

PD-ABD-9878  
76534

**Administration of Justice in El Salvador**

**An Interagency Strategy  
for U.S. Government Assistance**

**Department of State  
Agency for International Development  
United States Information Service  
Department of Justice  
Drug Enforcement Administration**

**April 1992**

## EXECUTIVE SUMMARY

The Salvadoran justice system has failed to fulfill its primary mandate -- having served neither as an impartial and timely mechanism for resolving disputes among citizens nor for upholding the laws of the nation. Prosecution of only the poor or politically weak, coerced confessions by the police and military, and repeated delays in the resolution of complaints brought before the courts generated public distrust and disrespect for the judiciary. The time spent in jail awaiting trial or sentencing can often be longer than the prison sentence would be if the accused were found guilty. Nearly 12,000 of the 13,000 criminal cases initiated during the year ending in June 1991 were unresolved.

In the early 1980's, serious human rights violations and unprosecuted murders of church and other social workers focussed world attention on the state of justice in El Salvador and resulted in United States support to help Salvadorans launch a judicial reform program. Over the years that followed, U.S.-assisted efforts achieved discrete improvements that enhanced criminal investigative techniques, enabling Salvadorans to prosecute some of the gravest cases of human rights violations. U.S. assistance helped improve judicial career stability and provided the poor and other disadvantaged groups with legal counsel when accused. These initial efforts, while not sufficient to effect profound changes in the justice system, were nonetheless first steps toward greater judicial branch independence, professionalism, and the building of a justice system that merits the confidence of its citizenry.

Reforms resulting from continued U.S. policy dialogue and the Peace Process marked another major milestone for justice sector reform. Following President Cristiani's call in 1990 for a negotiated settlement to the civil conflict, a debate among the political forces ensued on economic and social injustices of the past and needed structural reforms. The justice system was among the principal targets of this debate, with early rounds of the peace talks leading to constitutional reforms designed to improve judicial independence and impartiality. Specifically, the reforms approved in April 1991 and ratified in late 1991 extend terms of office for the Supreme Court, stagger magistrate's appointments, and establish a fixed percentage (6%) of the budget for the court system. They also strengthen the Attorney General's role in criminal investigation and prosecution, and establish an ombudsman for human rights.

The Chapultepec Peace Accords, signed on January 16, 1992, formally ended El Salvador's civil war. They include political commitments to return control and oversight of the police to civilian hands (the Ministry of the Interior) and broaden the interests represented on the National Council of the Judiciary -- the body which develops candidate slates for judicial branch appointments. Constitutional reforms related to the police were ratified in late January 1992, and the multi-party Peace Commission (COPAZ) will soon complete its revision of legislation in order to implement these agreements.

These actions facilitated a decisive shift in the impetus for judicial reform. The Government of El Salvador, in early 1991, had committed itself to

the preparation and adoption of a comprehensive judicial sector reform agenda as one condition of our FY 91 ESF Policy Reform Program. The GOES' agenda, prepared with U.S. assistance, includes reforms, embodied in draft laws currently before the Legislative Assembly, to broaden the protection of human rights through such measures as pre-trial release, reduction of the administrative detention period, and suppression of extra-judicial confession. By 1994, the GOES will also have achieved comprehensive revisions to the criminal and criminal procedure codes.

Today, changes in criminal proceedings and mechanisms to better protect human rights are being debated throughout the legal community. Many non-governmental organizations are participating in the debate as well as carrying out public education efforts. These activities are strengthening the leadership necessary to sustain a reform program. This nascent reform movement includes a small, but increasingly active, group of academic leaders, several NGOs and the Ministry of Justice and its special judicial technical support unit.

Despite these gains, the process of reform in El Salvador is still in an incipient stage and may falter if a broader political consensus and popular support base cannot be created to sustain reform efforts. The Salvadoran legal community, absorbed with the civil conflict, has been only minimally informed of the wave sweeping the Western Hemisphere and Europe away from written inquisitorial court procedures to a more open and oral adversarial or mixed system. The academic community and NGOs, likely sources of critical thought and public dialogue on the need for improvement, have been similarly sidetracked by the conflict. Too, the quality of legal training and education declined significantly in the last decade in no small measure due to the ravages of the war. Among the results are a weak legal culture and a poorly trained cadre of leaders, ill-equipped to lead a reform movement that merits public confidence. Without an understanding of the process and substance of reforms, the political leadership and general populace are wary of change. Many entrenched beneficiaries of the existing system in the judiciary and El Salvador's elites are even less enthusiastic about change.

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

Continued external donor assistance to strengthen, expand, and accelerate the process of judicial reform is needed to enable Salvadoran reform leadership to overcome constraints and put in place a reform program that can be sustained through a series of successive administrations. With the financial demands of the national reconstruction program estimated at over \$1.4 billion, together with other strong fiscal pressures, the GOES simply cannot handle the task alone. It does not possess sufficient financial resources to design, plan, and implement the comprehensive reform program needed. Continuing U.S., as well as other donor, support will be required.

**The U.S. Assistance Strategy: 1993-1997**

The policy of the United States in post-war El Salvador is to support fully the Peace Accords because we believe the reforms that have been negotiated in the judicial system, the electoral system, and the armed forces and the police will strengthen El Salvador's democratic institutions, enlarge the scope of human rights, and promote national reconciliation. The USG is working with the United Nations and the democratic community of nations to help mobilize the political support and the financial resources necessary to translate the promises of the Salvadoran Peace Accords into an enduring reality.

The proposed strategy for the next five years builds upon the lessons learned during a difficult eight-year (1984-92) USG effort to improve the administration of justice in El Salvador. While international attention has correctly focussed on this country's poor human rights record, it has tended to ignore some of the positive changes that have been made as a result of USG policy and project-based assistance. Intensive USG policy dialogue efforts, USAID's Judicial Reform I Project, and ICITAP assistance have enabled Salvadorans to take some of the first important steps to overcome technical, legal, policy and human resource weaknesses in its judicial sector. Equally important, technical assistance and training provided through USAID's Judicial Reform I Project have fostered the emergence of an incipient Salvadoran judicial reform movement that now offers a much improved base for further accelerating and deepening the entire reform process in the 1990s.

The U.S. assistance strategy, described in detail in the body of this Strategy Statement, focusses on deepening and accelerating the reform process. It will strengthen and support Salvadoran leadership in the justice sector to plan, build consensus around and accelerate the implementation of reforms so as to demonstrate progress and build political and popular support for further changes to come.

By combining policy and project-based assistance within a comprehensive USG approach to this vital sector, we believe that the USG can strengthen and deepen the growing resolve in Salvadoran society to continue its important judicial reform process. We are well aware that this reform process is an imperfect one. To be improved, it will require patience, continuity, and USG staying power. We cannot let the euphoria of the Peace Accords or short-term setbacks which will surely occur undercut the longer term commitment which is required. The proposed strategy is but one key portion of a longer-term effort that we are confident will ultimately leave behind a better judicial sector that can contribute to a stronger Salvadoran democracy.

Two challenges to a successful judicial reform program in El Salvador lie ahead. Additional analytical work and the building of public consensus are needed to give justice sector institutions a clear mandate for reform. For example, a clearer definition of the Attorney General's role in investigations is required, particularly in relation to the police and the court. Issues concerning the composition of the National Council on the Judiciary and the design of the judicial appointment process need further study. In the area of legal reform, analysis and debate is only now beginning. The MOJ has a clear leading role in the reform process, as do other institutions such as the

reconfigured National Council on the Judiciary. The academic and legal community, as well as NGOs, should also be extensively involved.

The U.S. assistance strategy is to strengthen key public and private institutions as they engage a broad spectrum of the legal community and populace at large in the design of solutions, and to promote a justice sector reform program that merits the confidence of the citizenry. Cognizant of the long-term nature of any judicial reform program, special emphasis is given to training and international exchanges to prepare a cadre of young leaders to continue the process of reform without external donor support. Policy dialogue efforts supported by conditionality in ESF Policy Reform Programs will be essential to ensuring consistent support of the GOES to pursuing the reform program. USIA and USAID will play key roles in the implementation of this aspect of the assistance strategy through support for specific project and leadership development activities.

A second focus in criminal justice is the timely implementation of reforms as they are adopted by the Assembly. Extensive analysis and adoption of the legislative reforms to implement civilian control and staffing of the police have already been completed; the development of a new civilian police force has begun. However, as demonstrated by public perception of a vacuum in protection, smooth transition from the old force to the new has not been adequately planned. A comprehensive Salvadoran strategy must be developed for overcoming the numerous constraints to successful judicial reform, involving the coordination of all of the justice sector institutions. Such a strategy must include plans for a smooth transition period.

The U.S. assistance strategy, recognizing the fiscal pressures and technical weaknesses that impede solution of these problems, includes technical assistance, training, commodities and essential operational support for the implementation of specific reforms. USIA, the Department of Justice/ICITAP, the Drug Enforcement Agency, Department of State, and USAID have all actively participated in the formulation of this strategy and will jointly participate in its implementation. ICITAP technical assistance will continue to improve the capacity of the Commission for the Investigation of Criminal Acts and help train the National Civil Police. DEA and STATE/INM will continue training for the successful Executive Anti-Narcotics Unit.

A working group, which the new USAID Judicial Reform II Project will help create, will bring together representatives of the key public and private institutions in the justice sector to prepare and implement a judicial reform action plan. Project assistance will be linked to implementation of specific reforms. For example, when El Salvador achieves a more representative, independent National Council on the Judiciary, the project will provide technical assistance to design the selection and screening process for judicial appointments and for curriculum design for the Judicial Training School. Similarly, passage of a law formally incorporating the public defenders function into the Public Ministry would trigger support for in-service training and other operational support.

Flexibility to respond to Salvadoran needs as the reform process unfolds will be critical, particularly as reform momentum builds. Accordingly, the design of the specific assistance programs of the U.S. agencies will build in

a flexible response capability. U.S. assistance will, however, fall short of the needs for the implementation of all reforms, e.g., assistance in the establishment of a civilian police, where ICITAP will be part of a multi-donor effort. A multi-donor approach is also appropriate for longer-term institutional improvements in law schools. El Salvador must actively seek additional donor support to address these needs, and particularly those where other donors are better positioned to provide assistance, e.g., Napoleonic law codes. U.S. assistance will facilitate Salvadoran efforts to develop projects and to conduct feasibility studies that might facilitate negotiations with other donors.

Progress in improving the professionalism, independence and integrity of the judicial system is more likely to occur in occasional quantum jumps rather than a smoothly rising curve. Indicators of progress will include: improvements in the timeliness of public counsel provided to criminal defendants; increase in the percentage of criminal cases taken to judgment and a decrease in the average time cases remain open; increased use of physical evidence and oral testimony as basis for court decisions; and improvements in the opinion of the Salvadoran people of the integrity and effectiveness of the justice system.

Milestones in the comprehensive reform of the administration of justice, supported by U.S. assistance, during 1993-1997 include:

- Passage of legislation formalizing the public defenders office.
- Civilianization of the Commission for the Investigation of Criminal Acts.
- Reconfigured National Council on the Judiciary established, and judicial appointment process based on merit designed.
- Justice Sector Working Group established, and a comprehensive action plan for justice sector reform developed and being implemented.
- Assumption by the GOES of the recurrent costs for the public defenders, prosecutors and criminal investigators now financed through USG assistance.
- Establishment of trained investigative corps within the Attorney General's Office.
- Specific reforms to the criminal procedure code widely debated and enacted by the Legislative Assembly, including the reduction of administrative detention period, reforms to the appeals procedures, release pending trial established, and elimination or suppression of the extra-judicial confession.
- Reduction in the percentage of detainees awaiting trial.
- Establishment of the Judicial Training School by the National Council on the Judiciary.

- Development of a reliable system for collecting and analyzing judicial statistics, so as to measure improvements in judicial system performance.
- Improvements in case tracking and management and a significant reduction in case backlog.
- Public review of draft criminal and criminal procedure codes and adoption of these by the Legislative Assembly.
- National Council on the Judiciary presents list of candidates for appointment to the Supreme Court to the Legislative Assembly.
- Transition to national civilian police completed.
- Assumption by the next generation of leadership for the judicial reform process.
- Adoption of a new curriculum in the law schools and establishment of a post-graduate program.

U.S. assistance also is targetted at reforms in El Salvador's legal, regulatory, and juridical (LRJ) environment. LRJ is a crosscutting theme, crucial to investment and economic growth, in our policy dialogue and in the USAID project portfolio. It deals with the bodies of law apart from the criminal codes, where the most important reforms concern land tenure, intellectual property, bank regulation, the environment, and maintenance of public records.

Assistance to LRJ reforms has been contained in USAID projects throughout the 1980s, beginning with the land reform projects. USAID relies on the policy assistance components of a variety of bilateral projects as well as on the ESF Policy Reform Program to implement LRJ reforms. We will finance technical assistance for studies in priority areas, such as public record-keeping, land rights and property registry, environmental regulation and banking regulation. Generally, these studies will contribute to the aims of a specific economic project or will facilitate Salvadoran efforts to obtain other donor assistance. In some cases, a small grant might be appropriate. Funding will be provided through existing projects.

**Land tenure:** USAID will assist the GOES National Reconstruction Program to reduce the procedures required for registration of small agricultural parcels. In urban areas, USAID is assisting the GOES to grant deeds to the urban poor. Conditionality under the ESF Policy Reform cash transfer program has already levered changes opening the way for agrarian reform beneficiaries to freely choose their land ownership pattern.

**Intellectual property rights:** Prominent in the 1992 ESF Policy Reform program, an improved legal definition and enforcement mechanism for protecting intellectual property is expected to be proposed in the form of legislation in 1992.

**Bank regulation:** USAID is assisting the Superintendent of the Financial Sector to develop regulations and monitoring procedures for prudential supervision of the financial sector.

**Environmental laws and regulations:** Rational management of natural resources by the public and private sectors will help ensure long-term sustainability and higher return on economic investments.

**Public records:** Many documents (voting rolls, tax lists, recorded contracts, etc.) have disappeared or deteriorated. USAID will assist the municipalities to improve management of publicly recorded documents.

**Court administration:** Many of the court administrative reforms discussed above in relation to criminal justice will also increase the efficiency of handling civil cases.

Milestones in the LRJ environment that will be monitored are:

- Simplified registration and titling procedures in place for titling low-value urban residential property. Expansion of this social registry to include rural properties.
- Adoption of laws, regulations, and procedures to mitigate land uses which result in severe soil erosion or pollution.
- Strengthened role of the Superintendent of the Financial Sector and enhanced regulations and monitoring procedures.
- Completion of a study on record-keeping and implementation of recommendations.
- Modification of laws to provide for adequate protection of intellectual property rights.

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### I. INTRODUCTION

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

The performance of El Salvador's judicial system has been weak on a number of fronts: access, timeliness, fairness and integrity. Delays, inequitable treatment, and the dominance of political, economic and military interests in judicial decisions in El Salvador have all served to undermine the integrity of the judicial system. The poor, frequently denied their constitutional right to defense counsel, are the victims of the system's disfunction. Established procedural norms and time limits are uniformly violated. Nearly 80 per cent of the prison population, or approximately 3,000 individuals, are being held in detention facilities awaiting sentencing or trial. The period of time spent in jail awaiting trial and/or sentencing is often longer than the prison sentence would be if found guilty of the offense. Too, nearly 12,000 of the 13,000 criminal cases initiated during the year ending in June 1991 were unresolved. At that time there was a total reported case backlog of nearly 79,000 cases. Not surprisingly, the public (as demonstrated in a recent opinion poll<sup>1</sup>) has little confidence in the justice system.

A combination of policy and project based USG assistance over the past eight years has enabled Salvadorans to take important first steps in resolving technical, legal and policy weaknesses in the administration of justice. Accomplishments include: increased judicial branch independence from political and economic interests; enhanced criminal investigative capabilities through the establishment of the Commission on the Investigation of Criminal Acts; reopening of the public defender's office; and adoption of a judicial career law. An incipient Salvadoran reform movement has also emerged, fostered by U.S. technical assistance and training programs. As a result of this assistance, and the recent peace process, El Salvador has in place a much improved constitutional and policy framework for achieving a comprehensive reform of the justice system. Implementation remains a difficult challenge, though, as significant institutional, human resource, attitudinal, and financial constraints must still be overcome. Leadership of the reform movement is weak and fragmented, and will require support to seize and carry forward with the momentum established through prior U.S. assistance efforts and the peace process.

The attainment of a negotiated peace and the upcoming conclusion of USAID's Judicial Reform I Project (March 1993) provided the impetus for an

effort to reexamine current USG assistance programs and develop a strategic plan for our assistance in the 90's. This Interagency Strategy is intended to establish the context for future USG assistance in the justice sector, expanding on the major points summarized above, and outline continuing and new project and policy-based assistance needed to foster a Salvadoran-led reform of the justice system.

## II. COUNTRY SETTING

The failure of the Salvadoran justice system to quickly and impartially investigate crimes and punish individuals responsible for such acts became apparent under the strain of the civil conflict. When fair, speedy and impartial trials of those accused of internationally publicized murders (e.g., Archbishop Romero in 1981 and four Churchwomen in 1982) eluded the justice system, world attention was focussed on the problem. But the reality represented by these dramatic events was far from new. It had long been with Salvadoran society, suffered for years by the poor, the illiterate, and those in political opposition to ruling elites. Indeed, upon in-depth analysis, other manifestations of the break-down became obvious, among them a growing case backlog and a prison population consisting largely (80%) of individuals awaiting trial or sentencing.

Salvadorans have recognized the fundamental importance that an independent, impartial, and responsive system of justice represents in a stable democratic society. In the mid-1980s, a small group initiated efforts to reform malfunctioning juridical structures. Among the initiatives were:

Revisions to the Supreme Court appointment process included in the Constitution adopted in December 1983 mandating that judges be chosen from a list compiled by an independent commission.

In 1984, the passage of a law increasing procedural protection to criminal defendants during the time that military courts had jurisdiction over civilians. (Note: Military court jurisdiction over civilians has now been eliminated from the Constitution.)

In 1985, the creation of a national commission (CORELESAL) to review criminal codes and recommend changes to improve the administration of justice.

To bolster GOES efforts to improve the administration of justice, the United States agreed in 1984 to support legal reform efforts and help improve criminal investigative capacity. U.S. assistance was also provided to improve administration of the courts and train justices of the peace and first instance judges. U.S. assistance had the immediate objective of helping the GOES to achieve specific acts of impartial justice (i.e., prosecute high profile cases) that could demonstrate the rule of law. Studies commissioned by the Mission in 1989 and 1990 reaffirmed the need for fundamental structural changes in the organization and operation of the judiciary. Changes recommended included: strengthening the independence of the National Council on the Judiciary, reduced political influence in the judicial branch appointment process, extending Supreme Court magistrate terms of office, strengthening the role of the prosecution in investigations, and substantive

reforms to the criminal and criminal procedure codes to afford maximum protection of human rights. Based on these studies, policy dialogue efforts were increased and economic assistance under the FY 1991 ESF Program was linked to progress on judicial reform. The U.N.-mediated peace talks accelerated the process. Flowing from these peace negotiations, constitutional amendments were enacted by the Legislative Assembly in November 1991 - January 1992 that broaden interests represented on the National Council on the Judiciary, the entity responsible for nominating individuals for appointment (by the Assembly) to the judicial branch, civilianize the police, and strengthen the role of the Attorney General in criminal investigations.

Despite these significant gains, the process of judicial reform is still in its incipient stage and may falter if a broader political consensus and popular support base cannot be created and momentum sustained. Government actions must instill confidence in the public that the agreements will be implemented and respected by both sides. The credibility and sustainability of the reform process depends on tangible demonstrations of the reforms being put into practice. Citizen confidence that change is indeed possible will, in turn, be key to strengthening the resolve of the incipient Salvadoran reform movement to press ahead and address problems remaining to a justice system that affords citizens due process and equality before the law.

### III. STRUCTURE AND PERFORMANCE OF EL SALVADOR'S JUSTICE SYSTEM

#### A. Constitutional Framework

The Constitution of El Salvador separates power between the legislature, the executive and the judiciary. Historically, the executive branch has been dominant, wielding influence through its party structure in the decisions of the legislature and the judiciary. Prior to the 1991 constitutional reform, a simple majority of the Assembly (and hence the dominant political party or coalition) elected Supreme Court magistrates; it was customary to appoint loyal party members. Concern over the increasing prevalence of special interests in judicial decisions grew as abuses became more apparent. To broaden the representativeness of appointments to the Supreme Court, the Assembly amended the Constitution in 1991 to require a two-thirds majority for Supreme Court appointments, and to extend terms of office to nine years with staggered appointments (i.e., one-third turnover every three years). This reform should provide for greater stability, balance, and, hopefully, independence in the court system.

The 1991 constitutional reforms also require that the Assembly appoint members of the National Council on the Judiciary, the body which develops slates of candidates for all judicial appointments. Formerly controlled by the Supreme Court, the peace accords call for broadened and more impartial representation on the Council in order to depoliticize judicial appointments.

The Assembly also appoints the Attorney General, the Procurador General (responsible for public defenders), and the new Procurador (Ombudsman) for Human Rights. These appointments previously required simple majority votes, but as a result of Constitutional amendments now require two-thirds majority as well. The intent of the modification was, again, to increase the representativeness of these appointments.

## B. Structure of The Court System

El Salvador's court system is divided into four levels: Justice of the Peace; Courts of the First Instance - Trial Court; Courts of the Second Instance - Appeals Court; and the Supreme Court.

The Justices of the Peace are distributed throughout the nation with at least one Justice in each municipality. Although limited in jurisdiction, justices of the peace wield considerable power over the everyday lives of citizens. Their jurisdiction includes preliminary investigation of crimes, rendering judgment in civil issues where damages are under two thousand colones (approximately \$250) and criminal offenses (e.g., theft of items under C20). They have authority to settle disputes by mediation.

Courts of the First Instance (trial courts) may be specialized (civil, criminal, labor, mercantile or landlord/tenant) or general. In criminal cases, these courts may take original jurisdiction, or assume responsibility for the case following a preliminary investigation by a justice of the peace. Courts of the Second Instance (appeal courts) hear appeals from the trial courts. The Supreme Court hears appeals from the appellate courts, decides writs of habeas corpus and constitutional questions, and settles disputes between the legislative and executive branches. In addition, the Supreme Court licenses attorneys to practice law and may suspend a license to practice.

Currently, there are 306 Justices of the Peace, 119 First Instance Judges, 28 Second Instance Magistrates, and 14 Magistrates of the Supreme Court. With the 1992 constitutional reforms, judges and justices of the peace must be law school graduates and are part of the judicial career service. Because of the shortage of law graduates in rural areas, non-lawyers may be appointed as justices of the peace on an exceptional basis, but for one year versus the normal two. However, most justices of the peace have law degrees.

In 1991, the court system received just over 3% of the national budget. Constitutional reforms enacted in 1991 establish a 6% earmark for the Judicial Branch, but funding for prosecutors, public defenders, and investigations has not been assured.

Individual judges are responsible for case assignment and management, although a separate administrative structure (the "Oficina Receptora de Demandas", similar to the clerk of the court in the U.S.) for the San Salvador courts was created in 1990 to more fairly and impartially distribute cases. It handles only civil cases, however, with the assignment of criminal cases still made largely on an ad hoc basis.

For trial courts and above, each judge has a staff composed of a "secretario" (a legal secretary) and several "resolutores" (legal clerks). The "secretario" is usually a lawyer and controls the judge's schedule, directs the "resolutores", performs some court administration functions, and must sign all decisions made by the judge. While these positions are political appointments, in rural areas there is a surprisingly high level of continuity in this office despite changes in the judges. The "resolutores" are usually law students or recent graduates who perform legal research and investigation for the judge.

### C. Criminal Investigation and Procedures

El Salvador's criminal procedure code follows the Napoleonic or inquisitive model. In it, the judge plays a dominant role in the investigation of crimes and actively directs investigations carried out by the police, the prosecutor, and the Commission for Investigation of Criminal Acts. Unlike other civil law countries, El Salvador's Constitution establishes an Attorney General which has responsibility for directing investigations.

Currently, there is no clear division of responsibilities among these agencies; as a result, control over investigations is weak and fragmented. For example, the police often act independently and the ability of a judge or prosecutor to request and obtain assistance is highly dependent on personal relationships with the officer in charge. A 1992 assessment<sup>2</sup> of the Attorney General's Office suggests that within the present criminal procedure code, there is considerable room for expanded use of oral procedures during trial and for a more aggressive prosecutorial role. Technical and attitudinal problems appear to impede exploitation of these provisions, however.

Constitutional amendments ratified in January 1992 attempt to clarify roles: the Attorney General's mandate to direct and carry out investigations was substantially strengthened, but judges retained the right to pursue investigations independently of the Attorney General. The Commission for the Investigation of Criminal Acts -- which includes the premier investigative unit in the country, the Special Investigative Unit (SIU) and the Forensic Laboratory -- will eventually be brought under the functional authority of the Attorney General's Office. During the transition from military to civilian staffing, however, it appears that the Commission will be functionally under the Ministry of the Presidency. A draft law providing the legal framework for civilianizing the Commission will soon be presented to the Assembly. Legislation creating the National Civilian Police also requires that the police report findings of their investigations to the Attorney General. These initiatives substantially strengthen the role of the Attorney General and provide a strong foundation to base more fundamental reforms to the criminal procedure code (e.g., adoption of a mixed or adversarial procedural model).

The Attorney General's Office has a staff of 200 prosecutors: 133 general crime, 14 human rights, 10 drug trafficking, and 43 attorneys working on GOES financial matters (e.g., white collar crime, tax and fines collection, and a registry of State property). The Commission for the Investigation of Criminal Acts, created through U.S. support, has a staff of 45 investigators and 33 forensic lab technicians, most of whom have received substantial training. Thus far, seconded military officers have led and staffed the Commission, and the Ministry of Defense has paid a substantial part of the rank-and-file's salaries. The Commission has thus been responsive to two separate and competitive agencies. However, in early 1992 the Ministry of the Presidency took over the GOES portion of the funding of the Commission. Moreover, civilians are expected to lead the commission.

#### D. The Criminal Code and Judicial Proceedings

El Salvador's criminal code distinguishes among three types of crime: petty offenses (among the most common are: against property but under 20 colones; bodily harm not requiring more than 10 days of incapacity; and against the public peace such as loud noise at night) which may result in fines or imprisonment for up to 40 days; misdemeanors (e.g., slander, libel, self-induced abortions, contributing to the delinquency of a minor, tax evasion, etc.) which can result in a prison sentence of up to 3 years; and felonies (e.g., murder, homicide, armed robbery, performing abortions, etc.) that have a penalty of 3 to 30 years imprisonment. The death penalty was in practice abolished in 1983.

The legal process varies with the type of crime. For the least category, offenses, the justice of the peace alone reviews the case and then renders judgment. Misdemeanors require a "summary trial" involving only a judge. Prior to 1990, all felonies required an "ordinary trial" in which a five person jury would render the final decision. This jury procedure, in use for approximately 100 years, is unique among Latin legal systems. However, citizens were reluctant to serve as jurors (in part due to intimidation) and jury selection became mired in procedural problems. Therefore the criminal procedural code was revised to exclude armed robbery, kidnapping, extortion, drug-related offenses, rape, theft and embezzlement from trial by jury. While this expedited judicial decisions, the denial of a jury trial constitutes a significant abridgment in the concept of due process.

Trials have four phases: Prearraignment; Arraignment; Investigation; and Judgment and Sentencing.

Prearraignment refers to a 72-hour period which begins at the moment of apprehension by police and ends with remission of the individual to a judicial branch official. The police, as agents of the court, may initiate an investigation following a complaint without the advice or consent of a judge and detain a suspect without an arrest warrant. Once detained, the police will continue to collect testimony and evidence which must be presented to the judge, along with the individual, during the prearraignment period. Because of traditional reliance on confessions and the lack of scientific methods of investigation, coercion by the police to elicit a confession is thought to be common during prearraignment. Although the Constitution<sup>3</sup> provides that a detainee must be immediately informed of his rights and the charges against him, and cannot be forced to testify without counsel, most individuals detained are not advised of these rights<sup>4</sup>.

Once detainees are brought before a judge, another 72-hour period arraignment begins. At this stage, the judge determines whether a crime has been committed and if sufficient evidence exists to continue detaining the accused. The judge may order further investigation by the police and/or conduct his own investigation, the latter being more common. The judge also assigns legal counsel if the accused has none. Because of significant limits on pre-trial release, a decision by the judge that sufficient cause exists to proceed with investigation normally results in the pre-trial detention of the accused individual.

Following the determination that a case has merit, the case enters the investigation phase (fase de instrucción). The judge and his law clerks begin a more elaborate investigative process, during which the prosecutor and defense may present additional written evidence and file motions related to jurisdiction, authority, etc. The law establishes a maximum period of 120 days to complete the period of investigation for felonies; however, this period in practice often extends for 2 to 3 years. During this time, the suspect remains incarcerated.

The judgment and sentencing phase (fase plenaria) is the trial itself. As noted, in El Salvador's Napoleonic or inquisitive model, the judge who directs the evidence collection also presides over this final phase in which a decision will be rendered. Thus, once a judge decides at the arraignment phase to pursue an investigation, not-guilty verdicts are rare in trials not involving a jury. To provide for greater procedural protection of human rights, Spain and Argentina among other countries have reformed their procedure code. These systems have a juez de instrucción and a juez de sentencia, thereby helping to eliminate any bias that may have arisen in the investigative phase from influencing a judgment based solely on the facts presented. Another reform increasingly being adopted is greater reliance on oral testimony. El Salvador's procedure code currently allows for oral testimony, but in practice, trials are based only on written evidence.

In deciding a case, the judge is not bound by jurisprudence or by legal precedent. Each case is decided on its merits, according to the way the particular judge reads the law at a particular time. Thus, decisions vary widely and may be at odds with other decisions in similar cases. In a jury trial, the judge need not advise jurors on points of law. Instead, the criminal procedure code states that juries will issue verdicts of conscience based on personal convictions.

Throughout the process, both defense and prosecution can make appeals (e.g., jurisdiction, habeus corpus). While some such appeals are clearly used as dilatory tactics, the majority appear to afford maximum protection of human rights to individuals accused of criminal acts. One issue of concern, however, is the mandatory consulta process. Under Salvadoran law, all decisions of first instance judges must be submitted for review (consulta) to second instance (appeal court) judges prior to issuance. The second instance judge reviews not only the legal basis of the judge's decision, but may consider other facts and can reverse the decisions of lower court judges, even if the verdict has not been formally appealed by either the plaintiff or defendant. This is done without consultation with the prosecution or defense.

#### **Detention and Penal Facilities**

The penal system consists of 3 penitentiaries, 12 penal centers and 3 medical facilities. Day-to-day administration of these facilities and the development of rehabilitation programs falls under the Ministry of Justice's Office of Penal and Reform Institutions. However, the Judicial Branch has a responsibility for continuing oversight of those sentenced to prison, i.e. determining which center they are taken to, monitoring their time served, providing legal assistance, etc.<sup>5</sup> The court has also established a detainee registry and 24 hour hotline for individuals wishing to locate detained parties.

### **E. Public Defense and Human Rights**

In 1980, with U.S. assistance, an Office of Public Defense was opened as part of the Procurador (Ombudsman) for the Poor. This Office closed in 1983 when the U.S. assistance ended, and was only reopened in 1986 through local currency counterpart support provided under the Judicial Reform Project. Currently, there are 108 public defenders with national coverage. However, the defense (whether a private attorney or a public defender) has little or no role in the investigation process, and cannot access any evidence without the judge's prior approval. Notwithstanding these procedural limits on their power, the Public Defender's program has provided counsel to approximately 4,000 individuals a year, with freedom for approximately 2,000 detained individuals being obtained.

Several other GOES and non-governmental entities exist to deal with human rights issues, including the Governmental Commission on Human Rights, the newly created Ombudsman for Human Rights, the Non-Governmental Commission on Human Rights and Tutela Legal, a human rights organization of the Catholic Church. The GOES Commission on Human Rights (CDH) monitors and investigates abuses, but then must refer all information obtained to the court or Human Rights Division of the Attorney General's Office for prosecution. The Commission has maintained a relatively low profile and has achieved moderately effective performance.

Constitutional amendments in 1991 created the Ombudsman for Human Rights in the Public Ministry, coequal with the Attorney General and the Solicitor General. This Office's role vis-a-vis other agencies, such as the Commission on Human Rights and the Attorney General, is still being refined. However, as explained by the Ombudsman, they will investigate abuses and monitor the performance of the justice sector institutions with respect to investigation and prosecution of human rights cases. It will also be responsible for monitoring those who have been detained to assure that the limit of 72 hours preventive detention is observed.

As noted, several private human rights groups exist. The most active are the Non-Governmental Commission for Human Rights, created with European donor support, and the legal aid office (Tutela Legal) of the Catholic archdiocese. Both organizations have been criticized for their less than accurate reporting and investigation of human rights cases. These entities are reinforced in the short term by the neutral-broker role of the United Nations contingent (ONUSAL), which arrived in mid 1991 to monitor human rights and later, the ceasefire. ONUSAL maintains a record of alleged violations.

### **F. Judicial System Performance**

A review of the Supreme Court's 1990-91 Memoria de Labores and a 1987 assessment of the Court<sup>6</sup> provide the only source of quantitative data on the efficiency of the court system. These reports provide data on case flow and on compliance with established procedural terms, two indicators of whether the system is resolving cases promptly while guaranteeing the procedural rights of the accused. The 1987 assessment, which looked at court statistics and case flow during 1986, found that the maximum time periods for completing

procedural steps were uniformly violated. For example, 53% of judges were unable to complete the investigative phase within the permitted 90-120 days. As a result, at the close of 1986, more than 37,500 criminal cases were pending. At the appellate level, there were more than 13,300 pending cases.

During the year from July 1990 - June 1991, over 13,000 criminal cases were initiated; of these, only 1,147 cases were resolved. Due to the lack of reliable court statistics, we are unable to determine how many of the nearly 12,000 unresolved cases remained open due to procedural delays, and how many were pending due to the lack of a suspect. The latter category is believed to be the majority, contributing to a total reported case backlog of nearly 79,000 cases as of June 1991.

One apparently reliable statistic, however, is on unsentenced detainees. The Supreme Court reports that nearly 80% of the prison population, or approximately 3,000 individuals, are being held in detention facilities awaiting sentencing or trial. The period of time already spent in jail awaiting trial and/or sentencing for some detainees is longer than the prison sentence would be if found guilty of the offense<sup>7</sup>, a serious violation of due process and human rights. Deficiencies lie both in public defense and in the court system. The initiation of mobile courts in 1989 was intended to address this problem. Although it is too early to have reliable data on the results of these mobile courts, the Supreme Court states that the backlog has been reduced<sup>8</sup>.

Not surprisingly, the public has little confidence in the system of justice. A public opinion poll<sup>9</sup> financed by USAID asked judges, lawyers, political leaders and ordinary citizens their opinion on the judicial system. The results indicate that the general public lacks basic information on the justice system, and believe that the judicial system is too slow (67%), overly bureaucratic (51%), and corrupt (56%). Judges interviewed criticized the system for lack of training (57%) and felt that lawyers lacked adequate preparation (43%). They also felt the system was too slow (86%) and that there was too much bureaucracy (73%).

#### G. The Civil Code and Regulatory Framework

Due to the high political visibility of criminal acts associated with human rights violations, U.S. assistance to improve the administration of justice has been largely directed at the criminal justice system. However, the broad legal, regulatory and juridical (LRJ) environment is also of concern, and ongoing and planned U.S. assistance efforts will help Salvadorans address the most critical to sustainable economic growth. These issues include: property registration and titling; intellectual property rights; business, bank and environmental regulations; and public record keeping. Procedurally, civil justice faces some of the same problems as the criminal justice: access of the poor and lack of timeliness. In the area of legal reform and record-keeping, some of the more pressing problems are as follows:

Maintenance of Public Records. Claims to identity, to land ownership, and to contractual obligations and debts are among those items publicly recorded by a government, often at the municipal level, for a variety of commercial and tax reasons. The process by which recording is done, as

well as the fee for this service, must be sufficient to ensure a thorough job, but not so lengthy or expensive as to be exclusive. Public records are the basis of civil suits as well as criminal complaints. A reliable, comprehensive and more easily accessible system must be established, as well as the recreation of public records destroyed during the conflict.

Property Registry and Titling. Proof of land ownership is of particular concern in a small, agricultural country such as El Salvador. Land titles are recorded in the Mortgage and Real Estate Registry operated by the Ministry of Justice in San Salvador. The recording process can be lengthy, requiring the paid assistance of a lawyer or much patience, personal intervention and time away from the farm. Revisions are needed to improve the process. Cognizant of the need, during 1990 the GOES established the Institute for Liberty and Progress to administer a "Social Lands Registry", the latter being a special register for low-value urban properties. During its initial stages of operation, the Institute will focus on establishing a simplified system for registering urban residential properties of modest value. Technical assistance from the Peruvian Institute for Liberty and Democracy is being provided. In response to similar problems with registration of rural properties, the GOES has indicated its plans to utilize the same process for titling rural properties that will be sold to former combatants and campesinos pursuant to the Peace Accords.

Business Regulation. The Commercial Code dates from 1941 and is in need of modernization. Compliance with time-consuming and costly bureaucratic requirements for small businesses and landowners in order to participate in the formal economy stifle entrepreneurial spirit and drive businesses underground and away from the tax rolls. The subjective nature of government approvals also turns away potential economic activity. The IDB is conducting an analysis of the Commercial Code as part of the preparation of its proposed Investment Sector loan package.

Environmental Regulation. El Salvador has not yet developed a legal framework which reflects environmental hazards. Businesses engaged in hazardous practices may do so without notice to environmental agencies. For instance in 1990, a soap company buried a large quantity of corrosive sulfur trioxide on its property in an urban area without regard to groundwater contamination or potential explosion<sup>10</sup>.

El Salvador has riparian water law, where a landowner may use the banks of a watercourse, but water flowing across or under a property is a public good regulated by the state. Water pollution from agriculture, industry, and sewage represents a considerable hazard to health. To obtain an injunction against point-source polluters is an involved and expensive process similar to a civil suit, and has never been done to date. The construction permit process in metropolitan San Salvador now requires adequate stormwater drainage in new construction, but nowhere does the law deal with whether or which contaminants may be disposed of through the sewage system.

Intellectual Property. El Salvador is not a signatory to the Berne Convention which provides for reciprocal registry of trademarks and copyrights. As a result, music and text, especially audio and video tapes, are used and reproduced in El Salvador without recognition of royalties due

the authors. Conformance to international standards for intellectual property rights is a condition in the FY 1992 ESF Policy Reform Program.

**Bank Regulation.** The Superintendency of Banks, formerly part of the Central Reserve Bank, has historically been a weak regulator. The 1991 Financial Sector Law made the Superintendency an independent body with authority to make cease and desist orders against institutions in violation of financial standards; USAID technical assistance is helping to strengthen the Superintendency. Prudent supervision of financial institutions protects depositors from undercapitalized or overextended companies.

#### IV. UNITED STATES ASSISTANCE TO DATE

The U.S. assistance program in administration of justice from 1984 to the present has consisted of policy dialogue efforts reinforced by conditionality in the ESF Policy Reform Program, targetted project assistance administered by USAID and the Departments of State and Justice, and USIA international visitor and worldnet programs. These programs have enabled the GOES to establish a public defenders office, a specialized criminal investigative unit and forensic laboratory, special prosecutor divisions for human rights abuses and drug trafficking, and an independent anti-narcotics enforcement unit reporting to the President, through the Anti-Narcotics Commission. U.S. assistance has also fostered a recognition that more fundamental reforms are needed to improve the administration of justice and a political commitment to these changes, such as revisions to the criminal and criminal procedure code and greater judicial branch independence.

**A. Policy Dialogue:** U.S. policy dialogue efforts related to the administration of justice have focussed on the problems of selective justice and the immunity of the military and economic elite from prosecution. We have encouraged the GOES to undertake structural reforms to reduce military influence in criminal investigations and political party influence over Supreme Court appointments and decision making. To support such efforts, the FY 1992 Policy Reform Program included conditionality related to reducing the politicization of the court system and to the development of a legislative agenda for improving the administration of justice.

Constitutional reforms ratified in 1991 and 1992 eliminate the role of the military in overseeing the public security forces and broaden the representativeness of the court. Importantly, we have also emphasized the need for the GOES to take actions to demonstrate that change is afoot, as a means for restoring public confidence in the judicial system. Actions taken during 1990/91 to investigate and bring to justice members of the economic elite and military for crimes committed against the state and individuals (e.g., bank fraud and the Jesuit murders) have sent the first such signal.

**B. Project Assistance:** Over \$15,000,000 in direct foreign assistance and an additional equivalent amount of local currencies generated through the Policy Reform Program have been used to strengthen Salvadoran criminal investigative capacity, protect key participants in legal proceedings, and improve judicial administration and training.

The USAID Judicial Reform Project has provided assistance since 1984 in the analysis of the criminal law, the organization of the judiciary, and selected civil law matters (e.g., family code); the development of a comprehensive agenda for legal reform; and technical assistance to assist Salvadorans in the drafting of revisions to the criminal and criminal procedure codes and laws concerning the organization and operation of the judicial system (e.g., the judicial career law and the law creating the National Council on the Judiciary). This Project also funds technical training for judges, prosecutors, and public defenders, improvements to court administrative practices, and efforts to improve legal instruction in the public and private universities. The reopening of the Public Defenders Office and expansion of it and of the Attorney General's Office are a direct result of U.S. project assistance.

Financing to establish the Commission for the Investigation of Criminal Acts and train its members in scientific methods for gathering and analyzing evidence was also provided under the Judicial Reform Project. This Commission has conducted over 150 investigations annually since its creation, as well as trained judges and other legal personnel. By increasing reliance on physical evidence and greater conformance with constitutional norms regarding defense counsel, the incidence of human rights violations and miscarriages of justice can be significantly reduced. A separate activity, involving the Departments of State and Justice, is continuing the provision of U.S. technical assistance and training to strengthen professional investigative skills of the Commission and continuing USG policy dialogue efforts are supporting further efforts to fully civilianize the Commission and establish a National Civilian Police.

The State Department INM and the Drug Enforcement Administration have provided financial assistance to the GOES to equip and train the newly created Executive Anti-Narcotics Enforcement Unit. This unit made two major arrests in 1991 for drug trafficking, including the seizure of a 3 ton cocaine shipment -- the largest seizure of cocaine thus far in Central America. Special prosecutors within the Attorney General's office handle narcotics cases.

A separate project, administered by USAID, is strengthening the Salvadoran Federation of Bar Associations to promote a more active role of the legal community in building a new legal culture and legal awareness in El Salvador.

#### V. WEAKNESSES IN EL SALVADOR'S JUDICIAL SYSTEM

El Salvador's judicial system lacks the independence, professionalism, and public confidence essential for a peaceful, stable democratic society. Sustainable economic growth and a stable democracy depend on a legal system which affords individuals the security to pursue a livelihood with the knowledge that when disputes arise, they can be resolved fairly and peacefully through the legal system. Delays, inequitable treatment, and the dominance of political, economic or military interests in judicial decisions in El Salvador have undermined the integrity of the Salvadoran justice system. The poor, suffering from a history of neglect and limited access, have been denied their Constitutional right to defense counsel; Constitutional and procedural norms on which justice is theoretically based are systematically violated; and the

military and economic elite have until recently enjoyed immunity from criminal investigation and prosecution.

El Salvador's judicial system suffers from legal and policy deficiencies, attitudinal/historical factors, a weak and fragmented judicial reform movement, institutional deficiencies in key justice sector institutions, gaps in the human resource and knowledge base, and inadequate financial support for justice sector institutions.

#### A. Legal and Policy Deficiencies

The Peace Accords, constitutional reforms of 1991/92 and the GOES' legal reform agenda together constitute a comprehensive policy framework for judicial reform. However, important areas remain where legislation and policy decisions are required. For example, a clearer definition of the Attorney General's role in criminal investigations is needed, particularly vis-a-vis the role of the police and judges. At a minimum, this requires revision of the organic law of the Attorney General's Office. Revisions to the law creating the National Council on the Judiciary are needed to broaden representation, as called for in the Peace Accords, and both legislation and policy decisions need to be enacted to improve the judicial career and implement a modified judicial appointment process. Additionally, legislation is required to:

- formally establish the Commission for the Investigation of Criminal Acts as an independent, civilian staffed agency; and
- establish Public Defense as a permanent function of the Public Ministry.

Comprehensive revisions to the criminal, criminal procedure, civil, and commercial codes are also needed. Revisions to the criminal procedure code will be required to conform the code to the 1983 Constitution, as amended in 1991/92, as well as to expand protection of human rights and to improve judicial efficiency. These latter reforms, consistent with the GOES' legal reform agenda, would include modifications to, inter alia: eliminate extra-judicial confessions, expand use of the jury system and oral procedures, place investigative and sentencing functions with separate judges, improve compliance with stipulated time periods, and modify the appeals process. Experience from other countries engaged in legal reform (e.g., Guatemala) demonstrate the need for extensive consultation with the legal community and political leadership prior to enactment of reforms, in order to prevent reforms from being stillborn.

The Civil Procedure Code, promulgated over 100 years ago, and the Commercial Code also need revision, to address new areas of concern and to eliminate legal constraints to investment and private sector growth. These areas include bank regulation, trade matters, and other business and property regulations. Additionally, Salvadoran studies<sup>11</sup> have suggested reforms to the family and labor codes and to protect the environment, among others. Procedural weaknesses also exist in recordkeeping, filing procedures for civil suits and in seeking injunctions.

Policy decisions are also needed concerning salary levels, the design of the judicial school, and the implementation of a judicial career service. Despite pay increases in 1989 and 1991, judges continue to earn comparatively low salaries in relation to attorneys in the private sector. Moreover, they face constant threats against their life and property. Prosecutors and public defenders earn even less, with a prosecutor earning the equivalent of \$150 per month, and public defender earning \$300 per month. These salaries approximate those of secretaries in the private sector. Moreover, these two agencies are dependent on support provided for operating costs provided through the ESF local currency generations.

Improvements in the judicial career law and its implementation need to be effected to afford judges more security in their jobs and shield lower court judges from the threat of adverse actions against them by the Supreme Court, such as arbitrary transfers to remote regions of the country or dismissal without benefit of an open hearing. Supreme Court justices also need to be protected from arbitrary dismissal. Although the Constitution states that they can only be removed for cause, the lack of a definition of cause leaves this open for substantial interpretation by the Assembly. Prosecutors also require greater career stability and incentives to resist external pressures.

Although public records are a prosaic element of the administration of justice, proof of a crime, especially technological and property-related, depends upon the existence of public records. With the destruction of municipal offices, the alcaldías, during the conflict, many records recorded at this level of government were lost. However, as the country moves towards an enduring peace, reconstruction of these records and establishment of a reliable system for recording licenses, deeds, trademarks, etc., is essential to providing an adequate legal and regulatory environment for economic growth and diversification.

#### B. Attitudinal Constraints<sup>12</sup>

Progress towards an impartial and effective judicial system is complicated by long-standing patterns of military domination and the distribution of benefits skewed to serve the interests of the economic and political elite. The influence of military and economic elite in judicial decisions, and the populace's general passivity to it, is but one manifestation of the attitudinal constraint impeding profound changes in how justice is administered in El Salvador. Popular support and the ensuing political commitment to concepts such as equality before the law, transparency in judicial decisions, due process, and safeguards of human rights have yet to be widely accepted as the norm against which the judiciary is judged. Worse still, citizens lack a basic understanding of their rights and responsibilities in a democratic, law-abiding society.

International concern over the human rights situation in El Salvador has increased public awareness of the most egregious violations of internationally-respected human rights. However, voices within society demanding change, although increasing in number, are still weak. The legal and academic communities, which in many countries serve as centers for critical thought and analysis on the judiciary, has not played this

constructive role. Efforts are underway to rescue the university system from decline, and improve the quality of legal instruction and expand research programs. Moreover, a number of NGOs focussed on improving the legal framework and justice system have emerged. As a result, both the depth and frequency of debate on justice sector reform is increasing.

The legal community's inaction is perhaps of more concern than attitudes of the public at large. Absorbed with the civil conflict, and themselves products of a deficient legal education system, the legal community has not played a leading role in the emerging reform movement. Able to uncover and publicize abuses, they have remained silent as lower court decisions have been overturned without legal basis by higher courts and in the face of thinly veiled abuses of the Court's power to suspend attorneys who have chosen to speak out against the system. Several recent initiatives of the Bar -- submission of legislation on the National Council on the Judiciary and sponsorship of a seminar on Human Rights -- may, however, mark a break from the past and a new more proactive role for the Bar Association. Political commitment to a comprehensive justice sector reform is increasing, in part a result of U.S. policy dialogue efforts and our ESF policy reform program. The prosecution of several long-standing and internationally publicized human rights cases, with jury verdicts against active duty military officers, signalled that immunity for the military may be over. Similarly, the GOES has pursued cases against the economic elite for outstanding loans and bank fraud.

### C. A Weak and Fragmented Judicial Reform Leadership

The year 1991 marked a decisive shift in the impetus for justice sector reform, with Salvadorans from both the public and private sector assuming a proactive role in promoting reforms. The unquestioned leader to date is the Ministry of Justice, which has with USAID support established a technical support unit charged with preparing both specific and comprehensive reforms to the criminal procedure and criminal codes. Experts in criminal and constitutional law, supported by numerous visiting experts, are assisting the Ministry to develop a new legal framework for criminal justice in El Salvador in consultation with the legal community and political parties.

Several private, non-governmental forces for reform have also emerged. The open debate on the economic and social injustices underlying the civil crisis, precipitated by President Cristiani's call for a negotiated settlement to the war, has fostered interest and support of private and non-governmental leadership in judicial reform. The Institute for Juridical Studies (IEJES), the Center for the Application of the Law (CESPAD), both with ties to the leftist Convergencia political grouping, several Salvadoran think tanks (CENITEC and CEDEM), as well as the Foundation for Technical Support to the Judiciary (FUSAJ), an NGO with links to the business community and the court system, began in 1991 to more aggressively promote debate on systemic deficiencies, injustices and judicial reform. The Federation of Bar Associations as well as individual lawyers and judges have also joined the reform movement, but are limited in their actions by the ability of the Supreme Court to use its sanctioning authority to censure those who criticize the Court.

Through U.S. assistance, the Council of Law School Deans, which represents 16 law schools including the National University, is also becoming a more active player. The breadth of opinion and the academic status of the Council permit it to examine policy alternatives and to consider new ideas without the same pressures felt by the Bar or practicing attorneys. Currently, the Council is being assisted in the publication and distribution of a quarterly law journal and activities to upgrade the quality of legal instruction. It has also expressed interest in support for action oriented legal research and debate.

The most powerful actor in the justice sector, the Supreme Court, initially opposed to any reform, has increasingly taken a neutral to mildly supportive stance, except in areas where a reduction in the Court's authority has been at issue. For example, the Court has opposed changes to the composition of the National Council on the Judiciary which would break its control over judicial appointments, but has been neutral to openly supportive of reforms to the criminal procedure code. Continued dialogue with the Court, as well as increased public and political pressure for reform, will be needed to improve the Court's receptivity to reform.

The emergence of these distinct currents of thought on judicial reform signals a shift from international concern over human rights abuses directing the reform to a Salvadoran-led effort focussed on establishing an effective and impartial system for administering justice. Interaction and coordination among these groups is limited, but growing. Mounting a consensus among these leaders of Salvadoran opinion is crucial to achieving the broad public support and political commitment to long-term justice sector reform. Communication and opportunities for the interchange of opinion need to be augmented. Deficient legal preparation and imperfect understanding of successful legal reform movements in the Hemisphere and Europe still constrain an informed debate and consensus among the parties.

#### D. Institutional Constraints

The expeditious implementation of reforms enacted by the Assembly would improve the professionalism, independence and integrity of the judicial system. However, quick action is limited by institutional constraints, many of which have led to the overwhelming backlog and inequitable and untimely resolution of cases that characterize the Salvadoran justice system. These institutional constraints include: deficiencies in the planning capacity of justice sector institutions; inadequate coordination among justice sector institutions; antiquated, inefficient case management and tracking systems; poor administration of the courts; and inadequate technical support for judicial personnel.

Planning Deficiencies: The absence of reliable statistical information concerning the volume and kinds of cases in the courts and their disposition impedes the court not only in its management of cases, but in its organizational planning. Population growth and internal migration are a contributing factor to court congestion, particularly in the metropolitan San Salvador area. The court, as well as prosecutors and public defenders, need information on the volume and types of cases in order to make such basic planning decisions as where to construct new court houses and offices, how to

efficiently allocate work among existing staff, and where additional personnel are needed. In the absence of such information, decisions are made on less relevant factors. For example, the court currently bases its personnel allocations decisions on the type and location of court, rather than the volume of cases. Thus, some courts have too many employees while others have too few.

Reforms related to the procedure code and institutional roles will create new planning burdens as they are implemented. In the transfer of institutional responsibilities for criminal investigation, for example, from the military police to the civilian police and attorney general, plans must be developed to ensure a smooth transition. New personnel descriptions, special training programs, and other organizational changes will be necessary. Coordination among the justice sector institutions will also be critical. Training in oral trial techniques will also be needed for prosecutors and public defenders. Because of the possibility for expanded use of oral hearings in the existing code, such training programs could begin now, and later expanded when a new code is promulgated.

Inadequate Coordination: Unlike other Central American countries, El Salvador lacks a National Coordinating Commission or similar body to oversee the planning and implementation of the reform program. The lack of coordination, for example, between the courts and the Public Defenders Office, or between the prosecutors and the police, result in denial of an individual's right to early counsel, or delays in the resolution of cases. As implementation of the reform program proceeds, even greater coordination needs will arise.

Case management and tracking systems: A major deficiency revealed by a 1987 study<sup>13</sup> of the court system was the lack of a systematic means for assigning and tracking cases. In criminal, civil, mercantile, labor, and landlord/tenant cases, the parties, lawyers, police and other governmental agencies actively select specific judges to handle their cases. This easy "judge shopping" process enables some individuals to obtain a judge friendly to their case, contributing to a serious imbalance in case assignment and court congestion. In San Salvador, a special office for the Receipt of Complaints (Secretaría Receptora de Demandas) was created in 1989 in an attempt to more evenly distribute cases and limit judge shopping. The Office, however, only handles civil cases and frequently assigns cases to judges based on requests from lawyers, rather than a lottery system or other objective criteria (e.g., caseload).

The Public Defenders Office and Attorney General also lack internal systems for case management and tracking system. This has contributed to imbalances in case workloads of individual prosecutors and defenders, resulting in problems of compliance with established time periods, including statutes of limitation and detention periods. The Public Defender's Office has, with USAID assistance, established a case management system which, when fully implemented, should help resolve problems. A similar system needs to be established in the Attorney General's Office.

Court Administration: There are no established guidelines or manuals for the administration of any level of the court system. Most judges

establish their own informal, unwritten procedures, leading to confusion among the staff and other participants in legal proceedings. The case files themselves are largely unprotected, stacked on the floor or on the tops of file cabinets, where they can easily be misplaced, damaged, or stolen.

Judges must also dedicate time to administrative tasks such as personnel matters, supply concerns, notification problems, lack of jurors, equipment breakdowns, etc. While a small administrative office exists within the Court in San Salvador, it is not yet adequately addressing the numerous administrative tasks associated with court administration, particularly in areas outside of the capital area.

**Technical Support:** The Ministry of Justice is responsible for publishing up-to-date copies of all legal codes and laws, while the Supreme Court is responsible for publishing decisions of jurisprudential value. While jurisprudence isn't binding, the dissemination of it is important to build consistency in the interpretation of the codes and sentencing decisions. USAID assistance has enabled the Supreme Court to resume publishing its Legal Gazette, but GOES financial limitations have continued to impede the publication of up-to-date legal codes and indexes by the Ministry of Justice. As a result, lawyers, public defenders, prosecutors and judges must search through the daily issuances of the Diario Oficial to research the current status of the law. To remedy this situation, the Supreme Court has, with private sector support, compiled the many changes to the criminal, criminal procedure and civil codes in a computerized library that is now being used in the metropolitan San Salvador area. Expansion of the system to the other areas of the country for the use of court personnel will require additional financing. A similar system, perhaps built on the Court's, needs to be developed for serving the larger legal community and the public. As in the United States, this may be a service that the private sector or a university could offer for a fee.

#### **E. Human Resource and Knowledge Constraints**

Despite the large number of law schools, a lack of qualified human resources constrains the adequate administration of justice. Judges and justices of the peace, court support and administrative personnel, prosecutors, public defenders and practicing attorneys are generally inadequately prepared to discharge their responsibilities. The quality of legal training afforded by public and private universities needs major improvement--the curriculum needs to be reformed, libraries established, teaching skills improved, and the physical plant of the largest university, the National University, improved. Without exception, every foreign expert that has visited El Salvador, has cited inadequate legal training as a principal constraint.

Recently established in-service training programs for judges, prosecutors, and public defenders (the latter two established with USAID project assistance) are helping to bring up skill levels of personnel now working in the system. The programs also inform these lawyers about reform movements and current legal thinking in other parts of the world<sup>14</sup>. A visiting professors program, also financed by USAID, is improving law professors knowledge of the law and teaching methodologies, as well as contributing to revisions to law school curricula.

Programs for legal professionals outside the system (e.g., professional seminars run by the bar) are virtually non-existent, meaning that many private lawyers are not kept abreast of changes to the codes and laws. A USAID financed project with the Inter-American Bar Foundation is helping establish a continuing legal education program through the Salvadoran Federation of Bar Associations.

The fact that most Salvadorans lack knowledge of their basic rights in criminal and civil actions is a major constraint to building public support for rectifying problems in the administration of justice. Incipient programs of legal education operated by the Federation of Bar Associations, law schools and NGOs need to be expanded to attain greater coverage. The Ministry of Justice is responsible for certain public awareness and information activities, but has never mounted an effective campaign to teach basic legal rights.

The human resource and knowledge deficiencies will become an even more formidable constraint as the implementation of the reform program proceeds. Revisions to the criminal procedure code, and indeed, even expanded use of current provisions for oral procedures, will require training for prosecutors and public defenders in oral trial skills. The adoption of new criminal and criminal procedure codes will, moreover, require a massive re-training of judges, judicial clerks and secretaries, prosecutors and public defenders.

The Chapultepec Peace Accords shift oversight responsibility for the National Judicial School from the Supreme Court to the reconfigured National Council on the Judiciary. Once decisions are reached and a law promulgated reforming the composition of the National Council and clarifying the type of training to be offered in the judicial school (e.g., preparation for candidates, in-service training for officials once appointed, etc.), the Council will need to conduct a training needs analysis, develop a curriculum, and identify qualified professors. Pursuant to the Chapultepec Accords, the Training School will train prosecutors as well as judges, and their special needs must be accommodated.

Finally, the new national civilian police and the expanded, civilian staffed Commission for the Investigation of Criminal Acts, will require training in proper police procedures and conduct, and in scientific physical evidence collection procedures. A considerable amount of training has already been provided through the Department of State/ICITAP program, but more expertise is needed in these areas. Moreover, orientation training in forensic science and the collection and protection of physical evidence need to be provided to judges, prosecutors and public defenders, so as to increase reliance on physical evidence instead of confessions.

#### **F. Financial Constraints**

The Judicial Branch, Attorney General, Public Defense, prisons, and police suffer from poor financial planning and, in several cases, are seriously underfunded. A limited analysis of the financial situation of the key actors in the judiciary indicates that salaries for these jobs need to be increased concurrent with efforts to professionalize the judiciary. More

resources also need to be devoted to equipment for basic operations (e.g., computer equipment and legal libraries) and support staff. For example, the current ratio of prosecutors to secretarial staff in the Attorney General's Office is inadequate; each secretary, equipped with only a manual typewriter, is responsible for the typing and filing of over 1,000 cases simultaneously. Adequate office facilities for the public defenders and prosecutors also need to be established throughout the country.

Negotiations of our FY 92 ESF Policy Reform Program resulted in GOES agreement to carry out an assessment of existing resource uses and long-term budgetary requirements to ensure adequate criminal investigation, prosecution, court operation, and public defense. Resource shifts, as well as increases in the operating budgets of several agencies, will be needed. The GOES also agreed to base its CY 1993 budget request for the judiciary on the results of that assessment.

## VI. U.S. ASSISTANCE OBJECTIVES AND STRATEGY

### A. U.S. Assistance Objectives

El Salvador's justice system lacks the independence, professionalism, and public trust essential for a peaceful, stable democratic society. As a result of extensive USG policy dialogue and project assistance, and the peace process, El Salvador now has in place a much improved constitutional and policy framework for achieving a comprehensive reform of the justice system. Numerous constraints exist to implementing this reform program, however -- gaps in the legal and policy framework, attitudinal factors, a fragmented and weak legal reform movement, institutional weaknesses in the justice sector, human resource and knowledge deficiencies, and financial limitations of the country. Too, El Salvador's outdated, ineffective civil judicial system and overly bureaucratic and restrictive legal and regulatory environment continues to constrain access to economic and social institutions and, in turn, to sustainable economic growth. To overcome these constraints, external assistance will be required.

The USG has and will continue to play a crucial role in facilitating the reforms needed to the Salvadoran justice system if all citizens are to be afforded their constitutional right to due process and equality before the law. The latest statement of U.S. foreign policy on post-war El Salvador states that,

"Consolidating peace, democracy, respect for human rights and national reconciliation will be as challenging and complicated as the process of defending democracy and negotiating a final agreement. . . U.S. policy in El Salvador (during the post-war period) will be founded on five principles: (1) full support for the implementation of the peace accords; (2) support for democratic institutions, the rule of law and judicial reform; (3) promotion of national reconciliation and an end to political violence; (4) national reconstruction, economic opportunity and growth; and (5) support for the regional military objectives of Esquipulas II."<sup>15</sup>

Consistent with this emphasis, the A.I.D. Central American Strategy for 1991-2000 has as its first priority the development of stable democratic societies. Three of the Strategy's ten guiding principles address the development of democratic institutions, and emphasize USAID's role in strengthening the judicial, legislative and electoral systems through increased professionalism, heightened accountability and civilian oversight. The U.S. Interagency Strategy for the Administration of Justice in El Salvador is consistent with the priority accorded in these policy statements to improving the independence, professionalism and effectiveness of the judiciary and police.

The goal of our assistance to the justice sector is to strengthen democracy through reforms to the justice system to afford all citizens due process and equality before the law. Our strategic objective is to improve the professionalism, independence and integrity of El Salvador's justice system. USG assistance during the next five-year period, 1993-1997, will be focussed on: supporting Salvadoran leadership of the reform movement, deepening public support for judicial reform, and strengthening the institutional capacity of justice sector institutions to implement reforms. While extended U.S. assistance may be needed, the next five years are critical. The ability of the leaders of the reform movement to build upon the momentum generated thus far and to address legal, policy and attitudinal constraints will depend to a large extent upon the justice sector's capacity to quickly implement reforms already adopted. Expectations and public confidence in judicial reform will be dashed if the reforms never lead to any tangible improvements.

While special emphasis will be given to the criminal justice system, increased efficiency and timeliness in civil matters before the courts will also result from enhanced institutional capacity of justice sector institutions. U.S. assistance will also target El Salvador's legal, regulatory and juridical (LRJ) environment. LRJ, which deals with the bodies of law and regulations outside the criminal code, is crucial to investment and economic growth and will be a crosscutting theme in policy dialogue and the USAID project portfolio. The most important reforms in this area concern record keeping and procedural simplification, particularly with respect to land tenure, intellectual property rights, and banking and environmental regulations.

Progress in improving the professionalism, independence and integrity of the judicial system is more likely to occur in occasional quantum jumps rather than a smoothly rising curve. Indicators of progress will include: improvements in the timeliness of public counsel provided to criminal defendants; increase in the percentage of criminal cases taken to judgment and a decrease in the average time cases remain open; increased use of physical evidence and oral testimony as a basis for court decisions; and improvements in the opinion of the Salvadoran people of the integrity and effectiveness of the justice system.

Milestones in the comprehensive reform of the Salvadoran criminal justice system which we will monitor will include:

- Enactment of legislation formalizing the public defender's office and the assumption of recurrent costs for the program by the GOES;

- Presentation to the Assembly of draft laws and a plan for the civilianization of the Commission for the Investigation of Criminal Acts and adoption of the law;

- Specific reforms to the criminal procedure code enacted by the National Assembly, including the reduction of the administrative detention period, reforms to the appeals procedures, establishment of release pending trial, and elimination of extra-judicial confessions;

- Reconfigured National Council on the Judiciary (NCJ) established, revisions to the judicial career law enacted, and judicial appointment process based on merit established;

- National level Justice Sector Working Group established, increased budget allocations to the Public Ministry, and a coordinated justice sector reform action plan with specific targets and calendar developed;

- Replacement of National Police (military dominated) with first class of graduates from Police Academy in designated departments of the country;

- The new National Civilian Judicial Training School under the NCJ established;

- Expanded role of the prosecution in criminal investigations;

- Broad public review and presentation to the National Assembly of comprehensive revisions to the criminal, criminal procedure and penitentiary codes;

- Appointments to the Supreme Court in 1994 will be more broadly representative of Salvadoran society as a result of the new appointment process;

- Transition to National Civilian Police completed and National Police abolished; and

- Implementation of improved criminal caseload management systems in the courts and Public Ministry and increased availability of reliable judicial statistics.

**Milestones in the LRJ environment that will be monitored are:**

- Simplified registration and titling procedures in place for titling low-value urban residential property. Expansion of this social registry to include rural properties.

- Adoption of laws, regulations and procedures to mitigate land uses which result in severe soil erosion or pollution.

- Strengthened role of the Superintendent of the Financial Sector and enhanced regulations and monitoring procedures.

- Completion of a study on record-keeping and implementation of recommendations.

- Modifications of laws to provide for adequate protection of intellectual property rights.

#### B. The Strategy

Accomplishment of the stated U.S. strategic objective -- improving the professionalism, independence and integrity of Salvador's justice system -- will require a coordinated effort of all U.S. agencies working in El Salvador (the Department of State, the ICITAP program of the Department of Justice, USIA, DEA, and USAID).

Our policy dialogue efforts over the last decade have emphasized greater respect for human rights, the building of sustainable democratic institutions, civilian oversight of the police and government institutions, independence of the judiciary, and legal reform to improve the administration of justice. As a result, Salvadorans have taken first steps toward eliminating some of the inequities and injustices that led to the civil conflict: establishment of a first rate investigative unit under the direction of the Ministry of Justice; investigation and prosecution of cases against military officers and the economic elite; promulgation of a judicial career law and revisions to the judicial appointment process to improve judicial branch independence. Agreements included in the Peace Accords will carry these efforts forward by establishing a civilian police and broadening participation in the National Council on the Judiciary, the agency responsible for developing candidate slates for judicial appointments.

Consistent with the latest statement of U.S. foreign policy in post war El Salvador, policy dialogue efforts during the 1993-97 period will focus on the implementation of the Peace Accords and continued progress on improving the legal and policy framework for ensuring due process and equality before the law. Specifically, we will encourage the GOES to establish a competent, civilian directed national police, expand the Commission for the Investigation of Criminal Acts (i.e., the SIU and forensic lab) and staff it with civilians, and enact comprehensive revisions to the criminal and criminal procedure codes pursuant to the timetable established in their legal reform agenda. The FY 1992 ESF Policy Reform Program includes measures related to these continuing concerns, as well as increased budget support for judicial sector institutions. FY 1993 and future year conditionality will build on the FY 1992 program and be designed to maintain the resolve of the GOES in pursuing judicial reform.

U.S. projectized assistance through 1997 will be focussed on strengthening Salvadoran leadership of the incipient reform movement, deepening public support for judicial reform, and improving the institutional capacity of justice sector institutions. During this period, an estimated \$20.5 million in U.S. ESF assistance will be required, in addition to assistance now being negotiated by the Department of Justice for police

assistance and a continuation of INM and DEA support at approximately current levels. Achieving the comprehensive reform needed in Salvador's justice system will probably require continued U.S. support beyond 1997, given the magnitude of the task. Thus, an evaluation of accomplishments under this strategy and Salvadoran resolve to the reform program will be planned in late 1995/1996.

The Interagency Working Group on Democratic Initiatives and Administration of Justice will be used as a forum for coordinating activities of the various U.S. agencies working in El Salvador, which are planned as follows:

**C. Agency Programs under the Strategy**

**1. USAID**

Judicial Reform II: The planned FY 92 Judicial Reform II project, with estimated life of project funding of \$15 million, will constitute the centerpiece of USAID's assistance in the judicial sector. Building upon the lessons learned in our Judicial Reform Project that will be virtually completed by the end of CY 1992, the new Project will accelerate and deepen the judicial reform process so that citizens' due process and equality before the law are guaranteed. The Project will form a part of a sector-like program, implemented through judicial sector conditionality included in our ESF Policy Reform Programs and targeted technical assistance, training, and commodity support through this new Project.

The new Judicial Reform II Project, described in greater detail in the Project Identification Document, will strengthen the incipient reform movement in El Salvador, deepen public support for judicial reform, and strengthen justice sector institutions. By the end of this five-year project, Salvadorans will be afforded greater guarantees of due process through legal and institutional reforms; citizen expectations that criminal matters before the courts will be resolved in a timely manner and that they will have access to public defense will be increased; and institutional roles, functions and resources allocated to the justice sector will have been redefined in accordance with constitutional reforms and the Peace Accords.

Judicial Reform II will strengthen the capacity of leaders, and the organizations they represent, to analyze issues, engage a broad spectrum of the Salvadoran legal community and populace at large in the design of solutions, and actively implement a justice sector reform program that merits the confidence of the citizenry. To ensure a wide range of participants and political views in this phase, the Project will work with both public and private institutions. At the same time, the Project will assist the courts system, prosecution, and public defense to implement reforms already adopted, as well as those yet to come. A Justice Sector Working Group, to be formed under the Project, will be responsible for carrying out a coordinated action plan.

Support for ICITAP and USIA Programs: The success of USAID efforts under Judicial Reform II will depend on expanded ICITAP and USIA programs. To ensure that adequate funding is available, the USAID will

transfer up to \$5.5 million in ESF resources to support these programs over the 1993-97 period. Descriptions of the activities are contained in the sections that follow on the Department of Justice and USIA.

Improvement of the Legal, Regulatory and Juridical Environment:  
USAID will also address important areas of the legal, regulatory and juridical environment. We will finance technical assistance and studies in priority areas, such as record keeping and procedure simplification, beginning with the land registry and titling, as well as in the area of business, banking and environmental regulations. Generally, these studies will contribute to the aims of a specific economic assistance project supported by USAID or will facilitate Salvadoran efforts to obtain other donor assistance. Funding will be provided through existing projects or PD&S.

The Federation of Bar Associations and Legislative Assembly Strengthening Projects: Two other USAID projects, Legislative Assembly Strengthening and the Federation of Bar Associations Projects, will complement activities under the Judicial Reform II Project. The Legislative Assembly Strengthening Project, to be amended to add \$1.0 million in additional funding and extend the Project through September 1994, will strengthen the Assembly's analytical capability and facilitate prompt and thorough consideration of legislative reform proposals presented by the Executive Branch. Special emphasis will be given to working with the Legislation and newly formed Justice and Environmental Committees. The Federation of Bar Associations Project, which runs through September 1994, supports continuing legal education and development of the Federation as an independent, professional association. Continued support for the Federation after the ongoing project expires may be provided through the Judicial Reform II Project.

## 2. Department of Justice - ICITAP

A longer term commitment and increased funding for the ICITAP program in criminal investigation is required. Over the next five years, a minimum of \$5 million (\$1 million/year) will be required to support the continued development of criminal investigative capacity and training in forensic sciences and physical evidence for judges, prosecutors, public defenders and the police. Another \$20 million will be needed to support ICITAP technical assistance for the establishment of the civilian police academy. The Department of State will provide new policy guidance to ICITAP's police training programs.

The ICITAP program in El Salvador currently has two sources of funding: \$300,000 provided through a budget transfer from USAID through State to the Department of Justice and resources available through the regional project funded on an annual basis from AID/LAC/DI. The former agreement finances specialized technical assistance and training to the Commission for the Investigation for Criminal Acts in the area of kidnapping. Under the regional program, approximately \$100,000 will be utilized during the period April 1, 1992 - March 31, 1993, for training and commodity support for the Commission. These activities will include:

- scholarships to seminars, conferences, and training programs to improve positive working relationships among the criminal justice components;

- training for judges, prosecutors, and police in criminal investigative techniques;
- a comprehensive assessment of the forensic lab capabilities of the country and assistance to improve capabilities, such as provision of transportable autopsy kits;
- training in fingerprint processing and evidence collection, including the provision of portable crime-scene-processing kits; and
- limited technical assistance to assist the national civilian police develop and implement a full complement of policies and procedures.

Over the past year, ICITAP, State, and USAID have strengthened interagency coordination as we have come to recognize the importance of a balanced, coherent strategy involving support for all judicial actors -- the court system, prosecutors, public defenders, criminal investigators, and the police. If any one cog in the wheels of justice fails, the whole system will fail. Through USAID, State, and ICITAP assistance, the Salvadorans now have a first rate criminal investigative unit to address high profile cases. The commission's coverage must, however, be expanded, and a capacity created within the new police established. Moreover, coordination between the Salvadoran agencies must be improved. ICITAP has several specially designed training programs that respond to these needs (e.g., Coordination of Criminal Investigation, and Overview of Investigative Techniques). Moreover, ICITAP has established an excellent rapport with the Special Investigative Unit and leadership of the new police, and have provided consistently high quality expertise.

### 3. USIA

USIA has extensive expertise in public information and educational exchanges, developed over the past fifty years. During 1991, USIS El Salvador increased its programming in the justice sector, including a special International Visitor (IV) program designed for the Minister of Justice and a four-part ARNET series on drug trafficking and prevention and the role of the Attorney General's Office. Additionally, USAID has agreed to cover travel and per diem costs of additional participants in regular scheduled IV programs, to the extent space can be made available.

As noted earlier, however, an expanded USIA program is an integral part of the U.S. assistance strategy for improving justice. During the 1993-97 period, USIA exchange programs, such as IV grants, AMPARTS and AMSPECs, FULLBRIGHT research grants, and WORLDNET/ARNET will be increasingly used to support achievement of U.S. assistance goals in the justice sector. USAID also plans to provide a \$100,000 annual budget transfer to USIA to cover the direct costs of an expanded IV program. The administrative and overhead charges will have to be borne by USIA, however. Activities will be directed at leadership development and improving media coverage of the judiciary. This expanded USIA program will involve:

- Tailored One-Country IV grant programs for members of the National Council on the Judiciary, print and broadcast journalists, and the brightest graduates of law schools;
- Increased representation of Salvadorans in the multi-regional Administration of Justice IV program;

Limited production of targeted press releases and televised or radio materials;  
Seminars on the judicial system and its reform, featuring Latin American and Salvadoran journalists and members of the legal community; and  
AMPARTS or AMSPECS experienced in social marketing to assist in developing print and radio messages/brochures on judicial reform and the law.

**4. State INM/and DEA**

The State Department's Office of International Narcotics Matters (INM) and the U.S. Drug Enforcement Administration (DEA) have provided technical assistance, training and limited commodity support to the Executive Anti-Narcotics Enforcement Unit in order to strengthen civilian investigative procedures and capacity. In FY 1992 and beyond, technical assistance and training are planned for narcotics intelligence, surveillance, and interdiction operations. In addition, INM will assist the Anti-Narcotics Unit to create a canine unit for detection of controlled substances. The continuation of these programs are vital to the continued effectiveness of Salvadoran efforts to combat the emerging problem of drug trafficking. The FY 1992 Narcotics Workplan placed estimated funding requirements for FY 1992 at approximately \$2.2 million, which included acquisition of a radar system valued at \$2 million.

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#### FOOTNOTES

1. Encuestas Nacional y de Elites sobre la Situación de Administración de Justicia en la República de El Salvador, January 1991.
2. National Center for State Courts, April 1992.
3. Article 12, Constitución Política de la República de El Salvador.
4. Personal communication with various judges, October 1991.
5. Código Procesal Penal, Arts. 688-695.
6. Florida International University, 1987.
7. Personal communication with various judges, October 1991.
8. Personal communication with Gutiérrez Castro, President of the Supreme Court of Justice, February 1992.
9. Encuestas Nacional y de Elites sobre la Situación de Administración de Justicia en la República de El Salvador, January 1991.
10. EPA, 1991.
11. CORELESAL, various.
12. The text paraphrases liberally from Stewart, 1991.
13. Florida International University, 1987.
14. Williams, 1991; Sancinetti, 1991; Schiffrin, 1991.
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