme Court, acting as a whole, has the following functions· a) supervise the administration of the judicial sector, b) select judges from candidate pools proposed by the Judicial Council, c) act as the only instance before which habeas corpus or challenges to the constitutionality of laws are presented, d) impose disciplinary sanctions, other than removal, to lower court judges for unethical conduct

b. Appeals Courts

There are 24 Appeals Courts Thirteen are in the capital and are divided into criminal (3), labor (2), juvenile (1), civil and commercial (5), and accounts (*Cuentas* - 2) sections There are an additional 11 appeals courts in eight regional centers (*Villarica, Encarnación, Concepción, Ciudad del Este, Pedro Juan Caballero, Neembucú, San Juan Bautista*, and *Coronel Oviedo*) These are primarily appeals courts composed of three-judge panels Their decisions are reached by majority rule.

Appeals court judges are named to five-year terms which do not coincide with the presidential term If they are re-elected to two consecutive terms, they receive life-time appointments Under the new constitutional reforms these appointments will be filled by the Supreme Court from a pool of three candidates proposed by the Judicial Council

c First Instance Courts

There are 75 single-judge First Instance Courts They are distributed as follows 25 civil and commercial, 31 criminal, 6 labor, 7 juvenile, and 6 non-specialized These courts have jurisdiction over serious crimes, civil cases exceeding a set amount and appeals from lower court decisions Additionally, there are 8 instructional judges Like their appeals counterparts, these judges are named to five-year terms Under the new constitutional reforms these appointments will be filled by the Supreme Court from a pool of three candidates proposed by the Judicial Council

d Justice of the Peace Courts

The 6 Justice of the Peace Lawyer Courts (*Juez de Paz Letrado*) are also single-judge courts and exercise jurisdiction over minor civil cases Like their superiors, these judges are named to five-year terms and their appointments are filled by the Supreme Court from a pool of three candidates proposed by the Judicial Council

There are more than 261 Lay Justice of the Peace Courts spread throughout the country They exercise jurisdiction over the smallest of civil disputes and are the representatives of the State in rural areas for a series of non-judicial tasks, which include acting as the civil registry in those areas in which none exists, acting as a notary, performing marriages, etc In the overwhelming majority of instances these judges are not lawyers They are also named to five-year terms in the same manner as their counterparts They are probably the largest source of political patronage in the justice system and it is unlikely that all political considerations will be totally removed from their selection

Recently, there has been some discussion about requiring justices of the peace to be lawyers This, while appearing to be a positive step, may have unexpected consequences as nonresidents are appointed, in rural communities, to solve community disputes by applying legalistic solutions to problems normally resolved through mediation

2 Personnel

A major deficiency of the Paraguayan justice system is the absence of a personnel system which rewards merit and depoliticizes the system The absence of such a system results in low morale as well as decreased public expectations, as unqualified candidates are promoted over more qualified colleagues A remedy to this problem, advocated for many years, and mandated by the Constitution, is the adoption of a judicial career law and implementing regulations

The Paraguayan judicial system has a limited work schedule Courts are open only from 7 00 a m to 12 00 p m even though all employees are paid for an eight-hour work day There has been no change in this tradition even though most admit to the limitations it places on the system's ability to process cases and provide access to citizens

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Judicial salaries have increased considerably in the last few years so that a Supreme Court justice receives a salary of approximately $4,500 monthly, Court of Appeals judges $3,000, First Instance judges $2,400, lawyers who are justices of the peace $2,400, instructional judges $1,900, and justices of the peace $555 Justice leaders are cognizant of the need for further increases, especially at the lowest levels While judges are prohibited from outside employment (with the exception of teaching at a university), the remaining judicial staff appears not to be so limited, and many of them hold other jobs This practice seems to be a primary impediment to adoption of a full-time work schedule

The number of courts and their location determine, in part, the access which citizens have to the justice sector and the issue of access ultimately affects public confidence in the sector The 1990 preliminary evaluation of the sector found that there were a total of 338 judges providing service to a population of 4 million or 084 judges for every 10,000 inhabitants Five years later, the number of judges has grown to 401 providing service to a population of 4 5 million or 089 judges per 10,000. Thus, while the number of judges has grown it is barely keeping up with population growth

While comparisons of population are one means to determine court needs, this measure is limited since it does not take into account user demands The most accurate means to determine the need for and location of additional courts is to analyze cases filed in previous years and project future growth while taking into account special circumstances that impact on caseloads

Judicial training is inadequate and the judiciary has no school or training program for incoming or sitting judges. One of the highest priorities for reform of the judiciary is establishment of a continuing legal education program for judges Training is one of the areas in which the USAID administration of justice project (AOJ) has had the most impact It supported a training needs assessment and a series of activities leading to the design of a judicial school, as required by the Constitution, and a proposed judicial school law The current Court, however, appears inclined to support an alternative model under which judicial training would be subcontracted to law schools USAID has also supported, between 1990 and 1994, the attendance of 35 judges and prosecutors to regional conferences, and sponsored workshops and seminars attended by 1,500 judges, prosecutors, and lawyers

3 <u>Budget</u>

A benchmark of judicial independence in Latin America is the right of the judiciary to seek and manage its own budget without interference from the other branches of government A means of guaranteeing such financial autonomy is to have a constitutionally prescribed minimum assignment of the national budget, usually expressed as a percentage of the national budget The 1992 Constitution has fulfilled this goal by assigning the Judiciary 3% of the national budget

The budget assignment to the Judiciary, however, must be shared with the Electoral Tribunal (18%), the Public Ministry (14%), and the Judicial Council (2%) with the remaining (66%) amount allotted to the Judiciary Judicial budgets in Paraguay are insufficient to meet many of

the courts' needs although there has been substantial growth in appropriations assigned to them For example, in 1990 the judiciary received only 51% of the national budget, one of the lowest percentages in the hemisphere By 1995, the allocation grew to 2 47% Even though this is still not up to the constitutionally mandated 3% it is still a substantial increase

Budget figures are misleading in that they do not take into account the unexpended funds remaining at the end of the fiscal year As the end of the year approaches, the Treasury begins to project shortfalls and to reduce transfers into the accounts of public agencies Thus, for example, in 1993 the Judiciary only received 79% of its appropriation Even more worrisome is that it only spent 82% of the amount actually received

There is a pending legislative proposal to increase the judiciary's budget by assigning it 20% of the funds which are collected through judicial fees (approximately 6 billion guaranis) to be used for construction of courts (an additional 35% of the total fees collected is earmarked to be used for new prison construction) This will be an important addition to the judicial budget

4 Controls

Regulation of judicial ethics is of paramount importance to any judicial system Corruption is an endemic problem for the Paraguayan public sector and the judiciary, especially at the lowest levels which are often the most susceptible to corrupt practices This is especially dangerous to a system which assigns a number of responsibilities beyond traditionally judicial ones to lower courts

The law assigns oversight of judicial conduct to the Supreme Court However, there is a general feeling that this function has not been carried out effectively For example, there is no internal affairs unit to visit and oversee court operations The case management system, which could be used as a control and disciplinary mechanism to determine compliance with prescribed processing terms or unusual movement of cases, has never been used for this purpose Citizens have no ready and simple means to file complaints against judicial officials There is a general perception among the population that corruption dominates the system and much of the criticism is focused on the criminal court judges This contributed to the establishment of the Judicial Council and the Magistrate Tribunal (*Tribunal de Juzgamiento de Magistrados*)

5. Court Administration

Recognition that court systems can be made more efficient by application of administrative concepts routinely used by the remainder of the public sector is of recent origin in the United States Growing caseloads and a popular perception of the system as unable to dispense justice has brought court administration to the forefront of discussions about the administration of justice in Paraguay The criminal and civil courts are encountering serious case backlogs, procedural congestion, and judicial delays with the resulting effect of inefficient, costly and detrimental delivery of services These delays contribute to the appearance of impropriety and public perceptions that the courts are unresponsive, corrupt, and politically-influenced The lack of

proper court administration is reflected in archaic procedures, inadequate control mechanisms, duplication of effort, weak administrative and logistical support to the judges, and inadequate judicial statistics which fail to provide a complete picture of the problems and are of limited use for improved court management and planning

A number of problems affect the entire administrative system and structure. a) inundation of the Supreme Court with menial administrative tasks, b) need for a modern administrative infrastructure for the judiciary, c) absence of a director general of administrative services (the Court has three directorates reporting to it without delegation to one director to oversee all administrative functions), d) lack of uniform procedures, e) need for additional courts, f) inadequacy of logistical support, especially in the lower courts, g) deficiencies in infrastructure, h) insufficient work hours, i) duplication of functions, and, j) records management deficiencies

B. Judicial Council (*Consejo de la Magistratura)*

The level of political interference in judicial selection strongly affects judicial independence The previous Constitution established a system whereby the executive nominated members of the Supreme Court and these were, in turn, ratified by the Senate Given the control over the legislative branch exercised by the Stroessner regime, this ratification was perfunctory and no proposed member was ever turned down Lower court judges were named by the executive also but with the approval of the Supreme Court This selection process was one of the most criticized features of the Paraguayan justice system since the sector was used by the prior regime as a pool for patronage and to insure that its decisions were not interfered with

One of the major constitutional reforms is establishment of a merit-based judicial selection process implemented by an independent body (the Judicial Council) The Council is composed of one member of the Supreme Court, a senator and a deputy from the Congress, one representative of the executive branch, two lawyers chosen by their colleagues, one law professor from the National University, and another from the private law schools In the case of the Supreme Court, it is charged with selection of a pool of candidates to be presented to the Senate which, with the consent of the executive, shall name the justices For all other judges, the Council follows a similar procedure but refers the candidate pool to the Supreme Court for their selection Should a judicial career law be adopted establishing a judicial civil service system, it is expected that this body will be charged with its implementation

As a result of the mandates of the 1992 Constitution and the enactment of the legislation establishing the Judicial Council, all of the judicial slots (prosecutors and judges) in the country will have to be filled through the competitive process of the Council, which requires at least three candidates per vacancy Of the 1,950 judicial positions which must be filled currently, only 107 persons had applied nine days prior to the application deadline and the Council was compelled to extend the deadline by one month It is expected that even with this extension, an insufficient number of candidates will apply and that a number of positions will not be filled through this competitive process The Court would then, conceivably, appoint interim judges until another competition is called in the future

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C. Court to Try Judicial Officers *(Jurado de Enjuiciamiento de Magistrados)*

A unique feature of the Paraguayan justice system is the establishment of an autonomous court to try judges and prosecutors for misconduct (Court to Try Judicial Officers) Oversight over judicial misconduct is traditionally assigned in Latin America to the Supreme Court or to an independent Judicial Council (with the exception of Supreme Court judges who are traditionally subject to impeachment by the legislative branch) Motivated, perhaps, by distrust of the judicial branch and fear of placing too much power in the hands of the Judicial Council, the framers of the 1992 Constitution opted for the creation of an autonomous body to deal with judicial misconduct.

This Court is composed of four representatives from the Congress (two senators and two deputies), two from the Supreme Court, and two from the Judicial Council In no case can a member of the Supreme Court preside over this body Judges have complained that the procedure used by this body is unfair towards the accused The law, for example, does not permit the Court to dismiss charges that are clearly unfounded, all accusations must be brought to trial. This disciplinary procedure brings judicial character into question, regardless of the merits of the complaint, and subjects judicial officers to pressures and threats from litigants only too ready to bring charges against them

D. Prosecutors

In accordance with the Constitution and the Code on Organization of the Courts, the Public Ministry acts as the prosecutor in criminal matters and represents the State in labor, civil and commercial, and juvenile cases This institution is similar to the Attorney General in the United States Criminal prosecution, family matters and cases involving minors occupy the bulk of the resources of the Public Ministry

In a descending hierarchical order, the Public Ministry is organized as follows. *Fiscal* General *del Estado, Fiscales Adjuntos* (2), *Fiscales* for Appeals (3), *Fiscales* for Accounts (*Fiscales de Cuentas* - 2), Civil and Commercial *Fiscales* (8), Criminal *Fiscales* (11), *Fiscales* for Juvenile Cases (6), Labor *Fiscales* (3), *Electoral Fiscal* (1), *Fiscales* in Asunción (5), others (1) While there are 42 prosecutors in Asunción, there is a much smaller number in the interior (41) and in most instances they cover the entire spectrum of legal responsibilities In addition, there are 19 procuradores also employed to represent the Public Ministry Of the 83 prosecutors, 30 are women, and of the 19 procuradores, 13 are women There is general agreement that there is an insufficient number of *fiscales*

The ample scope of the Public Ministry's legal responsibility, combined with the small amount of *fiscales* and an antiquated code of criminal procedure, results in the Ministry playing a passive role in the criminal process This, in turn, contributes to the delays in processing and its inability to adequately prosecute major white collar or drug crimes

One of the major reforms of the 1992 Constitution was to attempt to adopt a merit-based personnel system in which prosecutors, along with judges, would be selected by the Supreme Court from a pool of candidates proposed by the Judicial Council The *Fiscal* General, on the other hand, is selected by the executive, with ratification by the Senate, from a pool of candidates proposed by the Judicial Council

The Constitution established the Public Ministry as an autonomous agency, both in its functional and administrative areas In practice, however, and until a new Public Ministry law is adopted, the judiciary still has legal oversight responsibility over Ministry operations For example, it names all of the support personnel An agreement between the Court and the Public Ministry, however, only has the Court ratifying hiring decisions made by the Ministry The offices the Ministry occupies and the furniture it uses are property of the judiciary

During the term of the previous Supreme Court, the Public Ministry became the primary change agent advocating major reforms of the criminal process This leadership position has apparently now been ceded back to the new Supreme Court Their activism has been rewarded with substantial increases in budgetary allocations The growth of the Public Ministry's budget has been the most impressive in the justice sector, growing from 684,000 guaranis in 1991 to 10 billion guaranis in 1995 As a result, it has made impressive strides toward modernization of this office

It should be noted that the Ministry decries its ability to adequately investigate cases The Ministry used its budget to establish a small investigations department (40 investigators) with many of the features of an investigative police force The Ministry complains that even though it is charged with the prosecution of complex criminal cases (for example, narcotics, organized crime, and corruption) it has little technical capacity to thoroughly investigate them

The role of the prosecutorial subsector is still undefined Assuming that an adversarial system is adopted in a new Code of Criminal Procedure there are two options for this office The instructional stage (investigatory phase of the process) may be supervised by a judge or by a prosecutor Assignment of this authority to the prosecutors would make it a very powerful office since it would carry out the bulk of criminal investigations in Paraguay. Should the supervision of investigations be assigned to a judge, the prosecutor may remain a passive agent in the process

E. Legal Defense

The importance of an adequate defense to the development of a fair and efficient justice system cannot be underestimated The right to a legal defense is established in the Constitution There is a small cadre of public defenders employed by the judiciary, 11 in the capital and 20 in the interior Given the large number of pending criminal cases and the indigence of most defendants, one can readily see that the number of defenders, 31 in all, is totally inadequate to meet the demands on the system The result is that legal defense is perfunctory at best For example, these lawyers represent the interests of interned juvenile delinquents who are incarcerated 50 kilometers from the capital Not only do they have few attorneys to represent them but they lack funds with

which to transport themselves to the place of detention Additionally, while public defenders have a duty to visit the prisons periodically, visits are not in their interest since they may then be sought out by inmates and appointed to represent inmates, further increasing their caseloads

The lack of an adequate defense also adversely affects the process by contributing to procedural delays since there is no one with an interest in moving the case forward The constitutional convention devoted little attention to the absence of a legal defense for indigents Right to counsel provisions appear unchanged from the 1967 Constitution Adoption of a new code of criminal procedure will add new responsibilities to this office while maintaining the same status as before This contradiction in responsibility and authority may turn out to be one of the primary barriers to successful implementation of an accusatorial system

As to the legal profession, there is a general perception that the quality of law school training has declined considerably and has contributed to a declining legal culture There are approximately 3,800 lawyers, of these maybe 2,000 are in active practice, with the majority of them in the capital The two principal law schools are the *Universidad Nacional* and the Catholic University. Recently, the National University has opened extension facilities in three cities in the interior and new universities are being established outside the capital There is a national bar association in the capital and several smaller associations in the interior It is not required that attorneys belong to the bar association and their membership reflects this A result is that the bar association has no effective means to regulate the actions of lawyers

F. Police

The police under Stroessner's rule was one of the primary institutions charged with political repression and was guilty of serious human rights violations In 1993, Congress enacted a new law which created the National Police, and removed them from military control The national police force, under the overall authority of the Ministry of the Interior, has responsibility for maintaining internal security and public order Police abuses of human rights, including extrajudicial killings, continued in 1994 In contrast to previous years, however, the Government did convict and sentence a small number of police officers for killing civilians

Unlike other Latin American police forces, Paraguay has broad authority to determine which cases will be forwarded to the courts Most studies have pointed out that this grant of discretion results in a large percentage being settled at the police station and many arrests made without a judicial order. Others have pointed out that use of this discretionary power to filter disputes has had a positive impact by curbing the growth of the inmate population

G. Corrections

Prisons fall under the jurisdiction of the Ministry of Justice and Labor (the Ministry's other justice-related activities are operation of the Civil Registry and supervision over the juvenile system) However, in practice, the Ministry only directly supervises the National Penitentiary in Asunción (*Tacumbú*) and the regional jails in *Ciudad del Este and Concepción* The women's

prison operates more independently while the other jail facilities are supervised locally Minors are held in the "*Hogar de Protección Coronel Panchito López*"

Overcrowding is a persistent problem for these prisons In 1993, for example, the National Penitentiary, with a capacity of 600 to 700, held a prison population of 1,700 (it currently holds 1,200) The situation is not much better for the other facilities Overall, there is a jail population of 2,000 inmates Conditions were particularly poor in the *Panchito López* youth prison An independent investigation of the prison revealed that the institution was unsanitary, unsafe, and extremely overcrowded, although originally built as a single family home, the institution houses between 130 and 150 detainees The human rights committee of the Brazilian Attorneys' Association released a statement declaring that the Paraguayan prisons in Alto Paraná and Canindeyu were "inhuman" Lack of alternatives to imprisonment (for example, probation) seriously limits the ability of the system to release nonviolent offenders One of the most important problems facing the justice and correctional systems is the large percentage of detainees awaiting trial (92 to 95%), one of the largest in Latin America

In order to guard the most dangerous inmates, the government established a new facility in Lagerenza, in the extreme north section of the Chaco region This motivated a riot, in 1992, in Tacumbú prison after prisoners were notified that they were going to be transferred to the Lagerenza facility A similar facility was opened in La Emboscada but its security was called into serious question by the escape of half of its inmates.

H. Criminal Procedure

Latin American substantive criminal law is very similar to the common law However, the procedure for determining the guilt or innocence of the accused and the imposition of sentence is very different The most commonly made differentiation between the two procedures is that the civil law system is inquisitorial while the common law system is accusatorial This, like many other oversimplifications, has led to erroneous conclusions about the efficacy and fairness of one system over the other

Perhaps the most important differentiating feature of the civil law system is the emphasis placed on the instructional judge as the active investigator of the facts rather than as a neutral observer Another feature of the civil law system is the secret character of many proceedings as well as the written nature of the process. When combined with an ineffective legal defense for indigents the potential for abuse is great Finally, US criminal procedure is largely determined by judicial rulings applying constitutional law to define procedural guarantees Latin judges, on the other hand, are limited to strict compliance with the terms of the code of criminal procedure

While substantial criminal procedure reform has taken place in the rest of Latin America, Paraguay's has remained virtually unchanged since 1890 The process is divided into two stages the summary (pretrial investigation) stage and the trial The pretrial investigation is inquisitorial and conducted by the judge, and the trial is limited to a review of the papers presented in the earlier stage. Judges also determine bail and are available to resolve potential abuses by the

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prosecutors or police Most pretrial release decisions result in detention since the judges primarily rely on monetary bail which indigent defendants are unable to meet Due to the nature of the process, the prosecutor plays a passive role and is primarily concerned with filing and moving paper

A potentially significant change introduced by the 1992 Constitution is authorization for Congress to move toward an oral criminal process Although this reform is only authorized and not mandated by the Constitution, eventual adoption of such a system may potentially bring the most radical reform of the justice system in Paraguay There are several proposed codes being discussed currently but they all point towards an accusatory system based on oral and public proceedings

One of the most important measures of judicial power is the ability of the Supreme Court to declare actions of the legislative and/or executive branches to be in violation of the constitution and to prevent their enforcement The 1992 Constitution calls for one of the chambers of the Supreme Court to have constitutional review jurisdiction However, the Constitution restricts the effect of rulings on constitutionality to the case at hand, thus preventing the Court from enjoining the other branches from enforcing unconstitutional laws and/or decrees An example of the consequences of this restriction occurred when a group of lawyers challenged the constitutionality of the Judicial Council law The Court found that the statute was unconstitutional but since its ruling was binding only on the parties to the litigation, it was compelled to order implementation of the statute that it had just found to be unconstitutional

II. PROBLEMS, CONSTRAINTS AND OPPORTUNITIES

The problems facing the administration of justice in Paraguay cannot be isolated from the overall political, social, and economic obstacles confronting a country which has only recently emerged from military rule In large measure, the dilemmas and challenges of Paraguay's judiciary are endemic to nations confronting the dual task of consolidating democratic rule while dealing with difficult issues of economic development Finally, a tradition of formalism, inefficiency, and corruption stands in the way of real progress

A. General Problems

This section analyzes some of the most important normative, social, economic and political problems facing the justice system

1 Normative Issues

Paraguayan law, like the legal systems of many of its neighbors, is characterized by extensive copying of foreign models with little reference to the social and economic reality of the country in which the code is being applied, to uncoordinated participation of diverse institutional actors in the implementation of the legislation and, even sometimes, contradictions between norms

Some of the laws have not been revised since their enactment even though conditions have radically changed and often require new implementing regulations

The adoption of the 1992 Constitution revolutionized the normative structure of Paraguay and left the bulk of the implementation of reforms to the enactment of future legislation One constitutional commentator estimated that at least 140 new laws would have to be enacted or existing ones would have to be amended to meet the constitutional requirements There is a need for comprehensive reform and modernization of criminal justice legislation dealing with the courts, corrections, police, criminal law and procedure While the Civil Code is recent and modern (1987), the majority of legislation is antiquated and in serious need of reform, including the Criminal Code (1910) and the Code of Criminal Procedure (1890)

The legislative achievements, thus far, however, are significant In 1993, laws were enacted establishing the Judicial Council, creating the Court to Try Judicial Officers, and establishing and regulating the National Police Among legislation which is still pending is the law creating the Ombudsman (*Defensor del Pueblo*), the judicial career law, the law on the Public Ministry, a new code of criminal procedure; and, a new penal code Of these, only the Public Ministry Law appears likely to be enacted this year

Legal reform efforts are complicated by the diversity of actors who may legislate In addition to the legislative branch, there are a number of quasi-legislative bodies beginning with the President and extending to the directors of public entities who may propose laws to the Congress or issue decrees For example, in addition to the public agencies which may introduce legislation into the Congress there is a Codification Commission in the Ministry of Justice and Labor (*Comisión Nacional de Codificación*) which has been assigned the task of drafting legislation in any field The varied types and numbers of institutions engaged in normative production result in confusion and impede access to knowledge of the law which, in turn, contributes to popular distrust of the legal system

One of the problems, which will be discussed more thoroughly hereafter, is the absence of coordination among the different agencies charged with law drafting For example, at one point there were at least three different proposed codes of criminal procedure being debated as well as three criminal codes (the latter are under review by the Senate) During the term of the last Supreme Court, with USAID funding, the initiative for major reform of the criminal justice system was undertaken by the Public Ministry which proposed a series of new codes The new Supreme Court is now reviewing these proposals and will make their recommendation to the Congress

A further normative problem is reliance on an antiquated legal reporting system in which legislation is published in official publications which are not indexed and are irregularly published (The *Diario Oficial* is 4 years behind) As a result, it is not uncommon for a judge to issue rulings based on legislation which has been amended or repealed Lack of adequate law libraries further inhibits consistent application of the law This problem is especially acute for rural judges who lack access to almost any legal information

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2 Social and Economic Problems

Paraguay has one of the highest rates of population growth in Latin America The rapid growth of Paraguay's population over the last 20 years, and the accompanying shift in its geographic distribution from rural to urban areas, have placed increased demands on the judicial system The inevitable increase in crime rates that accompanied urbanization, and the legal demands of modern society, have brought increased numbers of cases before the courts

The rise in crime, and the resulting popular fear, has generated distrust in the ability of the system to deal with the problem of security. Citizens have resorted to self-help measures, armed themselves and taken the law into their own hands An unregulated private security apparatus may become the largest growth industry in Latin America

A social problem which seriously affects Paraguay's relations with other nations, especially Europe and the United States, is narcotics trafficking Paraguay is a major transit point for the flow of narcotics to its neighboring countries as well as the United States and Europe There are also continuing reports that Paraguay is becoming an important money-laundering center because of liberal banking laws and weak regulation of this sector The relative poverty of the country and the weakness of the judicial system make narcotics a serious threat to the administration of justice

Paraguay was recently included by the U S in a list of nations failing to cooperate with the war on drugs It has also been taken to task by a State Department report for exhibiting "a lack of political will to investigate vigorously allegations of official corruption " However, Paraguay's efforts were considered to be sufficiently encouraging to grant them a "vital national-interest certification," thus exempting them from potential U S sanctions

Prior to 1988, the Paraguayan penal code was inadequate to deal with the problems created by the narcotics trade A major revision adopted in that year provided legislation to deal with narcotics trafficking and organized crime (Ley No 1340/88) The law introduced significant changes to criminal procedure by permitting reduction of sentences (by one-third to one-fifth if the accused provides information leading to the discovery of narcotics organizations or the seizure of large amounts of narcotics) and allowed the seizure of assets of narcotics traffickers prior to trial This law is a significant improvement as it provides, for the first time, the legal framework for the prosecution of major figures in the narcotics trade

The actual effect of the new legislation is more difficult to gauge Statistics published by the Supreme Court show that only one person was prosecuted under this legislation between 1989 and 1994, while only 398 persons were prosecuted for possession of and trafficking in narcotics during the same period In addition to this legislation, Paraguay has agreed to compel financial institutions to record all transactions over $10,000 as a means of regulating money-laundering The effectiveness of this legislation is also questionable since there are no sanctions for noncompliance and there is an ineffective auditing mechanism There is a proposal for a money-laundering statute pending in the Congress

Another social issue affecting the justice system is the language used in the courts All Paraguayans would not be equally comfortable with an oral Spanish court proceeding Although Paraguay does not have a large indigenous population, its Guarani traditions are strongly rooted in its society For example, close to one-half of the population claims Guarani as its primary language A shift to an oral system without giving thought to its impact on non-Spanish speakers may create more problems for the system than those it solves

Finally, the shifting role of women in social and political movements and professional positions is an important change As women grow more powerful, the social and legal landscape may shift significantly on such issues as abortion, rape and other sexual offenses The percentage of women occupying important positions in the justice sector has grown in recent years Access to the highest level positions, however, still appears to be limited

3 Political Issues

As Paraguay celebrates six years after the coup which ousted Stroessner, the political problems facing the country can appear insurmountable The executive presidentialist model, which has predominated for so long, shows signs of weakening as the legislative branch seeks out areas of influence The judiciary is frequently caught in the middle of power struggles between the legislative and executive branches and between the political parties For example, the proposed creation of the Judicial Council caused much controversy and ill-feeling between President Wasmosy and Congress in late 1993 A showdown was averted by negotiations culminating with a 'democratic commitment' to reform, announced in January 1994 by the President and leaders of Congress, who agreed to appoint 'consensus candidates' to the Supreme Court and the Electoral Tribunal.

The consensus appeared threatened when the opposition majority in Congress pulled out of a 'governability pact' with the ruling ANR (Colorado) party after clashing over a new law curtailing the political rights of members of the military and the police The strains placed on the governability pact also had an impact on justice reform Negotiations on the justice reform package broke down in July 1994, with the opposition blaming the government's lack of 'political will' to establish an independent judiciary One month later, President Wasmosy announced that the ANR and opposition parties had reached an 'agreement in principle' which basically reinforced the January accord on 'consensus candidates'. As a result of the interparty negotiations, Congress selected four judges to the Supreme Court who are affiliated with the Colorado Party, three affiliated with the Authentic Radical Liberal Party, one with the Christian Democratic Party, and a consensus candidate

The role of police in maintenance of national security and their relationship to the armed forces has also been a source of internal political debate The 1993 legislation establishing the National Police as a civilian body, in addition to recent legislative attempts to equalize police salaries with those of their military counterparts has gone a long way toward remedying this problem.

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However, critics have complained that police have failed to take action against rising crime rates largely because of fear that they will be accused of reverting back to the repressive tactics they utilized under Stroessner

4 Human Rights

A reviewer of Paraguay's Constitution and codes would conclude that the fundamental rights of citizens are adequately guaranteed In addition, Paraguay is a signatory to United Nations conventions (Minimum Standards for the Treatment of Prisoners, for example) as well as the Inter-American Convention on Human Rights However, codes, compacts and constitutions do not tell the whole story Torture and brutal and degrading treatment of convicted prisoners and other detainees has continued Police and military personnel and prison guards have been implicated in the mistreatment of individuals in their custody Although the authorities arrested some penal system employees and held them for investigation and trial, they actually tried, convicted, or appropriately punished very few There were credible reports of mistreatment of women and minors and of brutal attempts to force confessions out of detainees

A respected human rights group, Tekojoja, reported that children in police custody were particularly susceptible to physical punishment, with torture and abuse occurring against juveniles at a higher rate than against adult detainees In several cases, the human rights group accused the police of torturing minors by placing plastic bags over their heads, knocking out their teeth, using a hammer to beat their backs, or scalding their hands and feet to force a confession Many minors reported being denied food, drink, or access to bathrooms for up to three days Both Tekojoja and another well-known human rights group, the Committee of Churches, filed charges against officials for the abuse of minors in their custody None of the persons charged with torturing minors were convicted in 1994

Prison conditions are deplorable Overcrowding and mistreatment of prisoners are the most serious problems Conditions have been reported as particularly poor in the Panchito López youth prison An independent investigation of the prison revealed that the institution was unsanitary, unsafe, and extremely overcrowded, although originally built as a single family home, the institution houses between 130 and 150 detainees The Tacumbú men's prison is similarly overcrowded

Following the December 1992 discovery of government archives documenting various human rights abuses and implicating many former government officials of the Stroessner regime, the courts, in 1994, convicted several Stroessner-era officials for human rights abuses and imposed sentences of up to 25 years The Committee of Churches, one of the nation's most prominent human rights groups, had over 16 cases against alleged Stroessner-era human rights abusers pending by the end of 1994

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While legislatively-mandated procedural terms present the picture of an expeditious criminal process, the majority of prisoners linger in confinement awaiting trial for terms often exceeding the maximum potential sentence The right to counsel is illusory due to a lack of funding for an effective public legal defense system

Standing to prevent the abuse of human rights is a cadre of passive judicial functionaries subservient to executive authority and more at home with formalism than judicial activism Prosecutors primarily file papers and seldom initiate investigations on their own Assisting these justice officials are law enforcement personnel who are underpaid, unappreciated and subservient to the military

Within this grim picture, there are signs of hope The justice system has historically been unimportant to the political life of Paraguay Growing fear of crime and popular discontent with efficacy of the justice sector has driven this system to the forefront of national politics No longer can problems of public safety, judicial inefficiency, systemic unresponsiveness and human rights be routinely ignored The manner in which the government addresses these issues may well determine the course of Paraguayan democracy

B. Judicial Independence

True justice must be independent, externally (economic independence, for example), functionally, which implies that judicial decisions are not motivated by external pressures, and internally (freedom for the lower judicial instances to act independently of those above, yet respecting the existing hierarchy) Several factors have been identified as contributing to the lack of judicial independence· 1) a tradition of executive supremacy; 2) political instability, 3) the civil law tradition which emphasizes a bureaucratic role for the judge in application of the laws, 4) the complexity and formalism of the system, 5) lack of a political base which supports and/or to whom the system is accountable, and, 6) political influence in the selection, promotion and discipline of judges (lack of the judicial career and financial autonomy in salary decisions)

Prior to the 1992 Constitution, Paraguay presented one of the most serious cases of dependency on executive authority The Justice Ministry played a central role in the selection of judges and even controlled the judiciary's day-to-day operations Judicial slots were a source of political patronage to be apportioned quietly and informally The new Constitution guarantees functional as well as jurisdictional autonomy and reverses the previous trend

Assignment of judicial positions on the basis of party affiliation in the recent appointment of Supreme Court judges was a predictable and understandable outcome given the political role which this institution plays. Whether similar considerations will be used to fill the remaining judicial positions is not known, to hope for a complete depoliticization of the selection process may be naive

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A threat to judicial independence, with serious consequences for human rights, is the usurpation of judicial roles by the police Of special concern are the powers of the police to assume traditional judicial functions in the investigation of crimes As has been pointed out earlier, most detainees are arrested without a judicial order and there is no requirement for police to forward all cases to the courts This denies the accused the right to review by a neutral and detached magistrate and may result in the denial of the right to counsel since the Constitution only guarantees such a right to persons brought before judicial authorities

While the above factors have been identified as contributing to low levels of judicial independence, most national commentators have focused on the lack of a judicial career and financial autonomy as the primary factors Of these, judicial career is the most cited in Latin America Job security is a key factor in the Latin American notion of judicial career Within this concept, judges are promoted and receive economic benefits in accordance with their years in office and merit. Additionally, they enjoy a permanent position, from which they cannot be transferred without their consent (innamovility) Judicial stability, under this concept, is guaranteed by lifetime tenure and barriers to the unfounded removal of sitting judges

As we have seen earlier, the 1992 Constitution has gone a long way towards establishment of job stability for judges Innamovility is constitutionally guaranteed, while lower court judges enjoy life-time appointments if re-selected after one five-year term (Supreme Court judges enjoy life terms from the moment of their selection) One of the most important changes in judicial selection is the introduction of a merit-based system implemented by an independent body (Judicial Council)

C. Justice System Access

Accessibility refers to the right to seek redress of legal rights or settle disputes through the justice system This principle is conditioned by a series of factors public knowledge of the law, public confidence, costs, location and number of courts, and corruption

1 Knowledge of Rights and Institutions

One of the first conditions which must exist for the justice system to be truly accessible is that the citizenry be aware of the laws and the institutions of the justice sector While there is generally little information on the level of public knowledge of the law, one could assume that given the complexity of the legal system and the amount of new legislation issued recently, public knowledge is low This must also be considered in light of the effect of years of military government in which laws were often not respected The situation is exacerbated by the existence of a large portion of the population (50% of the population is monolingual in Guarani) for whom Spanish is a second language at best, as well as by the scarcity of free legal services for lower-income groups who are unable to participate in the system

It is important for the justice system to pay particular attention to the problems presented by an uninformed population, confused about their rights or the institutions that safeguard them, and lacking adequate legal representation before a complex legal system Under these conditions, the justice system becomes an inaccessible resource or option for bulk of the population and may lead some to seek alternative, and often illegal, means of resolving disputes

2 Public Confidence

A factor which affects any transition to democracy from authoritarian rule is the distrust which the public holds for institutions which were closely associated with repression and human rights violations during the prior regime This distrust most affects the police since it is usually the justice institution directly responsible for human rights abuses In Paraguay, there has been a purge of the most repressive members of the police forces and some prosecutions However, a complete purge of the security apparatus is impossible One consequence of public distrust of police is the criticism that police are reluctant to intervene to safeguard public safety lest they be denounced as Stroessner "goons "

Another institution which must overcome its association with authoritarian rule is the judiciary While some Paraguayan judges exhibited courage in defying the Stroessner regime, the system is generally viewed as having cooperated with it Like police, this justice institution is still largely viewed as a remnant of Stroessner rule and its members are tainted with that perception

Corruption is another feature which characterizes public perception of justice institutions in Paraguay. The inability of the system to regulate judicial conduct has contributed to public distrust Some policymakers call for a purge of the judiciary Dissatisfaction has resulted in public outcries for justice reform and been instrumental in motivating neighborhood groups to file complaints against individual judges For example, residents of a rural community filed complaints before the Bicameral Commission of the Congress about the corruption and abusive behavior of the justice of the peace judge in their community An investigation was conducted, its results were widely disseminated in the press, and charges brought before the Court to Try Magistrates. The confidence of neighborhood groups in nonjudicial government institutions, and the willingness to seek redress of grievances is a positive sign so long as government institutions respond appropriately.

The decision to establish autonomous institutions to depoliticize judicial selection (the Judicial Council) and investigations of judicial misconduct (the Court to Try Magistrates) are partially the result of the low confidence which constitutional framers had in the judiciary The work of the Bicameral Commission of the Congress to Investigate Illicit Acts, almost supplanting the role of the courts in criminal and judicial misconduct investigations, is a further demonstration of the diminished image of the judiciary

There is an expectation that the Judicial Council will conduct a widespread purge of the judicial sector when it selects new candidates for all of the judgeships in the country While their actions will go a long way to restore public confidence, the system could ill afford to totally replace its

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judiciary Replacing judges, by itself, will not improve the public's image of the judiciary in the long-term

In the face of mounting criticism, the judiciary has maintained a defensive posture, often pointing out that they should be judged solely by their rulings ("My rulings speak for themselves") This is at best a naive view of the role which the judiciary must play and of its accountability to the citizenry Institutionally, the judiciary has done little to improve its image For example, it has no public relations office to deal with the press and the public, it engages in few outreach activities to explain its policies to the citizenry; it maintains no office or entity to which a citizen can come and be informed about the status of his case or the actions taken, it issues few publications and sponsors no public campaigns to improve public knowledge of the law or judicial institutions

3 Costs

Access to the system is limited by the user's financial resources in relation to the costs of access Even though the Constitution guarantees equal rights to all citizens, indigent criminal defendants lack equal treatment due to the inadequacy of the State-supported legal defense system While law schools and other nongovernmental organizations provide some services, their capacity is limited The greatest deficiency in the state-funded public defender system may be in criminal defense

4 Location and Number of Courts

The number and locations of courts determine, in part, popular access to the justice sector and ultimately public confidence in it Judicial staffing and court distribution is grossly inadequate with less than one judge (089) per 10,000 The insufficient number of judges are distributed haphazardly geographically. For example, in one department of 25,000 inhabitants and 9,000 kilometers there is only one instructional judge supervising 17 justices of the peace, in another department of 243,000 inhabitants and 5,000 square kilometers, near the capital, there are only justice of the peace courts (23) Given the high rate of growth of Paraguay's population, the shortage of courts will become more acute until major reforms are made

The majority of judges are still located in urban areas, especially if one does not take into account the lay justices of the peace The courts have complained of the scarcity of judges given population growth

Comparisons of population are one means to determine the need for and location of courts, but do not take into account user demand The most accurate means to determine location of additional courts is to analyze the number and types of cases filed in previous years and project future growth and special circumstances that might affect caseloads These figures are not available for the country and estimates are hard to make

Judicial schedules also determine whether certain sectors of the population will have adequate access to the justice system As mentioned, Paraguay's courts cease to operate after 12 00 p m (with a five-hour workday) The closing of almost all judicial offices during the month of January further limits access to courts

D. Efficiency of the Justice Sector

It is very difficult to evaluate the efficiency of the system of justice in cost-benefit terms The system rests on qualitative concepts that are difficult to evaluate quantitatively, such as justice, equity and innocence However, certain evaluative parameters can be used One of these parameters is the degree to which the system complies with the time limits imposed by the procedural law. Thus, for example, while the code of criminal procedure provides that the instructional (investigative) stage of a criminal proceeding be completed within 60 days, with a maximum 7 months considering all possible continuances, this requirement is seldom met The investigative stage not uncommonly exceeds 1 or 2 years The problem is especially acute since the majority of defendants are incarcerated while awaiting trial

Investigative delays result in a pretrial detainee population which exceeds 90% of total detainees (one of the highest in Latin America) A consequence of these processing delays is the lengthy pretrial detention and the small number of actual number of cases which reach a conclusion A conviction only occurs in 1% of the cases

Procedural delay is partially attributable to the lack of oversight by the higher courts. Many judges are still carrying on their dockets a number of cases which could easily be dismissed since no action has been taken in two years or more (a term after which the case may be dismissed and filed) Superior courts seldom exercise their authority and the duty to supervise the work of the lower courts Site visits and audits of dockets rarely take place and there is no pressure on lower court judges to move their caseloads more expeditiously.

Other indicators of the efficiency of the system are the methods for selection of personnel and their professional training Criticisms of the personnel selection system have already been mentioned There is also a lack of training programs for judges, or for support personnel of the judicial branch.

Finally, the efficiency of the system can be judged by the degree of satisfaction which the public, users, and participants have with its operation In general, there is dissatisfaction with the performance of the justice system personnel

The following section discusses specific obstacles to achieving speedy and efficient administration of justice in Paraguay

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1 Administration

Justice administration is a new concept for this sector Efforts to modernize the judiciary are recent Although the Supreme Court established administrative units, it has been reluctant to delegate overall responsibility to them Often, the judicial concept of modernization is relegated to requests for automated equipment and computers without a realization of their utility

Common administrative problems are a) unclear definition of the role and function of administrative units; b) confused lines of authority; c) noncompliance with chains of command; d) excessive centralization of authority; e) absence of inventories and a lack of planning; f) insufficient work hours, g) lack of reliable statistics, g) absence of uniform operations manuals; h) lack of effective case tracking control mechanisms, i) duplication of effort, j) insufficient records management guidelines and procedures

2 Coordination

While the justice sector is a system composed functionally of different parts regularly interacting (police, courts, prosecution, legal defense, corrections), there is little coordination between the different components of the justice system, and even between agencies within the same subsector Coordination between these institutions is fundamental to a more efficient processing of cases and clearer definition of functions

3 Planning and Evaluation

While the sector suffers from a serious lack of resources, the effective use of existing resources is hampered by the virtual absence of a mechanism for planning and evaluation There is no planning office in almost any of the agencies of the justice sector Such an office could establish clearly identifiable and measurable goals and define the means by which they are to be reached Recently, the Supreme Court expressed the desire to receive assistance from the IDB or USAID in the formulation of a sector strategy which clearly identified priorities and needs of the Judiciary The recognition of the need for planning is an encouraging sign that this Court may be more receptive to these initiatives than previous ones

Effective planning cannot be implemented without improved judicial statistics and information management As pointed out earlier, the Court has established an information systems (computer) office which has, among its charges, the task of developing judicial statistics It has already published a compilation of statistics for a preceding year

An impediment to the establishment of a reliable statistical system is that not all offices forward reports regularly and there is very little data on the movement of cases in rural areas Additionally, lack of an effective evaluation mechanism to evaluate the reliability of data affects the level of confidence which can be placed on the information Finally, there is no indication that the statistics that are being produced are being utilized for any planning and evaluation purposes by members of the Court or other policymakers

Every organization is in need of an information system which provides facts so that decisions are made on an informed basis As has been mentioned earlier, one of the major reform thrusts of the USAID project was the development of an information systems office. Members of the new Supreme Court have, however, raised some concerns about the reliability of the information system and are desirous of an outside evaluation to determine the reliability and utility of the information being processed

In addition to agency-specific planning and evaluation, there is a need to develop sector-wide planning and evaluation capabilities which could contribute toward the development of a unified justice policy However, there is disagreement on which institution should be responsible for sector-wide planning. The Ministry of Justice argues that sector-wide planning should be a responsibility of the executive The IDB appears to have agreed with this view since they have included a component to strengthen the Ministry's ability to collect and analyze judicial statistics The judiciary objects to the assumption of this role by the Ministry

The consultant's analysis is that a misunderstanding exists due to the improper usage of the term "judicial statistics" Clearly, the Supreme Court should be responsible for gathering and analyzing its own data but there should be no objection to the Ministry being the depository of all justice-related statistics, thereby enabling it to coordinate the development of a unified plan for the sector

4 Caseloads and Delays

One of the most serious problems hindering the efficiency of the administration of justice is the increasing number of cases entering the system without a corresponding increment in human and financial resources The combination of growing caseloads and diminishing resources results in delays in case processing For example, the criminal caseload rose from 6,655 to 62,290 between 1989 and 1994

Judicial inefficiency and growing caseloads lead to processing delays, with one estimate that an average criminal case may take up to two and a half years from initiation to resolution Another consequence of court congestion is the large number of people who are jailed for long periods of time awaiting sentence The solutions proposed to deal with growing caseloads and processing delays have been largely limited to the creation of new courts However, studies carried out in other countries have shown that simply increasing the number of judges or shifting their jurisdictions cannot solve the problem It would take, for example, several times the number of current judges, working for a number of years to clear the current dockets, assuming no new cases are filed

Another solution to the problem of judicial congestion is to encourage the development of alternatives to the courts The adoption of dispute resolution mechanisms could free the courts to deal with the most serious cases while encouraging amicable settlements among the disputing parties in lesser disputes

Another mechanism designed to reduce delays and to improve the efficient administration of courts is case-flow management Case-flow management suggests active attention by the judge to whom the case is assigned and oversight by higher courts However, little commitment to controlling the movement of cases and avoiding backlogs is evident

5 Personnel System

While adoption of a merit-based selection mechanism for judges and prosecutors has gone a long way toward depoliticizing the system and creating a professional judiciary, a similar system is not in place for support staff There is no modern personnel system in place and the absence of procedural manuals and detailed job position descriptions hinders modernization of this area

Judicial salaries have been raised in recent years but lower level judges (especially justices of the peace) and support staff are underpaid Low salary levels, combined with decreasing prestige of the judicial profession, and absence of personnel control and evaluation mechanisms, may contribute to a climate where corruption thrives The best candidates for judgeships are inhibited from applying

6 Role of Prosecutors

As described in greater detail in other sections of this report, the prosecutors play a passive role in the criminal process The passive role of prosecutors is common to most of Latin America Nevertheless, in recent years there has been a trend in this region towards strengthening the prosecutorial institution by guaranteeing its autonomy and charging prosecutors with broader powers, especially during the investigatory stage The Public Ministry has led the movement to establish such a system for Paraguay

E. Fairness

The extent to which this principle is respected can be evaluated by considering certain parameters, among which the most important are adherence to constitutionally-mandated guarantees, clarity of the process, equality of access to the system, impartiality of the judges, and equity of judicial decisions

Many barriers to equal citizen access to the courts exist Equality before the law is affected by discriminatory treatment based on economic, social, and political factors As pointed out earlier, overpoliticization of the system, and a large population percentage in poverty point to unequal treatment Almost all prison studies have confirmed that the overwhelming percentage of inmates belong to a disadvantaged class

The principle that all proceedings will be conducted before an impartial magistrate is also violated by the large number of cases which are resolved by police without resort to the judicial system Indigents' right to counsel is limited by the lack of state-supported defenders Their low number

is underlined by large caseloads and responsibility extending to almost the entire gamut of legal services Scarce resources further hamper defenders' effectiveness

Pretrial detention is the rule rather than the exception Pretrial detention not only violates the basic principle of the presumption of innocence but leads to prison overcrowding Assignment of an inordinate number of resources to the detention of pretrial detainees results in unavailability of resources for the rehabilitation of condemned prisoners, and a large economic and social cost to detainee's families Finally, human rights violations are commonplace

F. Accountability

Public accountability (*transparencia*) is a current theme in Latin American public administration Public accountability is the premise that public officials have a duty to report to those who placed them in positions of power and that the work of government officials can and should be periodically evaluated and the results made public Evaluation of the executive and legislative branches takes place every election Politicians, therefore, must communicate regularly with the electorate and convince them of the benefits to be derived from providing another vote

Although openness is at the center of the notion of public accountability, the justice system is characterized by little transparency The judiciary adheres to a view of accountability characterized by only vague notions of the "law" Politicians characterize the judiciary as apolitical and take refuge in arguments of judicial independence Police adhere to concepts of state security as the justification for the secrecy of their activities and the consequent lack of transparency. Personnel who provide ready access are viewed as dangers to the institution and are often punished

There are various mechanisms by which the justice system can submit itself to public review Publication of periodic reports outlining the successes, failures and needs of the sector is one of the primary tools by which the other branches of government and the citizenry can be informed However, periodic activity reports by any of the component agencies of the justice sector are rare Relations with the press are strained or limited A general perception persists that journalists are the enemy whose sole function is mudraking and whose goal is to demean the institution.

One of the primary areas in which public oversight is needed is the regulation of the conduct of justice officials Rather than encouraging complaints and facilitating access to grievance mechanisms, the justice system procedures impede access through failing to inform the public about the place and manner in which complaints can be filed, simplifying the process, guaranteeing the safety of the complainant, and achieving satisfactory and speedy resolution of cases The public does not feel that wrongs can be remedied and they feel that it is useless to complain.

One of the most important developments with impact on justice sector accountability has been the development of the field of human rights and the emergence of advocacy groups ready to investigate and denounce violations Several human rights groups operate in Paraguay, including

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the Committee of Churches (an interdenominational group that monitors human rights and provides legal assistance), Prodemos (a group linked to the Catholic church), Tekojoja (a group dedicated to protection of children's rights), and the local chapter of the Association of Latin American Lawyers for the Defense of Human Rights

In addition to these NGOs, the Government has established the office of the Director General of Human Rights, located in the Ministry of Justice and Labor It sponsors seminars to promote human rights awareness This office has access to congressional, executive, and judicial authorities. It does not have subpoena or prosecutorial powers but may forward information concerning human rights abuses to the Public Ministry for action It also serves as a clearinghouse for information on human rights The office of Director General of Human Rights trained thousands of educators in human rights law in 1994

III. FOREIGN ASSISTANCE TO THE SECTOR

A. USAID

USAID/Paraguay's assistance in justice reform began in 1992 with the signing of a $142,000 bilateral grant agreement between the Supreme Court, the Public Ministry and USAID/Paraguay The agreement was amended in 1993 and 1994 to increase total funds to $942,000 ("Judicial Reform Project") This project is scheduled to end in September, 1995 Among the major achievements to date are elaboration of a Judicial Reform Action Plan for a two-year period, development of an automated jurisprudence database and a case-tracking system, establishment of a Human Rights Documentation Center to preserve files and documents of the National Police and the Ministry of the Interior under the Stroessner regime, drafting of numerous code proposals (a code of procedure for the labor sector, a code of criminal procedure, and a criminal code), training of judges, prosecutors, and lawyers (15 judges sent to the US under the auspices of USIS, 35 trainees attended A I D -sponsored regional conferences, 1500 persons attended training events in-country), development of a merit-based judicial selection mechanism (judicial career law)

The following activities are currently under way 1) judicial career law and code of ethics for judges and prosecutors, 2) completion of judicial school preparatory steps and programming of further courses for judges and prosecutors, 3) improvement of financial and administrative systems in the courts, 4) establishment of a law library and documentation center for the judiciary, 5) drafting of new laws (criminal code, code of criminal procedure, law on the Public Ministry, juvenile code, law on the execution of criminal sentences and organization of the correctional system), 6) a study of judicial delay in criminal cases, and, 7) an educational campaign on the benefits of alternative dispute resolution mechanisms

USAID/Paraguay is currently seeking approval of a democratic institutions development or "umbrella" project, for FYs 1995-1998 One of the objectives of this project is "the evolution of the Paraguayan judicial system into a high-quality, efficient, decentralized and multi-dimensional

system " The purpose of the project is to introduce into the Paraguayan justice system a new vision and test new ways of providing access to justice, of enforcement, of education, and to influence basic assumptions about disputes and conflicts

The proposed judicial reform components include 1) modernization of the law, 2) improved access to justice by encouraging the development of legal services for indigents and minorities, and protection of community rights; 3) development of alternative dispute resolution mechanisms, 4) institutional strengthening of the Supreme Court, the Public Ministry, the Judicial Council (*Consejo de la Magistratura*), and the Jury on Judicial Misconduct (*Jurado de Enjuiciamiento de Magistrados*), 5) human resource development (training, implementation of the code of ethics and the judicial career law), 6) court administration (operating procedures, registries, MIS, documentation and libraries)

The USAID/Paraguay FY 1996-1997 Action Plan review was conducted on April 28, 1995 The reviewers questioned whether it was wise to engage in all of the activity subsectors indicated in the proposed democratic institutions development project "It was agreed that the Mission will focus its activities in the justice sector on activities to support reforms of the Criminal and Criminal Procedure codes In particular, the Mission will support the Judicial Training School and focus on providing training and technical assistance needed for judges, prosecutors and others to better understand their new roles and responsibilities under the new codes It is expected that the other activities currently under way in democracy area will wind down It was agreed that the Mission will refine the focus of this Project and prepare a revised NAD following completion of the democracy sector assessment later in May 1995 The AA/LAC concluded that, rather than approving the NAD in the Action Plan, the Bureau will review the revised NAD " These comments will be discussed more thoroughly in the strategy section of this report

B. United Nations Development Program (UNDP)

UNDP carried out a number of limited assistance activities to the sector in 1989 and 1990 In the human rights area, they have funded a seminar and a number of visits by experts UNDP also sponsored the initial visits of a criminal law expert which gave impetus to many of the law reform projects currently under way. It does not appear to have been active in this sector since 1990

C. The Inter-American Development Bank (IDB)

The Inter-American Development Bank, as part of its "Modernization of the State Program," began a number of project development and identification activities to review a potential loan in this area over a year ago Thereafter, it began to review potential assistance to four sectors (described below) In its preparatory work, IDB funded experts to conduct analysis of the normative structure, the information systems, and the organizational problems of the sector Recognizing that the sector had not developed a strategy within which the Bank could identify priorities and prepare an assistance plan, IDB supported a meeting of sector leaders for the purpose of developing such a strategy Unfortunately, the meeting did not bear the expected

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results During our own visit to Paraguay, an IDB team visited the country and presented a status report to Paraguayan officials (Perfil II)

The report identified the major problems faced by the sector 1) normative deficiencies which impact on human rights (processing terms, for example) and lead to a lack of confidence in the consistent application of well defined norms, 2) organizational problems which lead to excessive centralization and an inadequate distribution of courts, 3) poor sector coordination among the three branches of government, 4) lack of an adequate personnel system which can contribute to merit-based selection and promotion of personnel and training; and, 5) infrastructure problems Its proposed program will assist the justice system (the Judiciary, the Public Ministry, and the Ministry of Justice and Labor), the Congress, registries, and the Office of the Presidency

Given the scope of work of this review, our discussion will be limited to the proposed assistance to the justice sector which includes the following components

i) Institutional strengthening which includes technical assistance for an improved organization and administration of the courts and the acquisition of computer systems leading to an improvement of information systems Particular emphasis shall be placed on computerizing the following areas civil, constitutional, juveniles, and civil rights (*contencioso administrativo*) matters

Additionally, in order to improve sector planning, a statistics depository and analysis capability shall be established in the Ministry of Justice and Labor

Assistance will also be provided in developing alternative dispute resolution mechanisms while aiding in making physical improvements needed for the potential implementation of an accusatorial and oral process In the short-term, the Bank will support the development of a unitary and comprehensive criminal justice policy

ii) Training to complement and build on the work of A I D in the establishment of a Judicial School will be supported

iii) Activities in criminal justice and corrections will be funded to support the development of an implementation plan to carry out new legislation, strengthen those institutions charged with crime prevention and rehabilitation of offenders (the *Instituto del Menor* and adult correctional facilities), and, develop a plan to decrease the number of pretrial detainees currently incarcerated

iv) Access to justice to strengthen the legal defense of indigents, design a plan to decrease the costs of persons accessing the justice system, and, develop popular legal education programs

v) Improvement of the Civil Registry

The projected financing includes a $4 million counterpart contribution by the GOP and an IDB loan for $16 million In addition to these loan funds, the Bank is prepared to provide some nonreimbursable technical assistance from a $1 5 million fund to strengthen democratic institutions (approximately $230,000 for project planning in all areas) It should also be pointed out that approximately $5 million of the loan funds would be dedicated to construction of new courts and registries It is estimated that an observation visit (project planning and development) would take place in the second trimester of 1995, analysis of the loan would occur during the third trimester and submission to the Bank Board would be complete in the first trimester of 1996

Implementation of this project is at least a year away and still faces a number of obstacles Following the recent visit of the Bank's team, the Supreme Court suggested the necessity of revising the project components since they had not participated in the previous discussions

IV. STRATEGY AND PROPOSED INTERVENTIONS

The purpose of this section is to identify key strategies which might be pursued by the sector The purpose of formulating a strategy is to identify and prioritize problems, determine commonalities among the different subsectors, establish quantifiable goals, determine a methodology for achievement of goals, and identify obstacles to success This strategy then becomes the policy statement and workplan for the sector

We have tried to propose a methodology to reach consensus on a policy document applicable to the sector regardless of foreign assistance Foreign donors, on the other hand, should attempt to determine their own strategic plan and match their assistance to the needs of the local agencies

A. Problem Areas and Sector Strategy

1 Poor Image

As has been mentioned previously, the entire justice system is held in disrepute. Through merit-based, open, competitive selection of a new Supreme Court and a *Fiscal* General, establishment of a Judicial Council, and the selection of new judges and prosecutors, currently under way, the first steps in improving this image have been taken. The justice system has been reluctant to accept that it is a political entity accountable to public opinion Among the potential solutions to the image problem are establishment of a public relations policy, training of journalists on legal issues and establishment of on-going dialogue with the media, educational campaigns directed at improving the public's knowledge of the legal system (this might include, for example, cooperation with the Ministry of Education to insure that texts contain accurate information on legal and constitutional rights and responsibilities), establishment of an information office which provides feedback to the public on the status of cases, etc

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All of the previous assistance efforts and judicial reform projects have focused on improvement of judicial services in the capitol or in the upper-level courts The image that users have of the judiciary, however, is largely shaped by their experience with the lower courts, especially justice of the peace courts The judiciary might consider the benefits to be derived from developing initiatives targeting justice of the peace courts These might include training of personnel, infrastructure improvements, better salaries, greater controls, expansion of their jurisdiction, adoption of alternatives to dispute resolution, etc

2. Outdated Normative Structures

Adoption of the 1992 Constitution and enactment of legislation establishing the Judicial Council, the Court to Try Magistrates, and the police has gone a long way toward establishing the normative framework of the justice sector However, the constitutional provisions require that a whole body of new laws be enacted, including a law on the Public Ministry, a code of criminal procedure, a criminal code, a new organic law for the courts, and a corrections law

Currently, there are a variety of major reform proposals being debated, for example, there are three proposed criminal codes being considered by the Senate Some of these have been initiated privately, others by the Ministry of Justice, and others by the Public Ministry The confusion generated by this multiplicity of initiatives may result in the adoption of weak codes or none at all There is an urgent need for coordination between the executive, judiciary, and the Public Ministry to arrive at consensual legislation which has the support of all implementing institutions After inter-agency agreement is reached, a strategy should be developed to generate public support for the reforms and shepherd the legislation through the Congress Finally, the participants should establish an implementation plan which takes into consideration the impact of the legislation. Among the key factors to be considered are additional budgetary and infrastructure requirements, training of personnel, graduality of the implementation, and potential establishment of pilot sites to identify problem areas

3. Popular Participation and Limited Access to Services

Access to the justice sector is conditioned by a number of factors a) popular knowledge of rights and institutions, b) public confidence, c) costs; d) location and number of courts Of these, the first two have been considered in the discussion on access while the last will be discussed in the organization and centralization section Costs of access are determined by the fees charged to participants in the system and the availability of free legal services to indigents None of the foreign assistance projects have targeted the improvement of the public defender subsystem (although it is briefly mentioned in the IDB project) We have not detected this to be a priority of the judiciary either yet establishment of a functional public defender system would be beneficial not only in improving human rights but would expedite the processing of cases by creating a participant interested in moving cases along

4 Lack of Controls

All of the institutions of the justice sector are organized in a pyramidal structure with the Supreme Court overseeing the lower levels This supervision is jurisdictional (usually handled through the appellate process), administrative and disciplinary The latter two functions have largely been ignored by the Court The Supreme Court, for example, has no internal affairs unit (usually called Inspección Judicial in Latin America) and does not use the case-tracking system to regulate the movement of cases or to identify judges who are not complying with procedural terms

Administratively, there is little oversight over field operations and the financial auditing function is deficient. The Court has largely abdicated the oversight function to the Bicameral Commission to Investigate Illegal Acts and the Court to Try Magistrates The Supreme Court would improve its image if it took significant and visible steps to oversee and regulate judicial misconduct and negligence. Among the steps that could be taken are· establishment of a proactive internal affairs unit; adoption of a code of ethics, development of simple mechanisms for citizens to file complaints, dissemination of information about judicial actions, rapid and exemplary detection and sanctions of judicial misconduct, improved auditing capability, development of administrative procedures and manuals

5. Public Sector Corruption

One of the major factors which contributes to the poor image of the justice sector is the widely held belief that corruption is rampant in the system and that the courts are unable to investigate and sanction public sector corruption The previous section on lack of controls detailed the supervisory function which the Supreme Court and Public Ministry should exercise relative to its own personnel. However, the judiciary and the Public Ministry have an equally important role as the lead institutions in the fight against public corruption

In order to improve Public Ministry and judicial capacity to prosecute and investigate public corruption, the following steps could be taken· 1) coordination with the Controller's Office (which has the greatest capacity to develop a joint strategy to investigate financial crimes, 2) creation of small specialized task forces composed of prosecutors, investigators, and auditors from the Controller's Office, 3) review of the current Criminal Code to update the sections dealing with criminal acts by public officials, potentially including a statute on illegal enrichment; 4) funding of NGOs with grassroots linkages to act as advocacy groups in the fight against corruption, 5) training of prosecutors and auditors in modern investigative techniques of complex financial transactions, 6) training of journalists in ethics and investigative journalism

6 Organization and Centralization

The judiciary and the Public Ministry have to take major steps in reviewing their organizational structures and operational procedures to insure administrative functions are decentralized The judiciary is one of the most centralized public sector institutions in Paraguay There is no lower-

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level input on decision making and even the smallest actions require approval from Asunción Decentralization is key to a more efficient and modern justice system The following steps may be undertaken 1) an organizational study to develop a more streamlined and efficient organizational structure, 2) development of terms of reference and scopes of work for the institutions which comprise the sector, 3) preparation of clear-cut procedural manuals, 4) delegation of administrative authority to regional centers and to individual judges so that minor actions may be undertaken by them, 5) development of procedures to regulate the discretionary activities of regional centers without imposing bureaucratic barriers to efficiency In addition, the Supreme Court should enter into cooperative agreements with departmental governors and mayors to benefit from local offers of assistance and services to courts This is already taking place ad hoc but should be formalized through agreements between the Supreme Court and departmental and municipal authorities

7 Absence of Planning and Poor Coordination

Absence of planning has been discussed previously Planning is especially crucial in the elaboration of the judicial budget It will be difficult to convince the legislative and executive branches, as well as foreign donors, of the need for significant increases in resources without detailed and justified budget requests Another problem is the lack of coordination between the different institutions charged with the administration of justice The results are visible in the different codes of procedure which have been proposed by the different institutions and even impact on the operational level

Lack of coordination is also apparent in criminal investigations in which a variety of agencies ranging from the prosecutor, the investigating judge, the Bicameral Commission to Investigate Illicit Acts, and other agencies all play a role The lack of definition of roles and function affects the success of investigations, creates duplicity, fuels interagency disputes, and generates public dissatisfaction While some of these problems may be remedied by the pending legislation, inter-agency discussions and agreements would go a long way toward solving the problem

8. Adoption of an Accusatorial and Oral Process for Criminal Trials

A major step in the modernization of the Paraguayan criminal justice system is the commitment to move towards an accusatorial and oral procedural model There are major implementation steps which need to be taken, however a) coordination between the different agencies to agree on a common code of criminal procedure, b) analysis of the impact which this legislation will have on other legislation (for example, the law on the Public Ministry) to insure complementarity, c) technical assistance to the Congress to improve the chances of passage, d) detailed impact analysis of the budgetary and resource implications which such a code will have (for example, in the area of material resources and infrastructure, e) development of a gradual implementation plan which will permit testing of reforms, f) massive training to judges, prosecutors, law school faculty, and lawyers

B. Methodology

Sector planning is an established tool for efficient administration in major portions of the public sector, for example, health and education The justice sector, however, has been characterized by a lack of planning This difficulty is aggravated by the appointment of a new Supreme Court and Fiscal who have not had an adequate opportunity to review the plans of their predecessors and determine their own priorities Therefore, we suggest a staged methodology to develop long- and short-term strategies for the sector The Supreme Court has recognized the need for improvement of the planning area and sought assistance from USAID or the IDB as noted earlier in this report

We recommend that the members of the Supreme Court and key administrative staff (for example, the director of administration) hold an initial strategy session, with the guidance of a facilitator familiar with Paraguayan justice sector issues and with expertise in strategic planning They should hold a preliminary discussion on strategic planning and reach agreement on priority areas for the sector The group should also establish a follow-up methodology, which may be carried out by working groups Input from lower level judges and support staff should be sought out It is recommended that such a meeting also include donor representation

It is unlikely that any of the problems outlined above can be remedied solely by solutions proposed by the court system The group should consider prior to its first meeting whether the strategy session should be limited to the Supreme Court or should also encompass the Public Ministry and the Judicial Council The outcome of this process should be the formulation of a policy statement which outlines the key problems affecting the sector, establishes the means by which they are to be addressed, sets measures of success, justifies the need for additional resources where necessary, and discusses and disseminates the policy widely

C. USAID Strategy

As has been mentioned earlier, USAID/Paraguay has an on-going administration of justice project which is scheduled to terminate in September 1995 There are eight activities of which only two, alternative dispute resolution and structural reform of criminal justice, still require a substantial amount of work. The consultant recommends that, other than the alternative dispute resolution activity, all others be wound down or suspended and that this project be extended at least six months or a year The extension is justified for the following reasons

- there are still significant unspent resources in the project,
- there is a new Supreme Court which is not totally committed to all of these activities;
- the Judicial Council has been established and will shortly appoint all of the judges and prosecutors in the country There is no guarantee that the current judicial officers will be reappointed and further training might be wasted,

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- the judiciary requires limited technical assistance to develop a strategy and a policy statement for the sector,

- the components of the IDB project have still to be agreed on by the Court and there have been indications that they will propose major modifications,

- signing of an IDB loan will take at least a year,

- the legal reforms are not moving swiftly in the Congress and legislators will require technical assistance to arrive at consensus between the different agencies proposing reforms and the Congress,

- a new FY 1996-1997 umbrella Democratic Institutions Development NAD has to be prepared for approval by USAID

The current project would fund discrete activities leading to the elaboration of a sector strategy and enactment of the major legal reforms The extension will also provide time for USAID and IDB to work out a common strategy to avoid duplication and prevent conflicts

The new project outlined by USAID/Paraguay for FY 1996-1997 has to be revised in line with the comments of the Action Plan review and take into account recent developments in Paraguay As mentioned earlier, the reviewers of the Action Plan concluded that USAID should engage in a limited, focused, and manageable set of activities and proposed that it "focus on providing training and technical assistance needed for judges, prosecutors and others to better understand their new roles and responsibilities under the new codes " We believe that it is a mistake to narrow the alternatives which USAID/Paraguay may pursue to this narrow objective for the following reasons

- various proposals are pending in Congress and only one, the Law on the Public Ministry, appears likely to be enacted soon,

- other than agreement that criminal procedure should move towards an accusatorial system, there is little consensus on the implementation details,

- assistance will have to be provided to reach some sort of consensus between the judiciary, the Public Ministry, the executive, and the Congress on the reform,

- the public is largely unaware of the reform although the legal community appears receptive to the shift,

- the impact of the change on other judicial budgets has not been analyzed and the allocation of roles between the Public Ministry and the judiciary has not been negotiated For example, both the judiciary and the Public Ministry are seeking authorization to establish a judicial police and forensic units

IDB appears interested in devoting significant resources to all of the strategic areas outlined in section D (1-8) above, with the exception of activities to counter corruption We suggest that USAID/Paraguay consider developing an anti-corruption activity as an alternative or complement to support the new accusatorial system A plan to fight corruption might include some of the following components 1) technical assistance and training in complex financial transactions, 2) cooperation agreements between the Public Ministry, judiciary, the Controller's Office and the National Police in corruption investigations (these agreements would outline responsibilities and roles for each of the agencies), 3) development of investigative task forces with representation from the Public Ministry, the judiciary, and the Controller's Office, 4) support to NGOs with an interest in becoming advocates against public corruption, 5) training in investigating, reporting and ethics for the media; and, 6) development of legislation with greater sanctions and increased authority for investigators (especially in the area of access to financial information and financial reporting by public officials)

Another area which deserves consideration by USAID/Paraguay is the development of alternative dispute resolution mechanisms The Supreme Court has indicated that ADR is their highest priority since it would strengthen procedures which already take place at the justice of the peace level, deal with some of the most sensitive social issues faced by the country (land tenure, for example), decrease the amount of persons imprisoned; and improve the delivery of legal services to the neediest populations

USAID/Paraguay and the IDB should be commended for their efforts to establish coordination in the preparation of their individual projects However, we believe that coordination can be extended much farther than has been accomplished so far Rather than only keeping each other informed, both agencies should be encouraged to develop a joint strategy which recognizes individual project goals but establishes a complementary methodology for project development The ideal outcome of such a cooperative relationship might be the development of a joint project

In addition to coordinating with international donors, USAID/Paraguay must also maintain a close relationship with other USG agencies which provide, either directly or indirectly, assistance to the justice system The principal ones are USIS and ICITAP USIS funds visitor programs for judges, prosecutors, and lawyers to the United States as well as presentations by U S legal experts in Paraguay Good coordination has been maintained with this agency ICITAP (International Criminal Investigation Training Assistance Program) is another US institution which could support this project ICITAP, under the supervision of the FBI, conducts in-country practical courses for judges and prosecutors on criminal investigation techniques, which could be included in U S assistance to the Paraguayan justice sector Both the Supreme Court and the Public Ministry requested this assistance and pointed to ICITAP in particular

USAID/Paraguay should consider whether it desires to proceed with separate projects in each of the democracy strengthening areas (Congress, AOJ, elections, and municipal development) or design an umbrella project which includes these areas as subcomponents of a project with a single set of goals While the latter appears to provide the most logical approach it might be more difficult to manage

Finally, USAID/Paraguay has the option of continuing to sign project agreements with GOP institutions or utilizing a private voluntary organization Prior projects were signed with the Supreme Court and Public Ministry and the consultant recommends continuing on that course The benefits to be derived from a decision in favor of a PVO are greater flexibility in decision making, more reliable and efficient project management mechanisms, and, improved ability to compel compliance However two major drawbacks outweigh the benefits of this approach These are first, the lack of a private voluntary organization in Paraguay that espouses justice reform as a priority and the lack of significant justice-related technical expertise in local NGOs Secondly, it is doubtful that the Supreme Court or the Public Ministry would accept this new mechanism, out of concern about interference in their operations and questioning the rationale for deviating from prior practices. Use of a PVO might raise significant political problems for the Mission

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ATTACHMENT A

LIST OF PERSONS CONSULTED

USAID Project Contractors

Teresa Ayala Garay, Executive Director of FIDES and Coordinator of CIDSEP, Coordinator of A I D Human Resources and Training Component

U. S. Embassy

Robert E Service, US Ambassador to Paraguay

Gerald McCulloch, Deputy US Chief of Mission Paraguay

Richard Nelson, USAID/Paraguay Representative

Alexander Margulies, Embassy Political Officer

Mauro Sanabria, USAID/Paraguay AOJ Project Manager

Enrique Villalba, USAID/Paraguay Project Assistant

Carlos Walters, DEA

Public Sector

Judiciary

Elixeno Ayala, Supreme Court Justice

Ramiro Barboza, Director of Judicial Computer Operations and Coordinator of A I D Court Automation Project

Anibal Cabrera Verón, Fiscal General del Estado

Federico Callizo Nicora, President of the Consejo de la Magistratura

Carlos Camp, Judge and Coordinator of A I D Alternative Dispute Resolution Project

Dora Graciela Claudio de Brioco, Instructional Judge, Paraguarí Department

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José Agustín Fernández, Tribunal de Apelación en lo Criminal, 3ra Sala

Carlos Fernandez Gadea, Supreme Court Justice

Jorge González Riobóo, Juez de 1era Instancia en lo Criminal de Octavo Turno

Teodisio Ibarola Coronel, Director of Administration for the Supreme Court

Gerónimo Irala Burgos, Supreme Court Justice

Luis Lezcano Claude, Supreme Court Justice

Andrés Martínez Sanguinetti, Justice of the Peace of Piribebuy

Jesús Blas Ozuna, Justice of the Peace of Caacupé

Oscar Paciello, President of the Supreme Court

Wildo Rienzi, Supreme Court Justice

Marcos Riera Hunter, Tribunal de Apelación

Cristoóbal Sánchez, Tribunal de Apelación and President of the Judges Association

Julio Samaniego, Presdient of the 5th Sala de Apelaciones en lo Civil and Coordinator of Court Administration Reform Project

Felipe Santiago Paredes, Supreme Court Justice

Raúl Sapena Brugada, Supreme Court Justice

Enrique Sosa, Supreme Court Justice

Public Ministry

José Caballero, Director de Política Criminal y Criminología

Aníabal Cabrera Verón, Fiscal General

Luis Escobar Faella, former Fiscal General

Meliano Morales, Fiscal, Paraguarí Department

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Marcos Gabriel Salt, Argentinean legal consultant to Fiscalía

Elio Vera, Advisor to the Fiscal General

Consejo de la Magistratura

Federico Callizo Niccora, President

Executive

Juan Rafael Caballero González, Vice Minister of Justice

Legislative

Marceo Duarte, Representative and Chair of the Codification and Legislation Commission

Others

Pablo Alonso, IDB/Wash , Paraguay "Modernization of the State" project officer

Juan Manuel Benítez Florentín, President, Partido Liberal Radical Auténtico

Edwin Brítez, ABC Color Newpaper

Herminio Cáceres, Governor of Paraguarí Department

Angela Coreli, IDB Modernization of the State Project Officer in Asunción

Carlos Mateo Balmelli, Centro de Estudios de la Realidad Paraguaya

Carlos Martini, Director of Investigations, Noticias (newspaper)

Carlos A. Mersán, Dean National University School of Law

Francisco Rivas, Governor of Cordillera Department

Ricardo Rodríguez Silvero, Economist, Euro América

ATTACHMENT B

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ANNEX B

LEGISLATURE

By

Francisco J. Sánchez

I. OVERVIEW

A. The Legislature and the Constitution

The 1992 Paraguayan Constitution in its Title II, Chapter I sets forth the organization and structure of the legislative branch Its two bodies are the Senate (the Senate) and House of Deputies (the House) They can also meet as a whole, known as a meeting of Congress

As a Congress, the Paraguayan Legislature meets only for special occasions such as to administer the oath of office of the President and Vice President and justices of the Supreme Court, to formally receive foreign presidents and other such Constitutionally-mandated functions Most often the two bodies meet separately. Each house has its own Rules of Order, names its leadership, and designates its own employees Legislators are elected by the people, except for former presidents who automatically become senators for life

B. Composition

The House (*Camara de Diputados*) is composed of 80 members, elected by departmental electoral colleges Each of the 17 departments in Paraguay elects its deputies and alternates The Electoral Tribunal stipulates before the election the number of deputies per department, which is a function of the number of registered voters

Specific responsibilities of the House are to

- Initiate legislation that relates to departmental and municipal topics,
- Designate or propose magistrates according to the constitution;
- Agree to intervene in departmental and municipal governments

The House has 22 standing committees which present written recommendations for approval, modification, substitution, or dismissal of bills to the floor of the House The dissenting minority can present a separate opinion for consideration

The Senate (*Camara de Senadores*) is composed of 45 members elected through a national electoral college Specific responsibilities of the Senate are

- Initiate consideration of bills relating to approval of international treaties and accords,
- Approve military and national police rank promotions,
- Approve designation of ambassadors,
- Designate or propose magistrates,
- Authorize the sending of military forces outside the country as well as the presence of other foreign military forces in the country,
- Approve designation of the president and directors of the Central Bank,
- Approve designation of Paraguayan directors to bi-national institutions, and other responsibilities the constitution designates

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Sessions for both houses are from July 1st through June 30th, with a recess period from December 21st through March 1st Quorum is established by one half plus one of total membership While the Constitution stipulates some measures requiring larger majorities, simple majority (one half plus one of present members) is the rule in most decisions

Members are elected to a five-year term simultaneously with presidential elections, and can be re-elected A legislator cannot work as a public or municipal employee nor for a private institution contracted by the state, provide legal counsel to any of these institutions A legislator may not be held legally liable for opinions stated while performing legislative duties nor may he be arrested unless the crime is penalized with corporal punishment

The political composition of the current legislature is as follows Senate seats (45) Colorado 20, Liberal Radical 17, Encuentro Nacional 8 House seats (80) Colorado 38, Liberal Radical 33, Encuentro Nacional 9 While the Colorado Party won the presidential elections, the opposition virtually has a majority in the Legislature

C. Effects of Strong Executive Branch

Historically in Latin America the executive branch has held a strong position compared to the other branches of government Due to years of being, in most cases, the only branch of government, the executive traditionally has held the technical knowledge and experience to govern, carry out programs, and design and implement public policy In Paraguay, the relationship between the executive and the legislative branches mirrors that of most Latin American countries Thirty-five years of dictatorship have left Paraguay with a legislative branch that is especially weak and inexperienced Although the Paraguayan Legislature cannot be considered a "rubber stamp" to the executive, its capacity to legislate and represent a constituency have been seriously weakened by its past

By and large, Paraguayan legislators understand their role as representatives of the people, lawmakers, and overseers of the executive branch However, they lack the technical skills to legislate in an increasingly complicated world and to represent a changing and modernizing society

The difficulties of legislating and representing a highly complex world and changing society, respectively, are experienced by legislators around the world Most legislators recognize the difficulties and complexity of issues It is through their leadership that modern legislatures have acknowledged the need to rely on technical and specialized staff for information and public policy analysis As in many developing countries, the Paraguayan Legislature lacks the highly technically-skilled staff assistance necessary to allow them to fulfill the three main functions of a legislature to legislate, represent, and oversee executive branch functions

The legislature actively exercises oversight of the executive branch in investigating crime and corruption cases One constraint projects in this area may encounter is the unwillingness by the executive to agree to the balance of power that must exist in a democracy among the three

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branches. Most legislators interviewed for this study felt positive about the willingness of the executive to modernize the legislative branch They view the relationship between the executive and legislative branches to be a very respectful and cordial one

II. PROGRESS

Considering that the legislature has been functioning only since 1989, moderate progress has been accomplished in terms of modernization Both houses still function on an ad hoc basis in selecting administrative and technical staff, starting up a library, acquiring computer equipment, and training and retaining personnel The legislature has attempted to organize itself and learn how to function as a legislative body, however, Rules of Order amendments for each house have been in consideration for over 12 months

Some individuals have proposed changes to the status quo For example, a group has proposed the creation of a Legislative Support Secretariat for the House The goal is to establish a multi-disciplinary group of professionals that would assist committees in the analysis and review of bills The Senate Personnel Director has proposed a project to strengthen library and archival services of the Senate

Through the *Legislacion* 2000 project and the *Centro de Recursos para el Desarrollo* (CIRD), USAID has contributed to strengthening this sector Participants in these activities included legislators, committee assistants, and media representatives More than 100 legislators, 360 staff, and 60 journalists have been trained in legislative administration and technical areas The *Legislacion* 2000 project goal is to provide training to the legislature in representation, train staff in the development of legislation, provide consultants for specific topics relative to legislative committees, and assist in the development of information systems Both projects have also exposed media representatives to techniques of research, investigation and reporting Activities have included contracting advisors to certain committees, seminars, expert team visits, and observation trips to Chile. Technical assistance has been provided through an agreement with the *Centro de Estudios y Asistencia Legislativa* (CEAL) of Chile

Through this project, committee staff assistants have visited CEAL in Chile to learn new legislative techniques They have formed an association of legislative employees with the goal of raising the legislative employee image and strengthening them technically and organizationally USAID support in training legislative staff and media representatives, has stimulated an awareness of the need to modernize the legislative branch

The efforts mentioned above, however, do not provide the kind of sustained development that the legislature needs to ensure permanent results Future efforts must stress the need to (1) reform the Rules of Order, and (2) attract and retain highly qualified, permanent, non-partisan staff to assist legislators in bill drafting, research, budget analysis, and citizen participation in the legislative progress, and (3) provide an adequate facility and space for the legislature

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Potential Donor Contribution

There are three main donors assisting (or planning to assist) the legislature in its modernization USAID, the Inter-American Development Bank (IDB), and the European Community (EC) In addition to the USAID project described above, the IDB and the EC are planning projects with legislative components The legislative component of the IDB Governability Program (Project No PR-0081) will concentrate on bill-drafting capability and improving relations between the executive and legislative branches With a total IDB contribution would be $16 0 million for the project, the legislative component draws down $1 0 million per year over a 4-year period

The EC project, approximately 900,000 ECU, would complement the IDB project It would finance equipment acquisition, legislative training through the *Universidad Católica del Paraguay*, training to enhance the administrative capacity and organization of the legislature, creation of a library and publicity campaigns to close the credibility gap between civil society and Congress Both projects are in the planning stages

USAID's contribution to these efforts may be the most valuable since it is the only one of the three institutions with a proven track record of assistance to legislatures in Latin America These three organizations should maximize coordination to ensure the best utilization of funds The three entities should work through one counterpart in the Legislature, perhaps a legislative modernization committee of each house, as proposed in this report, and to the extent possible one implementation agency A four-way funded project (USAID, IDB, EC, and the legislature) with common goals and objectives would be an ideal approach The pre-conditions necessary for such a package of assistance are 1) one voice speaking for the legislature, and 2) a capable implementing agency with a proven track record in multi-donor legislative projects that works with a local PVO, perhaps CIRD, already working in this arena

III. PROBLEMS, CONSTRAINTS, AND OPPORTUNITIES

A. Lack of Trained Permanent Staff

In both houses, there are two types of staff administrative and technical Each house president determines the method of hiring staff There are differences between the houses in how individuals are selected Legislative committees in the House rely currently on generally poorly-trained staff with low academic credentials that serve at the whim of the committee chair and House Speaker The administrative staff has generally the same status as the non-CIRD staff (poorly trained, and serving at the whim of the House Speaker)
However, the committee staff provided by CIRD seems to be the most respected by legislators In the Senate, the committee staff is generally better-qualified than in the House Selected by a process established by the current President, selection procedures include an entrance exam

The lack of a systematic process of selection will affect the institutional memory of the legislature, will create inefficiencies for training staff, and, if a system of promotion is not

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established with specific positions and scopes of work for those positions, valuable and experienced staff will be lost

B. Bill-Drafting Capacity

The majority of bills initiated in the legislature are drafted by the legislators themselves In the Senate, the legislators, although proud that they draft their own bills, complained about the amount of time spent in this function and acknowledged the risks involved lack of drafting standards and jurisprudence principles in enacted legislation This complaint was stated by legislators with legal backgrounds The situation, logically, is worse for those whose backgrounds are not in the legal profession, these legislators rely on friends, mostly outside the legislature, for bill-drafting assistance

C. Research and information capability

The Library of Congress, the typical source for information to legislators, is in deplorable condition This is mainly due to the fact that have started to gather volumes for the Library only two years ago. The primary activity relating to the Library is the "dusting off" of existing documents found in boxes scattered all throughout the building. Currently the Library has abut 1,200 volumes, there is no functional archive (in the Senate), the House archive, although in better shape because the archivist managed to keep some system going for the last 25 years, is still of virtual no functional use to legislators

Assistance to the Library has been provided through part-time hires Some progress has been accomplished, but it is very limited Microisis (a library catalogue system) has been installed in the Library of the Senate but the staff has not been trained on how to use it Legislators still do not have a central place where they or their staff can access information easily

D. Oversight Functions: Budget Analysis and Enactment

The advisors supplied by CIRD in this area have proven to be very helpful to legislators The bicameral committee in charge of analyzing and approving the budget receives very helpful information from the *Centro de Analisis y Difusion de Economia Paraguaya* (CADEP) Budgeting, however, is a year-round activity and the legislature should receive information constantly about budget expenditures and implementation

Some members of the committee expressed frustration with the executive branch because they could not exert enough influence or power over the executive to assign funds to particular projects or regions This shows two things one is lack of knowledge on how the budget is formulated by the executive, and second, lack of creativity in terms of finding new ways to enact a budget that reflects regional needs

E. Representation

Citizen participation in the legislative process is an important indicator of a democratic state A legislature should provide a forum for citizens to present their needs to those who represent them In most Latin American countries, legislators are elected through a closed party list In other words, the people vote but do not elect those who represent them Consequently, loyalties of legislators are first to the party that places them on the ballot, and second, to the people of the region they represent A gap exists between the legislator and his/her region Paraguay is no different Legislators agreed that relations between in Paraguay Legislators agreed that relations between themselves and the people they represent could improve But they lack the means to reach their districts in an efficient fashion

F. Two Houses, Two Worlds

Although legislators agree that they need more technical assistance to perform their duties, no consensus was found as to the best model. There is a marked difference between the houses in terms of the way they view one another. The Senate is viewed as the more conservative body comprised of distinguished and well-known individuals who can afford to hire technical staff out of their own pocket, if necessary The House is viewed as the chamber of the people, with individuals from all economic and cultural spheres The model for a legislative services office recommended in the next section will take this factor into account

G. Space

The legislative building is not adequate to meet the needs of the legislature Discussions are underway with the Chinese and Taiwanese governments regarding financing of a new legislative building One resource available to the Paraguayan legislature is the National Conference of State Legislatures (NCSL) which three years ago at their annual conference in Cincinnati, Ohio, held a seminar on how to restore or build new legislative buildings

H. Other Related Problems

1 Outside experts Some legislators expressed dissatisfaction with some of the outside consultants brought by several institutions to assist the legislature Most of these consultants came with pre-packaged models that often did not apply to the reality of Paraguayan legislative problems Some legislators complained about the number of consultancies and the lack of action after experts left An attitude of "enough talk, letś do" prevails among some members

2 IDB missions The President of Congress feels that IDB missions do not understand the legal intricacies of both houses, he is tired of explaining to them the constitutional issues involved, and he is willing to decline assistance His view of the IDB may or may not be correct Also, he may not be aware of models of assistance that can meet his legal concerns and at the same time, perhaps, satisfy some of the IDB requirements

3 CIRD perception Apparently the President of Deputies was not well informed about the CIRD assistance to the House Although he appreciates the quality and importance of the assistance, he complained about the lack of communication between the House and CIRD The CIRD responded that the President of Deputies had been informed about several CIRD activities in the past, and agreed that communication should improve

I. Willingness to Modernize

All legislators interviewed expressed the need to modernize the legislature They openly recognized their limitations, and are willing to receive assistance This recognition is essential in legislative assistance projects In a legislative body in which political opinions are expressed nothing gets accomplished without the political will of the members and the parties they represent Any effort in terms of legislative assistance must recognize legislators as the client Likewise, political parties represented in the legislature stated their desire for a stronger legislature that can more effectively perform its duties of legislation, representation, and oversight

IV. PROPOSED RECOMMENDATIONS AND STRATEGIES

A. Creation of Technical Services Legislative Offices

The following recommendations are based on the problems stated above and propose the strengthening of current staff using legislative staff models that exist in other countries The goal is to increase the technical capacity of existing committee staff, and to recruit additional non-partisan technical staff that would provide assistance to all legislators in the areas of bill drafting, research, constituent relations, and budget analysis and oversight

Creation of Modernization Committees in each house is proposed These committees would set policy guidelines for all the units mentioned below They should select all staff and serve as the counterpart body for all the international assistance provided to the legislature The supporting executive group to these legislative Modernization Committees could be the CIRD through the *Legislación* 2000 project. Ideally one Modernization Committee serving both Houses could be created If this is not politically feasible, an alternative idea is to create committees in each house to assist their respective presidents in modernization efforts

The units recommended below should be located in one office, preferably inside the legislative building The location is key in terms of accessibility to legislators and will greatly influence the level of initial demand on the units Requests can be directed to each individual office named below The request should be logged and recorded in writing and should be answered on a first-come-first-serve basis, unless the President of either House grants a waiver of urgency for immediate consideration The CIRD will ensure the proper coordination of the units and would also coordinate multi-unit studies

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1 Committee Assistants Currently, the selection process for these individuals is performed in accordance with the criteria of each house president, is not in writing, and is very *ad hoc* The selection process should be outlined and included in the Rules of Order of each house with minimal standards for academic credentials, preferably in the areas of law, political science, public administration, and public policy Once selected, committee assistants should attend a seminar on legislative skills so they understand their role in the committee, learn about legislative processes, and know about other offices, such as the ones suggested below, to assist them in their functions Scopes of work for positions should be similar across the board for all committees Committee assistants should serve at the will of the President of the respective house but with minimum standards on hiring and firing.

These individuals should work in close relation to committee presidents, but should also work with and accept requests from all members of the committee Their functions should be non-political in nature, and their salaries should be commensurate with experience in the subject area, although the typical assistant will be a recent graduate of a major university in the areas mentioned above, and the turnover rate will be medium to high Salaries should be financed through legislative funds, while training could be financed by international organizations

2 Bill-Drafting units Their main function would be to draft bills for legislators, provide legal opinions about pending legislation, and to provide analysis of comparative laws on specific subjects These units should be composed of at least three attorneys each of whom should have, in addition to his other areas of expertise, constitutional and administrative law qualifications

For practical reasons, the creation of one bill drafting office serving both houses is recommended, but it may not be politically feasible Staff of these units should be permanent within each house, non-partisan, and the units should respond to each house president and their respective modernization committees, if created

3 Research units These units would provide legislators with quick, short, and easy to read information reports on any subject area The CIRD should serve as coordinating body for managing the connection to the Global Link Information Network (GLIN) of the U S Library of Congress, Internet, and other international electronic databases with these units This would avoid duplication of effort and would also ensure house-specific approaches to delivery of research

The staff should be composed of at least two researchers per unit, who are also experts on electronic databases, database design, and possess research skills Again, one unit for both houses is recommended

4 Budget analysis and oversight unit This unit would provide support to the budget bicameral committee and legislators during the analysis and enactment of the budget law Ideally, it would have databases concerning the economy, account expenditures, and information necessary for forecast analysis The unit would provide periodic information to all legislators in the areas

mentioned above The unit should also provide a fiscal impact statement on major bills considered

Currently some of these information services are provided by CADEP It is suggested the legislature continue to use CADEPś services until this unit is up and running The unit should be staffed by at least two economists, one of which must have experience in taxation, and the other in revenue forecasting.

5 Constituent relations unit This unit would facilitate the delivery of information to the legislators about their districts, and would also give information to constituents about the legislature, its processes, its composition, and its members The first phase of the creation of the unit would be to find out what data sources are available in the country, how to access them and at what cost The second phase would be to adapt those databases for easy access and retrieval of information to legislators Demographic, geographic, and civic information about districts are examples of the types of information that would be of interest to legislators

The other function of this office is to provide information to constituents about the legislature Pamphlets explaining how a bill becomes a law and how to participate in this process, how to write a letter or reach your representative, and a Directory of the Legislature are some examples of the type of information that this unit would supply For distribution of pamphlets, local NGOs can be helpful

6 Consultant Roster CIRD should create and maintain a roster of national and international experts from which committees, legislators, and CIRD can select for assistance to Congress in specific areas

The offices described above would utilize the CIRD to help with coordinating training activities for staff, assuring the efficient use of funds (avoiding duplication of for equipment, software, etc), maintaining the consultant database, and coordinating funds the Legislature receives from international donors

B. Technical Services Secretariat

Currently, in the House, there is a *Secretaría General* under which all administrative offices (personnel, press office, information systems, etc) reside The creation of a *Secretaría de Servicios Técnicos* (SST) under which the offices of bill drafting, research, constituent relations, and committee assistants would be housed is strongly suggested The SST would respond directly to the President of the House The CIRD should assist the President in the selection of personnel for the SST, drafting scopes of work for each position Staff of the SST should be professional and non-partisan with clear procedures for selection, promotion, evaluation, and removal of staff These procedures should be included in the Rules of Order The CIRD should be heavily involved in staff training and technical assistance to the units

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Committee assistants have created an association of legislative employees to better coordinate training efforts for them Although the *Secretario General* does not view the creation of this group favorably, this is a step in the right direction and training efforts in the future should be channeled through this group Their membership is bicameral and consists currently of about 80 legislative employees

C. Short and Long Term Training

Any legislative assistance effort include observation trips to see other models of legislative services offices These trips provide tools to better understand how other legislatures work and what can be applied to Paraguay. Legislators for these trips should be selected on the basis of their modernization leadership or ability to provide political support to the project Also, those who strongly oppose legislative modernization or do not understand aspects of it should be selectively included in the trip The end result is that these individuals would assist in the project design and implementation

The project should also include training for the two types of legislative staff administrative and technical Administrative staff training should include short seminars on computer skills and applying legislative procedures established in each house This type of assistance is second in funding priority to technical staff training The latter should take the form of visits to state legislatures in which the most advanced systems of legislative service offices exist These observation trips, which could be done along with the legislator's trips suggested above, could also serve to set up linkages, electronic and professional, with other legislatures

Long term training could take the form of internships in other legislatures (3-4 weeks) for staffers so they can get the flavor of what it is like to work in a similar office in another country Another modality of long-term technical assistance could be Masters degrees offered to selected Paraguayans that would, after their studies (12 - 24 months), return to Paraguay to work in the legislature The areas recommended are library science, economics, and public policy

Paraguay should participate actively in NCSL annual meetings NCSL provides a forum for legislators to exchange ideas and concerns over issues of common interest It is also a forum for staff to share views and keep up with the latest technological developments available for policy analysis Paraguay should also connect itself to Legisnet

Although some of the training could be done in Latin America, U S state legislatures have more experience in the subject areas States can be found with similar characteristics to Paraguay in terms of size of legislature, legislative services office model, population, needs and social problems

D. CIRD - Legislacion 2000

CIRD could continue to be the channel for legislative assistance funds to the legislature so legislators have one institution that responds to them in terms of legislative modernization CIRD

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has the flexibility, a capable staff and the trust of the legislature CIRD admits their lack of sufficient technical experience to carry out a large technical assistance project Implementation duties are not similar to technical capabilities

However any institution coming from the outside to implement the project will need to use CIRDś position in Congress to achieve project goals The implementating agency could use CIRD resources to save on administrative implementation costs to carry out the program The units established in the legislature should also take advantage of CIRD'ś databases in the area of municipal governments and NGOs

CIRD could improve its marketing and coordination with the legislature Key individuals in the legislature are not aware of the extent of available assistance and have misconceptions about the scope of the project and funding available Monthly meetings should be held with each house president, their modernization committees, and general secretaries to inform them of project progress and to receive feedback on activities executed Any comments and conclusions from these meetings should be recorded in writing and sent to each member

E. Public Hearings

This is a tool which is often underutilized in Latin American legislatures Public hearings encourage citizen participation and promotion of national expertise The Paraguayan Legislature should hold hearings on issues of interest to the public Hearings can enhance the image of the legislature by sending a message to the public that there is a forum where their ideas and opinions can be heard These are especially useful for budget matters in which ministers, local officials, and regular citizens can participate in the decision-making process in approving the budget

Another venue for public hearings is through committee invitations to national experts to testify on particular topics Such testimony is a tool to promote local talent Universities often are the best place to find such individuals

F. Media as Marketing Tool

While CIRD should cooperate with the media to inform the public about the modernization efforts the legislature is undertaking, its focus should be on providing information to legislators to let them carry the message In a support capacity CIRD could also provide training seminars and observation trips for the media on how best to cover the legislature

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APPENDIX A
List of Individuals Interviewed

U.S. Embassy

Robert Service, Ambassador
Gerald McCulloch, Deputy Chief of Mission
Alexander Margulies, Political Officer
Myron Boon, Political Officer
Karen Williams, USIS

USAID

Richard Nelson, Representative
Oscar Carvallo, Project Specialist
Mauro Sanabria, Chief Accountant
Julio Basualdo, Program Specialist

Centro de Estudios de la Realidad Paraguaya

Carlos Mateo Balmelli, Director

House of Deputies

Dip Atilio Martinez, President
Dip Conrado Papalardo, President, Budget Committee
Dip Marcelo Duarte, President, Law and Codification Committee
Dip Mario Esquivel, President, Municial Affairs Committee
Dip Rubén Darío
Humberto Fernández, General Secretary
Miguel A Romero, Committee Assistant
several other committee assistants

Senate

Sen Evelio Fernández, President
Sen Victor Rodriguez, member Municial Affairs Committee
Sen Basilio Nikiphoroff, First Vice President
María de la Cruz Mendez, Human Resources Director

Centro de Estudios Democráticos

Esteban Caballero, Executive Director

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IDB

Pablo Alonzo
Stefano Tinari, State and Civil Society unit
Raúl Baginski

Centro de Información y Recursos para el Desarrollo

Agustín Carrizosa, Director
Edward Bogado, Project Coordinator
Oscar Carvallo, Project Consultant
Gloria Rios, Project Specialist
Dionisio Borda, Legislative Consultant
Enrique Marín, Legislative Consultant
Rubén Gaete, Legislative Consultant

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APPENDIX B
List of Documents

1 USAID/Paraguay Cooperative Agreement No 526-0616-A-00-2019-01 Legislación 2000 Legislative Assistance Project

2 "Paraguay Disappointed", The Economist, June 11, 1994, p 42

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8 USAID/Paraguay Annual Budget Submission, July 1994.

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13 Constitutción de la República del Paraguay, sancionada y promulgada el 20 de junio de 1992

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19 "Preliminary Master Plan for the Initial Development of the Legislature of Paraguay" Prepared by the Consortium for Legislative Development for USAID/Paraguay, July 1991

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ANNEX C

EXECUTIVE AND LOCAL GOVERNMENT

by

David Jickling

SUMMARY

Six years after the fall of Stroessner, Paraguay continues to have major problems of corruption, bureaucratic inefficiency, and excessive centralization in the public sector This report recommends

- Encouragement of decentralization/deconcentration of sectoral bureaucracy, such as taking place in the Health Ministry This type of effort should be extended to education and public works, water and sewers Public sector modernization should increase the departmental and municipal capacity to undertake these functions

- Strengthening of the revenue-raising capacity of local government through the prompt and proper implementation of the IDB loan already in hand Donors should collaborate in integrating revenue-generating operations in their own local government development work

- Improving the administrative rationalization of municipalities through technical assistance and training in support of simpler more transparent processes, accountability and improved financial management

- Civic education to promote participation and accountability

- Strengthening of municipal and departmental associations as the basis for clarifying the role of local governments, for addressing the resource constraints--financial and human--faced by them, and for giving local government a clearly heard voice in central decisions which affect their citizens

The donor community by itself can do little to resolve these highly political, entrenched public sector problems They can identify and support local groups who seek to address them They can provide access to the relevant experience of other countries The future of Paraguayan democracy is directly related to the success of these public and private groups in gaining support for and achieving responsible and responsive institutions at all levels of government

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I. OVERVIEW

Central Government

Paraguay is in the midst of a complex and difficult transition from a long tradition of authoritarianism and centralization There are strong indicators of a commitment within the society to democracy and decentralization, but there also is widespread agreement that the transition will not be easy Early this year, the *New York Times* headlined an article on Paraguay "A Few Potholes on the Road to Democracy" The analysis pointed out that Paraguay was the last country in South America to abandon military rule in short, making "a bumpy transition from a tidy dictatorship to a messy democracy"

The Constitution establishes that the Executive Power in Paraguay shall be exercised by a popularly-elected President The President represents the state and directs the public administration of the country He is aided by a vice president and eleven ministers (Interior, Foreign Relations, Finance, Education, Agriculture, Public Works, Defense, Health, Justice, Industry and Commerce, and Economic Integration) Six secretaries handle special areas at the presidential level (including Planning, Information, Women, Drug Control, etc) There are eighteen decentralized agencies (including the National University and six social security funds) In addition there are eleven major public enterprises in transportation (air, river and railways), public services (electricity, water and sewers, telecommunications, river ports and airports), and manufacturing (oil refining, alcohol, cement and steel)

The privatization of four enterprises has been authorized (the steel plant, railway, river transport and airline company) In addition President Wasmosy has pledged to privatize cement production and the alcohol plant Discussions are underway regarding the possible privatization of telecommunications, water and electricity To date, however, only the national airline has been privatized

The modernization of the Executive Branch has been moving forward slowly since 1989 In 1989-91 the Controller General was established as an independent "fourth branch" of government to facilitate its oversight functions In 1991 the Ministry of Finance was reorganized by Law 109/91 More recently the Ministry of Public Works and Communications has been restructured by law Other ministries operate under outdated administrative structures and such previous legislation as the basic Law of Administrative Organization dating from 1909 The UNDP proposed a new Organic Law of the Executive Power to serve as a general framework for administrative modernization It proposes a series of "horizontal systems" cutting across ministerial lines seeking to improve organizational structures, human resource management, planning, financial administration, purchasing, and administrative systems

These systems would seek to provide the basis for

- transforming the traditional bureaucratic culture,
- providing greater transparency in government operations,

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- simplifying bureaucratic procedures, and
- increasing democratic control of public administration

The Director General of Public Personnel in the Office of the President is responsible for pushing these administrative reforms including personnel management, administrative reorganization, systems and procedures improvement, and the expansion of management information systems The earlier work of the UNDP remains as the guidelines for implementing these reforms

Transparency in the public sector has increased since 1989 as the result of a renewed independent press, more energetic oversight by the Congress, the creation of an independent Controller General, and the strengthening of an independent judiciary

Departmental Government

Paraguay is administratively divided into 17 departments--or regional areas Previously the departments had been headed by a government delegate appointed by the president and reporting to the Minister of Interior, whose duties were focused largely on maintenance of public order and internal security. The Constitution of 1992 introduced the position of an elected governor as the executive head of each department

The current Constitution refers to the nation as having a unitary state, casting doubt for some observers on the role of the governor and the independence of the departmental governments Although the governor is elected by the people of the department, he continues to "represent" the central government within the department The position clearly calls for a sensitivity to both local needs and demands and to central plans, priorities and resources

The departments vary widely in size and population The Central Department, which rings the capital district of Asuncion, is the largest department with a population of over 860,000 In contrast the Department of Alto Paraguay is 35 times larger in area than the Central Department, but has only 12,000 people

Article 161 of the Constitution establishes that each department will have an elected board (*junta departamental*) serving for a five year period, as do the governors The smaller departments (under 35,000 population) have boards of seven members Larger departments have an additional member for each 5,000 citizens, up to a maximum of 21 members

The departmental boards are charged with working closely with the governors in managing the resources of the department They can enact laws and regulations, theoretically they can oversee the activities of central government agencies in their department, and can call for the central government to "intervene" in their department, that is, to remove departmental and local officials under specified circumstances

The Constitution grants the departmental governments the authority to

- Organize common departmental services, such as public works, in cooperation with the municipalities,
- Prepare a departmental development plan and annual budget,
- Coordinate departmental activities with central government programs, especially in health and education,
- Facilitate the formation of departmental development council

The recently enacted Departmental Law (Ley No 426 of September 8, 1994) strengthens the authority of the departments to provide public works, electricity, water and transportation services in cooperation with the affected municipalities It also grants the departmental government oversight authority for central government activities within their department

This law establishes that 15% of the value-added tax collected within their areas shall be kept by the departments for education, health and public services It also clarifies that 15% of the property taxes allotted to the municipalities shall be transferred to the departments to finance their operations An additional portion of the property tax is to be allotted to the poorest municipalities Taxes on gambling, bingo and other games are to be shared between the municipalities and the departments

Although generally the new departmental governments have been slow to get underway due to the ambiguity of their functions and limited access to revenue, two more developed departmental governments are found in the Paraguari and the Central Departments The governor of Paraguari has appointed secretaries of education, public works, transportation and administration (general/cabinet) Each secretary has one or two staff members There is also a secretary for the Department and a director of administration Additional secretaries are to be added for health and agriculture The department board is served by a secretary

The governor of the Central Department has appointed secretaries for health, education, public works, economic development, environment and for administration (general/cabinet), in addition to a secretary for the Department and a director of communications (press relations) The board has six sub-professional staff members

Nationally, an Association of Governors has been formed to enable the governors to work together on common problems It has served as a means for the governors to meet from time to time and exchange views on themes such as the meaning of decentralization Political divisions among the governors have limited the usefulness of the Association

Municipal Government

Paraguay has 217 municipalities which vary widely in size and population Article 167 of the Constitution establishes that each municipality will be governed by a mayor (*intendente*) and a municipal board (*junta municipal*) elected for a five year term The Municipality of Asuncion has

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24 members on its board Other municipal boards vary in size from nine to twelve according to the population and budget of the municipality Until 1991, when the first municipal elections were held, the mayors were appointed by the central government and were responsible to central authorities Their election by local voters has been a major step toward creating local democracy in Paraguay

Article 168 of the Constitution provides that the municipalities will have the following functions

- Urban planning, environmental control, education, culture, sports, tourism, sanitation and health services, credit institutions, police and inspection services,
- Management of municipal property,
- Regulation of public transportation and traffic, and
- Other functions as established by law

The Constitution also grants the following authorities to the municipalities

- Budget preparation,
- Participation in national revenues;
- Determination of municipal service rates,
- Issuance of ordinances, regulations and resolutions, and
- Access to national and international credit

The Municipal Administration Law 1294/4 of 1988 gives additional responsibilities to the municipalities including

- Solid waste disposal,
- Control of construction,
- Markets and slaughterhouses,
- Historic preservation, and
- Cemeteries

A further modification of the Municipal Law is under consideration in the Congress at the present time It is likely to devolve additional central functions to the municipalities including primary education, water and sewers, and health

On paper, the municipalities have broad responsibilities In fact, an estimated 120 municipalities (that is, over one-half of the total number) have human and financial resources so limited that for the foreseeable future they can hardly be considered functioning governments These "mini-municipalities" are a special problem for future attention Meanwhile the decentralization effort will have limited impact on the services they provide for their communities

In keeping with Paraguay's long tradition of centralized government public services are still delivered by central ministries Water, sewers, public health, education, public housing, public

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transportation, and road construction are all controlled by central ministries At the most, municipalities are providing

- Limited physical planning,
- Street paving,
- Garbage collection,
- Regulation of markets, slaughterhouses and cemeteries,
- Control of animals and food,
- Regulation of the circulation of vehicles, and
- Provision of a public bus terminal.

Data for 1993 indicate that 102 municipalities (47% of all municipalities) had annual budgets of less than $30,000 per year In 1991, forty municipalities had no budget at all and only six (including Asuncion) had annual budgets of over $100,000 Over one-half of total municipal outlays have been made by the Municipality of Asuncion The Ministry of Finance is working to improve municipal and departmental finance through improved implementation of existing revenue legislation and exploration of needed legislation The coordinator of this effort is

Dr Oscar Arias Torreani
Technical Advisor to the Sub Secretary of
Financial Administration
Ministry of Finance

Before the overthrow of President Stroessner in 1989, citizen participation in local government was strongly discouraged Recent years have seen a remarkable turnaround Several NGOs have been active in promoting local citizen participation and in helping communities solve local problems and meet local needs Mayor Filizzola of Asuncion has taken a leadership role in strengthening citizen participation His administration has been supportive of neighborhood community groups which now number more than 200 in Asuncion On one day each month, the mayor visits one of the eleven neighborhoods of the city where he holds an open town meeting and goes from house to house visiting and discussing issues with constituents

The Municipality is creating neighborhood community centers in the neighborhoods to serve as a means of encouraging local citizen participation and in providing city services as a "little city hall" It should also be noted that the Municipality of Asuncion is in the hands of the political opposition, a major step forward in breaking the dominance of the Colorado Party in the political life of the nation

II. PROGRESS

Constitutional Reforms

The Constitution of 1992 clearly sets the national government on a course of decentralization of the public sector Municipalities have, in theory, broad powers and responsibilities to contribute to the improvement in the quality of life of their citizens The Constitution and subsequent legislation have strengthened local government finance and have created an intermediate level of government (the departments) to work with the municipalities in expanding local public services

Public Sector Efforts

The Paraguayan Organization for Inter-Municipal Cooperation (OPACI) is one of the oldest municipal associations in Latin American Under the Stroessner government it carried on an active program of municipal development activities

- Representation of municipal interests in national policy discussions,
- Assistance to individual municipalities in requesting central government support for local government projects and activities,
- Interchange of experience between municipalities and links with local government organizations in other countries, and
- Other activities to advance the interests of municipalities

OPACI, however, has not prospered since the fall of Stroessner Its position of authority as an extension of the Colorado party has become irrelevant, its revenue source has been cut off and it has been reduced to a minor service role in the registration of driver's licenses and license plates for automobiles It is struggling to regain its leadership, with a prominent mayor as president and an energetic young lawyer as secretary general Its current work plan calls for internal reorganization and establishment of effective services to municipalities In June 1995 it will organize a two day, comparative seminar in Asuncion on municipal legislation in Latin America in cooperation with IDM (the Paraguayan municipal development institute), IULA Quito (the regional municipal development center for Latin America) and USAID With the participation of legislators, mayors and specialists in municipal law the seminar will examine the experience of Chile, Colombia and Ecuador and its applicability to Paraguay

At the same time, OPACI is organizing a series of four "training of trainers" workshops on municipal management to be held in different regions of the country with the assistance of the Canadian Government The program will be organized in cooperation with IDM and IULA It will emphasize local participation in municipal government and the organization of broader, more effective community service activities by the municipalities The contact at OPACI is

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Lic Hector Ramirez Bogarin
Secretario General, OPACI
Mcal Estigarribia 1080
Asuncion
Tel 208-462, Fax 211-767

The Metropolitan Area Municipal Association (AMUAM) has been active since 1978 as an informal coordinating group of the 11 municipalities which make up the metropolitan area of Asuncion These municipalities presently share 30% of the national population and 40% of all municipal resources AMUAM has developed programs for garbage disposal and for sharing heavy equipment and coordinating public works and street construction It has received help from Japan and is presently negotiating credit and technical assistance from the Spanish government

Several other municipal associations have been created at the departmental level A country-wide organization for municipal cooperation, the Paraguayan Municipal Councils Association (AJUMPA) was established in 1992 It seeks to provide for interchange among the municipal boards of the country Due to limited resources its activities have been severely limited A possible cooperative arrangement linking AJUMPA with OPACI is under consideration

At the initiative of OPACI, the Municipal Development Institute (IDM) was established in 1971 It was designed to provide subsidized credit for financing municipal public works, for technical assistance and for training of municipal staff Until the fall of Stroessner, IDM had received loans from USAID, IDB and KFW of Germany for US $15 million, which were used to fund 900 projects throughout the country Typically the loans were used to construct town halls, multi-purpose centers, markets, slaughterhouses and bus terminals At present IDM's lending capacity is drastically reduced As has happened in other countries, IDM as a municipal credit institution has encountered major problems in recovering its loans to municipalities and in being responsive to local training and technical assistance needs

GTZ of Germany has helped IDM with its technical assistance and training work for municipalities in recent years IDM's training materials are excellent and cover the whole range of municipal functions and local development needs IDM has created a regional electronic-based data system (*Red Ambiental Urbana-America Latina y el Caribe*) for sharing information on improved systems to provide basic public services. The future of IDM depends very much on three key areas

- strengthening its service mentality,
- expanding its technical assistance and training activities for interior towns, with emphasis on local revenue generation and public service delivery systems, and,
- on obtaining new lines of credit for on-lending to the municipalities for priority local public works

The Ministry of Health has taken the lead among the central ministries in seeking to decentralize its services It has developed a proposed "National Health System" which would seek to

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decentralize the administration and financing of the system and tie its programs more closely to community needs as expressed through local participation AID, PAHO and other international agencies have helped with the process The system will be coordinated at the departmental (field) level, under each governor's secretary for health AID is helping fund a pilot decentralized health program in four departments Central, Paraguari, Cordillera and Guaira The goal is a health delivery system controlled and implemented by the local community and increasingly funded by that community's own resources

Similar programs to decentralize the administration of central ministry activities are taking place in education and public works Since in the vast majority of Latin American countries, water supply is a municipal function, another possible program could direct itself to the national water and sewer systems There are two systems at present CORPOSANA which serves communities of 20,000 population and above and SENEPA, a Ministry of Health program serving rural communities of less than 4,000 Many towns fall between these two limits which leaves them without strong support for developing their water systems

The "municipalization" of CORPOSANA certainly is a useful prospect for Paraguay to consider A key figure and advocate in these discussions to decentralize further functions to the municipalities is

Deputy Mario Jose Esquivel Bado, President of the
Commission on Municipal and Departmental Affairs
The Congress
Avda Republica & Chile
Tel 450-401, FAX 447-978

Private Sector Support

Several private research groups, including the Center for Democratic Studies (CED), have been active in recent years in furthering the national dialogue on decentralization and municipal development Their publications and fora have focused attention on the possibilities for municipalities to play a broader role in local democratic development and in contributing to national economic and social betterment CED has provided public policy planning support to the Central Department for the area around Asuncion Their director, Esteban Caballero, has an excellent grasp of the democratization and decentralization processes in Paraguay and it can be anticipated that he will be a major contributor to the success of these processes in the future

The Paraguayan Center for Sociological Studies (CPES) is also working with the Central Department to strengthen its contacts with local community groups and to ensure that its programs are responsive to local needs and priorities With the assistance of the Swiss Government, the Central Department has prepared and distributed a civic education teaching aid called "*El Estado Paraguayo*" with a similar view toward strengthening local participation in local government Special attention is being given to the decentralization of health services

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DECIDAMOS has done an excellent job in civic education and in studying the needs of local communities and their relationships to local government Their analysis in "*Problemas Municipales y Propuestas Vecinales de Solucion*" points out the need for attention to basic services (water, electricity, sewers, garbage disposal and street cleaning) and local public works (streets, roads and bridges) by the municipalities in cooperation with central agencies

Political parties also organize municipal development activities from time to time For example, while the study team was in Paraguay, the youth group of the Liberal Party organized a five-day seminar on municipal planning, development and administration Senior municipal officials from various parts of the country participated as seminar leaders Young candidates for municipal office in the 1996 elections were special invitees

U.S. Official Programs

Both AID and USIS have made significant contributions to the democratization process in the public sector These contributions are listed below

- Support for the documentation work of the *Centro de Analisis y Difusion de Economia Paraguaya* (CADEP) which publishes an "*Hoja Economica*" summary of economic news

- Support for policy analysis in promotion of a free social market economy by the *Centro Paraguayo para la Promocion de la Libertad Economica y de la Justicia Social* (CEPPRO)

- Support for the democratic initiatives work of the *Centro de Estudios Democraticos* (CED)

- Use of the LAC/RHUDO Regional Local Governance Project to support seminars and studies supportive of decentralization

- Use of the Decentralized Health Services Project to build increased capacity in financial management at the departmental and municipal government levels

- Response through USIS to inquiries in such areas as the role of state governments, legislative reform and the operations of the Office of the Vice President

- Visiting USIS-sponsored experts/speakers on subjects such as contracting by municipalities and economic reform strategies

- The USIS international visitors program through which senior Paraguayan officials have been sent to the U S to study local government operations and decentralization systems

- A sister city relationship established between the Municipality of Asuncion and Miami-Dade County in Florida

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Other Donors

Inter-American Development Bank

Major projects have been proposed or initiated for support of Public Sector Modernization and for Municipal Strengthening The proposed public sector project will focus primarily on the legislative and judicial systems with secondary attention to the Office of the President and its relation to the legislative process

The $18 million IDB municipal program working through an executing agency in the Ministry of Interior has as its goal to support the decentralization of the public sector in Paraguay The IDB municipal program will finance urban property cadasters ($11 million of the total), provide technical assistance and training for local government staff, and, review legislation to strengthen the financial base and the planning and administrative capacity of municipal governments It will also finance preinvestment studies The project will be administered by a committee including representatives of OPACI, AMUAM, and the Municipality of Asuncion

The first phase of the IDB-GOP program will seek to define the role of the departmental governments and consolidate the basis for municipal governments to become economically solvent and able to accept credit for infrastructure projects to be financed in a possible second phase of the program The IDB proposes to help strengthen the training and technical assistance capacity of IDM, but to place any follow-on funding for lending to municipalities with other financial institutions This important project will place IDB in the lead among the donor community in supporting local government development

Other donors should coordinate their local government improvement efforts closely with this project The project coordinator for the IDB is

Ing. Luis Linares
Edificio Aurora
Calle Caballero
Tel 492 061

World Bank

The World Bank is considering the possibility of grant-funded technical assistance to address public sector reform questions They are also considering the establishment of a public information center which would give Paraguayans access to World Bank social-economic data Their primary activities in recent years have been a rural property cadaster, rural water systems, road construction and private sector development They are anticipating approval of projects in natural resources protection, sewer construction in Asuncion, health, and secondary education.

UNDP

The UNDP has provided short-term assistance on the organization of the Office of the President It also has a continuing concern for the improvement of public sector management It is discussing, for example, assistance to the Controller General's office It has worked, with limited success in the area of civil service reform and in financial management with the Ministry of Finance and the Central Bank

GTZ (German Technical Assistance)

The GTZ has provided major support for several years for the technical assistance, training and outreach activities to municipalities of the Municipal Development Institute (IDM) It has helped in the preparation of outstanding training materials on municipal administration and community self-help activities It also supports an international information network on municipal management problem-solving techniques based at IDM A key contact in this process with an excellent vision of the positive role which IDM can play in local government development is

Ing Robert Salinas
Coordinador GTZ
Instituto de Desarrollo Municipal
Ygatimi No 705
Asuncion
Tel 490-012, Fax 442-079

German Foundations

Hanns Seidel Assists with the publication of the thoughtful quarterly *Propuestas Democraticas* It has also been supportive of the work of the GTZ at IDM, with the training of departmental staff members, and with educational development work at the National University, including the Center for In-Service Training (CAES)

Conrad Adenauer Supports the free market development work of the *Centro Paraguayo para la Promocion de la Libertad Economica y de la Justicia Social* (CEPPRO) It also works with the CIDSEP legal reform group at the Catholic University and trains trade union leaders in the art of negotiation

Japanese International Cooperation Agency

JICA has supported environmental improvement, garbage disposal, urban traffic management and transportation development for the Municipality of Asuncion The Paraguayan Japanese Center has actively promoted concerts, workshops and other cultural events in cooperation with the Municipality of Asuncion JICA has also supported many local community development projects in other municipalities

Spanish Assistance

The Spanish international assistance program has supported urban planning work for the Asuncion region As part of the commemoration of the 500th anniversary of the arrival of the Spaniards in the New World, Spain has been involved in several historic preservation projects in Asuncion and at the Jesuit missions

3. Constraints

The consultant does not underestimate the considerable progress which has been made in public sector reform since 1989, especially in setting the bases for decentralization and increased popular participation in governance, but significant constraints remain These constraints and the underlying conditions that contribute to them follow

Tradition of Centralization

- The continuing belief that the allocation of scarce resources can best be done by central--wiser and more easily controlled--authorities
- "*Caudilismo*"--the tradition of strong personal political leadership rather than broad participatory decision making
- Lack of separation between party and state--a carryover from the times when the Colorado Party was the State
- Participation or threats of participation by the military in civil, democratic governance

Bureaucratic Inefficiency

- Widespread political favoritism and nepotism in the management of the public sector
- Continuing corruption through the use of public office for private gain

Weakness of Local Government

- Lack of adequate human and financial resources at the departmental and municipal levels to provide basic public services
- Lack of strong, active municipal associations and supporting public and private municipal development programs
- Conflicts in some cases between the newly created departmental governments and the municipal governments over their respective roles and responsibilities

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- Multiplicity of small units of local government which lack the economic basis to support vital local public services

4. Proposed Actions

Control of Corruption

- Strengthen the capacity of the judicial system to prosecute corruption within the public sector. A few newsworthy convictions may be worth a thousand educational campaigns All donors should work together on this politically-sensitive issue

- Support programs to increase public awareness of efforts being made in other countries to control corruption It is well to know that others are trying to control corruption in all of its forms Various donors could sponsor informational visits of governmental groups which are key to controlling corruption, such as the Controller General's office, as well as NGOs and the press

- In cooperation with responsible Paraguayan groups, sponsor periodic seminars for the media on the techniques of investigative reporting An active, investigative press is a prime instrument to focus attention on corruption and hopefully to bring it under control USIS should be encouraged to continue its work in this field

- Support administrative rationalization to provide simpler, more transparent public sector work methods Corruption thrives on complexity and hidden systems The UNDP and the GTZ should be encouraged to support Paraguayan efforts in this area

Civic Education

- Encourage and support efforts by private civic education groups to broaden popular participation in the political process (in addition to voting) at all levels of government Private voluntary groups, such as CED, DECIDAMOS, *Mujeres para the Democracia*, and CPES provide the best means to further local democratic participation on a continuing basis. All bilateral donors and private assistance groups should be encouraged to support civic education in Paraguay In an area as important and extensive as popular participation, duplication is of no concern

- Support efforts to discuss and gain consensus on the proper role of the military in a democratic society Security is a legitimate need of all societies, so too is the need for a civil society directed by popular participation, not by military intervention This complex issue can perhaps best be handled by NGOs But because it is difficult does not mean that it should not be addressed by the development assistance community

Supporting Decentralization

- Encourage the continuing decentralization of appropriate central government programs to the departmental and municipal government levels, such as is being done by the Ministry of Health Extend this effort to education, public works and water and sewer systems when feasible An important part of this effort is the continuing process of defining the role of the newly-created departmental governments and their relationship to the municipalities All donors, but especially the international banks, should be encouraged to consider the decentralization of the administration of their development projects to the departmental and municipal levels

A key resource person and specialist in Paraguayan democratic decentralization is

Andrew Nickson
Development Administration Group
University of Birmingham
Birmingham B15 2TT UK
Tel 021-414-4987, FAX 44-21-414-4989

- Strengthen local government finance This key aspect of decentralization needs continuing attention The current IDB work with urban cadasters is a major investment and should serve to provide a better base for the municipalities in collecting property taxes Other approaches need to be explored by all assistance agencies, including IDM, AID and the GTZ Local government in Paraguay will never succeed in expanding local services and meeting local needs without additional revenue raised locally plus funds received as transfers from the central government This effort deserves creative and energetic support

- Strengthen the organization of municipal associations at the departmental and national levels through technical assistance and motivational seminars These associations have the best chance to provide the basis for voices to be heard from below in support of decentralizing services and providing the resources to organize to meet local needs through local institutions Consider the revitalization of OPACI, combining AMUAM and the regional municipal associations into OPACI as an umbrella group IULA (the regional local government development group based in Quito) should be encouraged to take a leadership role in this area with the support of RHUDO, Canadian assistance, the European Community, IDB and the World Bank

- Enable the municipal associations to observe the work of relatively successful systems such as those of the Brazilian, Chilean and Ecuadorian municipal associations Associations provide the best means for sharing experiences in solving common local problems and in motivating local officials to experiment with innovative systems IULA again can take a leadership role in arranging these visits with the support of international

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agencies IBAM (the Brazilian municipal development institute) can also be very helpful in these arrangements as well as in the interchange of technical materials for the improved management of local finance and municipal services Key contacts in this process are

Lic Jaime Torres Lara
Secretario General, IULA
Casilla 17-01-1109
Quito, Ecuador
Tel. 593-2-469-365; FAX 593-2-435-205

Prof Diogo Lordello de Mello
Special Advisor for International Affairs
IBAM, Largo IBAM No 1
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Brasil
Tel. 021-2666622, FAX 021-537-1262

Conclusion

The timing is right for the donor community to support decentralization and public sector management effectiveness in Paraguay Expectations are high Local government provides the basis for increased grass roots involvement Local revenue may be there if the IDB cadaster effort is well implemented The legal provision for local autonomy and direct election of local officials exist If a sense of accountability between the mayor and the constituency can be brought about, together with improved management and delivery of services, a basic building block of democratic process will have been put in place in a country that has never experienced real democracy

Moreover, improved social services--and, therefore, citizen well-being--will require stronger and more responsive local governments If local governments are not up to these challenges, the national level structures alone will not be able to sustain the continued maturation of democracy in Paraguay

Suggested strategies include

- Continuation of a policy dialogue at Congressional and Executive branch level on the importance of decentralization and public sector reform, using technical assistance, professional interchange, foreign visits, sponsored workshops, and coordination of efforts among the donors

- Strengthening the municipal and departmental government associations through the use of IULA in Quito and contact with the local government associations in Brazil, Chile and Ecuador

- Support of training for local government improvement The needs here are so enormous that there is no danger of overlap among the donor programs Emphasis should be given to demand- driven training, i e training that is determined by the individual local governments not by the top-down approach of the training organizations

Attachment A

PEOPLE INTERVIEWED

Public Sector

Josefina Lovera de Arce, Secretary of Education, Paraguari Department
Oscar Arias Torreani, Technical Advisor to the Sub Secretary of Financial Administration, Ministry of Finance
Selya Acosta de Ayala, Secretary of Environment and Tourism, Cordillera Department
Alba Baruja, Mayor (intendente) of Paraguari
Eduardo Bogado Tabacman, General Coordinator, Planning Directorate, Municipality of Asuncion
Jorge Enrique Bogarin Gonzalez, Acting General Secretary, Municipality of Asuncion
Herminio Caceres, Governor, Paraguari Department
Vicente Cappello, Chief, Technical Cabinet, IDM (Municipal Development Institute)
Mario Augusto Chelli Z , Representative of the Cordillera Department before the Ministry of Public Works and Communication
Isidro Coronel Salcedo, President, IDM
Hector Diaz Britos, Member, Departmental Board of Cordillera
Roberto Dullak, Chief of Planning, Ministry of Health
Mario Esquivel, Deputy of the Congress, President of the Committee on Municipal and Departmental Affairs
Judith Abbate de Garcia, Assistant to the Secretary of Education, Cordillera Department
Deolinda Guzman, Secretary of Health, Cordillera Department
Salvador Invernizzi, Secretary of Agriculture, Cordillera Department
Raul Monte Domeq, Chief of Financial Planning and Foreign Cooperation, Municipality of Asuncion
Maria Graciela Ocariz, Department of Financial Cooperation, Municipality of Asuncion
Francisco Rivas, Governor, Cordillera Department
Gilberto Riveros, President, Departmental Board of Paraguari
Victor Rodriguez, Senator, Member of Committee on Municipal and Departmental Affairs
Maria Jose Rolon, Environmental Secretary, Central Department
Angel Sakoda, Private Secretary to the Mayor, Municipality of Asuncion
Roberto Salinas, GTZ coordinator at the IDM
Jose Luis Simon, Coordinator of International Programs, Paraguayan Center of Sociological Studies (CPES)
Luis Simon, Secretary of Public Works, Cordillera Department
Juan Jose Soler, Director General of Public Personnel
Andres Vidovich, Minister of Health
Luis A Wagner, Governor, Central Department
Olga Maria Zarza, Chief of International Relations, Municipality of Asuncion

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Private Sector

Juan Manuel Benitez, President, Liberal Party (PLRA)
Edwin Britez, ABC Color (newspaper)
Esteban Caballero Carrizosa, Centro de Estudios Democraticos
Jose L Caravias, CEPAG
Arnaldo Gutierrez, DECIDAMOS (Civic education PVO)
Jose Jimenez, DECIDAMOS
Tomas Palau, BASE Investigaciones Sociales
Hector Ramirez, Executive Secretary, OPACI (Municipal association)
Jose Luis Simon, Ombudsman for the newspaper Hoy and Coordinator of International Relations for the Centro Paraguayo de Estudios Sociologicos (CPES)

International Organizations

Pablo Alonso, IDB specialist in government reform
Juan Carlos Crespi, Assistant Resident Representative, UNDP
Nils Janson, Resident Representative, The World Bank
Luis Linares, IDB manager of municipal strengthening project
Wolf-Rudiger Luers, Representative, Konrad Adenaur Foundation
Oswaldo Pacheco, Acting Representative, IDB
Jose Soler, Program Officer, UNDP
Stefano Tinari, IDB specialist in legislative reform

US Embassy/USAID

Oscar Carvallo, AID Officer
Mark Jacobs, Cultural Attache
Alexander Margulies, Political Officer
Richard Nelson, AID Representative
Todd Sorenson, CHF Regional Representative
Karen Williams, USIS Officer

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Attachment B

DOCUMENTS CONSULTED

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ANNEX D

ELECTORAL SYSTEM

by

Marta Maria Villaveces

1. Overview

Although elections are not ends in themselves, the will of the citizen expressed by means of a ballot is an indispensable element of democracy An efficient and well-organized electoral system is important to the consolidation of democracy in Paraguay

The Electoral Code of 1990 and the 1992 Constitution establish the framework for the electoral system The electoral code provides for

- direct vote,
- presentation of independent candidates,
- proportional representation,
- possibility of establishing electoral alliances, and,
- prohibition of political and party activities by active members of the armed forces and police

The 1992 Constitution establishes that voting is a right, duty and a public function Article 273 establishes an Electoral Tribunal with responsibility for administering elections Voting is universal, free, direct, equal, and secret Ballot counting is public The system is one of proportional representation Voters must be Paraguayan citizens and at least eighteen years of age

The President and Vice President, members of Congress, Governors, and members of Municipal Councils are elected simultaneously for five-year periods The President and Vice President may not be re-elected The Mayor and the Members of the Municipal Councils are elected simultaneously in all districts for five-year periods, but these elections are held in the middle of the presidential term of office

A system of proportional representation is used for elections to the Legislature Senators (currently 45) and deputies (currently 80) are elected according to lists presented by parties and political movements, the only organizations permitted to present candidates

2. Progress

Since 1989, Paraguay has had four elections· the election of the President and Congress in May 1989, municipal elections in May and June 1991, election of the National Constituent Assembly in December 1991; and the election of the President, Congress and Departmental Governments in May 1993 In these last elections in 1993, registered voters totalled 1,700,000 and 70% participated

The holding of these elections was an important step forward in the democratic transition While there were some irregularities, these elections have generally been accepted as valid and legitimate International observers, including former President Carter, pronounced the 1993 elections the freest and fairest in the country's turbulent history

An electoral code was approved in 1990 The Constitution of 1992 establishes a new Electoral Tribunal These are important steps but much work remains to be done to make the new system functional

The National Democratic Institute and National Endowment for Democracy have helped DECIDAMOS in voter education and assisted in the parallel counting of the vote in the 1993 elections

3. Constraints

The principal factors and problems constraining progress in improving the electoral system are

- Lack of credibility of electoral system The issue has its roots in Paraguayan history Stroessner's dictatorship was always accompanied by a facade of democratic legitimacy Every four years elections were held and the dictator was declared president with 90% of the votes The dictatorship was based on a fraudulent system with the Colorado Party as its main operator That experience is so embedded that political parties of the opposition cannot conceive that the party in office, still the Colorado Party, will not engage in some kind of fraudulent activity The lack of credibility extends to the institutions administering the electoral process

- State-Colorado Party fusion Because most public sector officials are Colorado Party members, opposition parties cannot trust the impartiality of, for example, the Department of Identification of the Police, in charge of issuing the identification document used to vote, or legal verdicts issued by the judiciary Involvement of the military in the electoral process, given its ties with the Colorado Party, has also been a problem for the electoral process

- Needed legislation Legislation to implement the electoral provisions of the 1992 Constitution must still be approved by Congress Legislation is needed to define the jurisdiction and role of the electoral bodies and the mechanics of the electoral process itself With municipal elections scheduled for 1996, this legislation is urgent

4. Proposed Actions

- Civil Registry A good civil registry is essential for an updated and accurate voter registry However this is difficult and expensive to achieve. Paraguay currently envisages a civil registry dependent on the Ministry of Justice and Labor, while the paperwork and issuance of identification cards is the responsibility of the police The voter registry is the responsibility of the electoral authorities Experience has shown that it is advisable to combine these two registries and the issuance of identification documents in the same body if and when the civil registry is updated

An IDB program under discussion with the government includes a component to improve administrative organization and management of public registrations and the civil registry

- Voter Registry A board made up of representatives of political parties, the executive, and Congress is working on amendments to the electoral code This board must decide if the list of voters is to be totally renewed or if the existing list is to be updated Preparation of a new voter registry depends on preparation of a new civil registry which would be too large and expensive a task at the present time It would be more appropriate for the near term to undertake improvement in the electoral lists through a national registration campaign

- Organization of the Electoral Process To maintain an efficient and transparent electoral process is a major undertaking requiring good organization, good management, and trained workers The Electoral Code is clear in laying out the steps to be taken when election results are questioned It is much less clear on how to organize the overall electoral process Neither the Electoral Tribune nor the legislators concerned are fully aware of the steps to be taken The 1993 elections observation team noted the difficulties in interpreting and applying electoral norms

Implementation of the Electoral Code provides the opportunity to fill gaps in the process Draft legislation now under consideration unfortunately does little to clarify the process and to define the specific roles of each organization in the process This area deserves the attention of the international community

- Civic and Voter Education. It is important to give support to civic education campaigns so that people know their civic and political rights and responsibilities Voter education campaigns prepare citizens to go to the ballot boxes aware of election participation procedures and the function they are fulfilling To reach as much of the population as possible, civic education campaigns should include use of the radio (because of the broad coverage of radio and its effectiveness in reaching illiterate voters) and materials and broadcasts in Guarani (for those who speak only Guarani)

Continuing training is also needed for officials involved in the election process NGOs such as DECIDAMOS, *Mujeres para la democracia,* and SUMANDO can play a key role in the training of both citizens and election officials.

International donors can usefully work with the legislature in supporting needed reforms in the electoral law They can also support the Electoral Tribune in planning and implementing the activities needed to improve the civil and voter registries and in training electoral officials

PEOPLE INTERVIEWED

United States Embassy/USAID

Alexander Margulies, Political Officer
Karen Williams, USIS Officer

Tribunal Supremo de Justicia Electoral

Carlos Alberto Mojoli, President
Ramirez
Expedito Rojas

Centro de Estudios Democráticos, C&D

Esteban Caballero Carrizosa, Director
Alejandro Vial, Project Director

Centro Paraguayo de Estudios Sociológicos, CPES

Domingo Rivarola, Director
José Luis Simón, Coordinador

Centro de Estudios de la Realidad Paraguaya
Carlos Mateo Balmelli, Director

Congreso Nacional

Juan Carlos Ramírez Montalbetti, Diputy

Comisión de Codificación y Legislación Electoral

Marcelo Duarte

Decidamos

José Jiménez, Director
Arnaldo Gutiérrez
José Carlos Negotiation
Humberto Ayala
María Julia Garete
Juan Boch

Sumando

Astrid Gustafson, Executive Director
Yule Boggino de Mojoli

Adenauer Foundation

Wolf Rodinger Leiers

Banco Interamericano de Desarrollo

Stefano Tinary
Raúl Baginski
Oswaldo Pacheco
Pablo Alonso

Diario " Noticias"

Carlos Martini

Diario "ABC"

Edwin Brítez

Partido Liberal Radical Auténtico

Juan Manuel Benítez Florentín, President

Plan y Control- Análisis de sistemas.

Luis Cáceres, General Manager

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ANNEX E

CIVIL SOCIETY

by

Marta Maria Villaveces and David Jickling

1. Overview

Civil society is organized social life that is voluntary, self-generating, independent of the state and bound by a set of shared rules It provides the social underpinnings of a democracy, including the activities of individuals and groups as they pursue their public purposes with the state in ways other than seeking formal power or public office Civil society is thus an intermediary entity between the private sphere and the state

In a democratic state, the civil society provides limits and controls on the state Through organized public opinion, it guides political decision-making When successful, it sets the rules of the game tolerance of the views of others, moderation in the search for policies and practices acceptable to a majority, with respect for the rights of minorities Values such as these make up the political culture of a people

In 1989, after more than fifty years of authoritarian regimes, Paraguay began the process of transition to democracy Most informed Paraguayan citizens agree on the need to construct a representative democracy characterized by a separation of the three powers of government--legislative, executive and judicial, periodical elections--free, fair and pluralistic, freedom of association, information and respect for human rights This is not to ignore the fact that many other citizens live out their lives with little concern for these values For them, their family and earning a living are all-encompassing Community involvement and political activity are minimal

The political system established in 1989 opened the doors for the functioning of political parties, for the organization of NGOs, for the expansion of a free press, for the formation of free labor unions; for freedom for university research and teaching, and for other aspects of an effective, free civil society

Nongovernmental Organizations (NGOs)

In the period since 1989, non-governmental organizations (NGOs) have proliferated in Paraguay Previously they had operated, if at all, in a reserved, almost clandestine manner Many had been church-related Now they enjoy the respect and attention of the government and society They provide ready access for international agencies which seek to help build a stronger civil society in Paraguay

In the preparation for elections, NGOs played a vital role They developed many civic education programs, prepared attractive pamphlets, and trained electoral personnel In the 1993 election the NGOs organized a parallel computer-based tabulation of the election results

NGOs have played a major role in providing opportunities for women to play a larger role in the civil society Women have filled more than 30% of the positions as directors and board members of the NGOs NGOs have been active in environmental concerns, in rural development, in education, in child and maternal health and in drug abuse prevention

One of the most important functions of the NGOs in relation to the civil society has been investigation of public issues and publication of discussion While universities have continued to be weak in sponsoring social research, the NGOs have taken the leadership in studying social issues and in organizing seminars and discussions to influence public opinion and public policy on social, economic and political reform A recent survey by the *Centro de Informacion y Recursos Para el Desarrollo* (CIRD), showed that over 20% of all NGOs are involved in investigation, 18% in project implementation, 16% in training and 12 % in consulting

Media

The media tends to be controlled by the business elite and to reflect their views and values Radio, TV and the press in many cases are in the hands of the same small groups Since the fall of Stroessner, there has been a major expansion of the role of the press in overseeing governmental affairs and in shaping public opinion Two schools of journalism at the university level provide the base for improvement of the media However, much remains to be done toward creating an effective, responsible press able to play its full role in a modern democratic state

Major constraints impeding the media in playing its full role in creating and supporting a civil society include

- The relative inexperience of the press and low pay for investigative reporting
- Need for increased professionalism and improved journalism training at the university level
- Problems with the telecommunications controls of the national telephone agency, ANTELCO, have prevented access to international information services such as Internet and its enormous data/information base, not now available to the media

USIS supports the professionalization of the press through its seminars and international visitor program. Since 1989, the USIS Latin American Journalism project has focused on developing democratic attitudes and skills among journalists in Central America which are responsive to development needs

Unions

During the long Stroessner dictatorship, independent trade unionism developed slowly in Paraguay Since 1989, the Unitary Confederation of Workers (CUT) has become an important catalyst for popular action at the grassroots With 50,000 members, CUT is the largest trade union Its aim now is to make labor a full participant in civil society through giving working men and women effective representation in government councils in addition to representation at the bargaining table

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The CUT seeks to represent Paraguayan labor on a regular basis in MERCOSUR negotiations on regional economic integration It also seeks to expand its membership and its role in national debates on social, political and economic reform issues--i e in the civil society

Other unions include the Paraguayan Confederation of Labor (CPT) which is closely allied with the government and the Colorado Party and a smaller independent National Confederation of Labor (CNT) Together the unions represent less than 10% of the labor force, but through the control of strategic points in the economy, such as the airport, bus service, and the Itaipu hydroelectric plant, their power is considerably greater than these numbers indicate

The goals of the labor movement include the elaboration of an acceptable, new labor code and a continuing dialogue with management on productivity, working conditions, quality control and apprenticeship programs It seeks to establish a labor-management center at the Catholic University and to expand the number of collective contracts in both the public and private sectors

Union organizers do suffer at the hands of private employers who may fire them Their recourse through the courts is so slow that they can be out of work for a very long time Lack of speedy recourse of labor increases the power of employers to resist organization of their workers Union leaders have used the trade union movement to successfully move up in the political process

Through the American Institute for Free Labor Development (AIFLD), USAID has been supporting the development of the Paraguayan trade union movement

Universities

Paraguayans generally recognize the role which education at all levels must play in their future development Yet education was severely blighted during the Stroessner period and so far only modest progress has been made to correct the years of neglect The two principal universities--the National and the Catholic--are hampered by a lack of adequate funding and trained instructors The social sciences were particularly hard hit by Stroessner Political science and sociology as academic disciplines were essentially eliminated History as a subject was ignored

For years budgets for higher education have either been flat or actually declined Faculty salaries have eroded to the point where it is virtually impossible for professors to teach full-time Library collections are outdated and university-funded research almost non-existent Although political repression has disappeared, the chronic lack of resources and the enforced isolation in which Paraguayan academics have long labored combine to ensure that the building up of competent institutions of higher learning will be an effort of many years

Since the coup of 1989, the academic community has begun to look outward to establish contacts with colleagues in other countries At present, formal university affiliations exist between two U S universities and the National University New Mexico State University and the National University recently renewed ties that had withered under the Stroessner government The University of Kansas has a program in human ecology with the National University funded by

the Kellogg Foundation A joint MBA program, initially funded by USAID is offered by the Catholic University and the Central American Institute for Business Administration (INCAE)

Some encouraging progress is being made in higher education Both of the major universities have opened branches in interior cities Steps are being taken to develop graduate courses Young faculty members in disciplines like sociology have begun to renovate their curricula and actively to recruit students In addition, some small universities have sprung up and appear to be thriving Although their courses of study tend to respond to local market needs--business administration and computer science are mainstays--the institutions are ambitious and dynamic and are certain to play a role of increasing importance as they gradually expand their reach

2. Proposed Actions

- Support NGOs in their work in democratic development, including judicial reform, legislative development, voter education, local government development and all aspects of civic education

- Continue to support the work of AIFLD with the labor movement

- Consider support for university programs related to democratic governance and investigative journalism, with special emphasis on scholarships for advanced studies abroad for faculty members

- Support efforts to provide broader access to INTERNET

ANNEX F

POLITICAL PARTIES

by

Marta Maria Villaveces

1. Overview

Dictatorial governments, by their very nature, preclude any kind of pluralism Although opposition parties existed previously, until the downfall of Stroessner's regime, Paraguay did not enjoy a democratic political party system which could channel the will of citizens to the centers of political decision-making

During more than four decades, the Colorado Party and the supporting armed forces governed Paraguay A system of power based on the integration of the party, armed forces and government was established with the General-President Stroessner at its center Through the use of repression, patronage and authoritarian power, Stroessner managed to consolidate his regime with the Colorado Party During his rule--1954-1989--no other party had any possibility of participating in political power

The Authentic Radical Liberal Party (PLRA) was created in 1977 as a division of the Liberal Party Its parent Liberal Party controlled the government from 1904 to 1936, and from 1937 to 1940 The Liberal Party was dissolved in 1942 by General Higinio Morinigo and then reconstituted in 1962, when Stroessner called on the Liberal and Febrerista Parties to play a peripheral role in the political system

In 1962 the Liberal Party was divided into two sections Liberal Party and Radical Liberal Party The latter party was further divided in 1977 when the Authentic Radical Liberal Party emerged on the basis of its refusal to continue giving legitimacy to the dictatorship by participating in the political process After the 1989 elections the Radical Liberal Party joined the PRLA

The Revolutionary Febrerista Party (PRF) emerged in February 1936 when disappointed veterans of the Chaco War organized a coup d'etat against President Euseio Ayala Between 1936 and 1937, the Febreristas governed Paraguay During Stroessner's time they were considered the real opposers of the regime, and they sabotaged national and municipal elections in 1968 and 1988 This party is affiliated with the International Socialist movement

The Christian Democrat Party (PDC) and the Liberal Party (PL) also participated in the May 1989 elections, while the Worker's Party (PT) requested a blank vote from its members The Democratic People's Party (PAPACO) emerged at a later date, as did the Paraguayan Communist Party (PCP), which had been underground during the Stroessner period

The two biggest politic parties the National Republican Association (ANR or Colorado Party) and the Authentic Radical Liberal Party, have dominated Paraguayan history since last century. In the 1989 elections, the Colorado Party and the PRLA obtained 94% of the vote for President and Congress In the municipal elections, both parties presented candidates for each eligible post and obtained 76% of the vote The Febrerista Party presented candidates for only 35 municipalities and obtained 3% of the vote for mayors and 4% for members of City Councils In the 1993 elections, the two parties obtained 72% of the votes for President and 78% of the vote for the Senate

As a result of the initiative of entrepreneur Guillermo Caballero Vargas, an independent movement, the *Encuentro Nacional* (EN), was organized to run candidates in the general election of 1993 Its promoter was a Presidential candidate in the 1993 elections, obtaining nearly 40% of the vote in the capital and 23% of the vote at the national level Their list of senators obtained 27% of the vote in the capital and 17% of the vote nationwide

The *Encuentro Nacional* defines itself as a Social Democratic party It encompasses a segment of the population that does not identify with the two traditional parties Its support is concentrated mostly in Asuncion among youths and the middle-aged

The new Electoral Law accepts the presentation of independent candidates for all eligible posts They have become the principal challenge to the traditional two-party system Independent candidates have emerged for example in the *Asuncion Para Todos* (APT or Asuncion For All movement) headed by Carlos Filizzola who was elected Mayor of the capitol city in 1991

Another important development in the political party arena is the emergence of movements within traditional parties These movements are more inclined to the struggle for power and posts than to ideological and programming differences The Colorado Party is subdivided into many groups, of which two prevail

- One of President Wasmosy's sympathizers has a movement encompassing the *Coordinadora Campesina* (Peasant Coordinator), the *Tradicionalist* (Restorer), and the *Tradicionalismo Democratico* (Democratic Traditionalism), and,

- Headed by Luis Maria Argana, *The Movimiento de Reconciliacion Colorada* (Colorado Reconciliation Movement), with closer ties to the military

The PLRA includes four movements

- *Cambiao para la Liberacion* (Change for Liberation) headed by Domingo Laino,

- *Movilizacion Popular para el Cambio* (People's Mobilization for Change) headed by Miguel Abdon Saguier,

- *Integracion y Apertura* (Integration and Opening) headed by Carlos Alberto Gonzalez, and,

- *Encuentro Permanente de Bases or Linea Progresista* (Permanent Encounter of Grassroots or Progressive Line)

In the PRF, there are two blocks including different groups the 17 of February Coalition and the Rafael Franco Multisectorial group

2. Progress

The political opening and respect for human rights and liberties brought on by the 1989 coup, the adoption of a new electoral code and the 1992 Constitution have provided a framework for political parties to function freely and openly in Paraguay While new parties, the *Encuentro Nacional* and *Asuncion Para Todos*, have emerged and extended their influence, the traditional Colorado and Liberal parties continue to dominate the political scene

Following victory by a combination of opposition parties in the Legislature in the 1993 election, fractions of all parties have agreed to seek agreement on key issues related to the democratic transition Agreements have been reached on establishing and appointing members to the Supreme Court, Judicial Council, and Electoral Tribunal. These examples of negotiation, compromise and power-sharing among the parties represent a significant move forward from the former political system of exclusion to a more open and participative one

The electoral code establishes the legal requirements for political party and movement constitutions as well as guiding their organization and functioning. Funding is provided by party member contributions, resources allocated by the state and other funding envisaged by states The law does not allow donations from foreign entities or persons, nor from entities or persons indirectly related to the state, nor from any multinational company The electoral code establishes the bases for state financing according to the different types of elections

ANNEX G

MILITARY

by

Marta Maria Villaveces

1. Overview

The military have intervened constantly in the internal politics of the country of Paraguay During the Stroessner dictatorship, those who would reorient the military were sent into exile, to jail, or to their deaths The overthrow of Stroessner was carried out by the military in the name of the dignity of the armed forces, not in the name of separating them from the political system

Stroessner was a master in the use of the armed forces to control the internal operations of the state To do this he created a "trilogy" between the armed forces, the Colorado Party, and the government The military today continue to be members of the Colorado Party All cadets must be members of the party before entering the military academy

The armed services under Stroessner also became involved in legal and illegal businesses Stroessner's successor, General Rodriguez, was one of the more successful of these "entrepreneurial" generals A factor in the coup of 1989 was conflict within the military over the exchange rates at the time, which enabled some to profit unduly from their business transactions

The result has been that the mission of the military has become fused with management of the political, economic, and social life of the country To separate the military from this involvement and define a new mission for them is essential for consolidation of democracy in Paraguay

2. Progress

The Electoral Code of 1990 prohibits military personnel from running for public office The Constitution of 1992 clearly is aimed at placing the military under civil control Article 238 states that the President is the Commander-in-Chief of the armed forces He cannot delegate this responsibility He names and removes the commanders of the armed forces.

An agreement of May 15, 1995 between the government and the military provides for steps to be taken to separate the military from participation in political party activity It reiterates the subordination of the military to the Constitution and to laws of the land It grants salary increases for the military and commits the military to move toward their professionalization and to focus their work on external security

3. Constraints

Civil-military relations continue as a major obstacle to democratic development Analysts point out that the armed forces initiated the process of change in 1989 The military claims credit for the fall of Stroessner and considers it a legitimation of their continuing position of prestige and privilege Their connection with the Colorado party and involvement in the economy and corruption appear as strong as ever in spite of their avowed commitment to institutionalize and depoliticize the military

It remains to be seen whether the May 15, 1995 agreement noted above will lead to the executive exercising greater real control over the military, including decisions over the promotion and retirement of officers, and whether it will also reduce the involvement of the military in economic activities Younger officers are ready and open for change But top commanders, conditioned for so long by the military's role to date in Paraguay, are a formidable obstacle

4. Proposed Actions

The military urgently needs to define a new mission and role for itself in Paraguay's rapidly changing society The goal should be an armed force organized on a professional basis and subordinate to the powers of the state, to the constitution, and to controls imposed by the legislature In a democracy, the mission of the military should be restricted to protecting the territorial integrity of the nation and to defending the legitimately constituted authorities

The U S. military, through its International Military Training and Education (IMET) program, seminars, subject matter expert exchanges, academy exchanges, joint exercises, and top-level commander visits, is attempting to promote professionalism, awareness of democratic civil-military relations, and respect for human rights in the Paraguayan military Funding for IMET programs rose from $75,000 in 1994 to $125,000 in 1995 and the U S military intends to maintain that level in future years Significant resistance has been encountered on the part of the Paraguayan army, in particular, to participating in some of these activities

USAID probably should not attempt to play a direct role with the Paraguayan military for practical and political reasons, but targets of opportunity such as sponsoring an in-country seminar with an NGO in the area of civil-military relations, or attendance at a program such as the one at American University, should not be overlooked

ANNEX H

SCOPE OF WORK

PARAGUAY DEMOCRACY ASSESSMENT

ATTACHMENT A

SCOPE OF WORK

I. Background

Since the dictatorship was overthrown in 1989, Paraguay has enjoyed a free press, active media, and human rights have improved substantially. Also, a new Constitution was promulgated in 1992, and Paraguay inaugurated its first civilian president in August, 1993.

Today, Paraguay continues its transition toward democracy and a market economy. The nation's democratic institutions, the Judiciary, the Congress, and the Executive Branch show signs of confidence and maturity.

The new Constitution calls for decentralized political systems and development. Mayors and governors are now elected directly by the people, but local government is young and inexperienced.

Considering that one of the USG's major policy objectives in Paraguay is to strengthen democracy, USAID/Paraguay is committed to help put in place the policy options and tools needed to solidify the democratic transition. In this context, in the last four years USAID/Paraguay and the Judiciary have been actively involved in programs related to training, court administration, revising laws, case load reduction, judicial career, and management information systems.

After these years of funding activities in this sector, this Mission needs to do a Democracy Assessment to refine its strategic objective in the sector and move ahead with the second generation of projects.

II. Purpose

The purpose of the assessment is to provide USAID/Paraguay with a comprehensive analysis of governance issues in Paraguay as they relate to USAID's country program strategy plans, and with recommendations for the Mission's future investments. It is also to explore options for the most effective use of assistance, better channeling of existing, and possible additional funding for governance within its portfolio of development assistance. The assessment will assist USAID/P to further its capacity to help Paraguayans achieve more effective governance in their pursuit of sustainable economic development and empowerment.

The assessment will:

- provide data and analyses useful for completion of those portions of the country strategy related to democratization and governance;

- identify constraints to progress in both economic development and the further political democratization of Paraguayan society and government;

- assess strengths, weaknesses, and effectiveness of US Mission's portfolio for improving the climate for democracy in Paraguay, with special emphasis on large projects;

- suggest areas of long-term support through which existing USAID/P projects and programs might promote solutions to governance constraints;

- suggest a conceptual approach through which USAID/P might identify new activities to further democracy and more effective governance as a contribution to Paraguay's achievements of sustainable development.

III. Focus

Following recently updated strategic approaches to supporting democratic governance both at the Agency level and in USAID LAC Bureau, this assessment shall concentrate on the following issues.

1. the growth of governance based on the rule of law, on assurances of basic human rights, and on a legal regulatory environment compatible with the development of commercial and non-commercial life independent of government;

2. The growth of institutions of government which are effective, accountable and responsive to public needs and demands;

3. the growth of a vigorous civil society, and of its capacity both to meet the needs of the Paraguayan people and to effectively express these needs to the holders of governmental authority;

4. the growth in capacity of the Paraguayan system of governance to resolve conflicts peacefully.

IV. Tasks

The following tasks are to be performed by the Contractor:

1. Within the broad objectives and focus of this assessment, the Contractor shall provide the following information, including, but no limited to:

a. governmental structures and processes, including:
- the organization and functioning of the executive,
- the bureaucracy and civil service,
- structures of decentralized administration,
- the legislature,
- the judiciary.

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b. legal underpinnings:
- informal legal norms,
- constitutional laws, framework laws
- implementing legislation,
- pre-existing decrees.

c. Institutions and legal structures of civil society, including:
- unions,
- youth groups, formal and informal, and student associations,
- employer and trade associations,
- producer and commercial associations,
- political parties,
- professional associations,
- religious and cultural associations,
- gender/women's groups,
- grass roots non-governmental associations,
- traditional authorities and hierarchies.

2. Leading to recommendations for specific emphases, approaches, and activities to further democratic governance, provide analyses and evaluate the state of the following processes:

a. functioning of the electoral system for free, fair, and competitive choice processes and determine the constraints on higher rates of participation in elections;

b. capacity of the government to formulate and implement coherent policies; development of transparency in government, and mechanisms for dealing with corruption,

c. strategies which the government is evolving to re-inforce legitimacy and maintain a functioning coalition, and the effects of these strategies on economic policy formulation and implementation;

d. capacity of the executive branch to decentralize public administration and be more responsive to non-state actors at each administrative level;

e. capacity of the legislature to initiate law, to debate and modify law proposed by the executive, and to represent constituency interests;

f. capacity of the judicial system efficiently to render fair and impartial judgements and functioning of legal advise of effective instruments for adjudicating claims and disputes;

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g. capacity of government to regulate and control potentially coercive services, and to reduce the use of extra-judicial force against citizens;

h. capacity of the media to request information and to provide it freely;

i. capacity of citizens to publicly express themselves in public meetings and in media without undue regulation and state sanctioned coercion;

j. capacity of non-state associations, including commercial interests, to freely associate, and to gain or increase their ability to communicate and interact with government;

k. proliferation of non-state associations and interest groups on social solidarity, on coalition formation, and on policy coherence specifically with regard to economic policies.

The intent of these analyses is to produce suggestions for enhancing the effectiveness of US efforts to foster governance, toward the empowerment of people and their exercise of freedom for meaningful participation in civic life and a democratic political system.

3. The assessment will include any other analytical issues deemed important to the realization of the objectives of this assessment.

V. Level of Effort

Because of the breadth of the task and the overlap of some research categories, the Contractor may propose to USAID/P the adequate mix of expertise required to complete all the assessment areas as stated in the Scope of Work, combining tasks of the team members shown below.

The team may be formed by as many as five persons as follows:

- democracy development expert (team leader)
- legislative strengthening expert
- local government/decentralization expert
- judicial reform and accountability/anti-corruption expert
- electoral systems/news media expert

1. Democracy Development Expert

Responsible for coordinating the activities of the team. He/She will develop the final document of the assessment, oversee the development of the assessment instruments, integrate the findings of different team members, and coordinate the preparation and drafting of the final reports.

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Requirements

At least five years of experience in program development and implementation activities, experience in managing multi-disciplinary teams, extensive experience in developing/implementing democratic institutions programs/projects in Latin America, competence in Spanish (FSI 3), ability to conceptualize and write clearly and concisely, advanced degree in a relevant discipline.

2. Legislative, local governance/decentralization, judicial reform and accountability/anti-corruption, and electoral systems/news media experts

Requirements

The other members should preferably have some familiarity with implementation, experience in management, and/or evaluation of democratic initiatives in Latin America, competence in Spanish (FSI 3), and an advanced degree in a relevant discipline.

VI. Reports

The team leader will be in charge of the preparation and submission of the draft and final assessment report as follows:

1. Table of contents

2. Executive summary

3. Body of the report including:

   a. purpose and scope of the assessment
   b. methodology
   c. findings, recommendations and conclusions. Schedule was revised

4. Three days before leaving the country, the contractor will submit a draft report and make an oral presentation of the assessment to the Mission Offices. Mission feedback will be given at the oral presentation. The Program Development Assistant will be responsible to gather and collect all Mission inputs and comments. The Program Development Assistant will provide the team with the Mission comments and inputs on the last day, prior to departure, to incorporate them into the final report, and if necessary, will be forwarded in writing to the contractor the following week.

5. Each of the team members will submit a separate report which the team leader will incorporate into the final report. The individual reports will be included as annexes.

6. The final report, including all comments and suggestions made by USAID/Paraguay, will be submitted within three weeks after the contractor leaves the country.

7. Ten bound copies and one un-bound copy of the final report must be submitted to USAID/Paraguay.

VII. Terms of Performance

The effective date on which this work will begin is on/or about March 20, 1995. The final report must be delivered to USAID/Paraguay no later than April 30, 1995.

About 6 weeks