

A.I.D. EVALUATION SUMMARY - PART I

1. BEFORE FILLING OUT THIS FORM, READ THE ATTACHED INSTRUCTIONS.
 2. USE LETTER QUALITY TYPE, NOT "DOT MATRIX" TYPE.

IDENTIFICATION DATA

| | | |
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| A. Reporting A.I.D. Unit: USAID/EL Salvador Mission or AID/W Office (ES# <u>2/88</u>) | B. Was Evaluation Scheduled in Current FY Annual Evaluation Plan? Yes <input type="checkbox"/> Slipped <input checked="" type="checkbox"/> Ad Hoc <input type="checkbox"/> Evaluation Plan Submission Date: FY <u>88Q</u> | C. Evaluation Timing Interim <input checked="" type="checkbox"/> Final <input type="checkbox"/> Ex Post <input type="checkbox"/> Other <input type="checkbox"/> |
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D. Activity or Activities Evaluated (List the following information for project(s) or program(s) evaluated; if not applicable, list title and date of the evaluation report.)

| Project No. | Project /Program Title | First PROAG or Equivalent (FY) | Most Recent PACD (Mo/Yr) | Planned LOP Cost (000) | Amount Obligated to Date (000) |
|-------------|------------------------|--------------------------------|--------------------------|------------------------|--------------------------------|
| 519-0265 | Judicial Reform | FY 1984 | 12/88 | 12,734 | 9,234 |

ACTIONS

| E. Action Decisions Approved By Mission or AID/W Office Director | Name of Officer Responsible for Action | Date Action to be Completed |
|--|--|-----------------------------|
| Action(s) Required | | |
| 1. Prepare a PP amendment to introduce some design changes into the Project and to increase the LOP amount. | ODI/PRJ | 12/88 |
| 2. Extend the PACD from 9/30/88 to 9/30/89 | ODI/PRJ | 12/88 |
| 3. Start a dialogue with the GOES to institutionalize the Judicial Protection Unit. | ODI | 12/88 |
| 4. Start a dialogue with GOES officials to explain that the Revisory Commission should draft and pursue enactment of laws. | ODI | 3/89 |

(Attach extra sheet if necessary)

APPROVALS

F. Date Of Mission Or AID/W Office Review Of Evaluation: _____ (Month) _____ (Day) _____ (Year)

G. Approvals of Evaluation Summary And Action Decisions:

| | Project/Program Officer | Representative of Borrower/Grantee | Evaluation Officer | Mission or AID/W Office Director |
|--------------|-------------------------|------------------------------------|------------------------------|----------------------------------|
| Name (Typed) | Henry L. Miles | | Hector Diez de Medina | William Kaschak |
| Signature | <i>Henry L. Miles</i> | | <i>Hector Diez de Medina</i> | <i>William Kaschak</i> |
| Date | | | 6/16/88 | |

ABSTRACT

H. Evaluation Abstract (Do not exceed the space provided)

H. EVALUATION ABSTRACT

The project aims to support the efforts of the Government and the people of the Republic of El Salvador to reform and modernize their criminal and civil justice system. Among the major factors in El Salvador's political problems is lack of confidence in the system of justice. Human rights abuses, including political assassination, have gone unpunished, partly from insufficient investigative competence, but also because of corruption of the system through bribery and intimidation. The project that is being implemented by the Government of El Salvador, has four components:

- a) Revisory Commission for Legislation (and the coordination unit for Judicial Reform Effort.)
- b) Judicial Protection Unit.
- c) Institute for Criminal Investigation and Forensic Sciences
- d) Judicial Administration and Training.

This mid-term evaluation was carried out by a contracted team of five consultants. The team conducted interviews, both in the U.S. and in El Salvador with Salvadorans and Americans involved in the project, as well as with others substantially knowledgeable with the project. The project evaluation had the following purposes:

- a) Assess how much improvement in the independence, fairness and efficiency of the Salvadoran justice system can be realistically achieved and how this can be measured.
- b) Provide an assessment of the importance which the prosecution of the major criminal cases can and should play in the Project as a whole.
- c) Measure the impact of the Project in the Salvadoran justice system.
- d) Comply with the evaluation plan.

The major findings and conclusions are:

- a) The Officers of the Special Investigation Unit (SIU) and of the Forensic Unit (FU) appear to be well selected for interest, ability and integrity.
- b) The above units, FU and SIU still suffer from shortage of transportation and communication equipment.
- c) The two units should be located in a single compound to encourage or facilitate close working relationship between the investigators and the laboratory staff.
- d) Functioning procedures are slowly being implemented and introduced, such as good indexing and cross indexing.

Under the Revisory Commission, the major recommendations are:

- a) That the Commission initiate the organic revision of the Penal Procedure Code.
- b) That the Commission revise its work agenda to give more emphasis to operational aspects and recognize the importance of attacking the drug trade.
- c) That the Commission take a more active role in carrying out the normative studies, which will give legal definition to the SIU and the JFU.
- e) That the GOES and USAID extend the project for two additional years to December 1990.

C O S T S

I. Evaluation Costs

| 1. Evaluation Team | | Contract Number OR TDY Person Days | Contract Cost OR TDY Cost (U.S. \$) | Source of Funds |
|--|-------------|--|--|-----------------|
| Name | Affiliation | | | |
| Arthur Mudge | | Individual Purchase Orders were issued | | 519-0265 |
| Steve Flanders | | | | |
| Miguel Sánchez | | | | |
| Adolfo Sáenz | | | | |
| Gilberto Trujillo | | | | |
| 2. Mission/Office Professional Staff Person-Days (Estimate) <u>10</u> | | 3. Borrower/Grantee Professional Staff Person-Days (Estimate) <u>12</u> | | |

A.I.D. EVALUATION SUMMARY - PART II

SUMMARY

J. Summary of Evaluation Findings, Conclusions and Recommendations (Try not to exceed the three (3) pages provided)

Address the following items:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Purpose of evaluation and methodology used • Purpose of activity(ies) evaluated • Findings and conclusions (relate to questions) | <ul style="list-style-type: none"> • Principal recommendations • Lessons learned |
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|---|--|---|
| Mission or Office: USAID/El Salvador | Date This Summary Prepared: 6/01/88 | Title And Date Of Full Evaluation Report: Evaluation of the Judicial Reform Project - 3/88 |
|---|--|---|

J. SUMMARY OF EVALUATION FINDINGS

Project Goal and Purpose

The goal of the Judicial Reform Project is to build and sustain confidence in the Salvadoran Criminal Justice System; the purpose of the project is to improve the administrative, technical and legal performance of El Salvador's criminal justice system.

The project represents a unique opportunity in the development process for basic democratic institution building in El Salvador. Historically, the country's system of criminal justice did not provide adequate channels for resolving legitimate grievances of the Salvadorans. Taking into account the importance of having an independent, impartial judicial system in a democratic society, the Government of El Salvador (GOES), with U.S. assistance is carrying out a Judicial Reform effort. The goal of the GOES/UEG program is to build and sustain the confidence of Salvadorans in their system of justice through the development of an independent, responsible and responsive judiciary and efficient and effective agencies. An immediate objective is to bring to justice the perpetrators of violent political crimes publicized by the international media. The longer term objective is to make fundamental reforms in the system of justice itself to help assure every citizen the fullest protection of the law and security of person and property.

The Project has four components::

1. Revisory Commission for Legislation, and for Coordination of the Judicial Reform Effort. Support is provided for the study and reform of Salvadoran laws and procedures, with an emphasis on criminal laws.
2. Special Investigation Unit, (SIU) and Forensic Unit, (FU). Assistance under the project includes the development and support of these two important functions.
3. Judicial Protection Unit, JPU. The project supports this component aimed at protecting judges, witnesses and other trial participants in vulnerable positions.
4. Judicial Administration and Training. Support is provided to improve the courts themselves through training of judges and staffs, procurement of needed equipment, and physical improvements of court facilities.

Purpose of the Evaluation and Methodology Used

The evaluation was undertaken to achieve the following:

1. To assess the progress of the project at mid-point in order to determine whether significant changes are required during the proposed two year extension period of project implementation.
2. To measure how much improvement in the independence, fairness and efficiency of the Salvadoran justice system can be realistically achieved and how can that improvement be objectively measured.
3. To provide an assessment of the importance which the prosecution of the major criminal cases can and should play in the project as a whole.
4. To assess the impact of the project on its three elements of the Salvadoran justice system: a) the human and physical resources that constitute it, b) the management system which administers it, and c) the laws which govern its operations; and, the likelihood of increasing that impact during the remaining years of the project.

A five person team made up of a lawyer, an expert in court administration, a police investigation expert, a police generalist and a development generalist who acted as the team leader conducted interviews with Salvadorans and Americans involved in the project, and others with substantial knowledge of the Judicial

System. The team started with briefings and interviews with State Department, Justice Department and A.I.D. officials in Washington, D.C. After it arrived in El Salvador, the team spent about three weeks in interviews with Salvadorans, both government and private, military as well as civilian and with other officers from USAID and the U.S. Embassy. Salvadorans interviewed include judges and court administrators from the Supreme Court down to the local magistrate level, military and interested Salvadoran citizens. The evaluation was reviewed in preliminary draft by USAID and Embassy officials prior to departure of a team from El Salvador. A final draft responding to the comments from that first review was submitted to USAID for final review and approval. The final version of the evaluation responds to observations from the second review.

Findings and Conclusions

The findings and conclusions are separated by project elements, as follows:

1. Special Investigation Unit - SIU, and Forensic Unit - FU.
 - a. Management - Subject to the reservation noted below concerning military involvement, the officers of the Special Investigation Unit appear to be well selected for interest, ability and integrity. They also seem to be performing well and without detectable partiality under difficult circumstances. As to management style, coming from military officers it is essentially military. Response is prompt under strict discipline, but for maximum efficiency of such investigative units, the military management style is probably not optimum. The officers give the orders, and the detectives and other staff obey the orders. The detectives are neither permitted, nor do they exercise, much initiative beyond doing what they are told. There is little of the upward feedback that is particularly desirable in an organization performing investigative functions.
 - b) Staff - The staff of the two units appears to have been well selected from available talent. However, while the people with more appropriate experience were available principally from the police, there still has to be considerable investment in training and experience to bring the organization up to high standards of performance.
 - c) Equipment - The organization is still suffering from shortage of transportation and communications equipment. While suppliers may have been at fault in some cases, certain procurement delays are attributed to A.I.D. slowness in managing project paper work. Also there have been some problems in synchronizing delivery of equipment with training of personnel, particularly in the laboratory. But this has not been a significant problem comparable to the delays in acquisition of adequate transport and communications equipment.
 - d) Facilities - The location of the Forensic Laboratory in the military compound impairs its usefulness. The limitations are both practical, in discouraging access of judges and other civilians involved in cases, and political in further indicating military domination of the SIU and FU investigative functions. Further, location of the laboratory at some distance from the other elements of the Special Investigation Unit, does not encourage or facilitate close working relationships between the investigators and the laboratory staffs. Additional space is needed as well.
 - e) Procedures - The establishment of well functioning procedures in new organizations must be expected to take time. Growing pains in this case may have been somewhat aggravated by carry over of military procedures in accordance with the experience of organizational leadership. There have been particular problems in making filing systems and record keeping as responsive as necessary for most efficient and effective investigation. With the help of technical advisors, good indexing and cross indexing procedures are being introduced.
 - f) Operations - The organization has done some good work but it is not showing yet in big cases involving senior military suspects. In fairness to these units in judging their performance, it has been difficult for them to show well on old cases for which the evidence has become stale. The kidnapping-for-profit case is often cited as evidence of willingness to pursue the military. However, the prosecution of senior military officers in that case may just evidence the drawing of some lines beyond which even the military can not go without being subject to prosecution especially if the victims are among the rich and powerful.

The case load of the units is relatively low by U.S. standards. It is of course important that the units not be burdened with more cases than they can handle, such as to impair their ability to handle the most important cases. It is also important, however, that they learn how to perform under pressure in increasing their efficiency and effectiveness. Only by handling an abundance of "live" cases can they gain the necessary on-the-job experience.

S U M M A R Y (Continued)

The Forensic Unit is only now reaching its first stage of operational capacity and thus far has had as much as it can handle. As it builds up its capacity to handle a substantially increased workload, there will be need to educate the judicial system as well as the police on the use of forensic evidence as a supplement, or even replacement for witness statements.

Conclusions

- a) Military staffing of the investigation units has had a negative effect in four ways:
 - i) Military management style does not seem conducive to optimum efficiency and effectiveness of investigative functions;
 - ii) Because the military personnel, the police being part of the military in El Salvador and particularly the officers of the units, are not committed to careers in police work, and may be subject to transfer back to military duty at any time, it is difficult to justify substantial investment in the training necessary for optimal performance. The experience and expertise acquired is bound to be lost through transfer back to the military.
 - iii) As long as the career of investigation leadership is within the military, success therein will depend upon relationships with other military officers, peers as well as superior. There have been, and seem likely to continue, pressures tending to limit the most vigorous pursuit of investigation of military complicity in crimes, particularly to higher levels of the military. We do not believe that such situation can be expected to change substantially within the near future.
 - iv) Regardless of whether the military affiliation actually constrains pursuit of investigations, the appearance of such potential is likely to undermine credibility of the units as investigators of military crimes.
- b) A major impediment to bringing the investigation units under civilian direction is their dependence upon military personnel as auxiliaries of the court for presentation of evidence.
- c) Operating under current criteria, the Commission appears responsive to current needs in selection of cases. We do not see need for further definition of the current purposely flexible criteria pending significant change in circumstances.
- d) There is continuing need for specialized technical assistance. While much of this can be provided by short term advisers, we believe that, for the present at least, continuation of the resident technical advisor is worth the cost in supervising on-the-job application of training to specific cases.

2. Judicial Protection Unit - JPU

- a) It is believed the time is opportune for reform within the Salvadoran judicial system. There is notable willingness of the CCEE officials, including the senior military officers visited, to support judicial as well as other democratic reforms. This willingness was combined with full awareness that such reforms might require substantial changes in Salvadoran law and attitudes to succeed. At the same time the USG, in assisting such reform must be sensitive to substantial differences between the United States and El Salvador in culture and legal system, which have a significant bearing on the substance of reforms.

The need for protection of participants in the El Salvador judicial system derives from the tenuous internal security situation, the history of intimidation affecting the processes of justice, the high crime rate and the need to bolster public confidence in the judicial system. The ability of certain individuals to commit crimes and escape with impunity because of the intimidation of witnesses, judges and prosecutors exacerbates the weaknesses already existing in the system. We believe that the Salvadoran judicial system must be able to protect participants against potential threats if it is to function effectively, independently and with fairness for all Salvadorans.

3. Legislation Revisory Commission

- a) The results of the Commission's work are positive and worthy of support and should achieve the planned objective in the proposed extended project period.

4. Judicial Administration and Training

- a) Unlike most countries whose legal systems are based upon the Napoleonic code, El Salvador has not established an adequate judicial career.

ATTACHMENTS

K. Attachments (List attachments submitted with this Evaluation Summary; always attach copy of full evaluation report, even if one was submitted earlier; attach studies, surveys, etc., from "on-going" evaluation, if relevant to the evaluation report.)

Evaluation Report

COMMENTS

L. Comments By Mission, AID/W Office and Borrower/Grantee On Full Report

L. COMMENTS BY MISSION, AID/W AND BORROWER/GRANTEE.

Following are the Mission's major issues/comments related to the Evaluation Report.

1. Civilianization of the SIU and FU. This is a very complex and sensitive aspect of the Project. At this time, the Mission feels that the SIU and FU are functioning quite well within their present location and their situation is fluid. The Mission's point of view is that the Government of El Salvador should keep the present structure of the Commission for Investigations for the short term. In the long term the SIU, should be institutionalized, probably under the Attorney General or the Supreme Court, and the FU should be located or placed under the Police Academy.
2. Education of the legal system concerning the use of forensic evidence. The project includes a training/education component under which this particular concern can be included. In order to see this happen, the Mission will deal with this during the process of amending the Project Paper.
3. The Judicial Protection Unit should be put in place as rapidly as possible. This recommendation made by the evaluation team has various implications and is not easy to resolve. The Mission will start a dialogue with GOES officials to study alternatives and negotiate the best possible solution. It is expected that at the time of the JP amendment, this issue can also be incorporated into the new design of the project.
4. The Revisory Commission should both draft and pursue the enactment of laws. The Mission strongly believes that there should not be a gap between drafting and enacting laws, consequently the Revisory Commission should be in charge of both actions. The enactment of the laws, even though not in the hands of the Revisory Commission, should be encouraged by the latter, by means of making the public, labor unions, campesinos, private enterprise, etc. aware of the proposed laws, so they can be an active part of the enactment process.
5. Establishment of a library for the Revisory Commission. A specialized library for use by the Revisory Commission, exists. Probably this was an oversight by the Consultants.
6. The Mission is planning to transfer the management of the Special Investigation Unit, SIU and the Forensic Unit, FU to the Embassy.

- b) Investigative activity is poorly integrated into the judiciary, and there is very poor coordination of investigations generally on such matters as responsibility for a crime scene.
- c) The national administrative structure needs to be strengthened, including especially a much strengthened capacity to investigate complaints against judges.
- d) The communications between the judiciary and other relevant agencies is often poor.
- e) A personnel selection and evaluation program does not exist.
- f) There is lack of physical facilities to house the judiciary system.

Principal Recommendations

The principal recommendations are listed separately by Project element.

1. Special Investigation Unit and Forensic Unit.

- a) The direction and staffing of the investigative units should be transferred to civilian police.
- b) The inter-ministerial commission concept for supervision of the Special Investigations Unit has proven useful and should be institutionalized, over the short term at least, pending establishment of the National Police under true civilian control.
- c) Because of the role of the courts in supervising criminal investigation, the President of the Supreme Court should be added to the Investigations Commission.
- d) The laws of El Salvador should be amended to establish the Special Investigation Unit as an auxiliary organ of the courts so that its staff may be eligible to present evidence without regard for affiliation with the military.
- e) All participants in the administration of justice, and particularly judges and police, should be educated concerning the use of forensic evidence to supplement or substitute for witness testimony as evidence in resolution of criminal cases.
- f) The Forensic Laboratory should be relocated in larger quarters outside of any military compound, as close as feasible to other investigative functions of the Special Investigations Unit.

2. Judicial Protection Unit

- a) That planning and other measures necessary to implement the JPU proceed as rapidly as possible.
- b) That the JPU be organized under the Investigations Commission.
- c) That studies be conducted to define the scope of authority for the JPU, and determine specific functions and procedures for this organization.

3. Legislation Revisory Commission

- a) That the Commission initiate the organic revision of the Penal Procedural Code, including within one body, the procedural aspects that have been studied to date, and contemplating within the Procedural Statute a Judicial Police force that would take over the functions of the SIU and JPU.
- b) That the Commission revise its work agenda to give more emphasis to operational aspects (penal methods, criminal investigation, judicial police) and recognize the importance of attacking drug trade at an incipient stage which permits emphasis on preventive measures.
- c) That the Commission take a more active role in carrying out the normative studies which will give legal definition to the SIU and the JPU.
- d) That the Commission initiate planning for an Institute for Socio-Judicial and Legislative studies, so that when this project has ended such institute can continue on a permanent basis, without foreign support, carrying out needed studies for legislative proposals.
- e) That USAID continue to support the establishment of a specialized library for the Commission.
- f) That the GCES and USAID extend the project by two years (to December, 1990).