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**An Assessment of the
El Salvador Attorney General's Office
Final Report**

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EXECUTIVE SUMMARY

Since 1984 the USAID Mission in El Salvador has provided grant support to improve the administration of justice in El Salvador and has committed a total of \$13.7 million. The major components of the program include technical support for Judicial Reform, Judicial Protection, Commission on Criminal Investigations, and Judicial Administration and Training. Under this fourth component, USAID/El Salvador has provided support to the Public Ministry (*Ministerio Público*).

The Public Ministry, an agency that is completely independent from the executive, legislative and judicial branches of the El Salvador government, has been composed of two independent organizations, the *Fiscalía General* and the *Procuraduría General*. The *Procuraduría General* provides legal assistance to persons with limited means (public defenders) and the *Fiscalía General* (Office of the Attorney General) provides the court prosecutors (*fiscales*). Grant support was provided during 1990 and 1991 to the *Fiscalía General*. Comprehensive training is being provided to *fiscales* under the Judicial Administration and Training component of the grant.

USAID/El Salvador, to provide ongoing planning and program support for improvement of the El Salvador administration of justice, required an assessment of the operational capability and effectiveness of the *Fiscalía General* in discharging its constitutionally mandated functions. The assessment had the objective of generating recommendations for improving the efficiency and effectiveness of the *Fiscalía*. The assessment was charged with identifying any problem areas, making recommendations for program improvements, and identifying areas for administrative and technical support.

CRIMINAL JUSTICE SYSTEM

The Salvadoran criminal justice system, to a large extent, represents an "inquisitorial" model. Typical of such systems is the absence of a single office charged with the prosecution of crime. The "accusatorial" systems of the U.S. and Puerto Rico are generally characterized by the existence of one agency, usually part of the executive branch, which maintains virtually complete control of the process at the investigation and the accusation stages. In the accusatorial system, the role of a "passive" judiciary during the investigative stage is limited to the issuance of search and arrest warrants, review of release and bond matters, constitutional issues concerning grand jury conduct, the gathering of evidence at pretrial stages, and matters concerning the admissibility of evidence and the conduct of the proceedings at trial.

The Salvadoran system, in stark contrast, is characterized by judges who are charged with the actual investigation of crimes in formal judicial proceedings. Justices of the Peace and First Instance judges are charged with the investigation of the criminal act and with deciding whether the case goes to trial. The same First Instance judge will preside over the trial if a jury is called for, or will actually decide the guilt or innocence of the defendant if that case falls within the broad category of offenses that have been removed from the purview of the jury. This same judge passes sentence as well.

The Second Instance judges are the intermediate appellate court between First Instance and the Supreme Court and are quartered in the same places throughout the country as the First Instances courts. Automatic review of all final judgements or verdicts, guilty and not guilty, is required of the Second Instance courts.

In addition to the judiciary, until recently there were several separate police entities charged with the investigation of crime: the National Police, the National Guard, the Treasury Police, the Commission on Criminal Investigations, and the Executive Antinarcotic Unit. With the peace accords there is to be created a new National Civil Police. The National Guard and the Treasury Police have ceased to exist as separate entities and the members of those organizations are in the armed forces. The Commission on Criminal Investigations is attached to the Ministry of Justice. The Executive Antinarcotic Unit is a specialized group of narcotics investigators attached administratively to the Office of the President.

A group providing forensic medical services, the Institute of Legal Medicine, is currently functioning under the administrative control of the Supreme Court. In addition there are two crime laboratories, one under the administration of the National Police and the other with the Commission on Criminal Investigations.

In 1991 the functions of the Fiscalía were significantly expanded to include the power to "Direct the investigation of crime, and in particular of those criminal acts which must be submitted to the criminal process" (Const. 1991, Art 193). The same Article provides for the creation of an investigative branch and requires the Fiscalía to institute criminal proceedings on its own (in those cases where it has jurisdiction) or upon complaint. These changes complement earlier statutory provisions in the "Organizational Law For the Public Ministry" (1990) granting broad oversight in the investigative process to the Fiscalía and requiring a more active role of the Fiscalía in the judicial process.

As the situation exists now, in spite of the key changes in the legislation and in the organization of the Fiscalía which is attempting to change its role in connection with criminal investigations, the fiscal has remained a passive actor in most of the judicial process. Those experts and consultants familiar with the Fiscalía note that the fiscal usually only sees the case on paper and that, consequently, it remains abstract. There is no aggressiveness or stake in the outcome, nor is there any sense that the case represents a real event, a serious crime affecting human beings and society. The ultimate long term success of fiscales performing as prosecutors depends on changing this mentality and present methods. Some changes are necessary in the law affecting the criminal process, but without a change in the underlying attitudes of the judges, fiscales and defense lawyers, no real improvement is likely.

FISCALÍA OPERATIONS

Of the total of 400 employees in the Fiscalía General, approximately 200 are Fiscales who provide coverage of all courts in El Salvador. In addition to the traditional services provided by fiscales to the public and to the courts, new programs have been initiated in recent years. The Fiscalía, however, is not well equipped to provide enhanced services and meet its expanded constitutionally mandated role. The main building that formerly housed the Fiscalía General in San Salvador was damaged in the earthquake of 1986. The Fiscalía has been housed in another building where only the top personnel have private offices. There is a general lack of transportation, clerical support, and investigators.

In January of 1992 the Fiscal General (Attorney General), created a new department charged with "crime prevention" activities, designed to become a significant part of the Fiscalía. To date the efforts of the Fiscalía Department of Crime Prevention have primarily centered around newspaper ads warning people of street crime and advising them not to allow their children to be alone in public. Ads have also been run describing the functions of the Fiscalía and its new programs. One of the major parts of this program is the planned development of an analytical statistical base in order to obtain profiles of criminality in Salvadoran society and to be able to better assess the functioning of the justice sector. The Assessment Team noted deficiencies in the gathering of statistics in all components of the Salvadoran justice system. This basic lack of valid or understandable data complicates any reform effort, whether legislative or internal/administrative.

The quality and quantity of services provided by the Fiscalía is directly dependent upon the integrity, education, training, and experience of the fiscales, the frontline of the Fiscalía General in accomplishing its constitutional responsibilities. While there is organizational coverage of all the courts, it is difficult to ascertain the caseloads, workloads, effectiveness, and efficiency of the fiscal body. Improved Fiscalía personnel systems can increase the capabilities of the fiscales to perform their duties in a changing justice system environment.

There is an organizational manual that dates from 1978 which is of little operational value to the Fiscalía. In June of 1989 a functions pamphlet was adopted by the Fiscalía consisting of five pages of text and samples of several forms. There are no written standards of professional or ethical conduct. A manual could include standards of conduct and other aspects of employment such as work standards, philosophy and objectives of the Fiscalía. The reproduction of pertinent codes, forms and such other material would be helpful to the fiscales.

FINDINGS AND CONCLUSIONS

The El Salvador system of justice is clearly moving towards its own unique form of "mixto moderno." The Constitutional Reforms give the Fiscalía the responsibility to conduct investigations and the Fiscalía has formulated a plan to create an internal unit, the Organization of Criminal Investigations. The Assessment Team was encouraged by the initiatives undertaken by the Fiscalía to meet its constitutionally mandated responsibilities. Training programs provided by the Judicial Reform Project's Center for Research and Training over the past year have clearly affected the thinking and discussions surrounding judicial reform and the role of the Fiscalía. The outlook and attitudes of fiscales are, by and large, fairly progressive. Many serious issues remain to be addressed, however. The major areas uncovered by the Assessment Team are summarized below.

- o Role of the Fiscales: In contrast to accusatorial systems of justice, the role of the fiscales in El Salvador is a comparatively passive one. Investigations are undertaken by the instructional Justices of the Peace and judges of the First Instance. Fiscales are not proactive in the prosecution of their cases. While plea bargaining and oral testimony of witnesses are permitted under the penal code, they are not utilized. Coordination is weak between fiscales and the police and judiciary and there is a lack of investigators and fiscales trained in conducting investigations.
- o Personnel Issues: Some judges expressed the opinion that many fiscales are uneducated, untrained and inexperienced. Personnel with the Commission of Criminal Investigations and the Executive Antinarcotic Unit, however, stated that there was good rapport and cooperation from the assigned fiscales. Fiscales

assigned to these areas have substantially higher salaries than the majority of fiscales. Relatively few of the fiscales (an estimated 20%) have completed their law school programs. Most fiscales are paid approximately 25% less than public defenders and Justices of the Peace receive salaries that are double the salary for fiscales. Incidents of bribe taking are said to be widespread throughout the justice system. Fiscales productivity is difficult to ascertain given the available statistics.

- o Crime Prevention: The Department of Crime Prevention was in its initial months of operation at the time of the Assessment study. Staff consisted of a program coordinator, whose activities were oriented towards compilation of crime statistics, analysis, and public information. Results to date of statistics collection and public information dissemination efforts are inconclusive.
- o Regional Office: A Eastern Regional Office was established in San Miguel to improve rural operations. Fiscales assigned to the other rural courts are supervised out of San Salvador. The Regional Office had fewer resources such as clerical assistance, office equipment, transportation and office space in comparison with the Fiscalía office in San Salvador. While conditions were far from ideal in San Miguel, fiscales assigned to the Western Region have even less support.
- o Records and Statistical Systems: The Fiscalía record systems substantially rely on hand written documents. There are instances of written materials recopied by hand. While case files contain substantial amounts of information that would be useful for operations and overall Fiscalía policy development, there is no structure for maintaining key information elements and this information is not readily accessible.
- o Operations Manual: The Fiscalía has a few documents that contain information on the instruction and plenary phases of criminal cases processing and some background information in judicial practices, but no comprehensive operations manual. An operations manual should be developed and can address case processing, legal references, orientation on the Fiscalía, objectives of judicial reform, standards of ethical conduct, and expectations of performance of duties and measures of effectiveness.
- o Training: The Judicial Reform Project Center for Research and Training has provided an extensive training program for public defenders and fiscales over the past year. This training has aided the fiscales to be aware of the Constitutional Reforms and the evolving justice systems in El Salvador and in neighboring Central American countries. Training, however, tends to be theoretical and faculty members from South America are unacquainted with the possibilities of active case prosecutions and elements of the El Salvador system such as jury trials.

EXTERNAL PROGRAM DEVELOPMENT

The Fiscalía, in order to increase its effectiveness and to undertake the major step of conducting investigations, must have the support of the other components of the El Salvador system of justice. Legislation and coordination are seen as the major avenues for Fiscalía progress in obtaining cooperation and support from other justice agencies as outlined below:

- o Legislation: The Constitutional Reforms provide substantial latitude to the Fiscalía to reorient its operations. Given the customary practices of fiscales, additional

impetus, encouragement, and authorizations are needed to facilitate the change process. A major sign of support would be the legislation or authorization to establish the Organization of Criminal Investigations (OID) within the Fiscalía as called for in the constitutional reforms. Other legislation could include increased funding for the Fiscalía and could provide guidelines that outline duties of the police, judiciary, and the Fiscalía in the conduct of investigations. Successful prosecution of criminal cases and reduction of caseloads could be enhanced by authorization for the expanded use of witnesses in jury proceedings, explicit authorization for the fiscales to undertake investigations without the prior approval of the court, clarifications on the use of no plea bargaining, and case dismissal by fiscales (*nolle prosequere* provisions), among others.

- o Coordination: Coordination is required with the law schools, National Civil Police and the judiciary. The Center for the Judicial Reform Project, in its technical assistance to reform law school curricula, can increase the awareness of law school deans regarding the role of fiscales and their needs for training in forensic practices. The Assessment Team recommends that the Fiscal General form high level Commissions for Coordination with both the courts and the police.

INTERNAL PROGRAM DEVELOPMENT

For several of the recommendations presented below, the Fiscalía has taken steps for implementation and the Assessment Team suggestions are directed to added support, project orientation, and future project possibilities. For the most part, the implementation of recommendations will require short-term and long-term technical assistance. The Assessment Team recommends that all technical assistance be structured to assure maximum participation by Fiscalía senior management and counterpart Fiscalía departments and divisions. The technical assistance can, as appropriate, include hands-on involvement in studies and project implementation activities as well as detailed briefings, training sessions related to technical assistance tasks, and workshops and conferences related to technical assistance topics.

- o Administration Guidelines: The *Ley Orgánica del Ministerio Público* (1990), the statute that defines the specific duties of the Fiscalía, may require reform or amendment to facilitate improvements in Fiscalía operation, training of fiscales, and career development.
- o Training: Additional training, within and outside of the Fiscalía, should be undertaken to reinforce the implementation of changes in theory and practices and to assist in the undertaking of additional innovations in support of the proposed expanded role of fiscales in the justice system. These training possibilities include the establishment of a Fiscalía Training Academy and related internal training programs such as investigations techniques, presentation of legal argument, oral questioning of witnesses and related duty-oriented training. The Assessment Team recommends that training be country-specific to El Salvador in addition to exposure of fiscales to theoretical legal concepts and practices in other countries.
- o Investigations Function: The Assessment Team recommends that the Fiscalía continue efforts initiated to establish within the Fiscalía an auxiliary unit of investigation, the Office for Criminal Investigations. Depending upon the quality and size of the investigative resources of the to-be-formed National Civil Police, between 40 to 200 investigators will be required within the Fiscalía. The allocation

of additional resources to the Fiscalía for the internal organization and training of such a body of investigators will also be necessary. The provision of technical assistance would aid the Fiscalía to organize an effective investigation unit through the preparation of regulations and procedures for its operation.

- o Personnel and Fiscal Career Development: Approximately 85% of the Fiscalía annual budget is committed to salaries for personnel, clear evidence that the Fiscalía program is dependent upon the quality of its employees for the accomplishment of its responsibilities. Issues to be addressed include salary equity, incentives for fiscales to obtain law degrees, and a career track program.
- o Operations Manual: The development of an operations manual would require an extensive review of operations, procedures, practices, performance measures, standards of conduct, and organizational structure. Components of the operations manual would include Fiscalía philosophy and objectives, procedures, ethics, expected performance and could provide basic legal reference materials.
- o Professional and Ethical Conduct: With the recently established Fiscalía Office of the Internal Auditor, now is the opportune moment to establish internal regulations and standards of conduct applicable to the fiscales. These regulations can serve to govern the investigations and administrative processes for the investigations to be undertaken by the recently created unit.
- o Regions: The Assessment Team recommends that the Fiscalía continue its efforts to regionalize operations. In 1992, the Western Regional Office will be established in Santa Ana. Operations will then be directed regionally out of Santa Ana for the west, San Salvador for the central part, and San Miguel for the east.

LONG-TERM TECHNICAL ASSISTANCE

The Assessment Team recommends that the foundation for improvement of the Fiscalía be a two year technical assistance effort to develop and demonstrate the efficacy of proposed internal and external program actions. The effort can consist of the following components:

- o Legislation Review: Long-term team members can serve as staff support and to coordinate short-term technical assistance to review legislation and develop new legal proposals. Practices of the CORELESAL program (Revisory Commission on Salvadoran Legislation) should be reviewed to guide the design of new efforts, the relationship to counterpart officials, as well as the previous use of short-term technical assistance.
- o Investigation Functions: A detailed study of investigation practices in El Salvador, past and present, would provide valuable information for additional reform in the court processing of cases. Such a study would be directly related to the Constitutional Reforms and would aid in the implementation of new procedures within the Fiscalía.
- o Commissions for Coordination: Long-team technical specialists can serve a staff function to support the work of the Commissions with the National Civil Police and with the judiciary.

- o **External Training:** Along with the Fiscalía Coordinator for Training, the long-term team can work with the Center for Research and Training and with law schools to develop courses and academic curricula.
- o **Regional Demonstration Project:** A major focus of the long-term technical assistance team can be the development and monitoring of a Regional Demonstration Project. Operations oriented activities can be developed and tested and can include operations manual design, introducing of investigation technology, cooperation with police and the judiciary, performance standards, and the use of statistics to improve operations and Fiscalía policy.
- o **Fiscal Career Development:** During the two year period, the long-term team can work with the Fiscalía personnel committee to develop the fiscal career track and provide supporting documentation. A regional demonstration project could provide the proving ground for career track development.
- o **Training Academy:** The long-term team can provide technical assistance to the Director of the Training Academy. Assistance will focus on procedures for design of training programs, training evaluation, on-the-job training, and coordination of external training programs and out-of-country training.
- o **Technical Assistance Support:** The long-term technical assistance team will require access to specialists to accomplish the long-term objectives. This support can take the form of baseline studies and project designs that are accomplished before the long-term effort is initiated. When the long-term effort is underway, additional technical assistance support will be required for information systems development, monitoring and evaluation, and procedures specialties such as juror management and caseload management, among others.

RECOMMENDATIONS FOR IMMEDIATE ACTION

The following recommendations support the development and eventual implementation of the long-term technical assistance effort. Baseline studies, designs, and any other procedural recommendations that emerge from these immediate activities can, in turn, be tested in the actual operations of a Regional Demonstration Project.

- o **Caseload Baseline Study:** The proposed study can address two major issues that were identified by the assessment study: the nature of the work for the current fiscales can be examined and case flow could be analyzed. To the extent that these studies provide sound estimates of fiscal productivity, a baseline of data can be established by which to measure the impact of program reforms, training, and Fiscalía procedures changes.
- o **Juror Study:** The use of the five person jury is a unique aspect of the El Salvador system of justice. A study of current practices could reveal interesting insights that could be used to continue the trend to El Salvador justice reform.
- o **Training Academy Design:** A design is needed to guide the Fiscalía and the long-term technical assistance team to develop the Fiscalía Academy. Components of the design could include: Academy objectives, design for orientation training, length of orientation segments, on-the-job training, mid-level training, personnel and resource requirements, and other program aspects.

- o **Demonstration Project Design:** This should be a major component of the overall effort to improve the Fiscalfá. Initial work to ascertain the best demonstration site, major demonstration objectives and related program issues such as coordination is needed in order to construct the overall two year technical assistance project.
- o **Design for Long-Term Technical Assistance for the Improvement of the Fiscalfá:** Given the emphasis of the assessment study on the areas of coordination, training and management information, a three person long-term technical assistance team may be required. The proposed project design would address the objectives for the improvement of the Fiscalfá, expected results and timelines, defined components, use of demonstration efforts, and required resources.

SECTION 1

INTRODUCTION

El Salvador, as many countries in Latin America, is undertaking a comprehensive review and restructuring of its system of justice. This process has been underway, in an intensive and focussed manner, for the past eight years. The peace agreement that was signed on January 16, 1992 and the reforms of the 1983 Constitution that were introduced through legislative decrees in October 1991 and January 1992 also provide new foundations for improving the El Salvador system of justice.

1.1 BACKGROUND

Since 1984 the USAID Mission in El Salvador has provided grant support to improve the administration of justice in El Salvador. Following four amendments to the original grant, USAID/El Salvador has committed a total of \$13.7 million. The major components of the program include technical support for Judicial Reform, Judicial Protection, Commission on Criminal Investigations, and Judicial Administration and Training. Under this fourth component, USAID/El Salvador has provided support to the Public Ministry (*Ministerio Publico*).

The Public Ministry, an agency that is completely independent from the executive, legislative and judicial branches of the El Salvador government, has been composed of two independent organizations, the *Fiscalía General* and the *Procuraduría General*. The reforms of the Constitution provide for a third organization, the *Procuraduría General de Derechos Humanos* (Human Rights).

In essence, the *Procuraduría General* provides legal assistance to persons with limited means (public defenders) and the *Fiscalía General* (Office of the Attorney General) provides the court prosecutors (*fiscales*). Grant support to the Public Ministry was provided during 1990 and 1991 to the *Fiscalía General*. Comprehensive training is being provided to *fiscales* under the Judicial Administration and Training component of the grant.

1.2 ASSESSMENT STUDY

USAID/El Salvador, to provide ongoing planning and program support for improvement of the El Salvador administration of justice, required an assessment of the operational capability and effectiveness of the *Fiscalía General* in discharging its constitutionally mandated functions. The assessment had the objective of generating recommendations for improving the efficiency and

effectiveness of the Fiscalía. Among the areas and issues addressed by the assessment were the following:

- o San Miguel Regional Office operations
- o Plans for incorporating the Commission on Criminal Investigations into the Fiscalía General
- o Case assignment, tracking and monitoring systems
- o Observation of fiscales in the conduct of their duties to identify areas for administrative support and training
- o In-house standards of professional conduct
- o Personnel management systems
- o Plans for Fiscalía crime prevention activities
- o Coordination mechanisms with police and courts

The assessment was charged with identifying any problem areas, making recommendations for program improvements, and identifying areas for administrative and technical support.

1.3 ASSESSMENT PROCEDURES

The assessment of the Fiscalía General was conducted by a three person team through the A.I.D. Regional Administration of Justice for Latin America and the Caribbean Project under contract to the National Center for State Courts. The Team Leader was Leo T. Surla, Jr., an economist and President of MetaMetrics Inc., subcontractor to the National Center for State Courts. Mr. Tim Cornish, Senior Prosecutor-in-Charge, Special Investigations Division, New Mexico Attorney General's Office, and Mr. Luis A. Feliciano Carreras, former Prosecutor General of Puerto Rico, served as Prosecution Program Specialists. The data collection, interviews, and draft report preparation were accomplished during a three and a half week period in March and April of 1992. Mr. Cornish and Mr. Feliciano each spent two weeks in El Salvador, and Mr. Surla was present in El Salvador for the entire three and a half week period.

The Assessment Team reviewed relevant reports, materials, manuals, and records. Interviews were conducted with Fiscalía personnel and personnel from the other components and pertinent programs in the El Salvador system of justice. The Fiscalía also provided additional statistics and information as requested by the Assessment Team.

SECTION 2

OVERVIEW OF THE FUNCTIONS OF THE FISCALÍA GENERAL

The Fiscalía General is one of three totally independent branches known generically as the *Ministerio Publico*. The other branches are the *Procuraduria General* which operates an increasingly effective public defender's office and the *Procuraduria de General Derechos Humanos*, a new organization established in the constitutional reforms of 1991. This latter organization has been assigned the power to: "oversee respect for and guarantee of human rights" and "investigate of its own volition or upon complaint, cases of violation of human rights" (Const.1991, Art 194).

2.1 CRIMINAL JUSTICE SYSTEM

The Salvadoran criminal justice system represents an "inquisitorial" model. Typical of such systems is the absence of a single office charged with the prosecution of crime. The so-called "accusatorial" systems are generally characterized by the existence of one agency, usually part of the executive branch, which maintains virtually complete control of the process at the investigation and the accusation stages, and has the ability to significantly control post accusation processes through the use of plea bargaining, witness immunity and *nolle prosequi*¹ powers. In this accusatorial system the role of a "passive" judiciary during the investigative stage is limited to the issuance of search and arrest warrants, review of release and bond matters, constitutional issues concerning grand jury conduct, the gathering of evidence at pretrial stages, and matters concerning the admissibility of evidence and the conduct of the proceedings at trial.

2.1.1 Court System

The Salvadoran system, in stark contrast, is characterized by judges who are charged with the actual investigation of crimes in formal judicial proceedings that are considered to be "open" cases in the sense that an indicted or charged case is an "open case" in the U.S. The same judges, in El Salvador known as *jueces de primera instancia*² (first instance judge), are not only charged with the investigation of the criminal act but with deciding whether the case goes to trial, *plenario*. The same judge will preside over the trial if a jury is called for, or will actually decide the guilt or innocence of the defendant if that case falls within the increasingly broad category of offenses that have been removed from the purview of the jury. This same judge passes sentence as well.

1 Prosecutors can decide that there is insufficient evidence to prosecute a case.

2 The jueces de primera instancia often delegate to the jueces de paz. This latter office is also empowered by the Code of Criminal Procedure to conduct the initial phase of any investigation unless the juece de primera instancia chooses to involve himself (Art. 116).

The *Jueces de Segunda Instancia* are the intermediate appellate court between *primera instancia* and the Supreme Court and are quartered in the same places throughout the country as the *primera instancia* courts. Automatic review of all final judgements or verdicts, guilty and not guilty, is required of the *segunda instancia* courts. There are also several opportunities for appeal from interlocutory orders and the fiscal can appeal for or against pretrial dismissals (*sobreseimiento*) as well.³

2.1.2 Police

In addition to the judiciary, until recently there were several separate police entities charged with the investigation of crime: the *Policía Nacional*, the *Guardia Nacional*, the *Policía de Hacienda*, the *Comisión Especial para la Investigación de Hechos Delictivos* and the *Unidad Ejecutiva Antinarco tráfico*. With the *Acuerdos de Paz* (Peace accords) there is to be created a new civilian police, *Policía Nacional Civil*, which is to come under the administrative control of the Department of the Interior, a cabinet level ministry which is part of the executive branch of government. The *Policía Nacional Civil* will be composed of a majority of *ex-Policía Nacional* and FMLN members. It is expected that there will be an equal number of individuals new to police work and an undetermined minority of *ex-Policía Nacional* and FMLN in the new *Policía Nacional Civil*.

The *Guardia Nacional* and the *Policía de Hacienda* have ceased to exist as police and the members of those organizations are strictly in the armed forces. The *Comisión Especial Para la Investigación de Hechos Delictivos* is expected to be transferred from the Ministry of Justice to the Fiscalía. The exact timing of the transfer is unclear, but it may not occur until the end of the Cristiani Administration, i.e., mid-1994. The *Unidad Ejecutiva Antinarco tráfico* is a specialized group of narcotics investigators attached administratively to the Ministry of the Presidency and has an impressive record of successes.

2.1.3 Investigation Resources

A group providing forensic medical services, the *Instituto de Medicina Legal*, is currently functioning under the administrative control of the Supreme Court. In addition there are two crime laboratories, one under the administration of the National Police and the other with the Commission on Criminal Investigations (*Comisión Para la Investigación de Hechos Delictivos*). The Commission on Criminal Investigations is widely recognized in El Salvador and in Central America for the quality of its investigative work.

3 Not to be confused with *sentencia* in Spanish which means the determination of guilt or innocence.

2.2 REFORM AND ISSUES

In 1991 the functions of the Fiscalía were significantly expanded to include the power to "Direct the investigation of crime, and in particular of those criminal acts which must be submitted to the criminal process" (Const. 1991, Art 193). The same Article provides for the creation within the Fiscalía of an investigative branch and requires the Fiscalía to institute criminal proceedings on its own (in those cases where it has jurisdiction) or upon complaint. These changes complement earlier statutory provisions in the "Organic Law For the Public Ministry" (1990) granting broad oversight in the investigative process to the Fiscalía and requiring a more active role of the Fiscalía in the criminal process.

There are many factors which militate against the speedy and efficient resolution of cases in the present system. The judge, theoretically, is required to be neutral and is not an advocate in the sense of the U.S. prosecutor. The judge must conduct the investigation by means of written orders and must share these orders with the fiscal and the defense. He must comply with the written requests of the fiscal and the defense at the investigation (*instruccion*) phase or risk being appealed. There are many opportunities for interlocutory appeal, opportunities that can delay cases at the virtual whim of a party.

Neither the fiscal nor the police have the ability to collect legally admissible proof on their own and any investigation that they choose to undertake without a judge's specific order is purely "administrative." These investigative results have no legal value unless validated by the court in a laborious and time consuming process. However, there are certain aspects inherent in the Salvadoran system that could provide a great deal more flexibility than is presently evident.

2.2.1 Role of the Fiscal

The fiscal, somewhat erroneously translated as "prosecutor," occupies an anomalous position in the criminal process. Before the recent statutory and constitutional changes, the fiscal was the traditional "guardian of legality" in the criminal process which has existed in most Latin American systems since colonial times. Fiscales generally exercised an obstructionist legal or review role when acting at all. The exception, of course, was and continues to be the role at the *Audiencia Publica* or jury trial as an advocate for the "interests of the state." This factor makes the Salvadoran Fiscal somewhat unique as an active, aggressive participant in the process and has existed in the country since the turn of the century.

The *Ley Organica del Ministerio Publico* (1990), the statute that defines the specific duties of the Fiscalía, now requires the Fiscalía to "exercise penal action at its own initiative or upon the petition of a party" (Art. 3, Section 3, *Ley Organica del Ministerio Publico*). Section 10 of the same Article requires the Fiscalía to join as a party in all criminal cases that come to its attention. Section 22 requires the Fiscalía to "organize and direct entities that specialize in the investigation of crime."

These provisions, together with the 1991 amendments to the Constitution, are commonly considered by virtually everyone interviewed by the Assessment Team as important moves towards a more modern "mixed" system. The "Mixto Moderno" system (that is in place or evolving elsewhere in Latin America and Europe) proposes that the prosecutor have a monopoly over investigation and charging decisions in somewhat the same way a prosecutor operates in the U.S. and places less emphasis on the traditional role of the fiscal which is to assure the legality of the judicial process. The role of the judge would no longer be that of primary investigator.

2.2.2 Fiscalía Organization.

The actual daily work of the Fiscalía in the courts is carried out by the *Fiscales Adscritos* and the *Fiscales Especificos*. *Fiscales Adscritos* generally are assigned to a particular *Juzgado de Primera Instancia*⁴ and are required by the Ley Organica to attend its sessions daily. *Fiscales Adscritos* are also assigned to one or more *Juzgados de Paz* (Courts of the Justices of the Peace). Experienced fiscales are assigned to the appeals courts, *Juzgados de Segunda Instancia (Camaras)*. The *Fiscales Especificos* are generally not assigned to any particular court. They are largely considered more experienced and are assigned according to exigency or importance to cases within their particular group's region.

Within the Fiscalía there exist four divisions that are primarily or significantly involved in the prosecution and/or investigation of criminal cases. The Penal Department, *Departamento de lo Penal*, handles most ordinary criminal matters⁵ and is a part of the Division for the Defense of the Interests of Society. The Department is divided into seven *grupos*. Each group is presided over by a *Jefe de Grupo* who supervises the group and is responsible for tracking cases and the movements of fiscales as well as assigning the work of the "especificos." Each group consists of from ten to fifteen especificos and 15 or so adscritos. These group leaders and the department heads also handle cases according to need and case importance.⁶ One group is located in San Miguel and serves the eastern part of the country⁷ and the other groups are located in the capital. A new regional office is proposed for the western region and will be located in Santa Ana.

The second division involved in criminal matters is the *Unidad de Derechos Humanos* or Human Rights Division which serves under a special Deputy Fiscal for Human Rights. This division was established in 1986 and now handles six hundred cases a year of diverse profile that

4 The juzgado de primera instancia is roughly equivalent to a court of general jurisdiction, with the key difference that these courts and their inferiors, the juzgados de paz, actually carry out the investigation, the instruccion criminal.

5 The Fiscalía does not get involved in all criminal matters, such as misdemeanors and minor felonies. The more serious or those offenses that are considered to cause the greatest social harm (trastornos sociales) are chosen by the Jefes de Grupo.

6 The team members attended a *vista publica* or jury trial at Zacatecoluca where the head of the Criminal Division, Lic. Arturo Cruz Delgado, presented a case against a soldier who was accused of multiple homicides.

7 Although some of the fiscales live in San Salvador and commute daily to their post.

generally have little to do with the usual definition of human rights as pertaining to life, liberty, and freedom of speech and association. That division's emphasis at the present time appears to be on child abuse and rape and not the type of official misconduct one commonly associates with human rights abuses. This division consists of 17 fiscales including a director and 16 especificos. There is overlap in the functions of the first two divisions in that the same crimes are basically addressed and the Human Rights Division may handle the more serious or sensitive cases.

The third division is the Narcotics Unit or *Unidad Antinarcotráfico* consisting of 7 fiscales who work with the special narcotics unit, *Unidad Ejectiva Antinarcotráfico* now serving under the President's Office. The Narcotics Unit focuses on those cases under investigation by the *Unidad Ejectiva Antinarcotráfico*. Fiscales in other division can undertake those narcotics cases in their assigned courts.

A fourth division is the *Departamento de Procuración*, a part of the "Defense of the Interests of the State Division" or *División Defensa de Los Intereses del Estado* which in general collects debts owing to the state. The *Departamento de Procuración*, however, represents the state in the *Cortes de Cuenta* in cases involving theft or embezzlement of public funds, *peculado*. Two fiscales are directly involved in this process and the division gets little support from any investigative branch and must rely on government auditors for collection of evidence and its analysis.

2.3 CRIMINAL PROCEDURE

In basic terms the Salvadoran court procedural system resembles those extant throughout the rest of Latin America since colonial times. Consequently, and as one might expect in a system that has remained virtually unchanged in its basic philosophy, judges and fiscales have certain attitudes that are resistant to change or even to new techniques. There are, however, significant differences between the Salvadoran system and other inquisitorial systems that affect training imperatives and legislation initiatives.

2.3.1 The Jury System

The institution of oral proceedings before juries to decide the guilt or innocence of the defendant is traditional to the Salvadoran system and has existed for many years. This fact is of enormous potential import to any training design or reform effort because Salvadoran lawyers are not as instinctively leery of oral proceedings and jury trials as lawyers in other Latin American systems. In practice this system has been weakened of late by the removal of certain serious crimes from the purview of the jury. All crimes that are punishable by a sentence of three years or more except kidnapping, drug trafficking in all its diverse forms, rape, larceny, fraud and robbery are triable before a jury (Art. 317, C.Pr.Pn.).

The significance of the existence of the jury in terms of planning of Fiscalía programs is equal to the importance of the recent changes in the Constitution and the Code of Criminal Procedure of the Fiscalía role in investigations. However, it should be emphasized that those involved in the system – the judges, the fiscales and the defense attorneys – are wed to the traditional civil law/Napoleonic methods of case presentation which center the case around the *instruccion* phase where the judge laboriously executes an excessively formal investigation of the case by means of written *diligencias*, *resoluciones*, and *requerimientos* in order to arrive at a conclusion as to whether to go to trial. This emphasis on the instruction phase to the exclusion of the presentation of oral evidence at trial and extensive non-judicial investigation before the initiation of formal proceedings, forces the process to be excessively slow and rigid.

During its interviews with various judges and fiscales and in visits to the courts to view actual proceedings, the Assessment Team learned that the provisions governing the presentation of oral evidence to the jury (Art 350-355) are uniformly ignored. Instead, a synopsis of the file containing the statements of the witnesses is read to the jury by an employee of the court and then the lawyers are allowed to argue the case. The judge, who is supposed to control the proceedings, allows broad latitude in the arguments, including the argument of extraneous matters that are completely irrelevant to the issues.

2.3.2 Investigation Prior to Initiation of Formal Proceedings

The investigation of crime prior to initiation of the instructional period is limited. Except for the Unidad Ejecutiva Antinarco tráfico, there is little undercover investigative work or proactive investigations of cases in the process of being committed. Most investigations are "reactive," that is they occur after the commission of the crime.

Where the crime comes to the attention of the authorities, whether the police or the court, it must be filed with the court. Thus it is generally the justice of the peace who conducts the crucial initial part of most investigations. With the formation of the new organizations specializing in criminal investigations, more proactive investigations are becoming more frequent, at least in the more complex crimes or those of greater importance to the Commission on Criminal Investigations.

2.3.3 Initial Proceedings.

Attached to this paper as Annex III are flow charts of the course of the two types of criminal cases. These charts include time limits for the various steps of a criminal case. In practice these time limits are rarely complied with and at least 40% of all criminal cases are pending more than five hundred days after their initiation.⁸

⁸ Diagnostico Sobre El Organismo Judicial en El Salvador, FIU, San Salvador, 1987. More recent information on processing time is not available.

The initiation of a criminal case begins with a complaint to a court, usually a *juez de paz*, on the part of the police, a private individual, or the Fiscalía. The present code of criminal procedure does not require the police or any individual to complain first to the Fiscalía. Nor does the absence of a fiscal affect the actions of the court or suspend proceedings at this stage⁹ (Art 118 C. Pr. Pn.). Hence criminal cases can be and usually are initiated without any type of screening process by the Fiscalía and are filed directly with a court.

From the initiation of the judicial inquiry to the determination of cause for trial, *elevación a plenario* or dismissal, *sobreseimiento*, the usual period is 90 days which can be enlarged to 120 days. This period, according to those familiar with the actual operation of the system, is not often complied with. For most crimes punishable by more than three years incarceration, there is no pre-trial right to bond. There is also a general opinion that most pre-trial detainees who are kept in custody after the time limit runs out are unable to avail themselves of *habeas corpus* type proceedings through lack of legal representation.

The initial period is dedicated to the gathering of evidence through the use of written orders from the judge on his own volition or on written petition of the parties. Statements of witnesses are taken after notification and are written even though the code allows statements to be recorded. Fiscales often do not attend these *diligencias* (proceedings) thus missing the opportunity to judge the evidence first hand or to conduct on site questioning themselves; instead they propose written questions later.

Another rather modern provision in the code of procedure is Art 97 C. Pr. Pn. which allows a judge to close the proceeding to the public. This power, if properly used, would allow the use of at least some proactive investigation, at least where the defendant's identity is not sufficiently clear to require making him a party (or where the criminal nature of the conduct is not yet clear). This provision is particularly important in more complex cases where evidence could disappear or the witnesses could be subject to intimidation or physical violence.

There is excessive reliance on formal evidence gathering at the instruction phase via written request and orders. The instruction judge is the only person who can collect valid proof, including the ordering of special procedures such as toxicology tests and the like. The emphasis from the point of view of the fiscales, is on this stage and their activity, with the exception of special units like the narcotics group that works closely with the investigators of the Unidad Ejecutiva Antinarco tráfico, is best characterized here as second guessing the judge.

2.3.4 Trials

The instructional period is closed by the issuance of an order of dismissal, remission¹⁰ (*archivo*), or *auto de elevación a plenario*. In the later event the case is considered ready for trial. However, the judge need not find that all possibilities for the gathering of evidence have been

⁹ Which, at the initiation of the case is usually the juez de paz.

¹⁰ Case is held pending receipt of additional information or evidence.

exhausted, only that there is enough evidence to go forward, that the evidence has "clarified the deeds" enough so that dismissal is not justified.

After appeals from this decision are exhausted, or the time for taking an appeal has run out, the parties have eight days in which to request the gathering of more evidence (C.Pr.Pn. Art. 300). This must occur in public proceedings and all parties must have notice. The parties have the opportunity to conduct a species of cross examination in these proceedings by means of propounding questions through the judge, *repreguntas*. It is not known how often the fiscales appear at these proceedings although the Assessment Team learned that fiscales often don't attend. There is no prohibition against preparatory interviews or the "administrative" investigation of the case throughout these periods.

Non-Jury

After the eight day period is exhausted, in the case of non-jury proceedings, the parties are given six days to submit their arguments, which are both legal and factual. The parties are subject to fines of up to one hundred colones in the event they fail to submit arguments, *alegatos del bien probado*. Thereafter, the judge has thirty days to study the case and issue his judgement, *sentencia* (Cap III C.Pr.Pn.).

Jury

In the cases of matters that are tried by the jury, after the passage of the eight days of the *probatorio* the court must proceed to create a summary of the case, a questionnaire for the jurors and the "lottery" of names from which they will be chosen (*insaculacion*). In the same judicial order the judge must fix a time and place for jury selection. The names of the list of jurors selected for the *venire*¹¹ are known only by the judge and the court employee who picks them from the urn. Immediately after the *venire* is chosen, the judge must set a time and place for the trial and notify the jurors. This date must not be more than fifteen days after the selection of the *venire*.

On the day of trial, a jury of five persons is chosen after *voir dire*¹² of a limited nature by the judge. The parties may challenged for cause which includes any reasonable grounds based on lack of impartiality. The parties, however, do not question the jurors, only the judge does¹³ (Cap VI C.Pr.Pn.).

After installation of the jury and the giving of an oath, a court employee reads the synopsis of the case that the judge prepares at the end of the *probatorio* and the parties each have two opportunities to argue the case to the jury. There exist rather extensive opportunities in the Code for the presentation of oral evidence at the instance of the judge or the parties at this stage. In

11 A *venire* is the panel from which the ultimate jury members are chosen

12 The process of questioning and selecting jury members.

13 This is similar to the limited voir dire allowed in many U.S. courts.

practice this almost never occurs according to the interviews conducted by the Assessment Team and by observations. This indicates a mentality in the fiscales and the defense that is still wed to the colonial system of an overly formal, written process.

The instruction of the jury is meager by U.S. standards but probably appropriate for Salvadoran jurors. The jury's verdict need not be unanimous. Only three of the five must vote a certain way and deadlock is not possible.¹⁴ After the jury renders its verdict of guilty or not guilty, the court has thirty days within which to issue judgment regarding definition of the crime according to statutes and to impose a sentence.

2.4 FISCALÍA SUMMARY

As the situation exists now, in spite of the key changes in the power and character of the Fiscalía which should fundamentally change its role in connection with the police investigation, the fiscal has remained a passive actor in most of the process. Those familiar with the Fiscalía such as outside experts who have provided training, note that the fiscal usually only sees the case on paper and that, consequently, it remains abstract to him. There is no aggressiveness or stake in the outcome, nor is there any sense that the case represents a real event, a serious crime affecting human beings and society. The ultimate long term success of fiscales reforming as prosecutors depends on changing this mentality and present methods. Some changes are necessary in the law affecting the criminal process, but without a change in the underlying attitudes of the judges, fiscales and defense lawyers, no real improvement is likely.

¹⁴ If a juror refuses to vote his vote is registered as a guilty vote and he can be fined 100 Colones. C.Pr.Pn. Art 336.

SECTION 3

FISCALÍA OPERATIONS

The Fiscalía General provides fiscales to cover all courts in El Salvador. In addition to the traditional services provided by fiscales to the public and to the courts, new programs have been initiated in recent years and the constitutional reforms have conveyed increased responsibility to the Fiscalía for the conduct of criminal investigations.

3.1 EASTERN REGIONAL OFFICE - SAN MIGUEL

The Assessment Team visited the regional courts and the Office of the Fiscalía in San Miguel in the eastern part of the country. The visit included an audience with the *Jueces de Primera Instancia* and *Segunda Instancia*, a tour of the court facilities and an interview with the Coordinator of the Regional Office and two fiscales. The team observed the following.

The offices of the Fiscalía appeared to be impoverished. Legal reference materials were located in the Coordinator's office and were almost non-existent. There is a copying machine, but this is apparently not available for copying of court files. The courts are located directly across the street from the Fiscalía. The hours of the Fiscalía in San Miguel conform to the court hours which are 8:00 am to 1:00 pm, six days per week.¹⁵

The court files exhibited many pleadings filed by the fiscales that were hand written. The team was also told that many times the fiscales had to copy pleadings manually.

The team learned that many of the fiscales that work in the San Miguel office live in San Salvador. Moreover, these employees, who must commute up to four hours a day must do so at their own expense.¹⁶ The Fiscalía has only three operating vehicles in San Miguel and a similar number in San Salvador. The team learned that the *jueces de primera* and *segunda instancia* are to receive 166 new vehicles this year together with sufficient monies for gasoline and maintenance. In contrast, the Fiscalía is to receive six new vehicles.

The fiscales that were interviewed were young and were not *licenciados*. One of those interviewed, an *especifico* who is therefore assigned more important or complex cases, was not a lawyer and had been a fiscal only a short time. There appear to be no criteria for the elevation of these individuals. There are no tests or other objective uniform means of deciding on

15 The hours for the courts and the Fiscalía in San Salvador are 8:00 am to 4:00 pm. Outside of San Salvador court hours are the same as in San Miguel.

16 For those stationed in San Salvador and covering other courts outside of San Salvador there is per diem of 15 Colones per day, about \$1.90.

advancement. Indeed the judges in the regional courts voiced the opinion that there were many cases where fiscales adscritos were promoted to específicos too soon and without sufficient experience.

The judges also commented that there is a high turnover rate among the fiscales, hardly surprising considering salaries and working conditions in San Miguel. In an interview in San Salvador, members of the public defender's staff stated that there is no possibility for those fiscales assigned to the San Miguel office to continue their studies after joining the Fiscalía. They are given, in effect, the choice of working for the Fiscalía or continuing their studies, a "take it or leave it" proposition.

The judges in San Miguel also voiced some concern over the honesty of some fiscales. The team was able to determine that there is no ethical indoctrination of the new fiscales worthy of note. It was also indicated that when dishonesty or unethical behavior becomes a concern, the individual involved is simply asked to leave. There is no real investigation of these matters and the offending individuals are not fired, according the Chief of the Criminal Division,¹⁷ because if they were fired (*destituidos*) they would be unable to work for the government in any other capacity.

The judges also noted that, due to the lack of training and the inexperience of the fiscales, there was a lack of coordination between them and the police or the courts in many instances. The Coordinator for the Fiscalía in San Miguel acknowledged that this is a problem. For example, the head of the local detachment of the Policía Nacional had never visited the Fiscalía office and vice-versa. The Coordinator also mentioned that there was one particular juez de paz who refused to cooperate with the Fiscalía in any case. The Coordinator mentioned that it was difficult to get effective assistance from the Comisión para la Investigación de Hechos Delictivos in San Salvador, particularly in terms of laboratory assistance. The Comisión currently has jurisdiction only over a limited number of specifically authorized cases and does not have the personnel to investigate all cases.

3.2 FISCALÍA RESOURCES

The Fiscalía is not equipped to provide enhanced services to the people of El Salvador to meet its expanded constitutionally mandated role. There is a general material impoverishment in all areas. Since the main building that formerly housed the Fiscalía General in San Salvador was damaged in the earthquake of 1986, the Fiscalía has been housed in another building where only the top personnel have private offices. The fiscales of the six groups of the Departamento de lo Penal quartered in San Salvador are in common areas with two secretaries per group. It did not appear that there were even sufficient telephones. The same is true of the fiscales of the other units. Better quarters are essential if the Fiscalía is going to carry out its functions. The old Fiscalía, a much larger building than the present facility, will eventually be renovated.

¹⁷ The division that is charged with handling the vast majority of criminal cases.

Comparisons to the physical facilities available to the public defenders and the courts reveal the discrepancy in quarters. The public defender's quarters were observed to be pleasant, with private office space and stand alone computers. A good library is on site. The courts, of course, have many personnel for each judge of first instance and they are generally better equipped. The location of the fiscales leaves a great deal to be desired; it is much worse when those facilities are compared with the offices of the other essential components of the criminal justice system.

3.2.1 Transportation

The Fiscalía is not able to fully provide for the transportation needs of its personnel. While the courts will receive 166 new cars this year together with a full support package, the Fiscalía is to receive only six vehicles.

The Fiscales Adscritos, many of whom must travel to distant places to attend court from their base in San Salvador, often have to use their personal cars with no recompense. Per diem, when paid, is 15 colones a day, less than \$2.00.

These factors, when coupled with the low pay received by the fiscales doing the work of the agency in the courts, are bound to affect the efficiency of the office. Furthermore, if the fiscales are to take a more active role in the initial investigative process, or attend more of the particularly important proceedings that are consigned to jueces de paz at the initial stage of the proceedings, the present transportation situation cannot be allowed to continue.

3.2.2 Support Personnel

The fiscales function without personnel support for investigative or liaison tasks. It is entirely consistent with this paucity of personnel that fiscales rarely have direct contact with the people involved in the cases that they handle. It is likewise entirely consistent with the situation that fiscales "try files" not cases or individuals. Given the lack of assistance, fiscales in El Salvador can not take the same kind of "hands on" approach available to prosecutors in other countries.

3.3 HUMAN RIGHTS

The Peace Accords and the Constitutional Reforms place a high priority on the rights of individuals (*derechos humanos*). This theme is very present in the responsibilities delegated to the Fiscalía. New program emphases of the Fiscalía reflect this priority.

The 17 person operation known as the Fiscalía Department of the Defense of Human Rights is funded by USAID/El Salvador. The participating fiscales are paid a salary almost double that of the other fiscales.

The unit started operations in 1986 and caseloads processed by this Department increased from 166 in 1988 to 612 in 1991. The definition of appropriate cases for the Department is those in which the perpetrator has an official or customary authority over the victim. Accordingly cases can range from police or other official brutality to the battering of spouses and child abuse.

The public defenders in the Procuraduría General also see themselves as protecting the human rights of their criminal defendants who have no financial assets to obtain paid counsel. They can see their role as protecting defendants from the larger authority of the state. However, public defenders cannot prosecute those authority figures who have perpetrated crimes on the weak and dispossessed.

The Constitutional Reforms have introduced another complication in the area of human rights with the establishment of the Procuraduría General de Derechos Humanos as the third organization within the Public Ministry. The functions allocated to the Procuraduría General de los Derechos Humanos, which may conflict or overlap somewhat with those of the Fiscalía, are the investigation of cases of violation of human rights, promotion of reforms within the national government for human rights, provision of opinions regarding the law and human rights, and the development of a permanent program to provide information on human rights.

3.4 CRIME PREVENTION AND STATISTICS

In January of 1992 the Fiscal General, created a new department charged with "crime prevention" activities, the *Departamento de Prevención del Delito*. On paper the Department is designed to become a significant part of the Fiscalía. To date the department's efforts have primarily centered around newspaper ads warning people of street crime and advising them not to allow their children to be alone in public. Ads have also been run describing the functions of the Fiscalía and its new programs.

One of the major parts of this program will be the development of an analytical statistical base in order to obtain profiles of criminality in Salvadoran society and to be able to better assess the functioning of the justice sector. This effort is already underway through the circulation of a multi-page questionnaire that has been designed for fiscales which they will be expected to fill out for each of their cases to become a part of the statistical base. The Assessment Team noted that the statistical effort is in its very early infancy and that it lacks any real expertise. The basic program is set out in a "white paper" on the subject (see Annex IV).

The Assessment Team noted grave deficiencies in the gathering of statistics in all components of the Salvadoran justice system. This basic lack of valid or understandable data complicates any reform effort whether legislative or internal/administrative. It is very difficult to find out what any particular organization, especially the Fiscalía, is really doing.

The courts also maintain their own statistics gathering capacity. The courts are in a better position than the Fiscalía to maintain statistics concerning the incidence and nature of criminality in El Salvador because every case is filed with them. The Fiscalía does not (and cannot given present resources) get involved in every case. A majority of cases are brought to the direct attention of the courts via *denuncias* or *acusaciones* whether by citizens or the police. These are filed directly with the courts and do not pass through the Fiscalía. The Fiscalía's crime prevention plan, however, does speak to the issue of coordination in general terms and proposes the creation of an interdisciplinary committee for the crime prevention area.

3.5 INCORPORATION OF CRIMINAL INVESTIGATIONS INTO THE FISCALÍA GENERAL

It is the obligation of a state to take the means necessary to preserve the security and the tranquility of all of the citizens of the country, especially in relationship to the conservation and the defense of individual rights that are protected by the constitution. In the spirit of collaboration and assistance to the respective judicial organizations, it was considered convenient and necessary to create an organization in the Republic of El Salvador that could be relied upon to conduct investigations in those crimes whose importance required professional mechanisms and appropriate technicians for their investigation. The Commission on Criminal Investigations was formed in order to secure social harmony, preserve internal peace and tranquility, and assure the personal safety of the members of society.

The recent Constitutional Reforms have mandated an investigative role for the Fiscalía. The next few years will be critical for the establishment of the Fiscalía's responsibilities for investigations within the El Salvador system of justice.

3.5.1 Organization of the Commission

Decree Number 58, dated July 4, 1985, created the Commission on Criminal Investigations with the objective of studying, qualifying, and arranging the investigations of all of those crimes which may have grave repercussions on the public and social order of the country. The criteria for selecting cases for the Commission included the nature of the crime, the characteristics of the victims or perpetrators, the means employed for the commitment of the crime or the impact on the public interest, and importance to the national conscience.

The Commission was nominally integrated into the Ministry of Justice with the Minister of Justice serving as President of the Commission. Other members of the Commission include the Vice Minister of the Interior and an official of the executive branch designated by the President of the Republic. In order to accomplish its objectives, the Commission has the following units:

- 1) The Executive Unit, named by the executive branch, is in the Defense and Public Security Division, as proposed by the Commission.
- 2) The Investigation Unit is composed of the Chief and investigative personnel assigned from the public security organizations, in the number that is considered necessary. They are selected from trained personnel, of recognized character and job performance. The function of this unit is to immediately pursue the investigation of those crimes selected by the Commission according to requirements established by the executive unit, in close collaboration with the Technical Forensic Unit, with the object of establishing the existence of a crime or crimes and the identification of the perpetrators.
- 3) The Technical Forensic Unit is composed of the Chief and the suitable technical personnel in the criminalistics areas as assigned from the public security organizations. The Unit's function is that of obtaining and protecting the evidence, conducting the analysis for the scientific clarification of the crimes, and to identify those presumed responsible for the crime.
- 4) Judicial consultation is provided by the chief consultant and auxiliary consultants whose functions are: A) to give strict legal consultation to the Executive Unit, Investigation Unit and the Technical Forensic Unit; B) to supervise from the legal point of view all of the proceedings in the investigation of the crimes; C) to study and analyze the effect of procedures and to give their respective judgements to the Executive Unit; and D) whatever other functions are designated by the Executive Unit.

The Investigation Unit and Technical Forensic Unit, according to Article 12 of the law, are considered auxiliary organizations that should observe the established procedures in the Code of Penal Procedures and are subordinate to the courts and are responsible for providing assistance to the Public Ministry and collaboration to the President of the Republic. Interviews indicated that the Commission has a good reputation and credibility among the members of the judiciary, lawyers, fiscales, and citizens of the Republic.

The Commission's investigative work although limited to those cases of public national interest, conforms to the criteria established by the law and is considered excellent. Very good coordination exists between the administrative and investigative personnel of the Commission with the fiscales and judges. The personnel of the Commission are selected among the best of the National Police. With the incentive of higher salaries, the Commission has been able to obtain the reputation of having excellent staff and an effective investigative organization.

3.5.2 Judicial Reform

Through Legislative Decree Number 64 dated October 31, 1991, which took effect November 30, 1991, the following responsibilities were added to the Fiscalía General:¹⁸

"3. Direct the investigation of crimes and in particular those criminal acts which are subject to the penal jurisdiction. To this end, under direction of the Fiscalía General of the Republic, an Organization of Criminal Investigations will function as defined by the law. This Organization will not limit the autonomy of judges in the investigation of criminal acts under their jurisdiction. The Organization of Criminal Investigations will undertake with all dedication whatever actions may be required by the judge for his jurisdiction."

As a transitory arrangement, according to the above mentioned Legislative Decree Number 64 in its Article 40, the following is presented:

"While the Organization of Criminal Investigations as contemplated in Number 3 of Article 193 of the Constitution may not be operational and the laws that develop this responsibility may not be in force, that is while the laws may not be in effect that develop the responsibility that is being conferred upon the Fiscal General, the same institutions in conformity with the respective laws and the penal process code will continue to be recognized in the investigation of crimes having the same responsibilities and applying the established procedures in the same.

The above mentioned responsibility for investigations will be accomplished by the Fiscal General in a progressive form, in conformity with jurisdictional criteria according to the nature of the crimes."

El Salvador judicial reform recognizes the need for an auxiliary organization of investigation in the Fiscalía General, taking into consideration that Article 3, Numbers 3 and 22 of the Organizational Law of the Public Ministry concedes responsibility to the Fiscalía General to "intervene in the investigation of crimes from the police stage for the purpose of assuring the strict conformance to legal procedures" and "to organize and direct specialized agencies in the investigation of crimes."

The Assessment Team notes (and the officials of the Fiscalía who were interviewed concur with the assessment) that the lack of investigative agents makes it difficult for the Fiscalía to undertake investigative procedures in conformance with Articles 118 and 134 of the Code of Penal Procedures that reads as below:

- o Article 118: "The fiscal will participate in all of the acts of the investigation and to request the implementation of procedures that he estimates as suitable, which will be ordered by the judge if he considers them pertinent..."

18 Decree No. 64 also indicates that the Fiscal General should: "2. On his own part or on behalf of a petitioner initiate actions to assure the legality of judicial procedures," and "4. On his own volition or upon petition, initiate criminal procedures."

- o Article 134: "...the Fiscal General by himself or through his staff will endeavor to obtain the proofs and necessary background information in order to present them to the responsible judge. These reports will serve as information in the judicial investigation."

The number of investigators to be placed within the Fiscalía depends upon the number of trained investigators that will be employed by the evolving National Civil Police. U.S. experience indicates that for special investigations requiring undercover work (narcotics) or other special investigative skills (white collar crime, government corruption), as many as two investigators are required for each prosecutor. Ordinarily, a ratio of one investigator per prosecutor is sufficient. If the police have adequate investigation personnel, one investigative coordinator per five prosecutors can coordinate investigations with the police, assure completeness of evidence, and serve as liaison between the police and the prosecutor. Assuming that the 209 fiscales presently employed by the Fiscalía are sufficient to handle the legal and prosecutorial demands of the workload, a minimum of 40 investigators (ratio of 1 to 5) and a maximum of 200 investigators (ratio of 1 to 1) will be required.

3.5.3 Organization of Criminal Investigations

The Fiscalía has developed a legislative proposal (*proyecto de ley*) to create an Organization of Criminal Investigations (OID) to investigate and affirm, with technical and scientific approaches, the existence of punishable offenses, the discovery and apprehension of those committing the crime, and to provide technical assistance for judicial investigations, without limiting the autonomy of judges in the investigation of crimes committed in their jurisdictions.

The creation of such an organization as proposed by the Fiscalía would constitute a major auxiliary resource for the administration of justice in El Salvador. As an additional unit of investigation, the Fiscalía would be able to relate to the National Civil Police through its Division of Criminal Investigations.¹⁹ The OID, under the proposal, would eventually assume the functions of the Commission on Criminal Investigations and of the Institute of Police Science.²⁰

According to Article 7 of the proposal, the following would be established as the minimal structure of the Organization of Criminal Investigation (OID):

- o Director General and Executive General
- o Department of Investigations
- o Department of Investigations of Narcotics
- o Teaching Department/Training Department
- o Administrative Department
- o Juridical Department
- o Department of Criminalistics
- o Department of Forensic Medicine

19 Through interviews, the Assessment Team was informed that the investigative unit of the National Police currently does not possess, in the judicial sector or among the academics of the country, the necessary credibility to discharge its investigative work efficiently and to obtain convictions.

20 The organization known as the Institute of Police Science although created by the law is not presently in operation according to Lic. Jesús Rodolfo Majano, who was the director.

Overall, the Assessment Team considers the proposed development of the Fiscalía Organization of Criminal Investigations to be appropriate. In relationship to the proposed Departments of Criminalistics and Medical Forensics, Assessment Team observations on the desirability of centralizing these services in an autonomous and independent organization are presented in Section 3.5.4. In order that the fiscal may participate in the investigative phase of judicial processing according to Article 193 of the Constitution, several amendments to the proposal are recommended as shown below:

- o Article 19 of the proposal relates to the initial procedures of the OID when it receives notice that a crime may have been committed. To this Article should be added the obligation of OID to notify the tour duty fiscal, if there is one, or to notify the fiscal assigned to the Court of First Instance or to the Justice of the Peace as appropriate, in order that the fiscal may know that a crime was committed in order to be present at the scene of a crime if considered necessary.
- o In those cases covered by Article 157 of the Penal Processing Code (when the judge is not present to conduct the inspection in the cases of violent or unexpected death or those cases presumed to be so) OID personnel or the fiscal should be able to remove the body, attempt the identification of the victim as well as arrange for the conduct of technical and scientific examinations including the autopsy that may be necessary in order to determine the cause of death and to prove the existence of a crime.
- o Article 23 of the proposed legislation deals with the value of the proceedings and the expert activities conducted by OID personnel. In conformance to the inquisitive system of penal procedures that governs in El Salvador "the procedures that OID practices, can be the basis for initiating the penal process or can add to the investigative body of information if the process had already been initiated; in order that the investigative proceedings to have judicial value, they should be ratified and validated by the judge of record according to the penal processing code." If the authorities in charge of judicial reform in El Salvador decide to implant a penal processing system know as mixto moderno, which is the object of current study and discussions through recognized authorities knowledgeable in this subject matter, then it would be fitting to revise the Article 23 proposal so that the procedures that are practiced by OID as well as those practiced by the fiscal, may be those that initiate the penal process, leaving to the judicial authority the evaluation of the presented proofs, without requiring ratification of the judge for the evidence and proofs to have judicial value.
- o The OID, before sending the evidence taken from the scene of the crime to the judicial authority, should be able to do the scientific analysis and processing of a technical character that are considered necessary. Article 26 of the proposal should be adjusted to deal with the preservation of proofs.
- o In order that Article 37 of the proposal be consistent with Article 19, the auxiliary organizations of the administration of justice will always act as OID auxiliaries recognizing that OID will not always be able to directly initiate investigations. Article 37 authorizes the National Civil Police, through its Division of Criminal Investigation, to engage in the investigations of crimes, but it is not consistent with that perceived in Article 19.

3.5.4 Notes on Scientific Investigations

The proposed legislation that creates OID provides that the Unit of Scientific Investigations of the Division of Criminal Investigations of the National Civil Police and the Institute of Legal Medicine assigned to the Supreme Court of Justice be incorporated into the criminalistic and medical forensic departments of the OID.

The current tendency in many jurisdictions is to establish an autonomous and independent institute for the forensic sciences that can conduct scientific criminal investigations as well as forensic pathology. This is similar to the English coroner and the North American medical examiner. A generally accepted principle is that scientific investigation shouldn't answer to any police, prosecutorial or judicial agency. Investigations of crimes should be conducted to guarantee the independence and objectivity of expert opinions.

The Assessment Team recommends, as a major emphasis in the reform of justice in El Salvador, that steps be taken immediately to restructure one autonomous and independent organization to conduct scientific investigations. These investigations would be undertaken upon requests for investigations from investigating judges, police investigators, and the OID of the Fiscalía, as well as from public defenders representing those charged with crimes. A scientific investigation could also be initiated for any interested party through a judicial order.

To continue with the model of each investigative body in the system of justice obtaining its own means to conduct scientific investigations would precipitate what, in other jurisdictions, has been criticized. These criticisms include duplication of efforts and wasted resources and, more importantly, the possibility of bias in the accomplished proofs, analyses, and studies. The results of scientific investigations should have a high degree of reliability and credibility.

3.5.5 Summary

The efforts to provide the Fiscalía General with an auxiliary organization of investigation should be continued. Additional resources to the Fiscal General for the internal organization of a body of investigators are required for the fiscales to undertake the investigations of criminal acts. Depending upon the number and calibre of investigators in the Police Division of Criminal Investigations, the Fiscalía may require up to 200 investigators. Without investigative personnel the Fiscal General will not be able to appropriately discharge the constitutional responsibility of directing the investigation of crimes.

In order that whatever auxiliary organization of investigation is established in the Fiscalía General may function efficiently from the outset, it will be necessary to provide technical assistance for the organization of the unit and for the preparation of regulations and manuals of operation. Technical and economic resources for the training of the investigative agents should be provided. Without additional resources, it will be difficult for the Fiscal General to be able to assume the responsibility entrusted under the constitution and the law.

3.6 COORDINATION WITH THE JUDICIARY AND POLICE ORGANIZATIONS

In the judicial system of El Salvador, which is still an inquisitorial court, the fiscal has a relatively passive function in the investigation of crimes. The auxiliary police organizations in the administration of justice²¹ have had the legal power to conduct investigations of crimes without the consultation of the fiscal. The police present the paper work to the instructional judges, ordinarily the Justices of the Peace, without the fiscal having reviewed them. The instructional judges (Justices of the Peace or Judges of the First Instance) have, by law, the instructive/investigative function in whose procedures the fiscal does not ordinarily participate unless the fiscal has initiated the case at the very outset.

3.6.1 Judicial System Issues

This situation results from the fact that the fiscal doesn't know about the commitment of crimes in the initial stages of the extra-judicial investigation or administrative investigation, nor in the judicial investigation. The participation of the fiscal is limited, therefore, in the administrative or judicial phase of the investigation process which is the most important for the clarification of the facts regarding the case. In the jurisdictions where the fiscal exercises an active accusatorial function, participating in the investigations that are conducted by the police organizations, there exists a saying that a case is gained or lost in the investigation. The investigative phase of crime is of utmost importance in accusatorial penal procedures.

In order that the fiscal may have more active participation in the investigation of crimes in the systems of inquisitorial justice such as that of El Salvador and to be able to consult and advise in the investigations or to obtain approvals and procedures of the instructional judge, it is necessary that the fiscal know of the crime from the very same moment that it is committed or known by other organizations. Close coordination between the Fiscalía and the auxiliary organizations of the administration of justice is essential as well as with the judicial sector, principally with the instructional judges.

3.6.2 Existing Mechanisms of Coordination

The assessment study in examining the mechanisms of coordination of the Fiscal General with the judges and with the police organizations received the impression that only in the cases of the Executive Antinarcotic Unit and that of the Commission on Criminal Investigations was there good lines of communication and coordination between the fiscales and the indicated auxiliary organizations. This has not the case with the National Police and is much less so with the instructional judges.

21 The peace agreements provide for the dissolution of the current National Police and its replacement by the National Civil Police. The following auxiliary organizations for the administration of justice in El Salvador will remain: the National Civil Police with its Division of Criminal Investigations, the Commission on Criminal Investigations, and the Executive Antinarcotic Unit.

In fact, the penal processing code does not require the notification or the immediate advisement to the fiscal of crimes known to the auxiliary organizations. This has resulted in a passive attitude for the majority of the fiscales and, at the extreme, they don't take initiatives because they are not notified of crimes by the police. The police agents also are not charged to do this, preferring to bring their cases to the instructional judge directly without the fiscal having reviewed the complaint.

This is not the case for the specialized units such as the Executive Antinarcotics Unit or the Commission on Criminal Investigations as previously indicated. The unit of the fiscales that assists in the narcotic cases has very good coordination with the investigative agents of the Executive Antinarcotic Unit. There is equally close coordination with the Commission on Criminal Investigations. Commission personnel request that the fiscales participate in the investigations. In other cases the Commission will provide the information needed by the fiscales, principally that needed by fiscales of the Division of Human Rights who take care of the most important cases.

It is hoped that the system of *turno* (round-the-clock coverage) fiscales that has been put into place by the Fiscalía in several jurisdictions will improve this lack of communication with the police. The limitations of resources in the Fiscalía may impede the assignment of *turno* fiscales in all of the jurisdictions where they may be needed.

With the justices of the peace, the communications and coordination of the fiscales are even less effective. The Coordinator of the Regional Fiscalía Office of San Miguel informed us that relations with one of the justices of the peace is so bad that he neglects to notify the Fiscalía of known crimes. The limitation on time did not permit the solicitation of the opinion of other supervisory fiscales, but other cases of this sort probably exist. The judicial structure in force, where the judge assumes the burden of the investigation, does not encourage coordination or linkage to the activities of the fiscal.

3.6.3 Effects of Judicial Reform on Coordination

With the amendments introduced by the judicial reform in El Salvador, the fiscal will be responsible to "direct criminal investigations." To this end, there will be created under the direction of the Fiscal General, an Organization of Criminal Investigation.²² The coordination necessary between the investigative organization that the judicial reform recommends to be created under the supervision of the Fiscalía General will be delineated clearly in the administrative regulations of this investigative body.

²² Regarding this subject, please see the comments of the Assessment Team regarding the plans for the incorporation of the Commission of Criminal Investigations in the Office of the Fiscalía General.

This will not be the case with the new National Civil Police to be created as a separate and independent organization under the Minister of the Interior. The Fiscalía General alone will have functional supervision over this auxiliary organization.²³ The fiscal will have to direct the investigations that are accomplished by the National Civil Police without having the ability to order those responsible within the police. For the most part, with the introduced reforms, it will be necessary still to have close administrative coordination between the National Civil Police and the Fiscalía so that it may be possible to accomplish the constitutional function to "direct criminal investigations." The coordination of the Fiscalía with the judicial sector, principally with the Justices of the Peace and the judges of the First Instance is even more necessary in order that the fiscal may assume a more active role in the judicial processes that are controlled by the instructional judges.

3.6.4 Coordination Recommendations

The Fiscal General, in consultation with the officials of the National Police and the to-be-formed National Civil Police, can name one or more commissions composed of officials of the Fiscalía and of the National Civil Police in order to meet periodically and coordinate the investigative work of both organizations. The commission for coordination with the National Civil Police can serve to pose and discuss the problems that will be surfacing in day to day conduct of investigatory work. These problems that can make difficult the investigations by fiscales include those cases where there is no notification given to fiscales on committed crimes known by the police. If necessary, the Commission may formulate written directives, with the force of law, to facilitate the implementation of cooperation. Resolutions of the Commission should be strictly adhered to by the two parties.

Equally, the Fiscal General could, with the agreement of the President of the Supreme Court, establish one or more commissions to coordinate the work of fiscales assigned to courts of the first instance and to the courts of the justices of the peace. These commissions could discuss issues and formulate recommendations to facilitate the work of both organizations. A key issue is the notification by judges to the fiscales of the crime in order that they can fulfill their duties.

23 Colonel Manuel Antonio Rivas, who is working with a group of consultants to structure the new National Civil Police, informed us that he will consider it necessary to have good coordination between the Fiscal and the police since only in this manner will it be possible to have the functional supervision of the Fiscal over the work of the police.

SECTION 4

PERSONNEL SYSTEMS

The quality and quantity of services provided by the Fiscalía is directly dependent upon the integrity, education, training, and experience of the Fiscales, the frontline of the Fiscalía General in accomplishing its constitutional responsibilities. The Fiscalía systems in place or in development can increase the capabilities of the fiscales to perform their duties in a changing justice system environment.

4.1 REVIEW OF INTERNAL PROCEDURES, STANDARDS OF PROFESSIONAL CONDUCT, AND CONFLICTS OF INTEREST

The Organizational Law of the Public Ministry in Title III, deals with the impediments, excuses, and incompatibilities of the officials of the Public Ministry. Article 68 of the law provides that the fiscales are not recusable, but they should absent themselves from those cases in which there exists the causes presented in Article 1157 of the Code of Civil Procedures. Article 1157 of the Civil Procedure establishes an extensive list of causes that may require the recusal of the judge at any stage of the judicial process.

The Organizational Law of the Public Ministry and Article 1157 of the civil procedure code, indicates that the fiscal should abstain himself from involvement in the criminal or civil process when these enumerated circumstances are applicable. Article 1157, in general terms, permits the recusal of the judge when there exists a family relationship or business, professional, or other kind of association that may affect the impartiality in the process. This Article is shown in Annex V.

Article 70 of the Organizational Law establishes that the Fiscal General will identify those impediments or excuses that affect the fiscales. The legislative assembly identifies the impediments and the excuses pertinent to the Fiscal General.

4.2 OPERATIONS MANUALS

There is an organizational manual that dates from 1978 which, except for historical note is of little value to the Fiscalía. In June of 1989 a functions pamphlet was adopted by the Fiscalía consisting of five pages with several forms attached. A manual could include standards of conduct and other aspects of employment such as work standards, philosophy and objectives of the Fiscalía. The reproduction of pertinent codes, forms and such other material would be helpful to the fiscales.

4.2.1 Standards of Professional Conduct in the Fiscalía

The Adjunct Fiscal General was interviewed regarding the existence of professional standards of conduct applicable to the fiscales that may be used in the disciplinary process or administrative process in cases of conflicts of interest. He indicated that there existed only the cited references in the Organizational Law of the Public Ministry and the Code of Civil Procedure, which regulates the conduct of the judges. Apparently the Adjunct Fiscal General and the other interviewed officials of the Fiscalía understand that the Organizational Law of the Public Ministry is sufficient. The cases that have occurred and that may be considered as violations of the canons of professional conduct have been managed administratively by requesting and accepting the resignation of the person who incurred the infraction of unethical or inappropriate conduct.

There do not exist any regulatory internal guidelines in the Fiscalía General that clearly establish which are the applicable norms or standards for fiscales in the conduct of their official duties and in their private life in the community. Neither do there exist any regulations that dictate the investigative procedures or the processes to administratively adjudicate violations of conduct, infractions of canons of professional ethics, or conflict of interest cases. The Fiscal General has recently created what is called the Office of the Internal Auditor that answers to him directly with the investigative functions in the field of ethical conduct of the fiscales. This office is composed of a supervisor and three lawyers and recently began to develop a workplan. With the recently established Office of the Internal Auditor, now is the opportune moment to establish internal regulations and standards of conduct applicable to the fiscales. These regulations can serve to govern the investigations and administrative processes for the investigations to be undertaken by the recently created unit.

4.2.2 Recommendations

The Fiscal General should formulate internal regulations based on the powers granted by the Ley Orgánica of the Public Ministry. Since the Fiscales are public servants who should be examples of behavior to the community, standards for public conduct as well as professional conduct should be established. Article 1157 of the Civil Procedures Code which lists various situations of conflict of interest for judges should be adapted to the officials of the Fiscalía with the addition of other possible situations of conflict of interest and non-ethical behavior that the Fiscal General sees as necessary.

Regulations should include internal procedures for investigating infractions and, importantly, the procedures for adjudication. At a minimum, the fiscal should be notified of the charge in order to respond with an administrative review in front of an official examiner or representative of the Fiscal General who can recommend disciplinary measures according to the seriousness of the charges and in accordance with the evidence accumulated during the investigation. The disciplinary measures that the Fiscal General may take in each case (verbal or written reprimand, written admonishment, suspension of employment and salary, or removal) should be clearly stated in the regulations, taking into consideration the mistake committed and its seriousness.

The formulation of standards of professional conduct is an area that has a close relationship with the management of personnel in any government agency. Standards also have a close relationship with the establishment of a career track for fiscales. The Fiscalía will require technical assistance for developing norms and procedures to govern professional conduct that can be combined with a study to establish the career track.

4.3 PERFORMANCE AND INFORMATION SYSTEMS

The assignment of Fiscales Adscritos to jueces de paz and jueces de primera instancia provides basic coverage of the Fiscalía throughout El Salvador. Those fiscales assigned to the *juzgados de segunda instancia* are general more senior and are not considered "adscritos." While there is organizational coverage of all the courts, it is difficult to ascertain the caseloads, workloads, effectiveness, and efficiency of the body of fiscales.

4.3.1 Workload Measures

Using the judgements initiated, *juicios iniciados* by the *cámaras de segunda instancia* as an indication of the proportion of the total caseload that is handled by the Fiscalía, it is estimated that up to 80% of all court cases are the responsibility of the Fiscalía. The remaining non-criminal cases deal with civil, mercantile, labor, landlord, traffic, and treasury law. In FY '91 ending June 30, 1991, for the segunda instancia, a total of 2,049 cases were completed. Since segunda instancia is an automatic appeal situation, it may be assumed that the work involvement for a fiscal would be less than for a case prepared for primera instancia. Of the fiscales in the Regional Office in San Miguel, only 2 of the 30 or 7% were assigned to the two cámaras. In all of El Salvador, there are 28 judges for the segunda instancia as compared to 101 for the primera instancia, a proportion of 22%.

The criminal cases, *penal*, processed by the courts of first instance present a more complicated picture. In FY 91, 13,000 cases (*juicios*) were initiated and an estimated 4,000 were completed. Of this number approximately half were dismissed, 35% were handled by non-jury trials and 15% were jury trials.

Information regarding these caseloads as presented in the Annual Report of the Fiscalía General is not very informative. Data was reported by region for jury trials only. The total of jury trials completed in the FY ending May 31, 1991²⁴ was 846 as compared to the 425 jury trials presented in the Annual Report of the Supreme Court.

Given that there are approximately 4,000 cases completed annually by the court of the first instance and 2,000 cases completed by the court of the second instance totaling 6,000 cases, if the 209 fiscales were involved in all of the cases processed by the courts we can assume that each fiscal would accomplish, at the very most, approximately 30 cases per year. Since fiscales work only on those cases that are considered serious, the average number of cases completed each year by a fiscal is lower than 30 cases.

24 The Fiscal Years for the Fiscalía and the Supreme Court are different.

The caseload average indicated above, while reflective of accomplished cases per year, does not indicate the total level of duties of the Fiscales. Court figures indicate that cases in process greatly exceed the number completed. An estimated 9,000 of the 13,000 cases initiated annually require more than a year for processing and the figures indicate, through basic inventory analysis, that a large number are not resolved and remain on the court records for five years or longer. Jefes de Grupo estimate that each fiscal has an active caseload ranging from 100 to 175 cases.

These figures raise issues regarding the provision of speedy justice as well as the effectiveness of procedures to process court cases and clear records. According to the Supreme Court Annual Report, approximately 30,000 individuals were detained during 1991. Figures were not given for the actual size of the incarcerated population. Given that conviction rates are in the neighborhood of 45%, approximately half of those detained may have been detained unnecessarily with respect to the eventual court outcomes.

4.3.2 Conviction Rates

Prosecutors in North America judge their effectiveness and that of their associates by conviction rates. The rates in the U.S. and Puerto Rico are in the neighborhood of 95%. The common law accusatorial system seeks to divert cases and to formally try those that show "probable cause" and where a likely perpetrator is identified.

Fiscalía figures indicate a 15% conviction rate (*condenados*) for the Fiscales Adscritos and a 37% conviction rate for the Especificos for jury trials. This results in a conviction rate of 30% for all fiscales combined. No information was provided for non-jury trials.

In contrast, it is estimated that in trials where the defendant has a public defender, the conviction rate is somewhat higher at 40%. Court information indicates the following conviction rates: 38% for jury trials, 56% for non-jury trials, and 45% for *segunda instancia*.

4.3.3 Systems Summary

Besides the questions raised regarding reliability of records and information systems, workloads, effectiveness, and the potential injustice to detained individuals, another question that is at the heart of the El Salvador system comes to mind. It would appear that the system is designed to assure the legal guilt of the accused as compared to determine the innocence. Requiring that all cases automatically be processed through an initial appeals court, *segunda instancia*, could give that impression, especially if the innocent person is still being detained through the appeal proceedings.

SECTION 5

FINDINGS AND CONCLUSIONS

The El Salvador system of justice is clearly moving towards its own unique form of "mixto moderno." The Constitutional Reforms give the Fiscalía the responsibility to conduct investigations and it appears probable that the Commission of Criminal Investigations will be transferred to the Fiscalía sometime before mid-1994.

The Assessment Team was encouraged by the initiatives undertaken by the Fiscalía to meet its constitutionally mandated responsibilities. Training programs provided by the Judicial Reform Project's Center for Research and Training over the past year have clearly affected the thinking and discussions surrounding judicial reform and the role of the Fiscalía. The outlook and attitudes of fiscales are, by and large, fairly progressive. Many serious issues remain to be addressed, however. The major areas uncovered by the Assessment Team are summarized in this Section.

5.1 ROLE OF THE FISCALES

In contrast to accusatorial systems of justice, the role of the fiscales in El Salvador is a comparatively passive one. Investigations are undertaken by the instructional Justices of the Peace and judges of the Primera Instancia. Additionally, fiscales are not proactive in the prosecution of their cases. Accordingly, the following findings characterize the existing situation:

- o Success in changing the investigative role of fiscales will require a change in attitudes and methods.
- o There is a lack of investigators and fiscales trained in conducting investigations
- o Fiscales now require authorization from judges before seeking legally admissible evidence
- o Coordination is weak between fiscales and the police and judiciary
- o Plea bargaining can be interpreted as allowable under law, but is not practiced

5.2 PERSONNEL ISSUES

Interviews indicated that there are various views of the fiscales from the perspective of other personnel in the justice system. Some judges expressed the opinion that many fiscales are uneducated, untrained and inexperienced. Public defenders felt that there was too much emphasis on gaining convictions and that politics played a role in the assignment of Fiscales to rural posts.

Personnel with the Commission of Criminal Investigations and the Executive Antinarcotic Unit stated that there was good rapport and cooperation from the assigned fiscales. Other personnel related findings are summarized below:

- o Relatively few of the fiscales have completed their law school programs. In the Eastern Regional Office, only 20% had completed the schooling for Licenciado which also happens to be the proportion for public defenders in the same region.
- o Fiscales are paid approximately 25% less than public defenders and Justices of the Peace receive salaries that are double the salary for fiscales. Fiscales with their law school degrees receive only 10% more than those fiscales who are still law students.
- o Incidents of bribe taking are said to be widespread throughout the justice system. Over the past year, five fiscales were released from their positions for alleged offenses, according to interviews.
- o Court work hours are less in the countryside than in San Salvador. Fiscales are given these same work hours and work 30 hours a week as compared to 40 hours per week in San Salvador. Pay is also reduced.
- o Fiscales productivity is difficult to ascertain given the available statistics. While caseloads of 120 or more per fiscal were possible, case completions are probably in the magnitude of 30 or less per year per fiscal. Conviction rates are low at approximately 30% as estimated from Fiscalía data.
- o While many of the senior officials of the Fiscalía have been there for ten years or more, there is no clear indication that a fiscal career track is in place. Turnover, however, appears to be low.

5.3 REGIONAL CONSIDERATIONS

National coverage of the Fiscalía of the more than 300 courts of the Justices of the Peace and the 100 courts of First Instance presents a challenge. A Eastern Regional Office was established in San Miguel to improve rural operations. Fiscales assigned to the other rural courts are supervised out of San Salvador. The following are key findings from interviews conducted in San Miguel:

- o A number of the fiscales apparently live in San Salvador and commute daily. Others return to San Salvador on weekends. This could detract from the development of community involvement of the fiscales and their relationships with other members of the system of justice. Commuting may also affect the possibility of completing law degree programs.
- o Regionally assigned fiscales may be more isolated from the profession in comparison with those in San Salvador.

- o The Regional Office had fewer resources such as clerical assistance, office equipment, transportation and office space even in comparison with the Fiscalía situation in San Salvador. All documents were handwritten.
- o Coordination between judges and police was lacking.

Interviews indicated that while conditions were far from ideal in San Miguel, fiscales assigned to the Western Region have even less support. Supervision and coordination are potentially less for fiscales in the West. There is no 24 hour coverage (turno) which has been established in San Miguel. Fiscales in the West have even less access to transportation and other basic program support.

5.4 RECORDS AND STATISTICAL SYSTEMS

The Fiscalía record systems substantially rely on hand written documents. A review of case file folders indicated that the information contained therein was extensive, complete and appropriate to the customary role played by fiscales in the processing of criminal cases. The shortcomings are as follows:

- o Efficiency: With the lack of basic office equipment such as copiers and typewriters, records are not easily legible. There are instances of written materials recopied by hand. The lack of a copier can result in limited access to information contained in the case files.
- o Operational Relevance: While extensive information exists in case files, there is no ready access to information such as status of case to assure that time limitations on stages of case processing are not exceeded.
- o Statistics: The case files contain substantial amounts of information that would be useful for operations and overall Fiscalía policy development. However, since there is no structure for maintaining or compiling totals on key information elements such as entry date of case, charged offense, and case status, this information is not readily accessible. Analysis of the files information would require an inspection of each individual file.

5.5 OPERATIONS MANUAL

The Fiscalía provides a document "Instructions for Appointed Fiscales" dated June, 1989. This document contains information on the instruction and plenary phases of criminal cases processing, some background information in judicial practices and copies of four forms used by fiscales in the performance of their duties. An operations manual can be more comprehensive and can address case processing, legal references, orientation on the Fiscalía, objectives of judicial reform, standards of ethical conduct, and expectations of performance of duties and measures of effectiveness.

5.6 TRAINING

The Judicial Reform Project Center For Research and Training has provided an extensive training program for public defenders and fiscales over the past year. This training has aided the fiscales to be aware of the Constitutional Reforms and the evolving justice systems in El Salvador and in neighboring Central America countries. Training, however, tends to be theoretical and faculty members from South America are unacquainted with the possibilities of active case prosecutions and elements of the El Salvador system such as jury trials.

5.7 ORGANIZATION FOR CRIMINAL INVESTIGATIONS

The Fiscalía has developed a proposal, *proyecto de ley*, to create an Organization for Criminal Investigations (OID) to investigate and affirm, with technical and scientific approaches, the existence of punishable offenses, the discovery and apprehension of those committing the crime, and to provide technical assistance to those who may require it in judicial investigations, without limiting the autonomy of judges in the investigation of crimes committed in their jurisdictions.

The creation of such an organization as proposed by the Fiscalía would constitute a major auxiliary resource for the administration of justice in El Salvador. As an additional unit of investigation, the Fiscalía would be able to relate to the Division of Criminal Investigations of the National Police. The OID would have departments dealing with investigations, narcotics traffic, training, judicial affairs, criminalistics, and forensic medicine.

5.8 NEW PROGRAMS

Over the past two years several new programs have been undertaken within the Fiscalía. These include fiscales assigned to Narcotráfico, an Internal Auditor, and Department for Crime Prevention. A Regional Office will be established in Santa Ana to cover the western region.

A major program effort is human rights. This 17 person unit currently handles over 600 cases per year and accepts cases ranging from child abuse to crimes against persons committed by government officials. With the Constitutional Reforms establishing an office of Human Rights under the Public Ministry, some jurisdictional conflicts may emerge. To a certain extent, there is lack of clarity on definitions and roles to be played as prosecutors or defenders of those accused of human rights crimes.

The Department of Crime Prevention, formed in late 1991 and composed of a program coordinator, is oriented towards compilation of crime statistics, analysis, and public information. Results to date of information collection and dissemination efforts are inconclusive.

5.9 JUSTICE SYSTEM

The Fiscalía operates within a system of highly interdependent components and is impacted by their policy decisions, procedures, and activities. The three components of the justice system that directly relate to the Fiscalía are law schools, the National Civil Police and the Judiciary as outlined below:

- o Law Schools: To effectively operate a reformed El Salvador system of justice, a trained and motivated cadre of personnel is essential. All players need to be motivated and oriented to achieving the constitutional goals of justice with fairness and concern for human rights. The source of fiscales are the law schools and curriculum reform is now taking place. Courses that would support the education of lawyers who will become the judges, fiscales and, to a certain extent, the police investigators in the future can include the theoretical and philosophic bases for judicial reform and forensic practices.
- o National Civil Police: The police have undertaken a two year development plan to result in the formation of a 10,000 person force to assure public security. Current plans call for 800 police investigators to work under the direction of fiscales. A major component in the police development plan is the Police Academy that will provide a six month training program to all police officers.
- o Judiciary: Although constitutional reforms state that the Fiscalía is responsible for directing investigations, the judges have traditionally played a leading role in obtaining evidence, ordinarily in written statements. For the fiscales to perform their constitutionally mandated role, cooperation with the judiciary is essential.

SECTION 6

RECOMMENDATIONS

The program development strategy to improve the Office of the Attorney General (Fiscalía) is divided into those actions that can be undertaken to address other justice agencies (external) and the Attorney General's Office itself (internal). Additionally, those project components that can be undertaken and completed within the short term (six to nine month timeline) are identified.

Assessment recommendations outlined below are intended to guide future program development and project designs. No attempt has been made to place priorities on these action possibilities. All, however, are considered relevant to the improvement of Fiscalía operations and the functioning of the El Salvador system of justice. While action can be initiated on the recommendations in the short term, accomplishment of most of the recommendations will require detailed planning and longer periods for development and implementation.

In the following recommendations, there is little distinction between those actions that will require additional funding and those that may be implemented with changes in assignments, personnel duties, and/or changes in Fiscalía procedures. As a case in point, the development of the recommended operations manual may be accomplished with a mix of current personnel and support from technical assistance specialists (Fiscalía operations consultants). In subsequent project design efforts, the requirement for funding support levels can be determined and project resource requirements can be detailed.

6.1 EXTERNAL PROGRAM DEVELOPMENT

The Fiscalía, in order to increase its effectiveness and to undertake the major step of conducting investigations, must have the support of the other components of the El Salvador system of justice. Legislation and coordination are seen as the major avenues for Fiscalía progress in obtaining cooperation and support from other justice agencies.

6.1.1 Legislation

The Assessment Team sees the legislative effort as requiring a time frame of two to three years to coincide with the establishment of the National Civil Police and the ongoing development of the Fiscalía. The Constitutional Reforms provide substantial latitude to the Fiscalía to reorient its operations. The responsibility to conduct investigations of crimes is clearly stated. Given the customary practices of fiscales since the creation of the Fiscalía in 1950, additional impetus, encouragement, and authorizations are needed to facilitate the change process.

A major sign of support would be the legislation to transfer the Commission on Criminal Investigations to the Fiscalía. Other legislation could include:

- o Finance: Apportionment of the 6% of the budget earmarked for the judiciary in a more equitable manner to increase available resources to the Fiscalía.
- o Investigative Responsibilities: Guidelines could be promulgated that outline duties of the police, judiciary, and the Fiscalía in the conduct of investigations. External laboratories and coroner services should be addressed.
- o Procedures: Successful prosecution of criminal cases could be enhanced by the expanded use of witnesses in jury proceedings, explicit authorization to undertake investigations without the prior approval of the court, ability to plea bargain, and the ability of fiscales to not prosecute cases with insufficient evidence (*nolle prosequere* provisions), among others.

6.1.2 Coordination

Coordination is required with the law schools, National Police/National Civil Police and the judiciary. The Center for the Judiciary Reform Project, in its technical assistance to reform law school curricula, can increase the awareness of law school deans regarding the role of fiscales and their needs for training in forensic practices. The Assessment Team recommends that the Fiscal General form high level Commissions for Coordination with both the courts and the police.

Cooperation and coordination among the police, court, fiscales and, to a lesser extent, between fiscales and defenders are essential to the provision of timely justice. Nowhere is such cooperation, communication and coordination more necessary than in the expansion of the fiscales' role in the conduct of investigations. Within a planned two year period, the civil police will have an investigative force of 800 persons, which number exceeds the present number of fiscales by four fold. Within an equivalent time frame, the Fiscalía should have absorbed the Commission on Criminal Investigations and expanded its personnel and material resources to conduct investigations. The Assessment Team recommends that the Fiscalía actively recruit military and police personnel that are experienced in police methods, especially in investigations, to provide a police oriented perspective that may facilitate communications with police investigative teams.

The proposed Commission for Coordination with the National Civil Police can serve to pose and discuss the problems that will be surfacing in day-to-day conduct of investigatory work. In those cases where there is no notification given to fiscales on committed crimes known by the police, it will be difficult for the Fiscalía to initiate investigations. If necessary, the Commission may formulate written directives, with the force of law, to facilitate the implementation of cooperation. Resolutions of the Commission should be strictly adhered to by the two parties.

Equally, the Fiscal General could, with the agreement of the President of the Supreme Court, establish one or more commissions to coordinate the work of fiscales assigned to Courts of the First Instance and to the Courts of the Justices of the Peace. These commissions could discuss issues and formulate recommendations to facilitate the work of both organizations. A key issue is the notification by judges to the fiscales of the crime in order that they can fulfill their duties.

To facilitate fiscales coordination with police officers and judges and the development of complementary roles, courses on investigation procedures and related case procedures should be provided to training groups consisting of fiscales and police officers and with fiscales and judges.

The Assessment Team recommends that a Justice Coordinating Committee be established to work out changing procedures and new justice system responsibilities. This committee could assume responsibilities of recommending legislation or other reforms to support changes in justice proceedings. The Committee would serve to develop channels of communications within the ranks of the justice organizations.

6.2 INTERNAL PROGRAM DEVELOPMENT

For several of the recommendations presented below, the Fiscalía has taken steps for implementation and the Assessment Team suggestions are directed to added support, project orientation and future project possibilities. For the most part, however, the implementation of project recommendations will require short-term and long-term technical assistance. The Assessment Team recommends that all technical assistance be structured to assure maximum participation by Fiscalía senior management and counterpart Fiscalía departments and divisions. The technical assistance can, as appropriate, include hands-on involvement in studies and project implementation activities as well as detailed briefings, training sessions related to technical assistance tasks, and workshops and conferences related to technical assistance topics.

6.2.1 Training

Additional training, within and outside of the Fiscalía, should be undertaken to reinforce implemented changes in theory and practices and to assist in the undertaking of additional innovations in support of the proposed expanded role of fiscales in the justice system. These training possibilities include the establishment of a Fiscalía Training Academy and related internal training programs such as investigations techniques, presentation of legal argument, oral questioning of witnesses and related duty-oriented training. The Assessment Team recommends that training be country-specific to the El Salvador in addition to exposure of fiscales to theoretical legal concepts and practices in other countries.

Investigations training for fiscales is very important and can improve police/fiscal relations and coordination. Fiscales will need basic courses in criminal investigative techniques to familiarize them in general terms with all aspects of modern criminal investigation including forensics and criminology so they can effectively deal with what in most instances will be a less prepared police force. The fiscal must know exactly what investigative resources are available and should be trained not only in theory but by means of actual visits to the Salvadoran crime labs and similar facilities. The mutual respect that will be necessary to achieve proper coordination between the two groups will be hard to achieve unless the fiscal is knowledgeable in these matters.

Training in investigative techniques should include not only such aspects as crime scenes and interrogations, but human rights protection and the philosophy underlying the concept of fairness within the system. Training should be provided in the fiscal's particular responsibility during the investigative stage to ensure proper police conduct as part of the overall ethics training. The fiscal under the contemplated changes in the Fiscalía role will occupy a position of special public trust. The nature of this trust has to be inculcated in the group.

Training should be provided in the management of investigative teams. Fiscales may alienate police through poor personnel skills which may be exaggerated because of the youth and inexperience of some fiscales. If the Fiscalía does indeed become the "director" of criminal investigations then management training will be required. Sensitivity to the exigencies of police work and teamwork skills will be essential as part of the training approach.

Hand in hand with the specialized training of the fiscales as described above, parallel training of the police directed towards their role in the new system is needed. A segment of this training should be directed towards creating teamwork skills. The fiscal must be viewed ultimately as the best ally in the fight against crime and as a figure who is always at hand to keep the investigation within the bounds of the law and towards successful completion. Without intense training in the outlined areas, the police may view the prosecutor at best as meddling and at worst as incompetent. Credibility of the Fiscalía and the role of the fiscales is paramount.

The Assessment Team recommends that the Fiscalía continue to take advantage of the semi-academic and theoretical and procedural training courses being provided through the Judicial Reform Project Center for Research and Training. The new Judicial School could also support training programs for fiscales. Law school courses for prosecution and investigation techniques would also be of help to prepare fiscales.

The Assessment Team recommends that training programs emphasize multidisciplinary relations such as the courses conducted by the Center for Research and Training for defenders and fiscales. Courses in investigation techniques could be presented to training groups composed of fiscales and justices of the peace.

According to the Salvadoran lawyers and judges interviewed, the Salvadoran system is wedded to the idea that the jury institution will continue. To this point, a substantial portion of the foreign experts who have worked towards reform in the justice sector are from countries which have no tradition of jury trials or concept of modern jury practice. The training that has occurred under these forward looking individuals has been of incalculable benefit. However, the Assessment Team recommends that the Center program include American jury experts with an understanding of inquisitorial systems to analyze the process of jury trials and to design better methods and training in this specific area. This would be important in the short term not only as a means of introducing a functional component in training efforts but as a means of a total overall effort to introduce new attitudes into the Fiscalía essential to its new role and to move the system in a modern, accusatorial direction.

The Assessment Team recommends that a U.S. expert be retained immediately to design such training and indoctrination efforts in coordination with already in place trainers with a start up date for actual training to begin within four months. It would also be of benefit to examine U.S. prosecutor training courses, particularly in terms of audio visual "training by example" devices and that this work be accomplished with the close association of Salvadoran trainers who should be exposed to U.S. style jury practice. An orientation visit to a Puerto Rican court to observe, first hand, jury trials in Spanish accompanied by a Spanish speaking U.S. or Puerto Rican lawyer familiar with the Salvadoran system would be an appropriate introduction for selected judicial, Fiscalía and defender participants.

Related to the above training and to possible attitudinal changes is the issue of effective presentation of testimony orally before the court. There is ample opportunity for the presentation of live evidence both at the "probatorio" stage and before the jury, yet this is rarely done. Training courses designed to emphasize the effectiveness and efficiency of these methods should be designed, consistent with actual procedural provisions.

The Fiscalía Training Coordinator should continue to work closely with the Center for developing training programs. In addition the following training program elements are recommended:

- o **Orientation:** Each new employee (estimated 20 per year) should be given a minimum 5 day orientation. The first day can consist of an overview of the Fiscalía as presented by a Fiscalía trainer and an introduction to objectives, internal personnel procedures, and operations manual. Days 2 through 4 could consist of a rotating to units such as Human Rights, Debts Collections, Regional Office and other units to demonstrate the extent of Fiscalía operations. The fifth day would be used to complete the overview and respond to questions of the new employees. The orientation could be conducted on an individual basis or could be given once a month, for example, to an incoming group of several employees.

- o On-the-Job Training: The Fiscalía trainer, in collaboration with the new employee's supervisor, can provide on the job training. Such training could include working with and observing work activities with an assigned experienced fiscal.
- o Academy Program: The Fiscalía could operate a periodic academy program once or twice a year for classes up to 20 persons. All employees including clerical personal would receive the one week orientation. Fiscales could then receive one to two weeks of advanced writing and oral presentation workshops. An additional week or two would address investigation and prosecution techniques.

6.2.2 Plea Bargaining

Article 70 of the Penal Code provides for a type of plea bargaining as both a means of resolving cases without the allocation of time and of resources otherwise required. Plea bargaining, through more lenient sentencing in return for guilty pleas, can also encourage defendants to provide evidence against other co-participants in a given criminal enterprise.

A provision for plea bargaining is very unusual in Latin American penal legislation. The proposal of a similar provision in the recent sweeping amendments to the Colombian Code of Criminal Procedure caused widespread and heated debate in the legal community. Such "deals" are generally considered illegal in most jurisdictions in Mexico and the prevalent attitude towards contemporary U.S. plea bargaining practices by most Latin American lawyers is that it is somehow almost immoral and certainly improper.

The team interviewed several Salvadoran lawyers concerning the use of this provision and discovered that it is rarely used. Conviction rates may be too low for this opportunity to plead guilty in return for lowered sentences to be attractive to the defendant. Little consideration has been given for the potential usefulness of plea bargaining in certain more complex cases and the possible effect in reducing caseloads.

The ability to negotiate pleas is one of the most important factors for the comparative efficiency of the U.S. justice system to resolve pending cases in relatively short times. Plea bargaining can alleviate the congestion that plagues the Salvadoran courts and, with relative ease, can be used to turn co-conspirators into witnesses in serious cases in order to penetrate sophisticated criminal organizations.

Further analysis of the opportunities for more expeditious case handling and a more effective and sophisticated approach to the investigation and prosecution of crimes through the use of the procedures authorized by Article 70 should be conducted. Due consideration must be given to the concerns of the legal community that such procedures present an additional opportunity for bribery or other types of corruption. Mandatory review procedures and safe guards similar to those promulgated for U.S. Justice Department prosecutors could be adapted and included in any procedure manual. Analogies to the new provisions of the Italian Code of 1988 or the Colombian

model can be used in deference to the strong feelings held by many Latin American lawyers and judges based on their perception of the freewheeling aspects of the U.S. practice. The procedure, if properly understood, used, and monitored could become one of the key aspects of an improved El Salvador system of criminal justice.

6.2.3 Investigations Function

The Assessment Team recommends that the Fiscalía continue efforts initiated to establish in to the Fiscalía an auxiliary unit of investigation. If the National Civil Police realizes initial plans to have 800 investigators, the Fiscalía could operate with approximately 40 investigation coordinators. Otherwise, up to 200 investigative agents may be required for the Fiscalía to fulfill the constitutional responsibility of coordinating investigations. The allocation of additional resources to the Fiscalía for the internal organization and training of such a body of investigators will also be necessary.

The provision of technical assistance would aid the Fiscalía to organize an effective investigation unit through the preparation of regulations and procedures for its operation. Training for the investigative agents will also be required. Additional resources to support the investigative function are necessary and, without resources and technical support, the Fiscalía will not be able to assume the investigative responsibilities as entrusted to the organization by the Constitution and the law.

The current tendency in many jurisdictions is to establish an autonomous and independent institute for the forensic sciences that can conduct scientific criminal investigations as well as forensic pathology. This is similar to the concept of an independent English coroner or North American medical examiner. A generally accepted principle of scientific investigation is that such an agency shouldn't answer to any police, prosecutorial or judicial agency and that it should accomplish its investigations of crimes guaranteeing the independence and objectivity of their expert opinions.

The Assessment Team recommends that, as a major emphasis in the reform of justice in El Salvador, steps be taken immediately to restructure one autonomous and independent organization to conduct scientific investigations. These investigations would be undertaken upon requests for investigations from investigating judges, police investigators, and the Fiscalía's investigation unit, as well as from public defenders representing those charged with crimes. A scientific investigation could also be initiated for any interested party through a judicial order.

To continue with the model of each investigative body in the administration of justice obtaining its own means to realize scientific investigations would precipitate what, in other jurisdictions, has been criticized. These issues are duplication of efforts, wasted resources and, more importantly, the possibility of bias in the accomplished proofs, analyses, and studies. The results of scientific investigations should have a high degree of reliability and credibility.

6.2.4 New Programs

Public visibility is important if the Fiscalía is to carry out the enhanced investigative role contemplated for it under the *acuerdos de paz* and the Constitution. The idea of a civilian agency that is not affiliated with the military and is not a court, and which is dedicated to the investigation and prosecution of crime in a somewhat adversarial sense, is rather at odds with the Salvadoran cultural tradition. For the public to realize the changes contemplated, a public information campaign is necessary. Given the paucity of resources it should be carefully designed. The emphasis of the message should be the effectiveness of taking criminal complaints to the Fiscalía instead of to the courts.

While the present publicity campaign of the Fiscalía may be inadequate, the basic idea of a government agency that is capable of protecting the average citizen is very important. A component of the effort to improve the Fiscalía should be dedicated to increasing public confidence in the agency as a means of engendering more direct reporting of criminal conduct. Such a "crime prevention" campaign would be a proper prosecutorial function, especially since transcendental changes are required of the Salvadoran Fiscalía.

Similarly, an appropriate activity could be the study and implementation of mediation procedures for those cases where conciliation is acceptable and appropriate. This idea was greeted enthusiastically by Fiscalía officials and, if implemented with the involvement of the police and the courts, could significantly decrease case loads and engage the Fiscalía in the initial stages of case resolution.

The problem now with consigning this to the Fiscalía is the same problem with any program to enhance its operations. In spite of the constitutional reforms making the Fiscalía primarily responsible for investigations, El Salvador still functions as a colonial inquisitorial system at the pretrial stages. The Fiscalía is simply ignored as a part of the process by most victims and the police in favor of going directly to the justice of the peace or judge of the first instance to lodge complaints and initiate the process. Were it not for the reforms it would be preferable to have any mediation organization attached to the courts and not to the Fiscalía. However, the establishment of a mediation program could be viewed as part of the impulse for the Fiscalía to move towards assuming its assigned role in the process.

The Attorney General's Office for the Mexican state of Chihuahua established such a program for the city of Chihuahua in 1987. This program has been very successful. Fiscalía personnel charged with the design and operation of a mediation unit could travel to Chihuahua or a similar program for an observation visit.

6.2.5 Personnel and Fiscal Career Development

Approximately 85% of the Fiscalía annual budget is committed to salaries for personnel, clear evidence that the Fiscalía program is labor intensive. The quality of Fiscalía employees directly impacts upon the accomplishment of its responsibilities and objectives. The following are issues to be addressed in order to increase the calibre of Fiscalía personnel.

The disparity of salaries within the juridical community can affect quality of personnel recruited by the Fiscalía, fiscales' perceptions of the value of their work to society, morale, and related issues such as turnover and lack of a career path within the Fiscalía. The Assessment Team recommends that Fiscalía salaries be brought into line with judicial and defender salaries. Related personnel and career development recommendations are presented below:

- o Assignment of Personnel: In the courts outside of San Salvador as well as for several justice of the peace courts in San Salvador, a single fiscal may be assigned to cover up to five or more courts. There are over 300 justice of the peace courts in El Salvador and a total of approximately 200 fiscales for the entire range of courts from justices of the peace through to the Supreme Court. The Assessment Team estimated that each fiscal completed fewer than 30 cases per year according to available Fiscalía and Supreme Court information. A detailed analysis of workloads and related time requirements for discharging duties (travel time, access to secretarial/clerical support, access to investigative resources) should be considered. Such an analysis should assign weights to caseloads according to output type (primera instancia, jury trials, segunda instancia, Supreme Court) and to activities associated with case intake and those cases that appear to remain on a semi-active status for long periods.
- o Operations Manual: The development of an operations manual would serve two important purposes. The development itself would require an extensive review of operations, procedures, practices, performance measures, standards of conduct, and organizational structure. The other purpose would be to orient personnel to the performance of their duties and their relationship to the Fiscalía. Components of the operations manual would include Fiscalía philosophy and objectives, procedures, ethics, expected performance and could provide basic legal reference materials.
- o Caseloads and Workloads: An analysis of workloads could be conducted in relationship with a Fiscalía records and information system study. Some of the information and analysis generated can be pertinent to both areas. Similarly the operations manual development will provide insights for both workload analysis and information systems development.

- o Working Hours: The assessment team recommends that hours for court operations be standardized throughout the nation. Other recommendations include the option of shorter hours to allow for the bachilleres to pursue their law degrees. Even if court hours are unchanged in rural areas, fiscales could work an additional two hours a day to total 40 hours per week, if warranted by their duties and workloads.
- o Salaries: A definite increase in salary should be given to those fiscales that have completed their degree programs. The current pay differential of 16% (¢1,800 monthly for bachilleres and ¢2,085 for licenciados) is considered an insufficient incentive to continue studies according to Fiscalía senior officials. The Assessment Team recommends that a raise be given to fiscales with their law degrees in a magnitude of 25 to 30% higher than the bachilleres. At the present approximately one of every four fiscales has completed their law degree (graduados).
- o Professional Development: There currently exist few incentives for law students to complete their university studies. Internal specialized training and instruction on up-to-date prosecution methods could provide the foundation for developing "esprit de corps" and positive attitudes towards the fiscales profession.
- o Promotions: The conditions upon which fiscales will receive salary increases and increased job responsibilities should be explicit and adhered to in managing and supervising Fiscalía personnel. These conditions can include level of education, entrance examinations to determine eligibility for advanced positions, level of production, achievement of standards of performance, and similar merit oriented criteria.
- o Political Influence: In the interest of fairness, effectiveness and efficiency, personnel decisions should be based on merit. The conscious and diligent application of this principle can affect institutional morale and overall level of production.
- o Personnel Committee: The complex of guidelines and activities that comprise the fiscal career track should continue to evolve to meet the requirements of a changing Fiscalía. A personnel committee should be constituted to meet regularly and report progress and proposals to the Fiscal General.

6.2.6 Professional and Ethical Conduct.

With the recently established Fiscalía Office of the Internal Auditor, now is the opportune moment to establish internal regulations and standards of conduct applicable to the fiscales. These regulations can serve to govern the investigations and administrative processes for the investigations to be undertaken by the recently created unit.

The Fiscalía should formulate internal regulations based on the powers granted by the Ley Organica of the Public Ministry. Since the fiscales are public servants who should be examples of behavior to the community, standards for professional conduct as well as public conduct should be established. Article 1157 of the Civil Procedures Code which lists various situations of conflict of interest for judges should be adapted to the officials of the Fiscalía with the addition of other possible situations of conflict of interest and non-ethical behavior that the Fiscal General sees as necessary.

Regulations should include internal procedures for investigating infractions and, importantly, the procedures for adjudication. At a minimum, the fiscal should be notified of the charge in order to be able to respond appropriately. An administrative review should be conducted in front of an official examiner or representative of the Fiscal General who can recommend disciplinary measures according to the seriousness of the charges and in accordance with the evidence accumulated during the investigation. The disciplinary measures that the Fiscal General may take in each case (verbal or written reprimand, written admonishment, suspension of employment and salary, or removal) should be clearly stated in the regulations, taking into consideration the infraction and its seriousness.

The formulation of standards of professional conduct is an area that has a close relationship with the management of personnel in any government agency. Standards also have a close relationship with the establishment of a career track for fiscales. The Fiscalía will require technical assistance for developing norms and procedures to govern professional conduct that can be combined with a study to establish the career track.

6.2.7 Regions

The Assessment Team recommends that the Fiscalía continue its efforts to regionalize operations. In 1992, the Western Regional Office will be established in Santa Ana. Operations will then be directed regionally out of Santa Ana for the west, San Salvador for the central part, and San Miguel for the east.

The establishment of Regional Offices does not intrinsically resolve problems associated with coverage and decentralized operations. At present, there is coverage in the western part of the country through the assignment of fiscales to the courts located in the region. Many of the fiscales live elsewhere, mainly in San Salvador, and will continue to commute to regional locations. The problems associated with such commuting are lack of time to pursue formal law education, commuting costs, lack of local community ties, less communications and coordination with local judiciary and police elements, and salary disincentives associated with shorter work hours in the regions. The Assessment Team recommends that these issues be addressed in order to increase Fiscalía effectiveness and efficiency.

6.2.8 Demonstration Projects

The use of demonstration projects, tested, proven and refined over an appropriate time period, would accomplish several program improvement objectives. In addition to testing feasibility, a demonstration project is a quick and relatively cost-effective way to initiate procedural changes, initiate new or expanded roles for the Fiscalía, and draw attention to innovative program approaches. Examples include increased use of orality, testing of coordination between the civil police and fiscales in the conduct of investigations, and development and implementation of improved records and statistics systems.

6.3 LONG-TERM TECHNICAL ASSISTANCE

The Assessment Team recommends that the foundation for improvement of the Fiscalía be a two year technical assistance effort to develop and demonstrate the efficacy of proposed internal and external program actions. The effort can include the Regional Demonstration Project and can also consist of the following components:

- o Legislation Review: Long-term team members can serve as staff support and to coordinate short-term technical assistance to review legislation and develop new legal proposals. Practices of the CORELESAL component of the original Judicial Reform Project should be reviewed to guide the design of the effort, the relationship to counterpart officials, as well as the previous use of CORELESAL of short-term technical assistance.
- o Investigation Functions: A detailed study of investigation practices in El Salvador, past and present, would provide valuable information for additional reform in the court processing of cases. Such a study would be directly related to the Constitutional Reforms and would aid in the implementation of new procedures within the Fiscalía.
- o Commissions for Coordination: Similarly, long-team technical specialists can serve a staff function to support the work of the Commissions with the National Civil Police and with the judiciary.
- o External Training: Along with the Fiscalía Coordinator for Training, the long-term team can work with the Center for Research and Training and with law schools to develop courses and academic curricula.
- o Fiscal Career Development: During the two year period, the long-term team can work with the personnel committee to develop the fiscal career track and provide supporting documentation. The regional demonstration project could provide the proving ground for career track development.
- o Training Academy: The long-term team can provide technical assistance to the Director of the Training Academy. Assistance will focus on procedures for design of training programs, training evaluation, on-the-job training, and coordination of external training programs and out-of-country training.

6.3.1 Regional Demonstration Project.

A major focus of the long-term technical assistance team can be the development and monitoring of the Regional Demonstration Project. The Project should encompass the analysis of caseloads that would facilitate the implementation of innovations in case assignments, workload standards and records systems development. Operations oriented activities can be developed and tested and can include operations manual design, introducing of investigation technology, specialized units to support fiscales, development of regional and local cooperation with police and the judiciary, development of performance standards, and the use of statistics to improve operations and Fiscalfa policy.

The San Miguel Regional Office suffers from the same problems as the Fiscalía as a whole and many of the internal problems discussed elsewhere are magnified by virtue of the separation from the main office in San Salvador. On the other hand the group of Fiscales quartered there is small enough that pilot type projects could render disproportionate results in terms of what is practical and what is not in the Salvadoran justice system. Moreover, the independence from the main office by virtue of geographical separation offers a certain degree of additional autonomy that could be advantageous. It is possible that the regional office planned for Santa Ana may not be functioning within an acceptable period of time. Accordingly, it is recommended that both San Miguel and Santa Ana be considered for the installation of the Regional Demonstration Project for the improvement of the Fiscalía. The project could address the following:

- Advanced training in oral presentation of evidence and jury techniques;
- Training of key personnel in investigative techniques;
- Funding of one or two investigative positions for investigators with advanced skills in ordinary criminal investigations who would become part of the new investigations division of the Fiscalía;
- Advanced training for these two individuals in police liaison activities;
- Funding of the basic support systems for this unit with essential investigative equipment to include cámaras, tape recorders, typewriters, and basic forensic materials;
- The establishment of a co-ordinating committee consisting of local police personnel, key court personnel and the Fiscalía to develop test protocols for the regional office;
- Funding of a basic library containing essential legal material as well as investigative references;
- Funding of sufficient word processing equipment to meet the needs of the unit;
- Protocol requirements for assuring increased use of oral proceedings;
- Establishment of model career track programs for personnel in the local office including salary parity for the fiscales as compared with public defenders and other salary adjustments; and
- Monitoring provisions to assure adequate study of results and potential problems from San Salvador and provision of expertise in statistical analysis and continuing review of physical and personnel needs for the advancing role of the Fiscalía;

6.3.2 Technical Assistance Support

The long-term technical assistance team will require access to specialists to accomplish the long-term objectives. This support can take the form of baseline studies and project designs that are accomplished before the long-term effort is initiated (before March, 1993). When the long-term effort is underway, additional technical assistance support will be required for information systems development, monitoring and evaluation, and procedures specialties such as juror management and caseload management, among others.

6.4 RECOMMENDATIONS FOR IMMEDIATE ACTION

The following recommendations support the development and eventual implementation of the long-term technical assistance effort. Baseline studies, designs, and any other procedural recommendations that emerge from these immediate activities can, in turn, be tested in the actual operations of the Regional Demonstration Project. The following is an outline of the initial components:

- o Caseload Baseline Study: The proposed study can address two major issues that were identified by the assessment study. For a defined jurisdiction, the nature of the work for the current fiscales can be examined and include profiles of cases, time allocations to cases by case classifications, case closings, and related case assignment information. The other element to be analyzed is case flow which includes duration by stages of processing, dispositions, average times of case completions, and related offender information such as length of detention. While both types of baseline study are somewhat related, there are differences in objectives and differences in the records and data collection procedures. In the interest of reduced costs, samples can be drawn from the caseloads of selected individual fiscales. The workload and caseload studies would provide insights to establish standards for performance and guidelines for assignment of fiscal. To the extent that the studies provide sound estimates of fiscal productivity, a baseline can be established by which to measure the impact of program reforms, training, and procedures changes.
- o Juror Study: The use of the five person jury is a unique aspect of the El Salvador system of justice. This practice removes traditional power of judges to determine guilt or innocence in an estimated quarter of the cases that come to trial. Some Latin American theorists in judicial practices do not support the use of civilian juries. A study of current practices could reveal interesting insights that could be used to continue the trend to El Salvador justice reform.
- o Training Academy Design: A design is needed to guide the Fiscalía and the long-term technical assistance team to develop the Fiscalía Academy. With such a design, the requirement for personnel, space, material and other support could be determined prior to the start of the long-term technical assistance. Components of the design could include: Academy objectives, design for orientation training, length of orientation segments, on-the-job training, mid-level training, personnel and resource requirements, and other program aspects.

- o Demonstration Project Design: This should be a major component for the overall improvement of the Fiscalía. Initial work to ascertain the best demonstration site, major demonstration objectives and related program issues such as coordination is needed in order to construct the overall two year technical assistance project.

- o Design for Long-Term Technical Assistance for the Improvement of the Fiscalía: Given the emphasis of the assessment study on the areas of coordination, training and management information, a three person long-term technical assistance team may be required. The Chief of Party should be experienced in these areas and in technical aspects of the role of fiscales. A training specialist and an information/records systems specialist are also recommended as important specialists. Additional short-term specialists would also be required. The proposed design would address the objectives for the improvement of the Fiscalía, proposed results and timelines, defined project components, use of demonstration efforts, and required resources.

ANNEX I
LIST OF INTERVIEWS

Lic. Jorge Amado Alas Alas
Defensor Adscrito al
Juzgado Quinto de lo Penal
Procuraduría General
San Salvador

Br. Jorge Alberto Amaya Hernandez
Defensor Adscrito al
Juzgado Cuarto de lo Penal
Procuraduría General
San Salvador

Lic. Miguel Angel Diaz
Jefe Departamento, Gestión de Cobros
Fiscalía General
San Salvador

Coronel Manuel Antonio Rivas
Executive Director
Organization Project
National Civil Police
San Salvador

Lic. Carlos Arturo Azucena
Asesoría Jurídica
Comisión de Investigaciones del Delito
San Salvador

Dr. José Prado Avalos Laguardia
Jefe, División Defensa Interes del Estado
Fiscalía General
San Salvador

Lic. Johana Barcenás Azume
Colaboradora Coordinadora, Depto. Prevención del Delito.
Fiscalía General
San Salvador

Lic. Romeo Benjamin Barahona
Asesor Jurídico
Comisión de Investigaciones del Delito
San Salvador

Lic. Ana del Carmen de Fernandez
Trainer/Evaluator
Centro de Investigación y Capacitación
Proyecto de Reforma Judicial
San Salvador

Dr. Salvador Edmundo Chica Helena
Fiscal General Adjunto
San Salvador

Rene Mauricio Chiquillo Cuellar
Fiscal Especifico, Gpo. #4 de la Penal
San Salvador

Lic. Alba Evelyn Cortez de Alvarenga
Coordinadora de Defensores Grpo. #1
Procuraduría General
San Salvador

Dr. Criollo
Director, Escuela Judicial
San Salvador

José Arturo Cruz Salgado
Jefe, Pepto, de la Penal
Fiscalía General
San Salvador

Dr. Manuel Efrain Urquilla
Juez Segundo de lo Penal
San Miguel

Br. Luis Santiago Escobar Rosa
Fiscal Especifico
San Miguel

Dr. José Estrada
Primer Magistrado de la Camara de lo Penal
de la Primera Seccion de Oriente
San Miguel

Ing. Diana Leyla Fernandez de Murillo
Segundo Jefe de la
Unidad Técnica Forense (Laboratorio)
Comisión de Investigaciones del Delito
San Salvador

Lic. Ana Gloria Fuentes de Argueta
Juez Primero de Transito
San Miguel

Lic. Hugo Noe Garcia Guevara
Coordinador de Fiscales
Zona Oriental
San Miguel

Jose Orlando Hernández Bustamante
Coordinador, Grupo 2
Procuraduría General
San Salvador

René Hernández Valiente
Ministro de Justicia
San Salvador

José Humberto Portillo
Coordinador, Gpo. #6 de lo Penal
San Salvador

Dr. Godofredo Lavied
Primer Magistrado de la Camara de lo
Civil de la Primera Seccion de Oriente
San Miguel

Alex Lee
U.S. Embassy
San Salvador

Dr. Jorge B.J. Maier
Argentino/Capacitador
Teorista y Asesor Jurídico
Centro de Investigación y Capacitación
Proyecto de Reforma Judicial
San Salvador

Dr. Roberto Mendoza Jerez
Fiscal General de la Republica
de El Salvador
San Salvador

Lic. Maximiliano Monterrosa Henriquez
Secretario General
Fiscalía General
San Salvador

Lic. Reynaldo de Jesús Nolasco Ventura
Jefe, San Miguel Oficina Regional de la Fiscalía General
San Miguel

Jorge Obando
Chief of Party
Centro de Investigación y Capacitación
Proyecto de Reforma Judicial
San Salvador

Cap. Oscar Armando Peña Durán
Jefe de la Unidad Ejecutiva Antinarco tráfico
San Salvador

Dr. Andres Pineda Chicas
Juez de lo Penal
San Miguel

Lic. José Eduardo Pineda Valenzuela
Coordinador de Fiscales de Dchos. Humanos
Fiscalía General
San Salvador

Tte. José Luis Preza Rivas
Jefe, Unidad de Investigaciones
Comisión de Investigaciones del Delito
San Salvador

Dr. José Guillermo Ramos Chorro
Fiscal Adjunto para Derechos Humanos
Fiscalía General
San Salvador

Lic. Juan Ramon Rivas Menjivar
Defensor Adscrito al
Juzgado Tercero de lo Penal
Procuraduría General
San Salvador

Dr. Oscar Rodriguez Diaz
Presidente de la Sala Penal
Corte Suprema
San Salvador

Dr. Armando Rodriguez Eguizabal
Coordinador de Capacitación,
Jefe, Dpto. de Criminología y
Prevencion del Delito
Fiscalía General
San Salvador

Lic. Jesús Rodolfo Majano
Legal Advisor
Organization Project
National Civil Police
San Salvador

Dr. Augusto Antonio Romero Barrios
Juez Segundo de Transito, San Miguel
San Miguel

Lic. Carolina Romero de Garay
Coordinadora de Defensores Gpro. #3
Procuraduría General
San Salvador

Dr. Roberto Torres
Camara de lo Penal de la Primera
Seccion de Oriente
San Miguel

ANNEX II
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ANNEX III

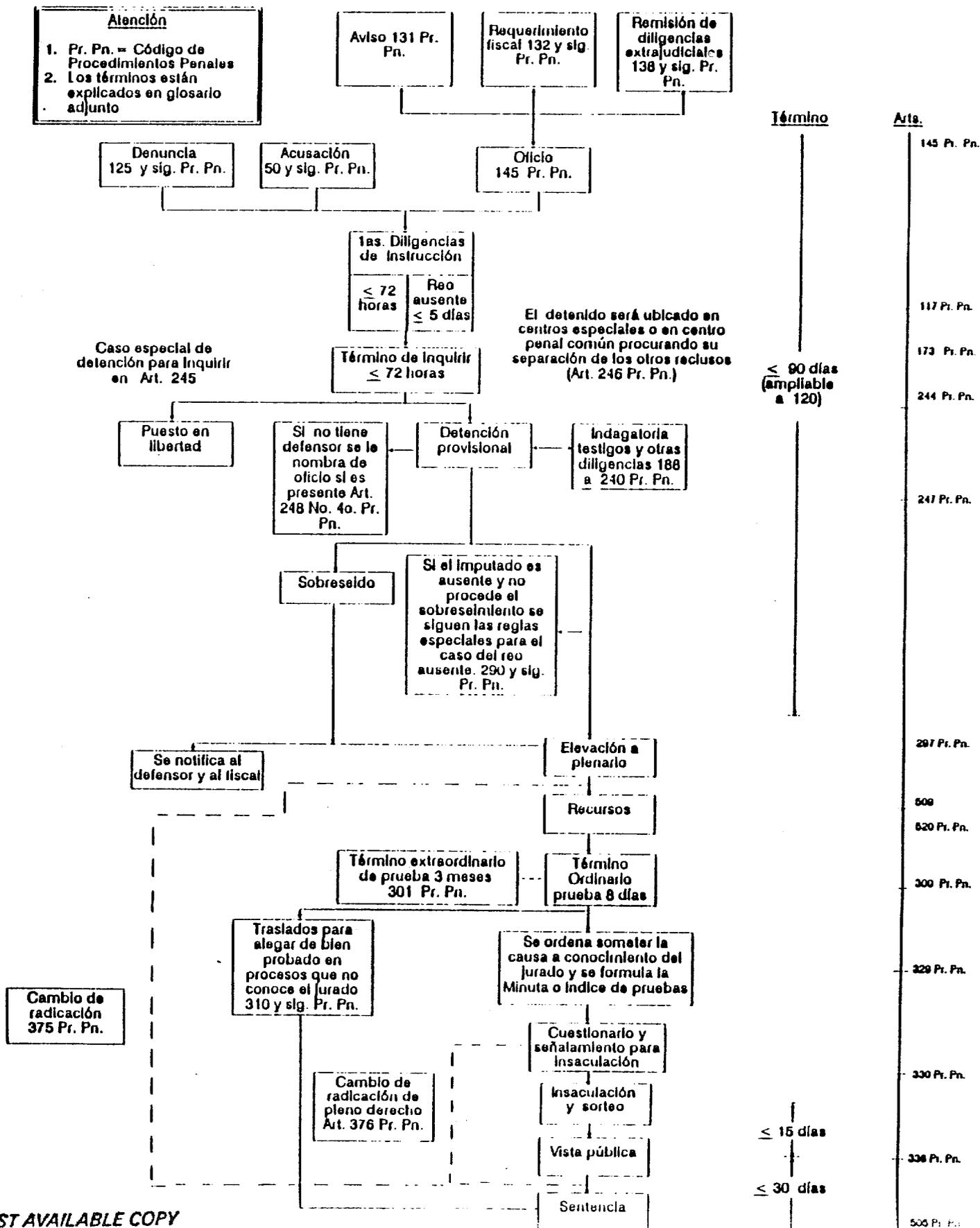
FLOW CHARTS FOR

CRIMINAL CASE PROCESSING

Source: Ministerio de Justicia, El Proceso Penal en Gráficos, San Salvador, March, 1992

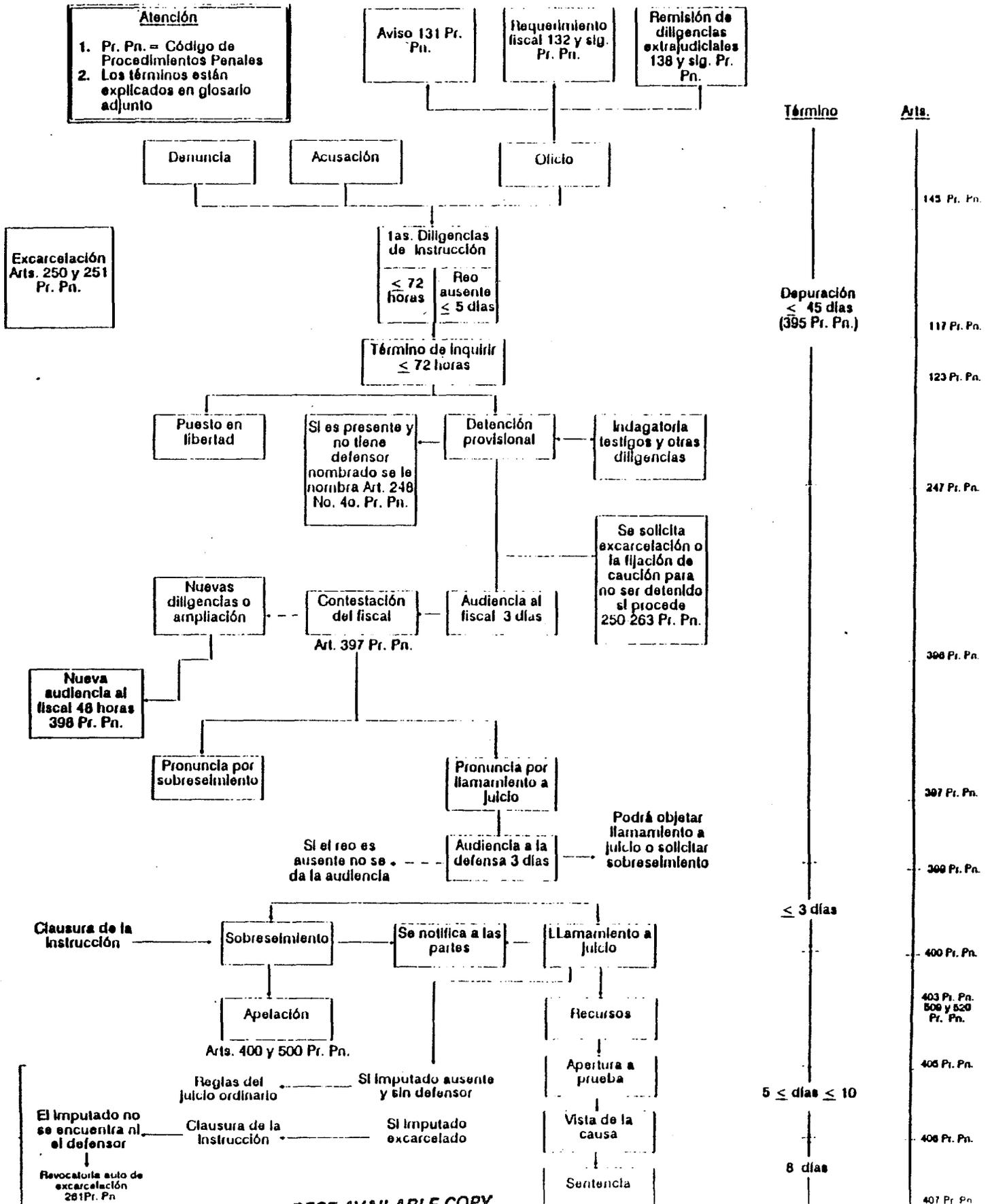
JUICIO ORDINARIO

(Delitos con pena de prisión > 3 años) Art. 115 Pr. Pn.



JUICIO SUMARIO

(Delitos con pena de prisión \leq 3 años, delitos con pena de multa) Art. 354 Pr. Pn.



ANNEX IV

**PROGRAM DESCRIPTION:
DEPARTMENT FOR CRIME PREVENTION
FISCALÍA GENERAL**

- I INTRODUCCION
- II DESCRIPCION DEL PROYECTO
- III MARCO INSTITUCIONAL
- IV FUNDAMENTOS DEL PROYECTO
- V OBJETIVO GENERAL DEL PROYECTO
- VI OBJETIVOS DEL DEPARTAMENTO
 - A) OBJETIVOS GENERALES
 - B) OBJETIVOS ESPECIFICOS
- VII METAS
 - A) INMEDIATAS
 - B) MEDIATAS
- VIII ATRIBUCIONES
 - A) DIRECTAS
 - B) EN COORDINACION
- IX DESCRIPCION DE LAS SECCIONES Y UNIDADES DEL DEPARTAMENTO.

I I N T R O D U C C I O N

Generalmente se nos ha enseñado que el delito es un hecho social que consiste en normatividad, culpabilidad y antijuricidad; si bien es cierto que esta actitud teórica es importante desde el punto de vista del análisis jurídico, no es menos cierto que hoy en día es de toda evidencia que el delito debe ser visto y considerado dentro del contexto social en que se da.

La Moderna Criminología enriqueció con una nueva dimensión la concepción puramente normativa del delito. Encuentra así que el delito se presenta como una interacción entre los seres humanos frecuentemente entre hechor y víctima, a menudo ante terceros pero siempre con la participación de todos los miembros de la sociedad. Todo lo social influye en autores y víctimas y todo lo social aparece articulado en la Comisión de un delito determinado.

En esencia el delito no es otra cosa que una conspicua y perturbadora manifestación de interacción social. Hay aun otro aspecto en la expansión del concepto tradicional normativo del delito. Los estrategas alineados en esta orientación ven el delito como un fenómeno que va cambiando de carácter a medida que se mueve por un pre-ordenado sendero; un proceso que se desencadena con el arresto y que puede desembocar en condena o absolución. Pero la Fiscalía

General de la República en base a las atribuciones que le establece la Constitución Política y la Ley Orgánica del Ministerio Público, quiere darle un nuevo significado a la justicia penal, que no sea solo de absolver o condenar al delincuente si no enfocar otras áreas que son el origen de la delincuencia para lo cual crea el Departamento de Prevención del Delito; para romper con las ideas tradicionales que se tiene de la acción de la Fiscalía y con esto contribuir a la existencia de una sociedad mas armónica.

II DESCRIPCIÓN DEL PROYECTO

Sintiéndose la falta de instituciones que se dediquen al estudio y prevención del delito, la Fiscalía General de la República entre sus objetivos proyecta crear un Departamento de Prevención del Delito, con el fin de contar con una dependencia dedicada al estudio de las causas y características del delito y asimismo implementar políticas para la prevención del hecho delictivo.

De acuerdo a lo anterior el Departamento de Prevención del Delito será el encargado de estudiar las diferentes formas de manifestación delictiva, sus causas y características, estructura y tipo de personalidad del delincuente; la situación socio económica y todos los factores que pueden

3.

ser influyentes en la delincuencia; otro de los fines es sacar estadísticas de hechos delictivos cometidos, tipificarlos y estudiar cuales son las causas mas comunes que intervienen en la comisión de determinado delito y en que zonas existe una mayor tendencia a la delincuencia. Y así establecer políticas preventivas para minimizar la acción delictiva.

El Departamento de Prevención del Delito contará con seis secciones; entre las cuales tenemos un Comité Técnico, una Unidad de Comunicación, una Sección Médica Toxicológica, una Sección de Educación, una Unidad Informática y una Sección de Atención Socio-Psicológica.

El Departamento tendrá también relación con la División Penal, ya que toda la información que puedan proporcionar los Fiscales Adscritos será de sumo interés para el Departamento. Se relacionará también con cualquier otra institución externa a la Fiscalía, que nos puedan colaborar en programas de coordinación, investigación o para impulsar campañas a nivel nacional dirigidas a sectores poblacionales mas vulnerables y propensos a la comisión del delito.

III MARCO INSTITUCIONAL

El Departamento de Prevención del Delito es una dependencia de la Fiscalía General de la República; ya que por mandato

4.

constitucional corresponde al Fiscal General de la República "Defender los intereses del Estado y de la Sociedad. Siendo una de sus atribuciones en el terreno práctico, ejecutar la acción penal ante el cometimiento del delito. Pero con la creación de este Departamento quiere dársele un nuevo enfoque que no se reduzca a ejecutar la acción penal sino prevenir la acción delictiva, para lo cual es menester que se realicen investigaciones como un componente esencial que contribuya a lograr los objetivos en la prevención del delito y esta será una modalidad mas en defensa de los intereses del Estado y la Sociedad.

La Fiscalía General de la República, se ha preocupado por realizar la creación de este Departamento poniendo todo su empeño para que se definan con prontitud las bases de su funcionamiento. Esta medida ha hecho posible la elaboración del proyecto de creación del Departamento de Prevención del Delito, señalando sus objetivos, metas, organización y atribuciones.

IV FUNDAMENTOS DEL PROYECTO3

Los doce años de conflicto bélico han influido para generar un porcentaje más alto de delincuencia en el país y en este momento es importante tomar conciencia de este problema y buscar las soluciones que puedan contribuir a minimizar en lo posible los hechos delictivos. Sin embargo no ha

existido en el país una evaluación precisa de la naturaleza y alcances del fenómeno por lo cual se carece de la información necesaria para delimitar objetivos específicos y proyectos que apoyen en una forma eficiente las iniciativas de acción que se intenten en este campo.

Entre los recursos indispensables para la formulación de estrategias para disminuir la delincuencia, es necesaria contar con la información sobre la realidad delincuencia salvadoreña. De lo anterior surge la necesidad de la creación del Departamento de Prevención del Delito, teniendo entre sus mas importantes atribuciones la realización de investigaciones del fenómeno delictivo y así implementar políticas, planes y programas que nos conduzcan a la prevención de la delincuencia en El Salvador.

V OBJETIVO GENERAL DEL PROYECTO

Crear en la Fiscalía General de la República, un Departamento que haga efectiva la prevención del delito, investigando las causas, origen, antecedentes del delito, para formular una política preventiva y elaborar planes y programas que tiendan a prevenir la delincuencia en el país para así contribuir a la existencia de una sociedad armónica bajo el principio de respeto a la ley.

VI OBJETIVOS DEL DEPARTAMENTO

1. GENERALES

a) Formular una política de prevención del delito y elaborar planes, programas y proyectos que incidan en la prevención de la comisión del delito en el país.

b) Investigar las causas de origen, antecedentes, problemática del delito.

c) Proponer tratamientos de tipo educativo, médico psiquiátrico y social, de acuerdo a las diferentes tipologías del delito.

2. ESPECIFICOS

a) Formular y realizar investigaciones que sirvan en la definición y desarrollo de la política de prevención del delito y sus aplicaciones.

b) Desarrollar metodologías de atención, dirigidas a satisfacer necesidades de prevención del delito.

c) Proporcionar a través de la investigación, información para la asistencia técnica de los programas y la capacitación de personal institucional.

d) Establecer vínculos de coordinación con las instituciones involucradas en la administración de justicia y encargadas de la educación, organización, salud y producción social.

VII METAS

1. INMEDIATAS

a) Terminar la instalación física del Departamento y completar la dotación de personal técnico y equipo.

b) Implementar una política de formación, capacitación, desarrollo y actualización del personal técnico, mediante acciones de participación a cursos nacionales, pasantías y becas en el exterior, así como la autoformación.

c) Establecer y mantener intercambio permanente con instituciones similares y que por la naturaleza de sus servicios contribuyan a la prevención del delito.

2. MEDIATAS

a) Elaboración de programas, campañas permanentes para la prevención del delito.

b) Realizar estudios e investigación de las acciones delictivas, en el área urbana y rural del país.

VIII ATRIBUCIONES

1. DIRECTAS

a) Formulación de proyectos de investigación del fenómeno delincuenciales en el país.

b) Recopilación de información estadística para constituir bancos de datos, que apoyen la formulación de

acciones preventivas del delito.

c) Organizar eventos técnico-científicos de carácter divulgativo a las acciones y programas institucionales en apoyo a la prevención del delito.

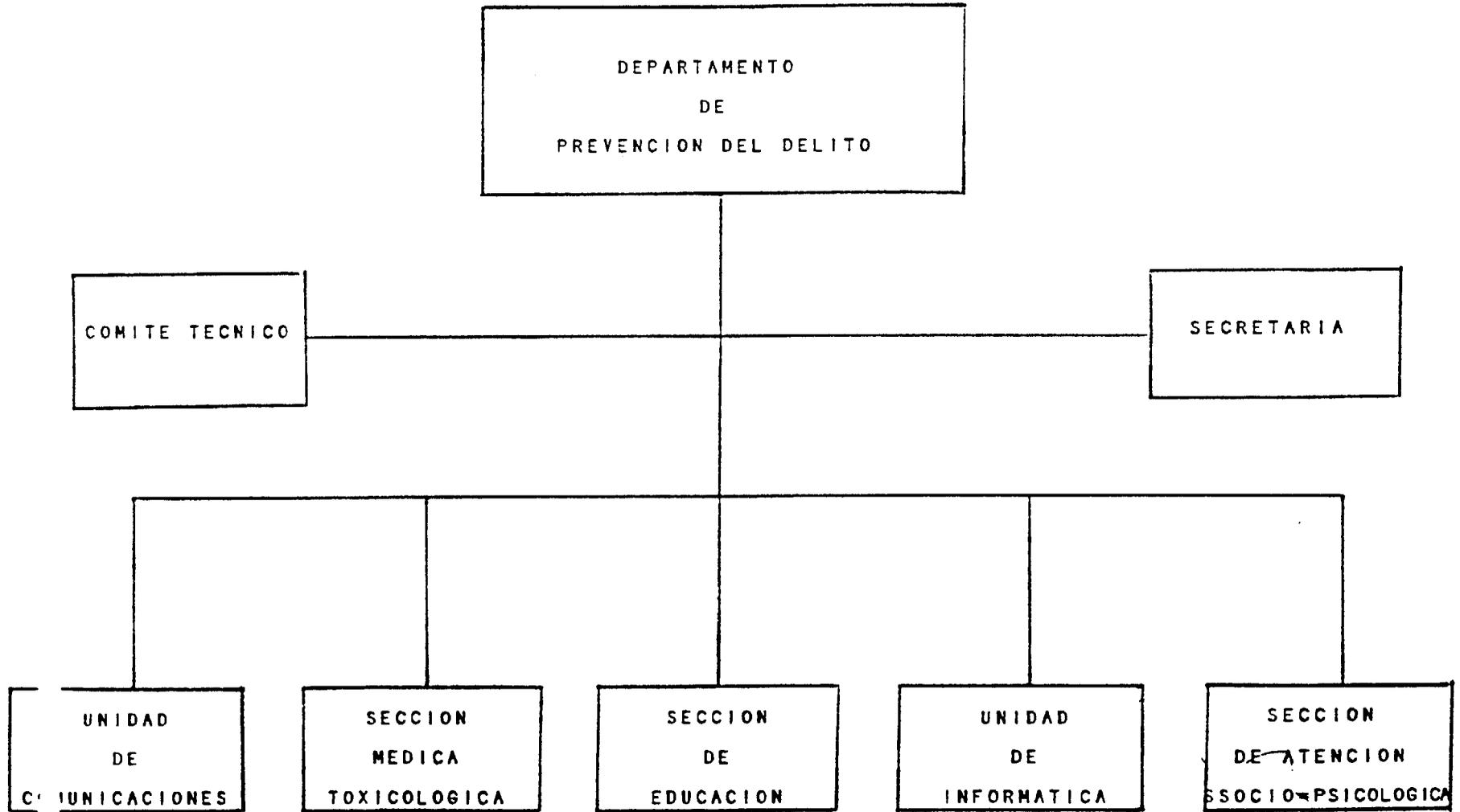
d) Preparar documentos que contengan los resultados de las acciones investigativas y divulguen áreas temáticas formativas e informativas de las acciones programáticas del Departamento.

2. EN COORDINACION

a) Crear un Comité inter-institucional consultivo, para participar interdisciplinariamente en la investigación, delimitación, solución y prevención de las causas reales que generan la actitud o potencialidad hacia el delito; sugerir las acciones educativas, preventivas a implementar y el seguimiento permanente.

b) Impulsar campañas a nivel nacional dirigidas a los sectores poblacionales mas vulnerables y propensos a la inducción o comisión del delito.

ORGANIGRAMA DEL DEPARTAMENTO
DE PREVENCION DEL DELITO



PROGRAMAS DE LAS DISTINTAS SECCIONES DEL DEPARTAMENTO DE PREVENCIÓN DEL DELITO.

COMITE TECNICO.

Estará constituido por los jefes de las secciones y asesores específicos si fuese necesario.

Se encargarán de conocer, revisar, proponer, sobre los contenidos programáticos y acciones del Departamento.

UNIDAD DE COMUNICACION.

- Unidad Técnica responsable de la producción y montaje y difusión de las diferentes acciones comunicativas que implementen los contenidos programáticos del Departamento.

- Contará de equipo audio-visual e impresos y personal profesional en la materia (Comunicólogo técnico en audio videos, periodista, etc.), además será responsable de los siguientes programas.

- Preparar campañas
- Materiales
- Coordinar la difusión de las campañas en los medios.

SECCION DE EDUCACION.

Unidad responsable de la planificación de las políticas educativas; metodológicas de enseñanza, contenidos programáticos, modalidades de materiales, Será la Unidad responsable de la capacitación institucional y extra institucional.

UNIDAD DE INFORMÁTICA

Unidad técnica de manejo de información mecanizada, encargada de planificar, formular y realizar acciones permanentes de investigación en materia, relacionadas con el delito, en forma de encuestas, investigaciones, bibliográficas, documentales, estudios de casos para recolectar y procesar información que permita arribar a la formulación de proyectos eficientes para contrarrestar la delincuencia.

También se encargará de la producción de documentos técnico-científicos especializados en la materia; del procesamiento de investigaciones; información de hechos delictivos cometidos, movilidad poblacional; sectorización por edades y de producir material y programas de apoyo a las acciones programáticas de las diferentes unidades.

SECCION DE ATENCION SOCIO PSICOLOGICA

Es la encargada de atender institucionalmente y relacionarse con otras unidades similares para contribuir en la producción y aplicación de programas educativos correctivos para personas reclusas en el régimen penal, o en estado de prevención (internados del Consejo Salvadoreño de Menores).

Proponer programas de reeducación laboral para reclusos; programas de asistencia psico-social para ex-reclusos, atención técnica-administrativa para centros de internamiento penitenciarios de atención a personas

cuerpos de seguridad a fin de garantizar el mínimo respeto a la condición de ser humano.

UNIDAD MEDICO-TOXICOLOGICA

Será la Unidad encargada de las evaluaciones médicas, (examen para verificación de Toxicomanía, peritajes, análisis de tejidos, etc.).

ANNEX V

GUIDELINES FOR JUDICIAL RECUSAL

Art. 1155.—Son recusables sin expresión de causa los funcionarios judiciales que no ejercen jurisdicción, como los Secretarios, etc. La recusación se hace a dichos funcionarios en la notificación de alguna providencia cualquiera que sea el estado de la causa, y el Juez de ésta tendrá por removidos de la intervención en ella a los funcionarios recusados, desde el acto de la recusación. Si el Secretario fuere el recusado, el Juez actuará con un Secretario interino que nombrará al efecto. Sólo podrá recusarse sin causa un Secretario. Si aún se recusasen más, se procederá conforme a los artículos 1165 y 1172, incisos 2º y 3º.

Art. 1156.—Son recusables con expresión de causa todos los funcionarios que ejercen jurisdicción.

Art. 1157.—La ley sólo reconoce como causales de recusación las siguientes:

1ª Si el Juez es pariente dentro del cuarto grado civil de consanguinidad o segundo de afinidad con alguno de los litigantes, o con su abogado o procurador; o si los parientes del Juez en los mismos grados tienen algún interés en la causa, aunque no sean parte;

2ª Si el Juez, su mujer o los ascendientes o descendientes del uno o del otro tienen pleito pendiente sobre un negocio semejante a aquel de que se trata;

3ª Si el Juez, su mujer o los ascendientes o descendientes del uno o del otro tienen pleito pendiente ante un tribunal en que una de las partes o interesado en la causa sea el Juez, o si son acreedores, deudores, fiadores o fiados de una de ellas, siempre que el crédito u obligación exceda de cien colonas;

4ª Si en los dos años que han precedido a la recusación ha habido causa criminal por acusación entre el Juez y una de las partes o su cónyuge o los parientes de ambos en el grado y de la manera ya prevenida, o si el Juez, su mujer o los ascendientes, descendientes o parientes del uno o del otro en el grado dicho, tienen pleito civil pendiente con alguna de las partes, iniciado antes de la instancia en que se propone la recusación.

El funcionario acusado no puede ser recusado ni excusarse mientras no se haya declarado por quien corresponde que ha lugar a formación de causa;

5ª Si el Juez es tutor, curador, amo o patrón de una de las partes, o viceversa en su caso;

6ª Si el Juez, su mujer, sus descendientes o ascendientes fueren herederos, legatarios o donatarios instituidos de una de las partes, o viceversa;

7ª Si el Juez se alimenta a expensas de una de las partes o viceversa;

8ª Si el Juez habitare en la misma casa con alguno de los litigantes, excepto que sea en hoteles o en casas particulares destinadas a alquilarse por partes;

9ª Si el Juez ha recomendado a alguna de las partes o prestádole dinero para los gastos del pleito;

10. Si hay o ha habido en cualquier tiempo enemistad capital entre el Juez y una de las partes o si ha habido entre cualquiera de ellas y el Juez agresión, injurias graves o amenazas verbales o escritas antes de iniciarse el pleito.

Pero durante el juicio sólo habrá lugar a recusación, cuando el Juez sea quien haya causado la agresión, las injurias graves o las amenazas verbales o escritas;

11. Ser el Juez superior pariente dentro del segundo grado de consanguinidad, o dentro del segundo de afinidad del inferior, cuyas providencias penden ante aquél por recurso ordinario o extraordinario;

12. Ser el Juez socio de alguna de las partes;

13. Si el Juez tiene interés conocido en el pleito;

14. Si el Juez ha sido abogado, procurador o director del pleito, o si ha sido testigo o tendrá necesariamente que serlo, conforme a las disposiciones de este Código. La intervención como empleado público no inhabilita si no se ha sustentado opinión en lo principal; ni la calidad de testigo cuando la declaración no haya de influir en la sentencia, o no tenga ya que calificarse;

15. Si el Juez, con vista de autos o de documentos referentes a la causa, ha manifestado por escrito su opinión a persona interesada sobre el punto que

16. Si ha recibido de alguna de las partes algún regalo o servicio notables, debiendo especificarse uno y otro;

17. Si el Juez ha sido sobornado o cohechado;

18. Si alguno de los litigantes fuere mujer a quien el Juez haya solicitado o con quien tenga comercio carnal. (*)

Art. 1158.—Cuando la causa de recusación se funda en algún hecho que sólo se refiera a una de las partes, el derecho de recusar, excepto en los casos de los números 4 y 10, corresponde solamente a la parte contraria de aquella a quien se refiere la causal de recusación.

Art. 1159.—La expresión Juez en este capítulo comprende a todos los funcionarios judiciales para cuya recusación se necesita causa.

Art. 1160.—Se hace la recusación de palabra a los Jueces de Paz expresando la causal, con juramento de que no se pone de malicia y ofreciendo probarla. Igualmente se hará de palabra a los funcionarios que no ejerzan jurisdicción en cualquier acto del procedimiento.

Art. 1161.—Los demás funcionarios para cuya recusación se necesita causa, deben ser recusados por escrito, con expresión de causal específica y juramento de que no se hace de malicia ni por infamar al recusado, ofreciendo la prueba de dicha causal, so pena de no admitirse.

Art. 1162.—Los Jueces de Paz serán recusados ante ellos mismos, y entonces fijarán el plazo para que el recusante ocurra al Juez de Primera Instancia respectivo con certificación del acta del juicio que le expedirán sin demora. El plazo será el que corresponda a la distancia y tres días más. Presentada la certificación ante el Juez de Primera Instancia recibirá la causa a prueba por ocho días con citación del Juez recusado, y concluidos, resolverá dentro de los tres días siguientes según el mérito de las pruebas, separando o no al Juez del conocimiento de la demanda.

Art. 1163.—La recusación de los Jueces de Primera Instancia se hará ante ellos mismos, quienes remitirán el escrito que la contenga en el término expresado en el artículo 993 a la Cámara de Segunda Instancia a costa del recusante, citando a éste para que dentro del término de la distancia y tres días más, ocurra ante dicha Cámara a usar de su derecho.

Art. 1164.—Los Administradores de Rentas serán recusados como los Jueces de Paz, debiendo conocer de la recusación el Juez de Hacienda, y éste será recusado como los Jueces de Primera Instancia, debiendo conocer de la recusación la Cámara de Segunda Instancia.

Art. 1165.—Los asesores son recusables en el acto de la notificación del decreto en que se les consulta o en escrito por separado. Cada parte puede recusar hasta tres para la determinación de cada artículo. Si aún se recusasen más, deberá ser expresando la causa, bajo juramento de no proceder de malicia, y el Juez que conoce del negocio, ante quien se formule la recusación, la resolverá dentro de tercero día, en cuyo término debe probarse la causa con sólo citación de la parte contraria, y la prórroga de ley, según la distancia de los testigos.

Art. 1166.—La recusación de los Magistrados de cualquiera de las Cámaras de Segunda Instancia, se hará ante la Cámara de Tercera Instancia, y la de los Magistrados de esta última, se hará ante la Corte Plena.

Si el conocimiento del negocio correspondiere a la Corte Plena, se hará

(*) El decreto legislativo N° 49 publicado en el Diario Oficial del 21 de mayo de 1942, que modificó este artículo suprimiendo algunas causales de recusación, contiene el siguiente artículo:

"Artículo Transitorio.—Las presentes reformas no serán aplicables a los asuntos pendientes en apelación, suplica, recurso extraordinario de nulidad o recusación, los cuales serán resueltos de conformidad con las leyes vigentes cuando se interpusieron; pero si serán aplicables a los causas

ANNEX VI

ASSESSMENT SCOPE OF WORK

| | | | |
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| | <input type="checkbox"/> PIOC | 1. Cooperating Country EL SALVADOR | |
| | <input type="checkbox"/> PIO/P | 2a. PIO Number 519-0296-3-00162 | 2b. Amendment <input checked="" type="checkbox"/> Original OR No. _____ |
| | <input checked="" type="checkbox"/> PIOC | 3. Project Number and Title AID Project 519-0296 Judicial Reform Project Component IV, Element 19 | |
| <input type="checkbox"/> PA/PR | | | |

Indicate block
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ATTACHMENT 1

1. OBJECTIVE

A.I.D., in its ongoing efforts to improve the administration of justice in El Salvador, provides operational support and technical assistance to enhance the ability of the Office of the Attorney General to investigate and prosecute cases. As A.I.D. prepares for the development of a follow-on project in the area of administration of justice, a more in-depth assessment of the functioning of this key player in the judicial process is needed to identify and target U.S.G. and other donor assistance in the coming years. The purpose of this contract is to assess the operational capability and effectiveness of the Attorney General's Office in discharging its constitutionally-mandated functions and make recommendations for improving the efficiency and effectiveness of the Attorney General's Office.

2. BACKGROUND

In El Salvador, the Attorney General's Office and the Office of the General Solicitor (Procurador General) constitute the Public Ministry -- which is technically an autonomous agency, independent both of the Executive and Judicial Branches of government. The functions of the Attorney General's Office, as stated in the Constitution of El Salvador, as amended in November 1991, are, inter alia; to defend the interests of the State and society; promote judicial actions in defense of legality; direct the investigation of transgressions of the law, in particular criminal actions, through a criminal investigative unit to be established under the Attorney General's Office; promote judicial action against those who have committed illegal acts; denounce illegal actions of public officials; and defend the fiscal interests of the state. The Constitutional reforms approved in November 1991 significantly broadened the functions of the Attorney General's Office for criminal investigations, placing under its operational jurisdiction oversight of a criminal investigative unit that, at the present, functions under the authority of the Ministry of Justice.

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The Attorney General's Office is composed of two divisions, the Division for the Defense of Society's Interests and the Division for the Defense of the State's Interests, and currently has a total staff of 490. Of these, 180 are prosecutors and the rest support personnel. The prosecutors currently operate out of two regional offices (San Salvador and San Miguel), although a third is scheduled to open in 1993 (Santa Ana). Its budget for 1991 totalled 9.3 million colones, equivalent to approximately \$1.2 million. An additional \$1.35 million is being provided through the U.S. assistance program to supplement the Attorney General's operating budget. (\$650,000) and to finance equipment procurement and training costs (\$700,000).

The Division for the Defense of Society's Interest has responsibility for all criminal actions. To better implement its mandate, two specialized units have been established within this division; the Human Rights Unit, in 1987, and Anti-Narcotics Trafficking Unit, in 1991. The Human Rights Unit focusses on the prosecution of cases involving violations of human rights, particularly those of high national and international profile. Since 1987, the Unit has grown from four prosecutors to thirteen prosecutors plus one coordinator. The Anti-Narcotics Trafficking Unit consists of ten prosecutors, one coordinator and 16 support personnel.

The Division for the Defense of the State's Interests is responsible for collecting debts owed to the government, representing the State in any legal action, and maintaining an inventory of the State's property.

In addition, the Attorney General's Office administrative departments responsible for planning, criminal statistics, training, and procurement. The training department, consisting of two persons, is responsible for developing in-house training programs and works in close coordination with the U.S. firm, Checchi and Co., contracted by AID under the Judicial Reform Project and responsible for assisting the Attorney General's Office in developing and implementing a comprehensive training program. An assessment of training needs of the Attorney General's Office was conducted in 1990, which provides much useful information on educational background and areas for improvement (e.g., in human resource skills, case handling procedures, etc.).

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| | <input checked="" type="checkbox"/> PIO/T | 3. Project Number and Title AID Project 519-0296 Judicial Reform Project Component IV, Element 19 | |
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As noted earlier, as a result of Constitutional reforms recently approved, the Attorney General's Office will soon assume oversight responsibility for the Commission on Criminal Investigations, a highly skilled technical unit that has been responsible for investigations in high profile criminal cases (e.g., the murder of Jesuit priests, bank corruption, etc.). Implementing regulations need to be developed to effect the transfer of oversight responsibility for the Commission from the Ministry of Justice to the Attorney General's Office. These regulations will need to address numerous personnel compensation problems, particularly given that the majority of current Commission are military officers on loan to the Commission.

3. Scope of Work

In order to accomplish this work, the contractor will carry out the following activities, all in country:

i. review the following documentation and conduct meetings with U.S. Mission and Attorney General personnel to obtain a broader understanding of organization and functioning of the Attorney General's Office:

- Ley Organica of the Public Ministry
- Action Plans and reports of accomplishments of the Attorney General's Office
- the training needs assessment and data bank on Attorney General employees prepared by Checchi and Co.

ii. conduct interviews with personnel in the various divisions, departments and units and review operating manuals and procedures to determine the operational division of labor among organizational units and identify any problem areas (e.g., staffing, workload distribution, etc.). The contractor should also: (a) assess effectiveness of San Miguel office operations and provide recommendations regarding plans for additional regional offices; and (b) discuss plans for incorporation of the Commission on Criminal Investigations into the Attorney General's Office and suggest organizational modifications needed to ensure optimal functioning of the Commission within the AG's Office;

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| | <input type="checkbox"/> P10/C <input type="checkbox"/> P10/P <input checked="" type="checkbox"/> P10/I <input type="checkbox"/> PA/FR | 1. Cooperating Country EL SALVADOR | 2a. P10 Number 519-0296-3-00162 |
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- iii. examine the case assignment, tracking and monitoring systems, and make recommendations for improvement;
- iv. observe prosecutors in the conduct of their duties, identifying areas for administrative support improvements, technical training, or other assistance to enhance efficiency and effectiveness;
- v. review in-house procedures for assuring highest standards of professional conduct and avoiding conflicts of interest and make recommendations for improvement if warranted;
- vi. review personnel management system, including hiring, supervision, evaluation and compensation policies and make recommendations to reduce employee turnover and optimize employee performance;
- vii. review plans for expanding crime prevention activities now undertaken by the Attorney General, particularly vis-a-vis responsibilities of other organs of the state and suggest parameters for AID support in this arena; and
- viii. review existing coordination mechanisms between the Attorney General and the Court and the police, and make recommendations as appropriate for improving coordination.

4. Level of Effort:

To carry out the above tasks, two experts are needed for an estimated period of 40 workdays. These individuals should have extensive prosecutorial experience, preferably in Latin American countries; thorough understanding of the role of the Attorney General's office (Fiscalia) in Latin countries; demonstrated ability to assess the technical, financial and administrative operations of public organizations; and be fully fluent in Spanish. The following is a guideline for the level of effort:

| | |
|--|---------|
| Travel | 4 days |
| Reading of materials: | 3 days |
| Site visits/observation/and interviews to determine organizational and prosecutorial effectiveness and efficiency: | 24 days |
| Briefings: | 1 day |
| Report writing: | 8 days |

(Note: Revisions to final draft report requested by AID may

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CONTINUATION
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5. Time Frame:

Contractor will begin work on or about January 13, 1992 and will present a draft final report on or about February 8, 1992.

6. Reporting Requirements:

The contractor will provide to USAID/ES prior to departure a draft final report, and will discuss the major findings in oral debriefings for AID and for the Attorney General.

AID will provide its comments on the draft final report in writing to the contractor within 2 weeks of its presentation, which will be incorporated into the final report. Ten copies of the final report (5 in English and 5 in Spanish) will be presented within 4 weeks after receipt of AID's comments.

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