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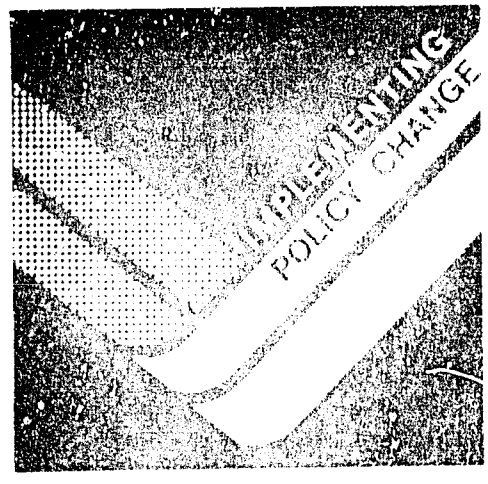
SUPPORT FOR JUDICIAL REFORM IN EL SALVADOR:
A Stakeholder Analysis

December 1992



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I. INTRODUCTION

A. Background

With the signing of the January, 1992, Peace Accords, a healing process was begun to unite Salvadorans in building a democratic society . In order to solidify the Accords, a sense of confidence in the legitimacy and openess of the new democratic system must exist in the myriad and often conflictive sectors of society. Essential to developing such a confidence is an impartial, efficient judicial system for resolving disputes among and between those sectors as they arise.

El Salvador's judicial system has been criticized for its lack of access, timeliness, fairness, and integrity. It is argued that a lack of leadership, a weak legal culture, and an absence of a consensus on the system's values and framework are the main factors underlying these problems. At the same time, conflicting and overlapping institutional mandates, underfunding, and the lack of both prosecutors and public defenders have contributed to the system's erosion and discredit.

Recent significant constitutional reforms and structural changes in the justice sector called for by the peace negotiations and subsequent Peace Accords provide an important opening to El Salvador's incipient justice reform movement. These include creation of a civilian police force, a more independent and representative court system, creation of the judicial career, and an enhanced role for the prosecution in criminal cases. At the same time, President Cristiani has also commited the government to comprehensive revision of the penal, criminal procedure, and criminal codes. Nevertheless, implementation remains a difficult challenge requiring the coordinated efforts of those within and outside the justice sector.

USAID will support efforts to expand, deepen and accelerate the process of judicial reform in El Salvador through its planned Judicial Reform II project. The project will have two main components: supporting Salvadoran leadership of the reform movement and strengthening institutional capacity to implement reforms.

This study will examine the positions and level of support of key stakeholders for the proposed GOES penal reform agenda, considered to be a key element in the ongoing reform process. The study will serve as input to ongoing discussions centering on the identification of individuals, groups, and mechanisms to assist in the implementation of the Judicial Reform II project.

B. Scope of Work:

USAID/El Salvador contracted the assistance of a consulting team through AID/W's Implementing Policy Change project to examine the feasibility and support for the current GOES reform agenda and to assist in the development of a coordinative mechanism to help manage implementation of the reform agenda. The team included a Senior Policy Change specialist and a lawyer.

The **original terms of reference** (Annex 1) called for the team to assist in the initial implementation of the Judicial Reform II Project by assisting the emerging justice sector working group to develop a strategic management plan for implementation of judicial reform. In developing the strategic management plan, the team was to follow the IPC project's strategic management approach with the justice sector working group. The team was also to explore alternative approaches for the Ministry of Justice and the Council of Law School Deans for developing effective working relationships with other institutions in the justice sector in order to improve the agenda for future legal and policy reform. This work was to be carried out over a series of three visits by the team and was to be concluded by the end of February, 1992. However, unforeseen circumstances have set back the date of completion.

At the time of team's arrival for its first assignment in San Salvador, the justice sector working group had yet to be organized; also, it had been decided that the Council of Law School Deans was an inappropriate mechanism for leadership of the justice reform process. Furthermore, there was a growing controversy over the nature and the timing of certain components of the GOES reform agenda which pitted the Minister of Justice against the Bar Association and other interests in the justice sector. In discussions with USAID officials, a verbal agreement was reached that the team's efforts should be modified to examine support for the proposed reforms, to examine the impact of that support on the proposed approach of the Judicial Reform II project paper, and to make recommendations for improving consensus and leadership for justice reform.

To accomplish this, the team carried out a stakeholder analysis that would: 1) determine the key individuals and/or groups affected by or with an interest in the proposed penal reform agenda, 2) determine the potential roles of stakeholder interests in either facilitating or blocking the proposed reforms, and 3) identify potential collaborators in the process from both within and outside the justice sector.

It was also agreed that depending on the results of the preceding analysis, decisions would be made regarding the structure of the remaining scope of work to be carried out under the current buy-in. Discussions will be held in early January in preparation for a second anticipated assignment to be carried out in late January or

early February.

C. Personnel

The study was carried out by a team of consultants from AID/Washington's RD/EID's Implementing Policy Change Project. The team members were Benjamin L. Crosby, team leader, Senior Policy Change Specialist, Director of the Implementing Policy Change Project and principal expert in stakeholder analysis; and Angel Interiano, a Salvadoran lawyer and Secretary General of the Instituto Centroamericano de Administracion de Empresas (INCAE). Dr. Interiano has extensive contacts throughout both the justice sector and the legal profession in El Salvador. The team would like to acknowledge the support received from the Office of Democratic Initiatives of the USAID Mission in El Salvador and from the law offices of Castaneda and Salinas in San Salvador.

The field research for this study was carried out during a two week period between November 11 and November 26, 1992.

D. Organization of the Report

The remainder of this report is divided into five sections. Following the brief introductory section, the report will discuss the approach and methodology used by the team in carrying out the stakeholder analysis. Section II addresses the methodology used and discusses the limits and constraints encountered. Section III briefly explores the political context for judicial reform under the assumption that a sympathetic environment for reform will help smooth the implementation process. Section IV examines the team's stakeholder analysis findings. It also discusses the findings of the micro-political mapping exercises carried out. Section V examines the conclusions that have emerged from the findings and briefly discusses implications of those conclusions for the implementation of Judicial Reform II. Finally, in the last section, the team proposes a set of recommendations and next steps to be taken both by the project and for the team's next visit.

II. METHODOLOGY

The principal methodology employed in this study is "Stakeholder Analysis". In order to enhance the findings presented by the stakeholder analysis, modified political mapping and force-field analysis techniques were also utilized. (Full descriptions of the techniques used can be found in Annexes 2 and 3) Briefly, the process used for this study was as follows:

A. Selection of Stakeholder Analysis Focus: Early on in conversations with USAID, it was decided that, given the time constraints and the breadth of issues contained in judicial reform, the stakeholder analysis should concentrate on the package of penal reforms contained in the Government of El Salvador Agenda for Judicial Reform (Annex 4), with particular emphasis on the five reforms listed in the USAID JRII project paper logical framework (including the right to legal representation before questioning, greater pre-trial release, increased use of jury trials, elimination of extra-judicial confessions, and a modified appeals process). The team was to specifically explore and try to zero in on the degree of support, opposition and indifference to the package being proposed by the Ministry of Justice. The team was also to examine implementation feasibility and attempt to pinpoint strategic concerns and issues for implementation of the penal reform package.

While the interview format centered on penal reforms, other issues, particularly reform of the court system, were also explored in a less structured manner. Although these reforms are not addressed in the GOES reform agenda, they were often cited as much more pressing than penal reform. Reform of the court system centers primarily on structural change aimed at reducing the authority of the President of the Supreme Court over the legal system and at improving the level of professionalism and capacity of the courts. Some issues included were elimination or modification of the CSJ's disciplinary authority over the legal profession, transfer of the CSJ's administrative authority to an independent body, administration of the court's budget by another agency, and an independent Consejo Nacional de Judicatura.

B. Selection of Interview Subjects: Given the time constraints of the assignment, only a limited number of interviews were possible. Efforts were therefore directed at opinion leaders and key government actors in the Justice sector. Sectors interviewed included government actors in the executive, judicial, and legislative branches, key political party leaders, non-government organizations, bar associations and the law schools. No attempt was made at multiple interviews within a particular organization, rather, it was decided that at least one representative of

important institutions within each sector be interviewed, in the hope of developing an initial, broad perspective. No attempt was made at systematic sampling except for the effort to include at least one interview from each important institution within each sector. It is expected that these will be supplemented by further interviews in the team's subsequent visits. A full list of those interviewed and their respective institutions may be found in Annex 5.

C. Stakeholder Analysis: A stakeholder analysis is designed to determine the particular interests and degree of support or opposition from actors with interests in a particular area. The stakeholder analysis utilized in this study roughly follows the methodology outlined in Annex 2. To obtain data, a questionnaire was designed (a copy of the questionnaire can be found in Annex 6) and applied in an open, but structured manner. Although designed primarily to provoke thought, the questionnaire also sought to extract data in four areas: 1) perceptions regarding the evolution, progress, priority, context, and leadership of reforms; 2) strength of support for and understanding of the reforms; 3) who supports and who doesn't, and degree of debate on reforms; and 4) specific interests of groups interested in judicial/legal reform. The results of the interviews were then compiled into a stakeholder table summarizing each group's interest, its support or opposition, and intensity of the group's support or opposition.

D. Mapping Judicial Reform: The stakeholder analysis, an extremely valuable tool by itself, is considerably enhanced when used in conjunction with other environmental analysis tools. To that end, modified "micro-political maps" (for complete description see Annex 3 were constructed in order to give a visual or graphic representation of support and opposition for judicial reform. Rather than using the standard categories of the political map, the categories were simplified to support and opposition, and groups were then arrayed to the left and right depending on the nature of their point of view and the strength of their support or opposition (figure 1, below). Two maps were constructed: the first to analyze support and opposition for the penal reforms specified by the GOES reform agenda; and a second to analyze support for court reform.

Both the stakeholder analysis table and the micro-political maps contain references to groups not interviewed in the stakeholder analysis; however, the team was able to get sufficient secondary information to be reasonably certain of placement of those groups on the map (these include the Armed Forces, the FMLN, and President Cristiani) The placement of those groups on the map and the summaries presented in the Stakeholder Table will be corroborated on subsequent visits.

figure 1

Micro-political Map

OPPOS.	NEUTRAL	AGREEMENT	NEUTRAL	OPPOS.
5	0	5	0	5

(groups arrayed according to type of group and degree of support or opposition to the reform)

government sectors

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political parties

---

pressure groups/other interests

source: authors

III. OVERVIEW: POLITICAL CONTEXT FOR JUDICIAL REFORM

Although the Chapultepec Peace Accords and other parts of the peace negotiation process consider judicial reform crucial, only two concrete actions are called for in the agreements: creation of the Consejo Nacional de la Judicatura and the creation of the Judicial Career. However, through the efforts of the Ministry of Justice, an agenda for justice reform has been prepared and is now in the early stages of implementation (Annex 4).

The political context for the implementation of these reforms is highly sensitive and complicated. Even if reform were carried out in a period of relative stability, the reform process would be a difficult one. Reforms are being attempted in the midst of disarmament, de-mobilization, and negotiation of the implementation of a series of measures which imply loss of power by major actors and the recognition of the legitimacy of groups who have been "the enemy" for over a decade. The polarization that has tipified El Salvador has not disappeared -- but it has become much less beligerant and more susceptible to negotiated solutions.

Judicial reform is generally recognized as being at the "heart of the peace process" but it is also recognized that it is also just one of many difficult issues that must be resolved for consolidation of the peace process. Indeed there are several other issues which take precedence over the problems of judicial reform but will also ultimately influence the outcomes of decisions on reform of the justice system.

El Salvador's political balance is in a state of flux. Old political roles are being modified, newer participants are trying to define their roles in the system, and there is an ongoing adjustment in terms of how the system's actors relate to one another. Formerly dominant groups are much less so, and former non-participants (ie., the FMLN) are now important participants in the civil system. What this mostly signifies is lack of control by any one group and the increasing importance of negotiating skills to achieve desired outcomes.

The above notwithstanding, the staying power of certain groups should not be underestimated. The formerly dominant coalition between the armed forces and the conservative (majority) wing of ARENA has now lost some of its potency and has been forced to cede on several important issues (eg., the purge of the military and the acceptance of a prolonged deadline for implementation of the Peace Accords.) Nevertheless, ARENA still maintains a majority in the Legislative Assembly which gives it (at least in theory) capability of managing much of the legislative outcomes of the peace accords.

With demobilization, the armed forces role has been diminished and modified. For instance, policing functions are no longer left to

the military. However, the process of creating new institutions to take over such functions has been extremely slow and has led to several problems. The new national civilian police force has yet to be created. There is a growing concern with security and a perception that common delinquency and crime has risen dramatically. The media as well as various organizations are calling for a stronger hand and greater government intervention to combat the increasing crime rate.

The armed forces has been vocal in its opposition to the findings of the Ad Hoc commission. This commission was established to review the human rights records of the military and to recommend which officers were to be transferred or purged. The Armed Forces has attempted to rally support from its long-time coalitional partners in the conservative wing of ARENA and others. This has caused greater tension and polarization as the deadline date for implementation of the accords approaches.

The role of the FMLN remains uncertain. Its early petition for inscription as a political party was turned down. The decision was made on the basis that the FMLN was to be fully de-mobilized before it can be accepted as a political party. But the FMLN does not want to give up all its chits while it perceives that the government is dragging its feet on complementarity. The announcement that the military would be deployed to "protect the coffee crop" did little to ameliorate the criticism by the FMLN on lack of complementarity in the Armed Forces demobilization, and will likely cause further delay in the FMLN's own demobilization.

Within the majority ARENA party, there appear to be two differing views on the approach that ought to be taken to implementation of the Peace Accords. One side continues to view the FMLN as a communist threat (and by various means is attempting to stall or modify implementation of the peace accords), while the other (minority) view favors legitimizing the FMLN as a full fledged political party and supports the faithful execution of the peace accords. Unfortunately, this places President Cristiani in the very difficult position of having to balance the interests of the two groups while at the same time consolidate ARENA's base of support.

Another element contributing to the climate of uncertainty is the problem of role definition and lack of institutionalization of key actors in the implementation of the peace accords process. Actors such as the Fiscal General and the Procurador General are to take on new roles but have neither the human nor the financial resources to do so. At the same time, full clarity of functions is either lacking or still being debated (eg., the location of the Crime Investigation Unit). The Legislative Assembly is being asked to decide on transcendent issues but it has only a very poor capacity for analysis and is only recently emerging from a perceived role of "rubber stamp". Mechanisms for internal debate and procedure are

often unclear and add to political tension. The lack of technical staff adds to delay of an already slow deliberative process of issues that need to be settled before other crucial elements of the peace accords implementation process can proceed.

Finally, 1993 will be an electoral year. While this does not mean that the government or the legislative process will come to a standstill, it does mean that debate on virtually any issue will have a much more partisan political tone. The need of each political party to consolidate its political bases and increase its visibility will mean that decisions on issues will be made more frequently on the basis of impact on party strength. At the same time, the government will be much less likely to risk its political capital on issues that are either highly politically charged, or which will have little payoff in accruing votes. Aside from this, the attention of important policy makers in government and in the opposition will be diverted from the task of reform to the task of organizing for the election.

The context for advancing the judicial reform agenda is indeed a difficult one. Those wishing to advance that agenda must keep in mind that apart from the controversial re-distributive aspects of reform, judicial reform must compete with other issues. In addition it will be difficult to maintain the attention of politicians more concerned with how the next election will go.

IV. FINDINGS:

The following discussion is broken into two parts: the first examines the degree of political support for both the penal reform package proposed by the GOES and for structural reforms to the court system. In order to more clearly show the degree of support and opposition for each type of reform, micro-political maps are presented and discussed. The second section dicusses some of the general findings that have emerged from the stakeholder analysis and interviews carried out. A brief summary of stakeholder interests, resources, general position on penal reforms, and intensity of interest in reforms may be found in the Stakeholder Interests and Positions table (Table One).

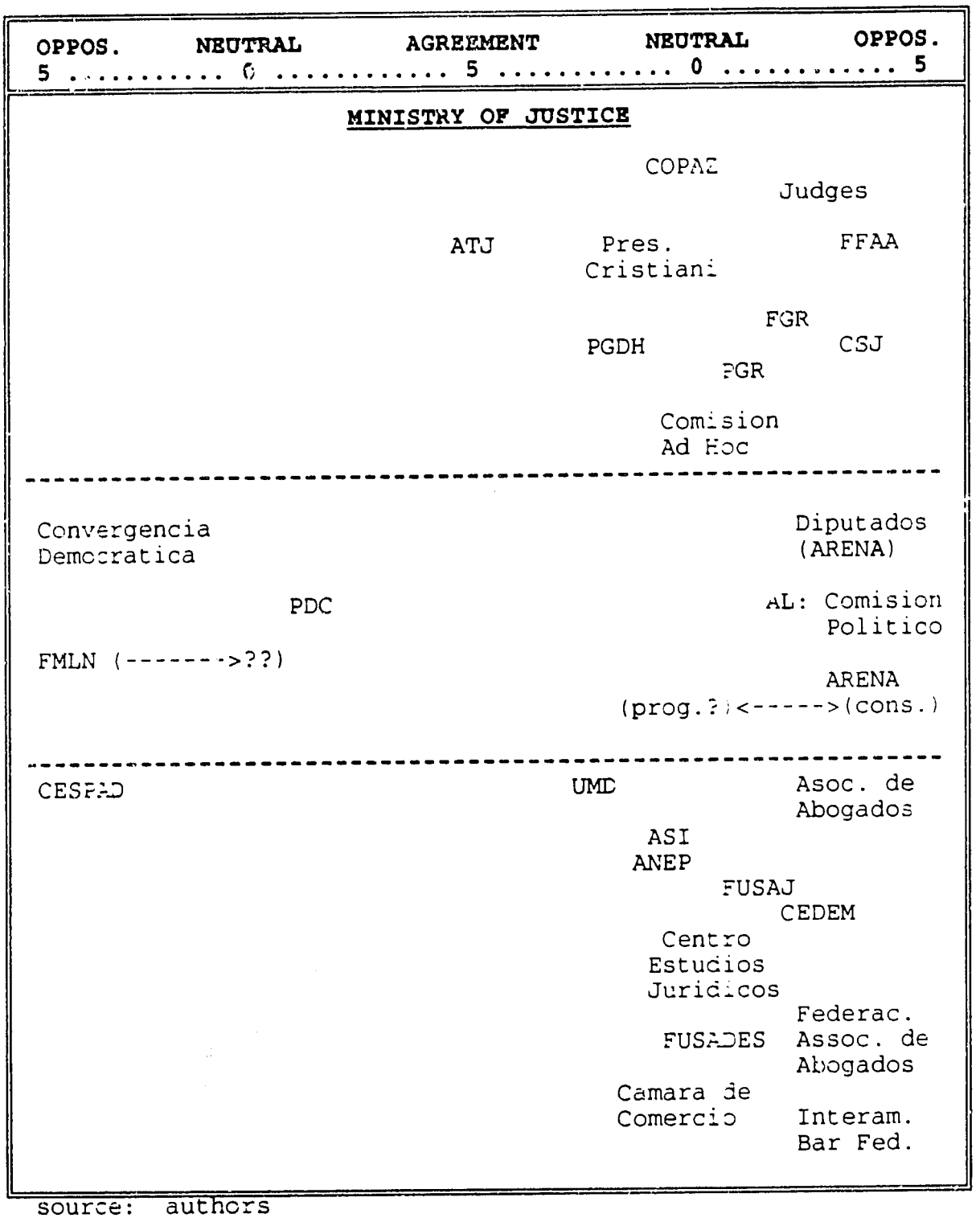
A. POLITICAL SUPPORT FOR REFORM:

* **In general, the legal community is "supportive" of the current GOES reform package.** However, that finding needs to be tempered with the caveat that most of the support for the reform package is "in principle" or in "technical terms" and is not necessarily for the actual implementation of those reforms. Most respondents view the proposed reforms as necessary, but that opinion appears to be more due to the difficulty of opposing such reforms rather than to a determined support for implementation. Several respondents argued that it is very difficult to oppose issues that support fundamental human rights -- but they can nevertheless have different views as to how reforms should be implemented.

  * Only two agencies -- the Ministry of Justice and the ATJ -- (see the Micro-political Map on Penal Reforms) strongly support the reforms in the sense that both provide "technical" as well as political support for the reforms.

  * There was substantial direct opposition to some of the penal reforms from such disparate stakeholders as the Supreme Court and the Convergencia Democratica. The opposition to reforms, however, tended to be selective rather than wholesale. Reforms such as the elimination of the "extra-judicial confession" and presumptions of guilt in certain circumstances are highly controversial as are reforms for provisional release of prisoners being held for trial and for the increased use of jury trials. The former two are seen as reducing the judge's discretion and capacity to act. For instance, the presumption of guilt (in cases of <u>hurto</u>, for instance) is an especially important tool or mechanism, even with its present abuses, for resolving cases given the lack of scientific investigative capacity on the part of the police or the fiscalia.

figure 2
Micro Political Map:
Penal Reforms



source: authors

It is important to note that opposition to penal reforms is due more to the sense of timing than to reform opposition per se. It is widely perceived that the institutional mechanisms for implementation of the proposed (and recently passed) penal reforms are absent. Were the institutional mechanisms for investigation by either the police or the Fiscalia in place; if the Procurador General had a sufficient number of lawyers at his disposal to take care of public defender needs -- then such reforms would have considerably more support.

* **The Micro-political map for the GOES penal reforms (figure 2) shows a clear lack of support for the current reforms.** In the critical central support sectors, only the Minister of Justice, the ATC, Comision de Paz (COPAZ), and USAID appear. More importantly, there is a near total absence of highly influential actors in either the strong or moderate support areas. The presence of the "progressive" wing of ARENA in the moderate support sector is of help, but given the small size and relative weakness of the group, it can offer little assistance in pushing the reform agenda forward. There is also moderate support from the PDC, but since that group is part of the opposition, an alliance with them would be risky. The most significant support would appear to come from COPAZ. It can be argued that COPAZ has been perhaps the single strongest source of support -- since its function is to oversee the implementation of the peace accords, and <u>inter alia</u> the adoption of reforms in the judicial area called for by the accords.

The opposition or indifference to reform is significant and serious and is composed of El Salvador's politically most powerful and influential actors. The Supreme Court, the Attorney General, the conservative wing of ARENA, the Armed Forces, and the major associations of lawyers are all in the opposition column and comprise a very formidable opponent. The opposition also has much more significant resources at hand for blocking reforms than the supportive forces have for passage and implementation. In some ways, indifference can be just as damning or moreso than opposition -- the apparent indifference of the President to the reform package is noteworthy. Also noteworthy is that opposition is not merely ideologically driven -- there is opposition from both sides of El Salvador's political fence.

Among working judges within the system, there is strong opinion that the reforms are inopportune. Judges complain that they have few probatory tools to work with. Without rapid development and institutionalization of the proposed investigative units and improved capacity in the Fiscalia General de la Republica for timely and systematic prosecution, the judges' capacity to carry out reform will be weakened.

One judge cited the recent and proposed reforms as "inoportunas e inoficiosas".

It is difficult to see how the present configuration of forces could change much in the short run barring a new, more amenable Supreme Court President or a sudden change of political direction in ARENA. The opposition has little reason, given their relative level of resources, to change their posture. It is also difficult to see where the Min. of Justice could easily recruit new, powerful allies. Moreover, it is not clear what the Minister has to offer that could make a significant actor change position.

Turning to the issue of court reform (limitations on the authority of the President of the Supreme Court, transferring of the CSJ's current administrative authority over the court system to another body, a CNJ independent of the CSJ, and more professionalization of the judicial career), the configuration of the micro-political map changes significantly. In figure 3, it can be seen that there is a considerably higher concentration of agreement for court reform than there is for penal reform. Groups as diverse as the FMLN, the PDC, ANEP, the Camara de Comercio, CESPAD, CEDEM, and the CEJ are all view court reform as the fundamental issue without which none of the other reforms can be truly effective. Strongly opposing court reform is the CSJ whose authority over the system would be substantially eroded.

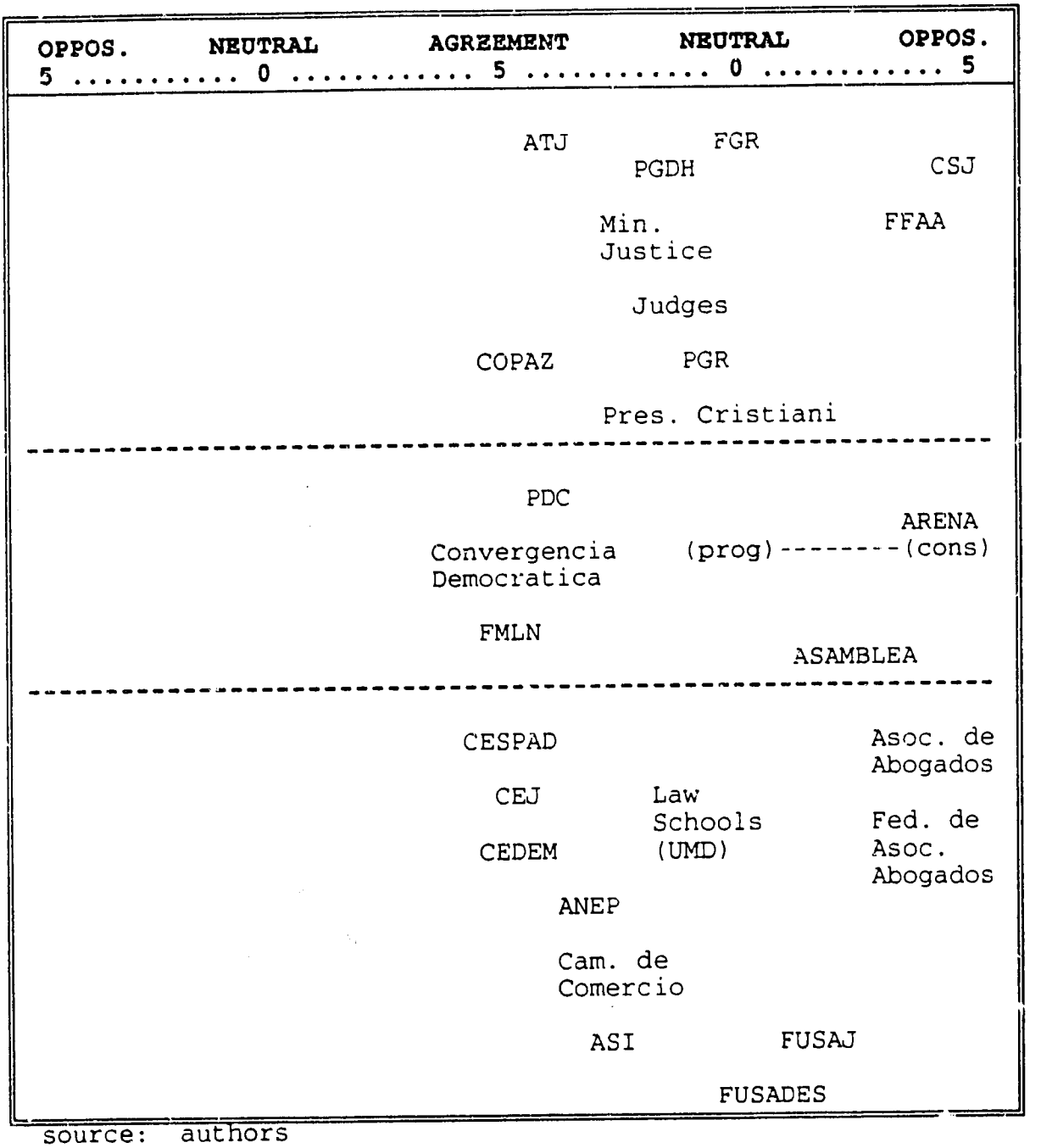
The primary reason for this dramatic difference from the lack of support for penal reform is perception of priority. Several actors argue that without significant reform of the court system itself, penal reforms will have little chance of real implementation. *Thus many of those opposed to reform are opposed because there is a perception that timing is poor or that other reforms take priority, and not because they are opposed to the reforms per se.* However, achieving signigicant change in the court will not be an easy task.

Support for court reform, though much more substantial than for penal reform, is not as strong as it is widespread. The actors content with the current structure are well endowed with resources and hold the potential for a powerful opposition to significant change. The combination of the Armed forces, the Supreme Court, the dominant conservative wing of the ARENA party (the President of the Supreme Court is also a member of ARENA's executive committee), and the largest Bar Associations are probably capable of blocking any serious modification to the court's structure.

Nevertheless, there is a substantially stronger constituency for reform of the court system than there is for penal reform. This support could be more effectively mobilized through

figure 3

Micro-political Map:
Court Reform



source: authors

incorporation of some of those actors currently positioned as either neutral or indifferent to reform.

One message clearly emerges: penal reform cannot take place in isolation of other reforms to the system, and in particular to the structure of the court. It appears that if penal reform is to be successful, greater emphasis will need to be placed on other reforms.

In general, the political environment for penal reform is an unsympathetic (if not exactly hostile) one. And, its difficulty has been compounded recently by the growing concerns with security. Consequently, the prospects for an easy and prompt passage of the penal reforms, except those demanded by the Peace Accords and CCPAZ, seem rather dim.

B. GENERAL FINDINGS:

* **Outside of a narrow group of government agencies, there seems to be a sense of lack of ownership of the GOES penal reforms agenda.** While the Min. of Justice and the ATJ feel there has been ample participation in the process of development of the reforms, others are less satisfied. Several interview subjects, including key actors within the government, expressed dissatisfaction with the process of "consultas", arguing that they had been only superficially involved. Other actors outside government were even less satisfied. One stated that the process was too heavily driven by external consultants who have only a minimal understanding of Salvadoran "reality", while another stated flatly that the reforms simply were being imposed by the United States government. It was also argued that the format of the Ministry of Justice sponsored seminars, designed to inform the legal community about the reforms, were primarily "conferencias" and provided little room or opportunity for debate or direct participation.

  It should be noted that on several occasions, respondents noted that there was much more participation when CORELESAL existed. There is a general perception that CORELESAL provided a much wider platform for debate than does the current system.

* **In general, the opinion on the locus and effectiveness of leadership for reform is split and/or indifferent.** The task of leadership has fallen to the Ministry of Justice, but several key actors in the government argue that it ought to be centered in the Supreme Court of Justice. Others feel that the leadership should be taken by a team which would include

all the key elements of the justice system. Another group of opinion appears to be indifferent to who should be in charge, so long as the process is absent of political influences. It should be noted that some sectors were directly critical of the Ministry's leadership of the reform process, stating that his haste was causing disruptions in the process, and causing problems for other agencies.

* **There is considerable debate over how "opportune" the current package of reforms is at this time.** In general, most of the reforms are seen as "inconveniente", even though most are generally seen as "a good thing". The range of negative opinion ranges from the socio-cultural context of El Salvador being ill-prepared for the reforms, to that if unaccompanied by other, structural, reforms they will have little effect or simply be innocuous. There is considerable concern that many of the key implementation institutions are simply not ready to undertake the tasks called for by the reforms.

  Representatives of several institutions stated that lack of resources, low internal capacity, and the absence of proper investigative capability were creating severe obstacles to the effective implementation of reforms already passed. On the other hand, there is concern that "it is now or never", that a rare window of opportunity has been presented. There is also a sense from some interviewees that if presented properly, the reforms would be more easily accepted.

* **With respect to the right environment or conditions for judicial reform, there is also considerable range of debate and difference of opinion, but nearly all felt that conditions for reform needed improvement.** The debate appears to include two major elements, the institutional and the cultural conditions for reform. On the institutional side, it is felt that changes will have to be made in the organic structure of the justice system (including real independence of the court). Also, improvements need to be made in the police and the state's investigative capacity, judges need to be better trained and their overall legal abilities improved, more resources, and more effective and efficient administration of the justice system needs to exist. On the cultural side, more education is needed to develop a greater understanding of the law by the general population, and changes in attitudes are necessary on the part of key elements of the system, particularly the judges.

* **Emphasis of the reform process should not be in the passage of new penal laws.** While there was a wide range of opinion regarding those issues or areas to be emphasized in the reform process, there was a consensus (excepting the Min. of Justice) that it should not be on the penal reforms. The greatest weight of opinion was that the reform process should emphasize

court reform, and improvements in the administration of the court system. Others argued that development of greater transparency in the judicial process, and a greater focus on assurance of due process be emphasized. Finally, one opinion asserted that the reform emphasis should be on structural reforms which would hold the possibility of more substantial long-run payoff than on specific laws that would require structural reforms for adequate implementation in any case.

* **The principal priority should be on reform of the court system.** Although there was some difference of opinion, the major priority was seen as court reform and not penal reform. In certain cases, particularly in the Ministerio Publico, certain officials saw their principal priority as coping with the management of their respective institutions and in trying to implement the policies they were charged with. However, with other agencies, and particularly in the non-government legal community, the principal priority is attention to the court system, its administration, structure, and political direction. There was strong coincidence of opinion in the urgent need for reforms in the Ley del Consejo Nacional de la Judicatura, though there are very different opinions on what direction those reforms ought to take. Only the Ministry of Justice and the ATJ felt the penal reforms should have priority.

* **In general, there is considerable dissatisfaction with the pace, process, and direction of reform to the moment.** Again, there is a wide range of content in the expressions of dissatisfaction about the reforms. Some feel the process should be accelerated, others feel that it needs to slowed down, while still others feel that it is inopportune. Some also expressed concern that the reforms are incomplete, that areas other than penal reform need to be addressed. Roughly one-half of the respondents argued that the process needs more debate and needs to be opened up, that reforms are being imposed without adequate consultation of other sectors. It was also noted that the debate has been limited only to the legal community and should be widened to other segments of society. Finally, one respondent noted that the reform process is weak and needs to be strengthened -- through more involvement of other sectors and through greater dissemination of information on the process.

* **Within the legal and political community there is an uneven level of information/knowledge regarding the penal reform proposals pending in the Legislature.** Within the legal community the level of knowledge/information is uneven, though most seem to have a minimum understanding. However, it should be noted that certain officials confessed to just a minimal amount of information owing to the fact their interests were in other areas. Once out of the official legal community, the

level of information dropped off quickly. Among the political sectors, information was uneven, but much lower than within the legal community. Within the legislature, information was surprisingly absent. Among private sector opinion leaders, such knowledge was mostly nil. All of this lends credence to a sense that most of the conversation or dialogue on judicial reform has taken place in a very restricted environment.

* **There is general agreement that the reform process as it stands is incomplete.** With the exception of the Ministry of Justice and the ATJ, every stakeholder cited the need for other important or complementary reforms. However, when asked which elements were missing, there was little agreement among the respondents. Elements mentioned were civil reforms, resources, capacity building, attention to process, and the commercial code. In addition, and the most frequently mentioned element was attention to reform of the courts structure (organismo judicial). Several respondents noted the interdependecy of the reform process -- ie., without additional reforms, certain reforms in process would have little chance of having significant impact.

* **There is a wide dispersion of opinion on which are the main obstacles to the reform process.** The range of opinion on this item was perhaps broader than on any other, which is perhaps an indication of lack of understanding of the process or of an unsympathetic environment to the carrying out of judicial reform. Some of the mentioned obstacles included the Supreme Court, corruption, lack of debate, lack of knowledge or understanding, lack of political will, lack of support of the President, and a lack of resources. Not only was the range of opinion wide, but several respondents mentioned more than one obstacle.

* According to most of the respondents, **there is little chance of passage (intact) of the current reform package.** Again, with the exception of the Ministry of Justice and the ATJ, there was no agreement that the current package of reforms has much of chance of passage intact. It was generally agreed that some of the reforms would pass, but that several, including the presumption of guilt in certain circumstances, elimination of extra-judicial confessions, and provisional release would not.

TABLE ONE
JUDICIAL REFORM IN EL SALVADOR:
STAKEHOLDER INTERESTS AND POSITIONS

GROUP	INTERESTS	RESOURCES	+/-	INTN -STY
Pres. Alfredo Cristi-ani	First concern is maintaining balance in Arena and same time comply with Accords. Does not decisively support or oppose M. of Justice. (Not interviewed)	Private sector support. Majority in AL, intl. support; low support in FFAA & ARENA to for major system change.	+	1
M. de Justicia	Pass penal reforms. Assume leadership of the justice sector reform movement. Adopt the agenda developed by the ATJ.	Legislative initiative. AID support. ATJ. Lacks support in Arena.	+	5
Corte Suprema de Justicia	Maintain status quo. Retain pre-eminence/leadership in legal community. Maintain full control of judiciary. Tangible achievements, buildings	Sweeping Const. authority of the court. Strong support from Arena. Growing econ. resources	-	5
Fiscal General de la Republica	Slow process to build institutional capacity to respond to reforms. Increase resource level.	Low finan. resources but growing demand. Discontent of fiscales-low wages.	-	2

Procur. General de la Republica	Improve functions in all areas of the law. Low interest in penal reforms, but more interested in solving probs. of PGR. More resources in other areas.	Low finan. resources, poor facilities, heavy case load Growing demand for public defenders. Not able to respond	+	1
ATJ	Develop agenda for reform and secure passage and acceptance. "Gurus" of the reform process/agenda.	Highly qual. staff., tech capac. Support from AID. Info. Low access to dec. makers.	+	5
Procur. de Derechos Humanos	Principal concern of PGDH is improving due process and speed of process. No time to study penal reforms. Problems are mostly "structural and administrative".	High legit. Support from Intl. donors Internal capacity? New agency.	0	0
Ministro de la Presid.	Not interviewed			
Policia Nacional	Not interviewed.	Only organized police force at moment. CIDH. Support from FFAA and Arena.		
Fuerzas Armadas	Disarm FMLN, maintain high level influence, avoid de-institut. of FFAA. (not interviewed)	Tradition of impunity. Supp. from ARENA, and media. Police power. Purge process.	-	3

COPAZ	Implement accords. No position on reform, is waiting resolution of AL Political Commission for NCJ law.	Authority of Peace Accords, multi-party structure, cred. ONUSAL support.	0	0
Comision Ad Hoc	Work finished with report. Implementation of recommendations.	Intl. support, UN Forces, high prestige, cred.	0	0
Asamblea Leg.: Com. Juridica	Comision has no specific interest in reforms as such. Commission head argues current reforms have little support.	Receives and processes new leg. Cap to bottle up leg. Inform. Arena controls.	-	2
Jueces	More admin. support. More resources, improved conditions, more manageable caseload. More influence in d-m. Reforms inopportune and useless.	Very low prestige. Low information (last to know!) Low econ. resources. and poor facilities	-	5
Fed. Asoc de Abogados	Stop/slow introduction of penal reforms. Primary concern is maintaining climate of security.	Prestige and financial resources. Assoc. with Cons. Arena	-	3
Asoc. de Abogados	Stop or slow process of reform until more "opportune" circum-stances. "Reforms create confusion." VP Garcia favors maintenance pre-eminence of CSJ.	idem	-	4
Cent. Estudios Juridicos	De-politicize the judiciary. Remove powers of the CSJ to name, transfer judges. Make the CNJ truly independent and effective. Penal reform important but not priority.	Low finan. resources. Information and ideas - proyectos. Status?	+	1

Interam. Bar Federa-tion	Education and prevent. of crime. Greater indep. for judiciary. More capacity for judges. Focus on court, against penal reforms.	ABA support, support from AID. Not well known.	-	2
IEJES	Not interviewed.			
CESPAD	Primary interest is in education of populace on rights and the law. Re-structure of the judiciary high priority. Penal reform important but not priority.	Information and tech. skills. Intl. support Status. Assoc. with left. High level commitment.	+	1
CEDEM	Emphasis on change in court system. Devel. policy analysis capac. Influence policies in jud. reform.	Intl. support. Good inform. Low econ. res. Mod.-high prestige, cred. & commitment.	-	3
FUSAJ	Education of sectors on rule of law. Build up the capacity of the system.	Limited econ. support. Strong support from CSJ. Credibl. in court system	-	1
Decanos de Escs. Derecho	Supportive of MOJ. Doubts about "ownership" of reforms. Wants to widen debate and enhance role of Universities. Equal emph. penal/judicial.	Low organiz. development. Low level of resources. Medium status. Not taken into account in debate.	+	3

ANEP	Favor reforms in principle but first need to overhaul the judicial structure to remove corruption.	Economic resources. Influence and inform. Cap. mobilize entire private sector	+	1
ASI	In favor of reforms but not as first priority. More interest in Commercial code. Need for court re-struct.	Econ. resources Influence, good info., legal advice. Mobil. capacity.	+	1
Cam. Comercio de El Salvador	Favor reforms in principle but first need to overhaul the judicial structure to remove corruption.	Economic resources. Influence and inform.	+	1
FUSADES	Main interest is in Commercial code. No official position on reforms.	Declining econ. resources, intl. support. High status and credibility.	0	0
Medios de Comun.	Slow down or modify reforms to improve security and allow freer hand to improve security of citizens.	Power of the press. Inform. and econom. resources. High status.	-	3
ARENA	Divided on the issues surr. reform. Certain sectors allied with Pres. favor pursuit of reform. Right is against.	Controls AL High level of resources Status and best organ. party. Incip. div.?	-	4
PDC	Priority is in the re-structure of the Court system. Are in favor of the penal reforms but as lesser priority. Remove politiz. of CSJ.	Internal problems. CENITEC. Mid-low status. Econ. resources.	+	1

Convergencia Democratica	Judicial reform is high priority. Opposes elim. of extra-judicial confession without improvements in investigation and restructure of judiciary.	Vice-pres. of AL, diputados. Good relations with left. Weak political movement. Low resource level.	-	1
FMLN	Publicly does not support the penal reforms but privately has indicated agreement. But principal priority is Court reform. (Not interviewed)	Principal actor in peace process. High intl. credibil., status.	-	1
USAID/El Salvador	Secure approval for the impl. of JRII. Pass reform package designed by ATJ. Reduce power of the CSJ and enhance influence of the MOJ.	Econom. resources. Infl. in policy process. Conditionality . Tech. asst.	+	5

V. CONCLUSIONS:

* **The process of debate and dialogue on judicial reform is too narrow and needs to be opened.** The perceived lack of debate bears much responsibility for the failure to achieve consensus and a sense of lack of ownership of the reforms proposed. The rather pervasive lack of knowledge and low level of information regarding reform outside the legal community as well as the frequently cited problem of "imposition by external consultants" contributes heavily to the perception of a closed debate.

* **The current reform movement suffers from a lack of clear and/or accepted leadership.** The Minister of Justice was frequently charactized as being isolated and alone. At the same time there is no credible "champion" of the reform movement. Moreover, the program does not appear to carry the government's full seal of approval given the absence of the President's enthusiastic support. The micro-political map on penal reforms clearly shows the Minister's inability to mobilize support from groups on either side of El Salvador's political fence.

* **There is strong agreement that reform of the judicial/legal system is vital.** However, there has been a lack of attention given to the generation of a consensus or clear prioritization of reforms. Interests in the reform process vary widely and contribute to fragmentation of effort.

* **The approach taken in the reform process has largely been piecemeal.** There is agreement that the judicical reform process is complex and has many impediments. As a consequence greater emphasis is needed on pursuing a more holistic approach, and on in-depth examination of the linkages between the different components of the reform process.

* **The political environment for the current justice reform initiative is unsympathetic.** Indeed, some of the reforms already passed are viewed as having created more problems than they have solved. Despite the importance of judicial reform, there are other issues (such as the demobilization of the Military, electoral law, and the up-coming election) which occupy the attention of key policy makers. To the extent that there is no easy consensus regarding either the content or the priority for judicial reform, it will be difficult to engage the attention of critical decision makers.

* **At the moment there does not exist a sufficiently firm base of active support for judicial reform either within or outside the government.** Most attention has been paid to developing agreement around the technical content of the reforms through

seminars and conferences rather than attempting to build a solid support base -- particularly outside the narrow legal community. However, increasing support will probably require that some modification in either content or the strategy for implementation be made.

* **The current reform agenda suffers from imbalance; in particular it is argued that reform of the court system has been ignored.** There is a strong current of opinion that court reform needs to be moved squarely onto the reform agenda, and that in most cases it ought to take precedence over penal reforms. It should also be noted that there is more direct support for court reform than there is for the penal reform package (see Micro-political Maps 1 and 2 .

* **A serious impediment to greater consensus on reform is the generalized opinion that environmental and institutional conditions for the proposed penal reforms are not yet appropriate.** Problems such as lack of sufficient institutional development, capacity, or resources to fully implement reforms contribute to a pervasive sense of insecurity and a feeling that conditions are worsening and not improving. As a consequence, the reforms do not have the blessing of the public or of most sectors interviewed.

VI. RECOMMENDATIONS:

* Assess the implications for implementation of the different parts of the GOES reform agenda. This can be done through implementation scenario analysis. By simulating the actual implementation of the reform, scenario analysis can help the government detect needs with respect to institutional development, human resource needs and capacities, allocation of financial resources, and the development of complementary policies. It can also indicate sources of opposition and help detect possible obstacles or impediments to the implementation process. Such analysis will help the GOES to plot a more effective strategy for the implementation of crucial reforms.

* Develop mechanisms to widen the process of debate and dialogue to a larger audience. Issues of a policy nature should be included in the debate rather than limiting discussion to strictly technical issues. This will help to develop both a wider consensus as well as help generate a greater ownership than has been the case to the moment. Utilization of a mechanism such as the (original concept) "judicial working group" hierarchically independent of any of the key institutions of the judicial sector can help accomplish this recommendation.

* Reassess leadership requirements for the Judicial Reform process. Does the Minister of Justice have enough support and will that support continue into the future? This can be determined through judicious use of the "judicial working group". While the "administrative" mechanisms for the reform process may be left with the Min. of Justice, the use of the working group as the intellectual leadership will help distribute risk as well as secure greater involvement and commitment. If the working group decides who or what institution leadership should rest with, the more likely that leadership will be more widely accepted.

* Reassess the nature of the conditions necessary for implementation of the reform measures. Institutional, level of resources available, political, and socio-cultural conditions should all be examined. This may be accomplished through environmental analyses and the application of implementation scenario analysis. Such an exercise would also help officials to determine better where elements of the process need to be strengthened before certain reforms can be undertaken.

* Address imbalance in the reform agenda by development of a strategy to include the rest of the judiciary system in the reform agenda. Use of a working group could help solve this and be instrumental in development of an acceptable strategy.

Addressing the imbalance would also help in achieving greater consensus and ownership.

* A strategy for increasing support for judicial reform needs to be developed. This should be done on three levels:

  Through raising the consciousness and participation of the legal community through debates and seminars (with opportunity to debate issues) on reforms.

  Development of greater political support in key institutions through design of a lobbying strategy.

  Through the development of mechanisms to sell the idea of judicial reform to the general public.

* Assess the benefits for developing a technical support mechanism with a board of directors composed of representatives of each component of the national legal/judicial system, independent of either the judicial or executive branch. An alternative would be to make the mechanism a full dependency of a "judicial working group." This would help the various representatives of the system increase their capacity to discuss and contribute to debate of the issues and thereby also help to generate a greater ownership and consensus.

  It is important that the unit report to either a board or to a Judicial Working Group. While the ATJ currently carries out many/most of the functions envisioned for the unit, the ATJ is generally perceived as part of the Ministry of Justice. Indeed, there is still some resentment that CORELESAL was abandoned, but then replaced by the ATJ and installed in the Ministry of Justice. To have full credibility and escape the taint of being part of one of the key sector agencies, it would be preferable to have the technical unit clearly specified as a dependency of a working group or Board of Directors.

* Effort should be made to explore the revival of the original "judicial working group" concept which included several private sector or NGO representatives and distinguished independent jurists, in addition to representatives from each of the justice sector institutions. The idea should be sounded out with key officials and potential participants from the private sector. It will be important to involve certain key figures (President of the Supreme Court, President of the Bar Association, the Minister of Justice, a distinguished independent jurist) from the outset in an equitable manner to assure full ownership of the idea.

The current arrangement (consisting of the five key justice sector institutions) could serve as a satisfactory vehicle for exploration of the idea. Discussions with key officials on the idea needs to be directed at having them draw out the advantages of expanded participation rather than haveing the advantages stated for them. A small roundtable or "mini-workshop" would be helpful to flesh out the idea.

SCOPE OF WORK

I. PURPOSE

To assist in initial implementation of the Judicial Reform II Project by supporting the emerging justice sector working group to develop a strategic management plan for implementation of judicial reforms.

II. BACKGROUND

The January 1992 Peace Accords marked the end to a twelve-year civil war and the beginning of a healing process to unite Salvadorans in building a democratic society which affords equitable opportunities and increased freedoms to everyone. To solidify the peace, the population at large and opposition groups in particular must develop a sense of confidence in the legitimacy and openness of the democratic system. Key to building this confidence is the functioning of the judicial system as an impartial, efficient mechanism for resolving disputes as they arise.

The performance of El Salvador's judicial system has been weak on a number of fronts: access, timeliness, fairness and integrity. Underlying this poor performance is a lack of leadership, weak legal culture and the lack of a broad popular consensus on the values on which the country's legal system should be based. Conflicting and overlapping institutional mandates, human resource weaknesses, and underfunding of the courts, prosecutors and public defenders have also contributed to the system's decline and discredit.

Important constitutional reforms which emerged from the peace negotiation process and the structural changes to the justice sector called for in the Chapultepec Peace Accords provide an important opening for the leaders of the incipient Salvadoran Reform movement. Civilianization of the police, a more representative and independent court system, a more professional judicial career service, and an enhanced role for the prosecution in criminal cases are among the reforms called for. These reforms coupled with the existence of a nearly 100-year old jury system and an autonomous Attorney General's Office, and the firm commitment of the President to comprehensive revisions to the criminal, criminal procedure and penal codes place El Salvador a step ahead of its neighbors in defining the parameters of its justice sector

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reform program. Implementation remains a difficult challenge, but can be facilitated if reformers from within the judiciary as well as those outside work in coordination to build a better system.

Of critical importance now is decisive action by the Government of El Salvador (GOES) to expeditiously implement the reforms achieved to date. The credibility and sustainability of the reform process depends on tangible demonstrations of the reforms being put into practice. Citizen confidence that change is indeed possible will, in turn, be key in bolstering the reformers to deepen the process and address the remaining obstacles.

The U.S. Mission in El Salvador has completed a stock-taking exercise and an administration of justice strategy that will guide U.S.G. efforts in this area for the next five years. The focus of the strategy, and in turn, the planned FY 92 Judicial Reform II Project, is to expand, deepen, and accelerate the process of reform in El Salvador. The Judicial Reform II Project will have two components: Supporting Salvadoran Leadership of the Reform Movement and Strengthening Institutional Capacity to Implement Reforms.

To facilitate the implementation of reforms already adopted, a justice sector working group will be formed to carry out a coordinated judicial reform action plan. In designing the plan for implementation of the various reforms, the legal community, NGOs, the Council of Law School Deans and other private sector groups will be consulted and involved extensively. Recommendations from studies and public debate will be used to refine and expand the strategy to accomodate new elements. As additional legal reforms are adopted or set in motion by the National Assembly, Project resources will be made available to assist the working group to implement them.

III. SCHEDULE AND LEVEL OF EFFORT

The consultants are expected to begin background research and planning (a total of five days each has been budgeted) by the end of September and prior to arrival to El Salvador (see Attachment III, Schedule.) Arrival in country is planned for on or about October 12, 1992. A total of six weeks or 36 work days each is planned for field work in El Salvador, which is expected to be completed by December 11, 1992. Two trips each have been budgeted to allow for the field work to be broken up into two visits. A draft strategic management plan would be expected by the end of the first visit. Five days is budgeted for the team leader for final report preparation in the home office. The total level of effort thus amounts to 87 work days. The work is expected to be completed by December 18, 1992. A six-day work week is authorized.

IV. STATEMENT OF WORK

A. Work Plan

Before arrival at Post (see Section III, Schedule and Level of Effort), the Grantee will prepare a preliminary work plan which will be finalized after arrival at Post. The work plan will schedule the activities of each team member, lay out the objectives for each activity, specify the kind of information to be sought, how the information will be validated, the analytic framework in which it will be utilized and the product that will be developed.

The work plan, which must be approved by USAID, is intended to demonstrate that the consultants and USAID are fully agreed as to points to be addressed in the final product, the methodology utilized to develop those points and the kind of evidence upon which observations are based.

B. Review of Documentation

The Grantee will review, in its home office, the following documents, and others, as appropriate, which will be provided to consultants by USAID in advance: 1) Administration of Justice Strategy; 2) Judicial Reform II Project Identification Document and Project Paper; and 3) GOES Reform Agenda.

C. Support to the Justice Sector Working Group

The Project Paper, which will have been completed by USAID prior to the consultants' arrival, will describe the make-up and functions of the justice sector working group. It will also reflect initial discussions of the working group concerning the development of an action plan for implementation of judicial reforms.

However, the viability of the working group, at this stage, is far from being assured. Political parties, from both the right and left, as well as the public remain skeptical of the reforms. On the one hand, the left questions the commitment of the Government to implementing both the letter and the intent of the reforms, while the right has similar doubts about the commitment of the left. Despite a climate which has become increasingly conducive to judicial reform, there has been limited, albeit growing, interaction and coordination among the various actors in the incipient Salvadoran reform movement. Poor communication and limited opportunities for the interchange of opinions has prevented the development of a comprehensive plan of action for a sustainable, substantive reform program. Intellectual debate and research on the performance of the Salvadoran system and areas for improvement have

involved only a small number of the legal community. Moreover, the public and political elite have only recently been brought into the debate. Lacking a broader consensus, much of the legal community and political leadership continues to cling to the familiar, albeit imperfect system, and is wary of further reform efforts.

The Judicial Reform II Project emphasizes the need for coordination among the various agencies in order to develop and carry out a coherent implementation plan for the reorganization of the sector. Mechanisms for regular communication among the actors and agreements regarding the phasing of changes and transitional arrangements must still be worked out. This coordination will occur through the functioning of the Justice Sector Working Group, which will be composed of senior representatives from each of the key players -- the Ministry of Justice, the Attorney General's Office, Public Defender's Office, Ministry of the Interior (representing the police), the Judicial Branch, the National Council on the Judiciary (NCJ), the Ministries of Planning and Finance, and the newly established Human Rights Ombudsman. This Working Group will consult extensively with the Council of Law School Deans and NGOs to ensure their ideas and recommendations are thoroughly considered.

To assist the Working Group to initiate its activities and develop effective working relationships, the consultant team will conduct interviews with each of the designated representatives to the Working Group as well as other key players in the justice sector. Through these interviews, a review of the Working Group's action plan, and close coordination with the Mission, the consultant team will work with the Judicial Working Group to develop a draft strategic management plan for implementing justice sector reforms. This plan will be discussed in concert with the Mission and the Working Group in order to refine it and gain its approval and adoption.

In developing the strategic management plan, the Mission endorses the Implementing Policy Change Project's approach, which includes the following steps:

1. Agreement on the strategic management process (this will occur during the Project Design Phase as the Mission brings the various representatives of the justice sector together to discuss the Project's methodology and to identify priority areas for Project support).

2. Identification and clarification of the Working Group's mission, objectives, and current strategies.

3. Identification of the Working Group's internal strengths and weaknesses.

4. Assessment of the threats and opportunities from the external environment.

5. Identification of key constituents/stakeholders and their expectations.

6. Identification of the key strategic issues confronting the Working Group.

7. Design/analysis/selection of strategy alternatives and options to manage the issues identified.

8. Implementation of strategy.

9. Monitoring and review of the strategy's performance.

The consultant team will be responsible for undertaking steps two through seven. Based on discussions of the strategy alternatives and options, the consultant team will assist the Working Group in the development of a strategic management plan which will guide the Working Group's activities under the Judicial Reform II Project, with special attention to 1993 calendar year.

D. Explore Linkages to the "Supporting Salvadoran Leadership of the Reform Movement" Component

While the Judicial Reform II Project design emphasizes the need for an effective working group to direct and coordinate the implementation of judicial reform, the first component of the Project will also need to strengthen operational linkages among the various participating Public and Private sector organizations. This component will bolster the incipient judicial reform movement to capitalize on the momentum which was generated by the peace negotiation process. The leaders of the reform movement must address the remaining legal and policy deficiencies and the attitudinal constraints limiting popular support for and wider political commitment to the reform process.

As designed, the Project activities under the first component concentrate support on two organizations that will play a leading role in defining the scope and pace of Salvadoran reform efforts: the Ministry of Justice, which, as the principle architect of the GOES reform agenda, drafts and vets legal reform proposals to improve the administration of justice and implement the Chapultepec Peace Accords; and the Council of Law School Deans, which has the participation of all 16 law schools in the country, representing the various legal currents and political ideologies in the country.

Given the logical linkage between the two components of the Project, the consultant team will explore alternative approaches for how these two institutions can develop effective working relationships with other institutions in the justice sector improving an agenda of future legal and policy reform.

V. REPORTING REQUIREMENTS

A. A preliminary work plan will be submitted to USAID within two working days after arrival of the Consultants.

B. The Team Leader will meet with the Project Implementation Committee no less often than weekly to report on progress, problems, potential innovations, unexpected difficulties, etc.

C. The consultants will brief USAID on the findings and will present a draft of a strategic management plan at least three working days before first departure to the U.S.

D. The consultant team will deliver a draft in English of the written report not less than 5 days prior to the team leader's departure from country (see Attachment II, Schedule.) USAID will review the report and provide comments to the Team Leader for incorporation into the draft.

E. Not later than 30 calendar days after completion of the field work, the contractor will furnish 12 copies in Spanish and 12 in English to USAID. Written acknowledgement of the adequacy of the final report by the Director, Office of Democratic Initiatives, will be required for payment of the Contractor's final voucher.

VI. METHODOLOGY

The Grantee shall work under the direct supervision of the USAID/El Salvador Office of Democratic Initiatives. This work is to be carried out in El Salvador. Background research and planning is expected to begin prior to arrival in-country.

Contacts necessary to gather primary data and to arrange interviews will be facilitated by USAID/El Salvador.

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The Consultants will be responsible for their own document preparation. -Will arrange if desirable for computer equipment ensuring that any work completed is given to USAID on diskettes compatible with USAID's Wang system.

The Grantee will certify that under the Executive Privilege Procedure of the USG, no copies of any documents prepared and/or obtained in the process of carrying out its work will be made available to any person(s) or institution(s) without the prior written consent of USAID/El Salvador.

VII. CONSULTANTS QUALIFICATIONS

The team will be composed of two persons with extensive experience in the operation of judicial systems and/or Public Administration or international relations. Experience in Latin American legal systems is desirable. Consultants will have demonstrated outstanding verbal presentation skills, experience in dealing with government and private officials, and ability to write clearly in Spanish and English. Professional-level competency (FSI-3) Spanish is required, as many counterparts do not speak English.

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Stakeholder Analysis: A Vital Tool for Strategic Managers

By Benjamin L. Crosby

The recognition of the key role played by stakeholders in the determination of policy, its implementation, and outcomes has made stakeholder analysis a vital tool for strategic managers. The term stakeholder analysis encompasses a range of different methodologies for analyzing stakeholder interests and is not a single tool—a fact that has led to some confusion about what it is and how one does it. The purpose of this note is to help clarify the notion of stakeholder analysis by exploring a series of alternative methods, their advantages and potential limitations. A common analytic methodology for use by the IPC team and developing country managers in reconnaissance and other diagnostic activities will also be suggested.

What is it and Why do it?

The purpose of stakeholder analysis is to indicate whose interests should be taken into account when making a decision. At the same time, the analysis ought to indicate why those interests should be taken into account. How do we know when a group's or actor's interest must be given specific and serious consideration? First, if an actor or group is in a position to damage or weaken the authority or political support of the decision maker or the organization, then it should be taken into account. For instance, the urban industrial import substitution sector in many developing countries is opposed to reforms to facilitate a more export-driven economy. Since this sector is often the most economically powerful sector, it is generally in a position to weaken political authority should it actively oppose the government.

Second, if the group's presence and/or support provides a net benefit or strengthens an organization and/or enhances the decision-maker's authority (and capacity to secure compliance to decisions), then it should be given close consideration. For example, if a group can bring new resources, provide entry into a new market or otherwise enhance the organization's strength, it should be taken into account.

Third, if a group is capable of influencing the direction or mix of an organization's activities, it needs to be counted as a stakeholder. Consumers are often viewed as stakeholders in organizations charged with the delivery of public services. But since public utility organizations in LDCs are frequently monopolistic, and since most consumers are poor and have little, if any, capacity to mobilize, the decision maker can safely exclude them from the decisional calculus. But in other cases even amorphous groups can be powerful stakeholders, particularly if they are large; the influence of the comparatively affluent American teenager on the music and fashion industries of the United States is a case in point.

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Generally, stakeholder analysis focusses on two key elements: groups or actors are analyzed in terms of: a) the interest they take in a particular issue and, b) the quantity and types of resources they can mobilize to affect outcomes regarding that issue. However, the way in which and the degree to which each of these elements is analyzed varies considerably. Overly inclusive approaches run the risk of turning the analysis tedious without a great deal of added value. As a rule of thumb, one might apply the following: only those groups or actors with real and mobilizable resources that can be applied for or against the organization and its interests to the issue at hand should be included. They are the ones that have the capacity to directly influence policy outcomes.

Approaches to Stakeholder Analysis:

Certain schemes are quite limited in what they expect to acheive with stakeholder analysis, while others are considerably richer both in data and analytic requirements. By applying the criteria noted in the paragraphs above regarding which groups ought to be included in a stakeholder analysis this note will explore some of the dimensions of these schemes, ranging from one of the more simple forms of stakeholder analysis to much more complex frameworks.

Brinkerhoff's (1991) approach to stakeholder analysis focuses upon use of the tool for managing programs. This focus highlights identifying what a program needs from its stakeholders to be effectively implemented. These needs are framed in terms of types of exchanges between the program and its key stakeholders; e.g., financing, physical inputs, political support, approvals, policy support, technical assistance, and so on. Stakeholders are identified and classified according to the resources they control, their interests in the program's activities and outputs, and their importance to the different types of exchanges. Brinkerhoff then summarizes the analysis in a maxtrix in which actors concerned about a particular issue are arrayed along a vertical axis, while the horizontal axis illustrates certain types of exchanges (or resources) the actor can bring to the issue.

There are a couple of characteristics of this approach and in the matrix that might limit its usefulness for certain analysts. First, while exchanges or resources are noted, the degree to which such resources are in fact salient to issue outcomes is not easily perceived in the matrix itself. Second, neither the matrix nor the narrative analysis indicate the degree to which the group has the capacity to mobilize the resource or exchange noted. Nevertheless, the approach does quickly communicate who has what—important elements for strategy development.

Honadle and Cooper (1989) take a slightly different and more limited approach to stakeholder analysis than Brinkerhoff. Their matrix arrays the primary actors or stakeholders across the horizontal axis, and on the vertical lists a series of problems upon which those stakeholders might have some impact or capacity to help resolve the issue. The matrix, however, is not clear about how stakeholders can actually help in resolving the problem indicated, merely that they might be able to. Perhaps more importantly, the matrix does not really indicate the level of interest of the stakeholder in the problem nor the direction of that interest. Is the stakeholder for the policy or against it? How strongly does the actor feel about the issue? However, as a "first cut" mechanism for illustrating the array and range of problems and actors, Honadle and Cooper's approach is quite useful.

Other interpretations of stakeholder analysis go much further than the two approaches just described. Gamman's approach (1991) is much more descriptive and analytically is quite comprehensive. However, his approach is keyed into aiding the analyst in strategy design—and is therefore necessarily more complete in his analysis. Unlike the earlier approaches, it not only lists the important actors but also attempts to gauge their relative importance, their interests and/or objectives, how these interests are in conflict with others, and the leaders of each group.

While the main strength of Gamman's approach lies in its comprehensiveness, it is also the source of some potential problems—especially with respect to how many and which groups are or ought to be

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included in the discussion. To be complete, Gamman suggests that the analyst look beyond the range of obvious actors or groups and determine which unmobilized and/or unorganized groups might be affected in some manner by the policy (regardless of whether they are in fact affected by the policy), and how they might feel about that policy. When the policy focus is fairly broad, then the number of groups that could be included under that criteria mounts rapidly, and can quickly turn the analysis into a somewhat burdensome exercise (at least from a busy manager's point of view.) Another potential difficulty with Gamman's approach is that he does not examine the nature of stakeholder resources nor their capacity to mobilize those resources. Without some clarity regarding resource levels and capacity, judging stakeholder impact on policy issues will be difficult.

The level of effort required to carry out the sorts of activities suggested by Gamman is substantial. Thus, before proceeding, managers should weigh the potential gains from the analysis. Also, Gamman's approach requires a degree of sophistication and familiarity with the environment that a short-term consultant seldom has. If this type of analysis is desired, then, effort should be made to obtain assistance from local knowledgeables or informants. These caveats notwithstanding, Gamman's approach can provide a wealth and richness of information to aid both in the policy design and implementation process.

A fourth approach is that utilized by Lindenberg and Crosby (1981) in conjunction with their political mapping techniques, and is that which has been suggested for use by the IPC project. This approach develops a matrix in which information for each group is arrayed according to the group's interests, the level of resources it possesses, its capacity for mobilization of resources, and the group's position on the issue in question.

In the first cell (Table 1) are listed those interests that will be affected by the policy or decision to be taken. What are the group's specific interests in the policy? The analyst should be careful to select only those two or three interests and/or expectations that are most important. In the second cell are noted those resources that the group possesses that could be brought to bear in the decision making or implementation of the policy. Can the group offer some special knowledge or information? Would the group's status and presence on one side of the issue be key to its implementation or blockage? If the group appears to have resources that can be brought to bear, it is important to know whether the group is capable of mobilizing those resources quickly or only slowly. Quickly mobilizable resources are advantageous if the issue has immediacy, but less so if the impact of the issue is further out into the future. If the group cannot mobilize or make effective use of its resources, then they are not really resources in any meaningful sense of the word. The analyst's judgement regarding mobilization capacity should be noted. Finally, the group's position regarding the issue should be examined and noted. Judgement should be more discrete than a simple for or against. If a group is barely in favor of an issue, a convincing argument could be enough to change its position.

In some respects this approach is similar to Gamman's, but with the difference that the analyst need not go beyond the range of obvious actors. Only those actors with a position on the issue and resources that can be brought to bear need be considered. Nevertheless, the level of effort, analysis and inclusiveness of this approach is much broader (and time consuming) than recommended by either Brinkerhoff or Honadle and Cooper. As with the Gamman approach, the analyst should carefully weigh the benefits to be achieved from the analysis against the costs of carrying it out.

TABLE ONE

GROUP	GROUP's INTEREST IN ISSUE	RESOURCES	RESOURCE MOBILIZ. CAPACITY	POSITION ON ISSUE

While stakeholder analysis is certainly helpful to gain a better understanding of the interests and resources of the important players for policy decision-making and implementation, it is even more so when used in conjunction with other strategic management tools such as political mapping, forcefield analysis, and the environmental analysis matrix (see IPC note, "The Political Environment for Implementation of Policy Change: Tools for Analysis", 1991.) With political mapping, stakeholder analysis can help to refine the placement of political groups on the map. In the case of forcefield analysis, it helps clarify a group's position as well as the comparative importance or salience of the group on the forcefield. Indeed, stakeholder analysis is generally a more interesting and powerful tool if used in combination with others.

How to Conduct a Stakeholder Analysis for a Reconnaissance Visit:

There are several reasons why an external analyst might carry out a stakeholder analysis. First, for identification of the client and where he/she sits in the environment (who he/she is, what he/she is supposed to do, the importance of the position in relation to others) and to understand some of the pressures and expectations regarding his/her role. Second, the analyst should acquire a broad understanding of the environment and how stakeholders interact with the environment and the organization in order to play a more effective role with the client. A knowledge of who's who and why will produce a more effective interaction with the client. Third, managers can sometimes hold strong opinions about stakeholders which conflict with generalized perceptions in the environment. The external analyst can play a valuable role as an "independent auditor" of those stakeholders. Finally, given that some approaches to stakeholder analysis can be quite time-consuming, the external analyst can provide at the very least an initial cut to be reviewed by the client.

Generally, the analyst can begin the stakeholder analysis before going into the field through perusal of the literature on the case country's politics and economics. In addition to standard sources such as the CIA's annual World Factbook, and professional journal publications, World Bank, AID, and UNDP publications can be helpful. The analyst should make a list of the groups that seem most relevant to the policy issue under consideration. One should not try to be very restrictive at this stage—it would be better to try to develop a fairly ample list and then begin to reduce. If sufficient information is available, the analyst might also consider drawing a political map or working up a tentative forcefield analysis. If possible, experts at local universities or think-tanks or from the country's embassy should be sought out for their opinions. With all this, the analyst ought to be able to generate some early hypotheses regarding the array of stakeholders and their relative importance.

Once in the field, the analyst should seek out local knowledgeables to obtain their opinions regarding key players and their interests. The analyst is encouraged to use as wide a range of informants as possible since many informants also have particular agendas they wish to promote. Key informants can be quite varied: journalists, top officials in the church, leaders of business groups, congressmen, leaders of political parties, international donor officials, leaders of interest groups, university professors, consultants, embassy officials (other than the US too), labor leaders, radio and TV commentators, local think tanks, management institutes, high ranking military officials or professors at the military colleges, and local and international PVO heads.

Although personal interviews are the standard method of obtaining information, other techniques can be used. For instance, this writer has had success in using informal panel groups and workshops to discuss these issues and work through differences of opinions. The difficulty of this approach is that it generally requires more entree than that enjoyed by most intermittent consultants. This technique is also a good sounding board for testing the analyst's ideas.

Ideally, the developing manager should acquire a solid familiarity with the tool both to diminish reliance on outside advice and in order to gauge the effectiveness and veracity of external advice and analysis when sought. Besides the obvious review of appropriate literature, there are a couple of useful mechanisms that this writer has found for transferring the technology. One useful method is through workshops; first, a brief introduction to the method and second, case studies or exercises to hone skills in using the technique. If several individuals will be expected to work with stakeholder analysis, this method is particularly effective. Care should be exercised to include only those who indeed will work with the technique and who will actually find it useful. Those who will not actually use it will find it

quite tedious. Another useful method, especially when only a very narrow group will benefit is through one on one consultation in the use of the instrument. When the number of users is more than three, however, the workshop method will prove more efficient.

How can the Developing Country Manager use Stakeholder Analysis:

In many respects there are parallels in the use and usefulness of stakeholder analysis for the developing country manager and the external analyst/consultant. However, it can generally be assumed that local managers have the advantage of their own knowledge (bolstered by a historical view) and usually much readier access to local knowledgeables. Nevertheless, managers should be warned that familiarity with names and groups does not necessarily amount to a strong analytical understanding of the different stakeholders. Often, the manager will know (perhaps intuitively) that a particular group is strong and needs to be taken into account. But he/she may not understand why the group needs to be taken into account. What are the groups resources? How quickly can they be mobilized? What are their interests and why? For purposes of strategy construction, these are important pieces of information.

It is important that the manager confirm his perceptions of stakeholders either through group discussions with associates within his organization or through external analysis. It is only natural that managers will elevate the importance of groups that share their own views and perhaps diminish the importance of others. While not perfect, the consultation process can help reduce bias.

When should the manager undertake the analysis? There are two points at which stakeholder analysis is critical. First, when the policy is being formulated—at the point when decisions regarding who will be favored are taken. While it is true that they often are not taken into consideration at this point, managers can supply important input regarding critical stakeholders and how they can affect policy outcomes. Since policy makers are often not in direct contact or have little to do with critical stakeholders, information supplied by the manager, who is in much closer and direct contact, can be critical. It is at this point that the manager can help the policy maker avoid erroneous decisions.

The second point is in the formulation of a strategy for implementation. It is at this point where the manager will have greatest input. It is also at this point where decisions become critical in terms of assuring alliances and support. A solid analysis of stakeholder expectations and a keen appreciation of the relative importance of different stakeholder groups can be key input for the design of strategies to handle certain groups, knowing what pieces of the policy should be emphasized, or how to assure future support.

Finally, and perhaps as a warning, since stakeholder exercises can be fascinating, it can be tempting to devote too much time, and worse, too much credence to the analysis. The stakeholder analysis is only a tool, one that helps to understand better the field upon which policy change and the implementation of those changes will be played. It is not an end in itself.

REFERENCES

Brinkerhoff, Derick W., Improving Development Program Performance. Boulder, Colorado: Lynne Reinner Publishers, 1991.

Bryson, John M., Strategic Planning for Public and Non-profit Organizations. Oxford: Jossey-Bass, 1988.

Gamman, John, "Stakeholder Analysis", (unpublished memo/note for IPC program, 1991).

Honadle, George and Cooper, Lauren, "Beyond Coordination and Control: An Interorganizational Approach to Structural Adjustment, Service Delivery, and Natural Resource Management." World Development, 17, no. 10, 1989.

Lindenberg, Marc and Crosby, Benjamin, Managing Development: the Political Dimension. Hartford, Connecticut: Kumarian Press, 1981.

White, Louise G., "Implementing Policy Changes" (unpublished paper attached to USAID Project Paper for Implementing Policy Change Project.) September, 1989.

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MANAGEMENT AND THE ENVIRONMENT FOR IMPLEMENTATION OF POLICY CHANGE: PART TWO

Policy Environment Mapping Techniques

By Benjamin L. Crosby

One of the first tasks required of strategic managers is to fully understand the terrain upon which they will have to play. The variety and complexity of political and decisional processes found in the making and implementation of policy change calls for a wide variety of tools for mapping, diagnosis, and analysis. The purpose of this note is to introduce and describe a variety of mapping and analytical tools useful for increasing managers' comprehension of the decision and implementation context in which they must work. Three policy mapping techniques will be discussed in this technical note: micro-political mapping, policy network mapping, and force-field analysis.

Political mapping need not be confined solely to the macro or national level as discussed in Part One of this series. Two other useful techniques are micro-mapping and policy network mapping Micro-mapping diagrams the relationships between actors at a micro-political level, and is especially useful to illustrate relationships among actors in a particular sector (e.g., health, education, agriculture). For instance, should the Minister of Agriculture of Boliguay wish to evaluate intra-sectoral support for new policies or ideas, then a micro-political map denoting the components and constituencies of the agricultural sector would be useful. If, on the other hand, the Health Minister wanted to focus specifically on a particular policy and gauge the potential efficacy of her strategy for getting through the approval process, she might wish to develop a policy network map in order to zero in on the key pressure points in the policy process.

Micro-Political Mapping:

Although a macro-political map shows overall support for the government, it does not necessarily reveal support on specific issues. It is possible that though a government has solid overall support, on specific issues there may be massive or particularly intense opposition. A micro-political map can clarify the distribution of support for specific issues, indicate how certain sectors will react to particular policies and clarify the positions of different organizations within the same sector. If, for instance, a Minister would like to promote a policy altering the nature of relationships within the sector, a map can reveal the extent of support for the policy,

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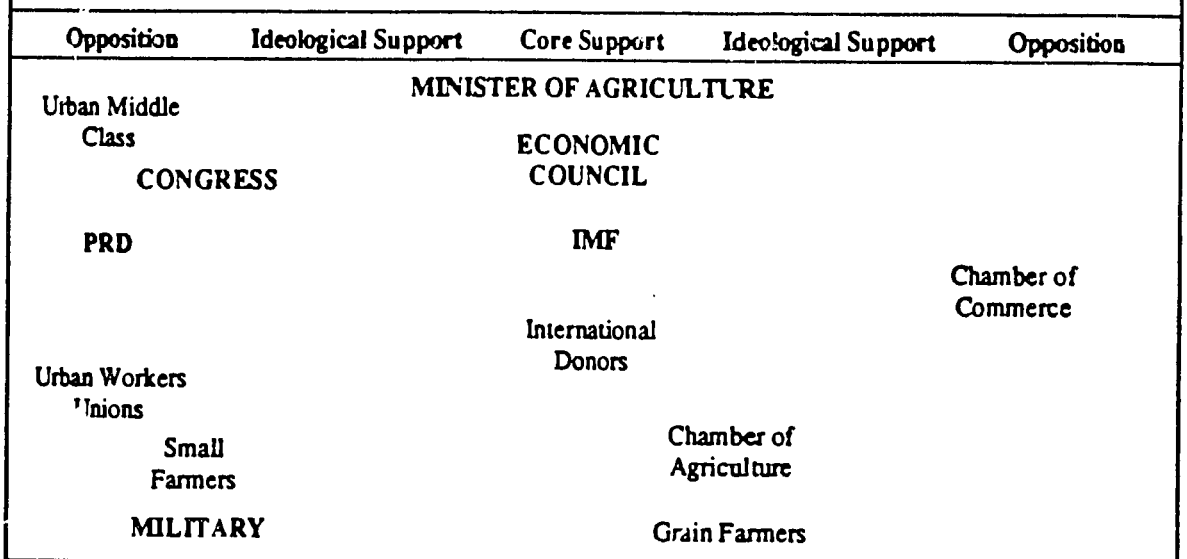
where support is located, where opposition lies, and possibilities for alliances or coalitions — should they be necessary. A serious lack of support, would certainly be an indication to either drop or substantially modify the idea, rather than wasting precious resources. Suppose, for instance, that the Minister of Agriculture of Boliguay wished to examine support for a reduction of price controls on grains in order to stimulate production, the forces around the issue might be arrayed as illustrated in Figure 1.

The micro-map indicates less support than one might assume from simply looking at the macro-map. The reason is that the particular issue of price controls on grains only interest a relatively limited number of actors and in this instance most actors are opposed to the issue. Judging from the array of actors present and the controversy that socially charged issues like price controls provoke, if the Minister of Agriculture wants to pursue the issue, he will have to think about how he can widen his support. The combination of ambiguity of support from powerful actors such as the Congress, the military, and a significant part of the President's political party pose a very uncertain environment for pursuing the elimination of price controls. However, if at least two of these powerful actors could be brought on board, their support would probably be enough to cancel the strong, but amorphous and difficult-to-mobilize opposition of the middle class, urban workers, unions, and small farmers. The combination of forces arrayed both for and against price control on the micro-map suggest that if the Minister were to go ahead he might have to alter the structure of the policy or otherwise modify it so as to decrease opposition. Tactics and strategy apart, it is quite clear that although there is a good general level of support for the government, the micro-map indicates that this particular policy is not likely to do well.

Should the Minister give up? Not necessarily. The micro-map can help indicate who needs to be satisfied in order for the policy to progress. Can a

Figure 1

Micro Political Map of Boliguay
Agricultural Sector
(Reduction of Price Controls)



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coalition be put together that will be strong enough to prevail over the opposition? Is the opposition coalesced around a single point or is it dispersed and fragmented? How entrenched and distanced is the opposition or potential coalition partners? What would the Minister have to concede those potential coalition partners? If a coalition does not seem to either be feasible or desirable, is there a way to neutralize key opposition actors—what changes would have to be made in the policy and what kinds of concessions would have to be made to those key actors? All of these questions can be answered by determining the level of resources and mobilization capacity possessed by each of the key actors (both opposition and support) identified on the map.

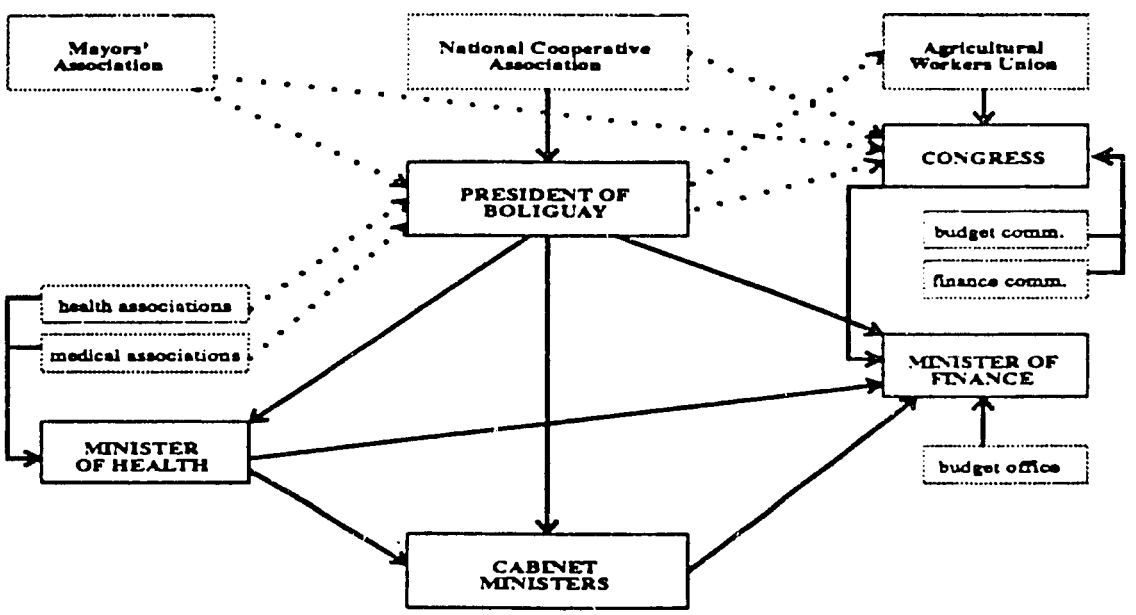
Policy Network Maps:

There are instances when officials would like to concentrate on a particular policy idea and would like to remove from consideration unimportant or irrelevant actors. The construction of a policy network map can be extremely helpful in such circumstances. There are several steps to develop a policy network map: first, what are the different points through which a project or policy passes to become approved and implemented? Second, who are the actor(s) in charge of each step? Third, how can officials gain access to these actors? Are there other actors, though not officially part of the process, that have substantial influence over those who decide? Finally, in which ways can officials exercise influence over this process? Do they have any particular skills or contacts that might help in this process? An illustration of how this process works can be seen in Figure 2.

Let us assume that the Health Minister wishes to increase budget allocations in order to establish better service in rural areas. The key actors in the policy decision process are the Health Minister, the Minister of Finance, the President and the Congress. But within that process there are several others who can and do influence decisions. The Minister of Finance's budget staff is charged with preparation of the budget and shapes most of the process and inter alia, many decisions about which projects will be

Figure 2

Policy Network Map: Health Sector of Boliguay



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maintained and which will be curtailed. Who, then, are the members of this staff and might there be some way to gain access to and to influence them?

Among the more important constituents of the President's political party are the health workers union and the medical association. Each of these might be brought into alliance with the Minister, and then bring pressure to bear on the President. Within the Congress, it is actually the committees on budget and finance that are in charge of approving the budget submitted by the President. Might there be some mechanism to influence directly the committee or the committee staff charged with the actual preparation of legislative authorization bills for the budget? Does a certain member of the committee have a keen interest in the problems of rural health? Perhaps the Minister could bolster the member's interest with pertinent and timely information that could be used to defend the policy in committee debates or hearings.

Finally, the pressure of rather diverse groups such as the Mayors' Association, the National Cooperative Association, and the Agricultural Workers Union, might also be brought to bear. While these groups are not direct players in the policy process, in contrast to the member of Congress or the Minister, they are the eventual recipients of the policy and can be important sources of influence on elected officials such as the President or the members of the Congress.

It should be pointed out that while all these points of access are possible, to be useful they must be mobilized. This will require initiative, time, and energy on the part of the Minister or some credible representative or delegate. If the Minister does not make the effort, it is likely that no one else will. But mere effort won't be enough. Each point of access will have to be examined for its potential for collaboration and for how much it can add to the objective of improving budget allocations for rural health.

Force-Field Analysis:

Force-field analysis is another, rather convenient method to illustrate support and opposition to a particular policy. The technique for applying the analysis is simple and straight-forward: groups are placed on a continuum of "strongly in favor," or supportive, to "strongly opposed" to "x" issue or policy. The middle of the continuum is a neutral position. The product is a "map" of who supports and who opposes a particular policy. It is particularly useful as a "first-cut" mechanism for sorting out positions of different stakeholders, and for giving the manager a quick impression of where major opposition and support lie. An example of force-field analysis application to Boliguay can be found in Figure 3.

Clearly, the analysis shows a great deal of opposition to the proposed reduction of price controls simply in terms of the number of groups opposed or

Figure 3

Force Field Analysis Reduction of Price Controls

(-) Oppose	(0) Neutral	(+) Favor
Urban Middle Class		Economic Council
PRD		IMF
CONGRESS		International Donors
MILITARY		Grain Farmers
Urban Workers Unions	Chamber of Agriculture	
Small Farmers		
Chamber of Commerce		

supportive. But it does not indicate why such groups are opposed, if they might go along with the idea simply because they are part of the government's coalition, whether such groups are opposed for the same reason, nor much about the quality or resources of the opposition or support. In this particular situation, the oppositional configuration of the force-field analysis ought to signal the manager to more closely analyze these questions before making any strategy choices.

Force-field analysis has certain limitations. Unlike the techniques for political mapping described earlier, force-field analysis does not examine questions of political support for the government on the policy or the value of a group's support on the issue, the degree to which the group supports a particular policy, or how much influence the group might have in determining the configuration or final outcome of the policy. Force-field analysis merely states whether the group is for or against the policy. Since the design of strategies for policy implementation generally requires more information, the manager will find the tool most useful for initial reconnaissance analysis.

René Hernández Valiente
MINISTRO DE JUSTICIA

PROYECTO DE AGENDA REFORMADA A EJECUTAR POR EL MINISTERIO DE JUSTICIA DENTRO DEL CONVENIO AID/COES 0520-219 "REFORMA JUDICIAL"

1. REFORMAS INMEDIATAS: (Septiembre de 1991.)

   1.1 Supresión de las presunciones de culpabilidad. (Cap. III. 3.3)

   1.2 Derogación de las normas legales que reglan el estado peligroso sin delito. (Cap. V, 2.1).

   1.3 Discriminalización del hurto y la defraudación entre parientes próximos. (Cap. V,2.5).

2. REFORMAS A PROPONERSE EN EL PLAZO DE UN AÑO (Junio de 1992)

   2.1 Ley definitiva de libertad provisoria en el proceso. (Cap.IV, 3.4).

   2.2. Acortamiento legislativo del plazo máximo de 72 horas de detención administrativa establecido por la Constitución. (Art. 13) (Cap. IV, 3.5)

   2.3 Supresión de la confesión extrajudicial o nueva reglamentación de ésta. (Cap. IV, 3.6)

   2.4 Reconsideración de la penalidad del hurto. (Cap. V, 2.4)

   2.5 Revisión de los Arts. 350, 351, 352, 353 y 354 con el objeto de darles una mejor aplicación práctica. (Cap. III, 1.6 y 1.7).

   2.6 Reglamentación sobre pesquisas y registros. (Cap.IV, 3.9)

   2.7 Introducción de la regla de exclusión, (Cap.IV, 3.10)

   2.8 Ampliación del rol de la defensa en el sumario. Obligación del Estado de proveer a la defensa desde el inicio de la investigación policial. (Cap. III, 2.6)

   2.9 En caso de no haberse ratificado aún la derogación del Art. 30 constitucional, se modifique el Decreto Legislativo 376 del 16 de noviembre de 1989, en el sentido indicado en el Capítulo IV, 3. 1. infine.

   2.10 Reglas para la detención por autoridad policial y fundamentos de la detención provisional . (Cap. III. 2.1)

   2.11 Nueva Reglamentación del Habeas Corpus.(Cap.IV, 3.8)

...2

3. REFORMAS A PROPONERSE EN EL PLAZO DE UN AÑO Y SEIS MESES (Diciembre de 1992)

3.1 Reforma de la jurisdicción de apelación y de consulta. (Cap.III, 2.5).

3.2 Reemplazo de la jurisdicción policial para las faltas de esa índole, atribuyéndola a los jueces de paz. Creación de recursos judiciales expeditos para las contravenciones de naturaleza penal administrativa. (Cap. IV, 3.2)

3.3 Supuesta la ratificación del nuevo texto del Art. 216 de la Constitución, apertura de una instancia judicial de recurso contra las decisiones de las cortes marciales. (Cap. III, 3.1)

4. REFORMAS A PROYECTARSE EN EL PLAZO DE DOS AÑOS Y SEIS MESES (Diciembre de 1993)

4.1 Código de Ejecución Penal (Ley Penitenciaria) deslindando las atribuciones del Ministerio de Justicia y del Organo Judicial.(Cap. V, 2.6)

4.2 Nuevo Código Procesal Penal. (Cap. III, Conclusiones, p. 24).

4.2.1 Medidas para obtener el cumplimiento de los plazos procesales. (Cap. IV, 3.7)

4.2.2 Medidas tendientes a facilitar la comparecencia del imputado, testigos, peritos y ofendido ante el jurado y declaración de todos esos en la vista pública. (Cap. III, 1.6 y 1.7)

4.2.3 Separación de las funciones de juez instructor y juez de sentencia. (Cap. III, 2.3)

4.3 Revisión integral del Códgio Penal y leyes complementarias (Cap.V)

4.3.1 Admisión del Error de Derecho en el Código Penal, Derogación o reemplazo de los Arts. 370, 379 y 380 del Código Penal. (Cap. V, 2.3)

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AGENDA REFORMADA A EJECUTAR POR EL MINISTERIO DE JUSTICIA DENTRO DEL CONVENIO AID/GOES 519-219 "REFORMA JUDICIAL"

Información actualizada al 29 de octubre de 1992

1 <u>Trabajos ejecutados y enviados al Organo Legislativo</u>:

2.2.8	a)	**Asistencia Legal y Defensoría Pública** (aprobado y sancionado).
1.1.1	b)	**Supresión de las Presunciones de culpabilidad** (pendiente de aprobación por la Asamblea Legislativa).
1.1.3	c)	**Descriminalización del Hurto y defraudación entre parientes próximos** (pendiente de aprobación por la Asamblea Legislativa).

2 <u>Trabajos ejecutados sometidos a consulta y debidamente revisados, incorporadas observaciones y listos para ser sometidos a la aprobación del Presidente de la República</u>.

2.2.3	a)	**Derogatoria de la Confesión Extrajudicial.**
2.2.2	b)	**Acortamiento del plazo de 72 horas a 24 horas, de la detención administrativa.**
1.1.2	c)	**Derogatoria de las normas legales que reglan el Estado peligroso sin delito.**

3 <u>Trabajos elaborados a nivel de documento, discutidos por el área, han sido enviados al Señor Ministro de Justicia y están listos para eventos consultivos</u>.

2.2.10	a)	**Reglas para la detención por autoridad policial.**
2.2.4	b)	**Penalidad del hurto extensivo a los delitos de estafa y daños.**
2.2.1	c)	**Reformas a la detención provisional y a la libertad provisoria en el proceso.**
3.3.1	d)	**Derogatoria de la consulta.**

4.
4.2
4.2.3 e) **Separación de las funciones de Juez Instructor y Juez de Sentencia.**

4 <u>Trabajos que en la agenda se consignan por separado; pero que ya fueron desarrollados en otros trabajos que a su vez ya fueron concluidos.</u>

4.
4.2
4.2.1 a) **Medidas para obtener el cumplimiento de los plazos procesales.**
Este punto de Agenda se desarrolló en el Anteproyecto referido a "Reformas a la detención provisional y a la libertad provisoria en el proceso", específicamente en lo que se refiere a lo más importante en materia de plazos: el plazo de la instrucción, Art. 123 anteproyecto, la sanción por negligencia e incumplimiento Art. 124 anteproyecto, así como el término de la duración de la detención provisional sin que se haya dictado auto de elevación a plenario y cuando ya se haya dictado dicho auto, Art. 250 número 3 y 4.

2.2.7 b) **Introducción a la Regla de exclusión.**
Este punto ya se ha concretado legislativamente, al aprobar la Asamblea el proyecto sobre Asistencia Legal y defensoría pública. Al respecto, cabe precisar que tal regla está contenida en los Arts. 46, ordinal 8o., incisos 3, 4 y 5 y Art. 551, ordinales 5o., 6o. y 7o. del Código Procesal Penal, según el texto establecido por el Decreto 238, publicado en el Diario Oficial del 12 de mayo de 1992.
Asimismo, el Art. 138-A, inciso 4o., del proyecto de Supresión de la Confesión Extrajudicial, ya sometido a consulta y puesto en manos del Señor Ministro, contiene un claro ejemplo del empleo de la regla de exclusión. En las bases para el Nuevo Código Procesal Penal se consignaron los principios generales.

Conforme al detalle anterior aparecen trece trabajos ya ejecutados, conforme a la Agenda de trabajo.

5 <u>Trabajos finalizados (primer documento) que están siendo discutidos en plenarias a nivel del Area Procesal Penal.</u>

2.2.6	a)	**Reglamentación sobre pesquisas y registros.**
2.2.11	b)	**Nueva Reglamentación del Hábeas Corpus.**
3.3.3	d)	**Reformas al Código de Justicia Militar.**

6 <u>Trabajos asignados y que están en proceso de elaboración (a nivel de primer documento).</u>

4.		
4.2		
4.2.2	a)	**Medidas tendientes a facilitar la comparecencia del imputado, testigos, peritos y ofendidos, ante el jurado y declaración de todos ellos en la vista pública, Arts. 350, 351, 352, 353 y 354 Pr.Pn.**
3.3.2	b)	**Reemplazo de la jurisdicción policial para las faltas de esa índole atribuyéndolas a los Jueces de Paz y Recurso Judicial en la aplicación de las contravenciones de naturaleza penal administrativa.**
4.4.2	c)	**Bases para el nuevo Código Procesal Penal.**
4.4.3	d)	**Revisión Integral del Código Penal y leyes complementarias.**
4.4.1	e)	**Código o Ley de Ejecución Penal.**

Conforme al detalle anterior y excluyendo los dos trabajos desarrollados en otros anteproyectos a que se ha hecho referencia, los trabajos de agenda quedan reducidos a cinco

LIST OF ACTORS INTERVIEWED

NAME:	INSTITUTION/ORGANIZATION:
Rene Hernandez Valiente	Minister of Justice
Gaston Gomez	Director, ATJ
Gerardo Lievano Chorro	ATJ
Rafael Flores Flores	ATJ
Ruben Antonio Mejia	ATJ
Roberto Mendoza	Fiscal General de la Republica
Jorge Giammattei	Presidente en Funciones Corte Suprema de Justicia
Jose Vicente Machado	Procurador General de la Republica
Agustin Garcia Calderon	Procurador General Adjunto de los Derechos Humanos
Guillermo Arevalo D.	Juez Primero Penal de San Salvador
Gerardo Le Chevallier	COPAZ
Abraham Rodriguez	Comision Ad Hoc
David Escobar Galindo	Ex-miembro de Comision Negociadora de los Acuerdos de Paz. Rector UMD.
Albino Tinetti	Checchi
Nelson Garcia	Asociacion Salvadorena de Abogados
Luis Lovo Castelar	Inter-American Bar Association
Roberto Oliva	Centro de Estudios Juridicos
Francisco Diaz	CESPAD
Victor Ml. Moreno	FUSAJ
Luis Cardenal	CEDEM
Ricardo Montenegro	Camara de Comercio/ANEP
Roberto Ortiz Avalos	ASI
Luis Felipe Umana	FUSADES

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Carlos Quintanilla Schmidt	Decano Escuela Derecho, UMD
Fidel Chavez Mena	Partido Democrata Cristiano
Raul Somoza	ARENA, Comision de Legislacion AL
Ruben Zamora	Convergencia Democratica
Ricardo Castaneda	El Salvador Ambassador to UN
Maureen Dugan	El Salvador desk officer AID/W
Michael Deal	USAID/San Salvador
Deborah de Iraheta	USAID/San Salvador

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CUESTIONARIO

Diagnostico del Progreso de las Reformas Judiciales

Evolucion de las Reformas:

En su opinion, que se ha logrado hasta el momento? Y que ha facilitado estos logros?

Cree usted que es satisfactorio la evolucion de las reformas hasta el momento? si no -- como debe proceder con las reformas? (si se opone a las reformas, de todo o quiere que cambia el proceder?)

En su opinion, cuales de las reformas son las mas prioritarias?

De estas, cuales son las mas factibles de poner en marcha y/o hacer efectivas a corto plazo?

Cual seria una situacion ideal para realizar las reformas? Que es lo que puede facilitar una situacion ideal?

En su opinion, cuales son los principales impedimentos al proceso de reforma? Hay acciones concretas que podrian obviar esos impedimentos? Cuales?

Como ve usted el liderazgo actual del movimiento de reforma judicial?

Cree usted que hay suficiente enfasis en las reformas civil?

Grado de Apoyo para las Reformas:

Cual es su percepcion del grado de apoyo para la reforma judicial?

Cual es el grado de entendimiento del contenido de las propuestas reformas?

En su opinion tiene suficiente apoyo el proceso para lograr la implementacion de los acuerdos?

Que elementos le faltan al proceso?

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Quien apoya? Quien no?

En su opinion, quienes apoyan? Por que?

Quienes son menos receptivos o quienes se oponen? Por que?

Quienes o cuales grupos serian los beneficiados en las reformas penales contempladas? ... los mas perjudicados.

Cree usted que hay suficiente debate publico sobre las reformas? Si no, como debe ser expandido?

Grupos y sus Intereses:

Cuales elementos de las reformas le interesan mas a usted o a su grupo? Por que?

Cuales elementos le interesan menos? Por que?

Si usted (o su grupo) tuviera el poder, de que manera le gustaria manejar el proceso?

Como ve su grupo el futuro de las reformas?

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