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*Assessment of USAID Honduras
Rule of Law Strategy*

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June 1996

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I. Introduction

This is a report regarding an assessment on USAID/Honduras ROL for activities results preliminary design of the results framework for strengthening Democratic Institutions II.

The review consisted of reviewing documents (listed in Appendix A) and discussions with USAID/Honduras DI staff, Honduras Judicial officials, prosecutors, representatives of private sectors (NGO's). Also, participating in the exercise was Ana Carrazo of Florida International University, who has served as an institutional consultant for both USAID and IDB for the past two years in Honduras.

II. General Observations Regarding Framework

The current indicator listed in strategic objective performance No. 4, pp. 90 - 95 reflect as a highest priority of USAID the reduction of corruption in the legal system the emphasis on reduction of corruption appears in all 5 of the indicators. While it is clearly recognized that corruption is a major issue in Honduras, and in the judicial system in particular, the almost exclusive focus of ROL project portends to create an environment of resentment. Clearly, the legal reform effort to improve the criminal procedure has other beneficial aims such as the creation of a more balanced, fair and prompt criminal procedure. The preoccupation with corruption and therefore, all the negative messages implied therein, must be considered when proposing the next phase ROL activities

USAID could easily be seen as the moral protector, a position that could ultimately reduce, if not outright, eliminates access to justice officials. After all, the U.S. is not without it's own moral issues. It is also true that without an adequate ethical frame of reference, all the improvements in justice will lack the quality of consciousness that must underlie the actions of those entrusted to operate a justice system.

It appears that consideration of a more balanced approach to ROL would benefit both the public image of the program as well as the content. Striking this balance will require consideration of other activities designed to compliment the existing rol programs. Notably, the area of access creation warrants further consideration.

A second observation about the structure of the ROL program is the need to reflect on coalition building activities. The newly implemented project of creating a special fund \$100,000 for local NGO's is constructive. However, it does not seem to be directed at a particular result. While there is a need to diversify and strengthen the role of NGO's in the sector, this goal should be done through some clearly defined goals, such as the support for the CPC, the highest priority of the USAID/ROL program. Further consideration should be given to creating or supporting a NGO coalition which will serve as a watchdog, proponent for change, when the consciousness of the society that clamors for justice.

The third general observation has to do with how the judiciary and public ministry respond to the FIU/March 1996 analysis. In both documents there are numerous observations regarding areas that

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need improvements. Consideration should be given to having a formal institutional response from each organization indicating what actions they have taken to address these issues. While the use of conditionality should be reserved, it does appear that the considerable U.S. investment in these institutions should be expected to show some results. The real issue impeding the progress of the project activities is political will.

The leadership of these institutions should formally indicate their "political commitment" by providing the mission with a time table for the implementation or at least consideration of FIU recommendations. Political will and leadership are inseparable for successful ROL projects. The ROL project in Honduras has an opportunity to test those critical factors prior to initiating the next phase of project activities.

RULE OF LAW STRATEGIES

USAID/Honduras

Constituency / Coalition Building	Structural Reform	Access Creation	State Building
FDDH - Foundation Coalition	Judiciary <ul style="list-style-type: none"> • CPC - oral process • Constitutional reform • Judicial career • Judicial budget 	Special Prosecutors <ul style="list-style-type: none"> • Women • Environment • Minorities Private Sector	Judiciary <ul style="list-style-type: none"> • Inspector General • Court Administration • Ethics • Administrative organization - IDB • Public defender • Administrative - Experience pilot
	Prosecution <ul style="list-style-type: none"> • Public Ministry 		Public Ministry
	Other <ul style="list-style-type: none"> • Agricultural Courts - Spain • Juvenal detention Centers - UNDP • Prisons - UNDP • Construction (80) courts - IDB 		

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III. Progress Areas

A. Poder Judicial

1. Inspector General (IG)

There are numerous initiatives directed at improving the operation, superintendence, and governance of the system. The effort to strengthen the IG function for purposes of reducing corruption in the system has already produced results. The number of individuals sanctioned or removed from office has steadily increased. However, it was observed that there was a considerable reaction to the office, placing in jeopardy its future. The Supreme Court indicated that they were doubling the number of IG positions throughout the country. This response by the court is a positive signal. There is hardly any activity more difficult to address than corruption, especially when entire systems are infiltrated.

There should be an effort to publish and synthesize the results of the "audits" performed to date. This activity would serve to further consolidate the gains made by the office, and it would serve to inform the judicial system about activities that are no longer permitted, in addition, this kind of report would be used to design training and education programs for employees and judges. Efforts to reinforce the success of IG's activities would serve to create an environment supporting proposed legislature changes. NGO's could support IG activities as responsive to the need of creating a more honest judiciary.

2. Auto Acordado

This initiative intended to serve as a bridge to the implementation of CPC is performing functions that are similar to the IG. The activities, being conducted by the unidad, are a combination of auditing, technical assistance, and supervision. In addition, this group is responsible for developing an integrated plan for the implementation of CPC. The bifurcation of duties among the IG, unidad, director administrativo, etc, contribute to a sense that no one is in charge nor is there any real coordination, as was mentioned in the FIU report .

There are numerous issues that need to be addressed in this transition phase. Among the most important ones is the development of baseline of statistical data on the performance of the current system. This activity includes measuring the duration of process, identify workload inequities, developing a flow chart of existing procedures as a frame of reference installing case-tracking system in pilot courts, training judges and staff on court and case management.

Technical assistance to this unit to assist them in organizing and performing these functions could have a short term benefit and impact. The results from such an effort should better enable them to execute their mandate, clean up the courts prior to implementation of the new system and establish a foundation for the development of new administrative capacities.

Another issue warranting immediate attention is the organization of the trial court. The current pivot

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project goes in the direction of creating a new modality of work, but it does not go far enough. Consideration should be given to an operational audit of the existing juzgados and the development of a more systemic organization. In Appendix , the results of a similar effort in Chile evolved this list of duties. Peru and Costa Rica have recently adopted this model. Guatemala also has it under consideration.

This study becomes very relevant when the issue of costs of the CPC surface. Opponents of the system will undoubtedly use this argument to stall legislative progress. If Honduras were to reconfigure the organization of the juzgado, the financial impact could be as much as a 30% - 35% reduction in staff needed at the trial court level. This approach must needs to be evaluated prior to the IDB project which contemplates construction of 80 plus court facilities. If Honduras were to undertake the construction of these new units, they should reflect the new organizational design.

The second aspect of this strategy is the need to do a cost analysis of the proposed code. Recently, Chile conducted such analysis with the results being persuasive enough that the Ministry of Hacienda came out in favor of the reform. An executive summary of the Chilean report is fund in Appendix

The third area of possible activity in unidad is the development of forms, procedures, manuals, etc, for use in criminal courts. Standardization of procedures and interactions by attorneys with the judiciary have proven to be extremely cost effective measures. There needs to be a study to identify needed forms and the development of same. The degree to which these areas can be standardized contribute directly to reducing the disorder within the system.

3. Budget

The mission has used the constitutionally authorized 3% of national budget as an indication of independent judiciary. I know of no direct linkage to judicial independence and independence for funding. Judicial independence is represented by the individual actions of judges. It is also measured by the degree of financial autonomy granted to the judiciary. However, there is much confusion about definition in this area.

It is quite common in U.S. judicial system for the executive branch's agency responsible for managing the budget to retain some control over expenditures. These controls chafe the judicial administrator and serve to limit the judiciary's management latitude but they do not cripple independence. While Honduras is not the U.S., executive interference should be seen as a common factor in the relationships between the three branches

In lieu of focusing exclusively on the 3%, an alternative would be to assess how the court currently manages the funds at its disposition. Again for comparison purposes, almost no judicial system in the U.S. receives over 2% of the available funds. Costa Rica's judicial system receives 6% includes judicial police which accounts for (over 60% of total expenses) and prosecutions. For corporate purposes the amount 2.5% serves to be a minimum adequate amount. This view is buttressed by the reported 65% expenditures in salaries compared to over 75 - 90% in other countries. It has also been

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my experience in numerous countries that those responsible for managing these funds often end up returning funds at the end of the year even though there are many needs unmet.

The need to assess the financial management issues can be approached by documenting current needs being met and those needs that have not been met. This study could also include a preliminary assessment of space and facility needs for CPC. The study should lay the foundation for justification of additional funds as well as identify the issues regarding the management of available funds.

4. Judicial Education

The FIU study identified the need to develop a more organized approach to the judicial education program. The suggested activities range from organizing models of classes to education at a distance. These substantive recommendations are all sound. However, there are some other factors to consider prior to attempting to implement this strategy.

The judicial education activities are just beginning. Even though there is no "coherent" plan, the projected activities include an emphasis on the "Auto Acordado" and the CPC. These two initiatives have the highest priority for Honduras. To attempt any "additional" institutional strengthening with the school at this time would appear to stretch the limits of the capacity of the staff to absorb, comprehend, and develop a new plan.

It appears that an alternative course of action would be to stay the course with the existing activities and develop some "external" evaluation of the results of the conferences. Such an evaluation could begin to train the judicial education staff on how to learn from these experiences in the course of developing a coherent plan. In this manner the strategy focuses more on building staff capacity than the production of a plan which they may not be able to execute.

Some of those individuals involved in education for CPC in Guatemala might be resources in developing a strategy. They have experienced the difficulty in training and trying the change individuals. Additionally, they have seen some of the unforeseen aspects in the implementation of the code.

The second aspects of implementing the code requires the development of a series of operational manuals that serve as a fundamental references for judges and court staff. Mention was made of the existence of such a manual for judges. These should be review of their manual with the eye towards operational issues and policy questions that need attention.

B. Public Ministry

1. Center for Excellence

This newly formed unit charged with the implementation of the CPC is just feeling its way. As might be expected there is some minor administrative confusion, especially between this unit and the education unit. The ideas and approaches being discussed by the unit appear to be sound. What

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is missing is a coordinating plan of action.

It was unclear from the brief visit whether the development of such a plan is feasible with the staff of the unit. Consideration should be given to providing some TA to assist them in developing an integrated plan of action. Where possible, this PM's plan should reflect some degree of coordination with the judiciary. It is not necessarily advisable that the fiscales be trained with the judges, but the timing of program, subject matter presentation, comparison of experiences between the center for excellence and unidad ejecutora, etc, would enable each group to improve its efforts.

There is a need to engage those fiscales at the local level in the process of planning. Some efforts should be devoted to requiring the development of local plans of action. These plans would address the distinctive regional issues. This concept is relative to the new role of the fiscales in the criminal process, they are the initiators of the system. Local prosecutors will need to develop management skills as well as understand the new role as leaders in the system. Giving them a special responsibility to design the implementation at the local level will contribute to their new skill development. Local plans would respond to the national leadership of the center for excellence.

2. Other Activities

The continuation of all the current project activities makes sense. The USAID investment in this institution contributes directly to the construction of a stronger justice sector. A strong independent prosecutorial arm is directly relevant to the creation of demand in the performance of the judiciary.

The support for the special prosecutorial activities for women, minorities, should contribute to greater access to the system by these groups. The condition of the NGO's being so weak that without the support of the PM they might not be able to prosecute their claims. However, there should also be some independent initiatives in this area. This topic is discussed in the next sections in coalition building and access creation.

3. Corruption

Since this is a major problem in Latin America and Honduras, in particular, focus on corruption is relevant. USAID's support for the PM's efforts is responsive to this need. The Fiscal has made this activity a high priority and the apparent effectiveness is measured by the increased prosecution.

The degree and amount of financial support received by the fiscal from USAID was not made known. However, it should be considered as a transition strategy that beginning with the next budget the fiscal will incorporate all the needed funding from the Honduras Congress.

There are factors motivating this recommendation. First, the risk of perception that the US government is funding the anti-corruption campaign has a high political content. Secondly, the political will to fight corruption will be tested in the congressional action on the request. By precipitating a clarification of political will, USAID can better gauge what, if any, additional assistance is needed. Further, the risk of the USAID program being seen as principally an anti-

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corruption program would be diminished.

C. Coalitions

1. FDDH

The current support for this foundation (FDDH) represents a major commitment for the ROL program. The new initiative with another foundation to handle sub-grants represents a diversification of effort.

The idea that his foundation could form alliances with other organizations is now being pursued. This sign is very encouraging. The success of the CPU effort in Chile is directly attributable to the formation of a coalition of NGO's from the right with the Christian Democrats.

2. Coalition of Coalitions

The recently frustrated conference of NGO's also offers a possible avenue of future action. The idea of a conference of NGO's to look at the justice sector and identify areas of concern has proved to be useful in the Argentina ROL project.

Since NGO's tend to be quite territorial about their constituency, it may be wise to suggest that this conference be supported by a public opinion survey in justice issues to focus the conference on those concerns. The Argentina survey arose from a conference of NGO's discussing the need to have public opinion information for the purpose of pursuing their agendas. The result of survey was the NGO's formed coalitions to work jointly on subjects of mutual interest. Copies of the public opinion surveys done in Argentina, Chile and Costa Rica are included in Appendix

This concept seems timely in light of the pending Presidential elections. By cultivating a broader based coalition for justice reform, the ROL project goals can continue to be prosecuted throughout the coming political year. Experience in other countries, as well as in the US, suggests that it is very difficult to achieve significant legislature reforms in election years unless those in power see its clear personal benefit to them.

Since this sector of Honduras society is recognized as weak and poorly developed, considerable investment in time, money and effort could seem to be warranted.

3. ADR

The question was raised during the assessment about the advisability or feasibility of ADR in Honduras. In the next section (access creation) there is a discussion of proposed strategy. However, if the survey includes a battery of questions on ADR they can be discussed by the coalition of NGO's to determine a future course of action.

D. Access Creation

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This area is the weakest of the ROL strategies. In the Chart on page depicting ROL activities by strategy areas very little appears under this topic. While the program supporting the PM's special prosecutors addresses access issues, it does it through the state agency. The concern to be addressed is the following: Honduras has no history of civil society and when there is a change of government, the tendency is for the new leadership to not pursue previous policies.

While it is understood the PM personnel were selected by merit without reference political affiliation, one cannot simply ignore the historical political practices of complete changes with new governments. Assuming the best case scenario, no significant changeover of personnel that still does not translate into no change in policy. Either way, the rol activity in this area should receive some new strategy.

Namely, consideration should be given to supporting NGO's with agendas for women's issues and ethnic minorities, to name two areas. Experience in Ecuador or Argentina has shown that modest amounts of funds can be extremely valuable and achieve high impact (see CDIE evaluation). Further, this line of action adopts a longer view than the immediate term of the current Fiscal. Whether or not his/her successor changes politics, it is advisable to have strong independent voices in the society serving to protect or advance democratic causes which may not be popular with incumbents. The amount of funding required in these activities tends to be quite small because they are primarily volunteer organizations.

An approach to consider would be to use the results of the survey regarding justice and the ensuing conference to identify the themes and the best organizations with which to work. Emerging from such a process should be several options for the organizations to consider.

A second strategy to consider regarding ADR is one being pursued by USAID/Peru. In lieu of starting a specific ADR project, the mission has contracted for a series of training programs for NGO's which are based or focused on women and ethnic minorities. The participants in the training are responsible for the implementation of mediation in their service delivery.

This approach would enable the mission to develop an incremental strategy in this area. Based on observation of receptivity by participating organizations and clear definition of aims of programs, the mission could gradually support these activities.

The delivery of dispute resolution services is a vehicle for a very cost effective mechanism to provide access to justice (see paper from Judicial Roundtable).

IV. Length of time

The overriding unknown factor is the impact of the presidential election next year. The degree to which these elections will alter the course of activities remains unknown. Therefore, visualizing all the previously recommended activities can be accomplished during the next 15 - 16 months. By pursuing this line of action the mission would have prepared the ground work for the implementation of the CPC, strengthened the PM, created and supported a civic participation in the process of

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reform and explored the feasibility of ADR in Honduras.

The full implication of the CPC will take at least 5 - 10 years. Implementation will require behavioral changes, acquisition of new skills, changes in the finally approved legislation once implemented, changes in manuals, on-going education programs both within and outside the judiciary.

The PM program will gradually shift to operational issues and improvements within the operation of the PM. Issues, such as automation, will become increasingly important. There will be need for constant training efforts.

V. Manageability

The totality of these activities suggests a high level of coordination and management supervision. This requirement will escalate in the implementation of CPC and its follow on. It was not clear to me what the management capacity was of the current staff. During the time of the visit, there was no time for discussion of this subject matter.

VI. Conclusions

There has been enormous progress made through the ROL effort to support the Public Ministry and strengthen the judiciary. This effort has begun to establish elements of a functioning judicial system. The national concern regarding corruption was enabled the program to focus on the issues of ethics, values, and honesty. These factors (institutional development and concern about ethics) have joined to create a framework for the ROL strategy.

Just as these terms (ethics, trust) are recognized as necessary for them to be real growth in the Honduras society (see Fukiyam, Trust). They tend to have a limited political life cycle in the public arena. It is not likely that another presidential candidate will center his/her campaign around the same theme. Also, because the themes of honesty and either can become very political, consideration should be given to attempting to strike a posture of more emphasis on areas as coalition building to create a sustainable public-private sector dialogue on ethics and honesty and supporting more activities that lead to improved access to justice.

The unpredictable nature of politics suggests that investment in the NGO community, although it is recognized as weak, will aid considerably in the long term strategy of ROL.

1. Test political will of judiciary and fiscal by assessing their response to FIU report.
2. Undertake a series of judicial administration activities to strengthen existing governance structures.
3. Expand activities in coalition building and access creation.

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Documents

Strengthening Democratic Institutions (SDI) Project - Project Paper Supplement - Argentina 1995

History and Accomplishments of USAID sponsors - Democracy Building Program in Honduras - April 1996

El Poder Judicial en Honduras - Marzo 1996

El Ministerio Publico en Honduras - Marzo 1996

Questions for Consultants - June 1996

SO4: More Responsive Democratic Processes with Grater Citizen Participation - (no date) (2/3 versions)

Strengthening Democratic Institutions - Project Objectives (no dates)

Table 2 - Strategic Objectives Performance (no dates)

Constraints to be considered in SDI Design (no dates)

A Summary of the Strategy and Activities in the Administration of Justice and Rule of Law (no dates)