

History and Accomplishments of USAID sponsored Democracy Building Programs in Honduras

Legislature Strengthening

Electoral Support

**Administration of Justice
&
Rule of Law**

NGO Legal Reform Advocacy

Background paper prepared for the
U.S. Congressional Budget Office
study of the impact of development
assistance.

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FOREWORD

This report was initially prepared in April of 1996, by the Strengthening Democratic Institutions Project (522-0296) office of USAID Tegucigalpa Honduras, in response to a request from the Congressional Budget Office which is in the process of preparing a study on the impact of development assistance funds.

PART I - U.S. & USAID REGIONAL DEMOCRACY PROGRAMS IN HONDURAS

AN INTRODUCTION TO USAID SUPPORT TO THE LATIN AMERICA DEMOCRACY SECTOR - THE U.S. REGIONAL PROGRAMS AND HONDURAS

U.S. Democracy Building Programs (1961 - 1972)

The years of the Alliance for Progress found programs for government accountability and democracy building subordinated to other regional priorities. It was not until the termination of the Cold War in the late eighties that issues of rule of law, accountability and *meaningful* democratic processes became focusses of USAID programs.¹

By 1984 the U.S. was in a generally weaker position to influence positive democratic changes in Latin America than was the case from the mid-60s to early 70s.² In the post-World War II Cold War era, the U.S. hegemony in Latin America; military, political, economic, cultural, was over-whelming. By the early eighties that was no longer the case, U.S. foreign assistance had lessened and diminished U.S. leverage and US Mission, USAID, military and other assistance had been greatly reduced. The American business community, while still prominent in Central America, was no longer dominant throughout the area and our presence overall was (and in 1996 remains) considerably less than it once was; hence our capacity, or even willingness, to influence events has considerably lessened.

As a result, the United States has fewer instruments available to promote consolidation of democratic changes and fewer resources to support change.

REGIONAL PROGRAMS SUPPORTING DEMOCRACY-BUILDING IN HONDURAS (1983 - 1986)

National Foundation for Democracy

The National Foundation for Democracy was established by Congress in 1983 with the belief that private institutions in free societies can contribute in developing democracy by providing

¹ see Herring, Op Cit, pp.933-934 for shortfalls of the Alliance in addressing democracy consolidation
Herring notes, "The Alliance had dedicated its members to 'improve and strengthen democratic institutions'—but this gesture towards free elections, legally installed governments, and an end to *coups d'etat* proved idle. Not only did savage dictatorships continue to plague the hemisphere, but there was a fresh series of overthrows of constitutionally installed regimes—each a body blow to all the Alliance stood for."

² Abraham F. Lowenthal, "The United States and Latin America: Ending the Hegemonic Presumption", *Foreign Affairs*, vol. 55 (October 1976), pp 199-213 ;also, on waning influence of the U.S. in Latin America see Skidmore pp. 351 .

PART II - THE STRENGTHENING DEMOCRATIC INSTITUTIONS PROJECT (522-0296)

SDI Project Objectives & Components

On September 20, 1987, a Grant Agreement was signed by the President of Honduras and the Ambassador of the United States to initiate the Strengthening Democratic Institutions (SDI) project.

☞ *The USAID project was the first bi-lateral democracy strengthening project in Central America.*

From 1987 through 1994, the purpose and activities of the SDI project were as follows:

"improve the capability of key democratic institutions (the Judiciary, the Congress, and the National Elections Tribunal/National Registry of Persons), develop local leadership and increase the knowledge and participation of the Honduran populace in the democratic process."

To implement three components of the project, separate Memoranda of Understanding (MOU) were signed; with the Supreme Court on October 14, 1987; with the Honduran National Congress on October 16, 1987; and with the National Elections Tribunal on September 21, 1987. A fourth component provided for democratic leadership training in support of the other three components.

Administration of Justice

Initial priority in the Administration of Justice component was given to four tasks:

1. Implementing a professional Judicial Career Service³ to enhance the professional and ethical quality of judicial functionaries and personnel stability for the same; this included establishing experimental development programs for Justices of the Peace, Public Defenders and Public Prosecutors;
2. Strengthening the Judiciary's administrative structure and capability;
3. Instituting a program of continued professional training supporting the Judge, Public Defender and Prosecutor functionaries integrated into the career service and experimental programs;

³ see *Judicial Career Law* (published in spanish), Supreme Court of Justice of Honduras, Tegucigalpa, 1988. The Judicial Career Law provides for open, merit based recruitment, selection and personnel action processes and is designed to ensure high standards of professional and ethical conduct by judicial personnel resulting in speedy, impartial and correct application of justice. It regulates the relations of employees to management and rights of Judicial employees within the Judicial personnel system. The Law has been widely ignored by various judiciary administrations in the practice. The USAID program has worked to strengthen adherence to the law in recognition of the high correlation between adherence to the Judicial Career Law and depoliticization of the Judiciary with a corresponding improvement in justice for the average Honduran

4. Developing a public information program to increase awareness, understanding, appreciation and utilization of the legal system by the population of the country.

Legislative Enhancement

To accomplish the objectives of this component, priority was to be given to two areas:

1. Establishing a National Center for Legislative Support Services designed to provide legislators with more and higher quality information; and
2. Improving the functioning of the Congress by:
 - a. enhancing the current administrative structure;
 - b. streamlining the legislative process; and
 - c. strengthening the committee system of the Congress.

Voter Registration and Elections Improvement

The major activities were proposed for this component:

1. Up-dating, microfilming and computerization of the Civil Registration Lists. This was to be broken into two stages:
 - a. Up-date, verify, and microfilm, within 18 months of the signature of the MOU, all documents from 1880 to 1987 required by the Civil Registration process.
 - b. Support the institutionalization of an improved and effective civilian registration process at all levels of the Republic.
2. Provide support to the 1989 national election (in-service training of administrative personnel and of election workers); provide technical, administrative, training and commodity support to facilitate the implementation of the general elections scheduled for November 1989, and strengthen the permanent institutional base for future elections.

Democratic Leadership Training

This component called for a broad-based program of training conferences for locally-elected officials and key individuals in organizations that participate in one way or another in the democratic process in Honduras. The prime contractor was to organize several national seminars each year for specific groups of officials or organizations to analyze their role in the democratic process and to identify ways to involve their constituencies more effectively in constructive support of the democratic institutions of the country. The only activities in this component undertaken between 1989 and 1992 were seminars organized by the American Institute for Free

Labor Development (AIFLD) for union members. The American Institute for Free Labor Development (AIFLD) received a one-year grant effective April 1, 1989 of \$198,000 to strengthen democracy in Honduras. The purpose of the grant was "to improve the capability of Honduran democratic trade unions to develop local leadership and increase the knowledge and participation of trade union members in the nation's political process." AIFLD managed the grant; the programs were to be carried out by two Honduran labor federations.

In this next section, we will look at the individual project components in greater detail:

A. LEGISLATIVE ENHANCEMENT PROGRAM

Strengthening Legislative Capacity

USAID supports activities aimed at promoting and facilitating continual exchange amongst legislators from Latin America and the Caribbean, the United States and western Europe, as well as strengthening institutional capacity of regional legislative entities. In 1982, USAID in cooperation with the Dominican Republic's National Congress and a local university, sponsored a training seminar for newly elected legislators. The seminar was highly successful in that it provided the impetus which resulted in the design of a Honduran program to provide long term support services to enhance the legislators' policy-making and management abilities.

The legislature of Honduras, based on the Dominican Republic model, developed a similar USAID supported program to strengthen information analysis and administrative support.

A Memorandum of Understanding was signed with the GOH in October 1987 for the Legislative Enhancement program. By 1994, USAID Honduras had successfully completed its legislature strengthening assistance to the Honduran Congress under a bi-lateral program and has no further plans to provide future assistance⁴.

Objective of the Legislative Strengthening Program: The purpose of this component was to improve the effectiveness of the Honduran Congress in formulating and passing laws and performing its fiscal monitoring functions of the other branches of government and to increase contact with and make its activities better known to the public.⁵

Strategy and Programs: This component resulted in an investment by USAID Honduras of **\$1.88 million dollars** in technical assistance, training and equipment. This significant assistance, resulted in Honduran legislators being able to formulate legislation based on more and a higher

⁴ The Inter-American Development Bank (IDB) has closely coordinated with the USAID Honduras program office plans for possible IDB future support to the Honduran Congress, to include follow-on support to the CIEL.

⁵ see, Ryan S. McCannell, Legislative Strengthening A synthesis of USAID experience, USG document PN-ABW-455 published by the USAID Center for Development Information and Evaluation, May 1995 for an overview of USAID experiences with legislative strengthening programs. "The term 'legislative strengthening' refers to activities that contribute to the institutional development and technical capacity of legislatures. USAID has sponsored activities in this field for more than two decades, beginning in Latin America and Southeast Asia. In both regions, highly centralized military dictatorships gave way to fledgling democracies whose legislative systems lacked capability to effectively represent constituents, introduce legislation, and act as a sufficient check to the executive power.

quality of information and improved Congressional administrative support organizations, while making their activities better known to the public. The Congressional administrative system was improved through enhanced reproduction capability of legislative acts, preparation of bills and bill tracking by the Executive Secretariat (*Secretaria Adjunta*), by the computerization of the Budget, General Accounting, and Accounts Payable functions of the Congressional Paymaster and Controller Office (*Pagaduría*), and by implementation of activities by the newly organized Honduran Congressional Center for Information and Legislative Studies (CIEL).

The USAID Honduras program supported design, creation, technical assistance, training and equipment for the CIEL with some \$1.4 million of the \$1.88 million in USAID program funds.

The CIEL effort was begun in 1989 and the fully functional CIEL was formally inaugurated in March of 1993. Its functions are roughly equivalent to the U.S. Congressional Research Service. CIEL public policy analysts, experts in various specialized disciplines, have produced over 600 reports. In addition, CIEL staff have worked with Honduran legislators, who have no assigned staff and in most cases no bill drafting experience, to draft legislative proposals. The CIEL has provided policy option analysis support to Congressional leadership and Legislative Committees. The CIEL has benefited from the project funded purchase, installation and information base development managed by an IBM 390 mainframe computer, 30 terminals, and information data bases that enable analysts and document and reference section researchers to provide more and higher quality information for Honduran legislators.

CIEL designated the Central American ICEL

Based on agreements derived from the Conference of Presidents of Central American Legislators, held in Managua Nicaragua in 1995, the Honduran Congressional Center for Information and Legislative Studies (CIEL) was formally designated the regional Central American Institute for Legislative Studies - *Instituto Centroamericano para Estudios Legislativos (ICEL)*.

The Honduran CIEL, which provides more and better quality information to Honduran law makers, was designed and organized with \$1.4 million in USAID program assistance. As the regional ICEL, it is designated to act as a repository for analysis and information on Central America integration requirements as well as provide technical assistance to other Central American countries strengthening their own CIEL type organizations.

Functions of USAID-Supported CIEL

A Documentation and Reference Service functions as an information/data base for legislative policy. The reference service focuses on action-oriented data -- policy documents, economic and social data, executive branch reports and policy research, books and periodicals. The fundamental criteria for selection of any materials is timeliness and relevance to current policy discussions. The service has book shelves, periodical racks, document files recorded under a Library of Congress type of reference system. A computer is installed to provide on-line indices and access to the central computer's legal and bibliographic information system, as well as to the data bases which deal with Honduras and Central America and which are maintained by the Information Systems Department.

A Research and Analysis Service provides a dynamic and rapid source of policy and position papers. The research service is staffed by professionals who understand policy research and evaluation. The individuals undertake short, incisive, action-oriented presentations of policy alternatives and consequences, and avoid scholarly productions. The work concentrates on the key issues affecting Honduras today and in the future.

An Information Systems Service is organized at the CIEL and is responsible for the development and implementation of the systems required. The information base retrieval systems designed and completed include bibliographic information, statutory/legal information, key speeches retrieval and a bill tracking system.

Other Congressional information systems technically supported by the CIEL will continue to be developed (without USAID assistance) and linked to additional Congressional entities. At the Executive Secretariat office of the Congress, the established Bill Drafting, Floor Debate and Major Speech Editing systems will be linked to the CIEL system.

CIEL Achievements

Achievements to date proved the CIEL to have been a sound investment.

☞ CIEL analysts respond to the requests of Honduran legislators by providing data, information, reports and/or policy option analysis on the full and diverse range of issues and topics which come before the national Congress. In the period between the inauguration of the CIEL on 3/17/93 and 12/31/95, CIEL analysts responded to requests from Honduran legislators for information and specialized policy option studies, producing well over six hundred (600) reports and providing thousands of lesser responses to requests for information. Significant legislation has resulted from the CIEL's analytical contributions which have been requested by Honduran legislators.

☞ Even before its doors formally opened, the CIEL was tasked by the Congress to research, analyze, and participate in the drafting of legislation on civil-military issues. Important legislation information and policy analysis was developed by CIEL analysts on the military's role and prerogatives, thus contributing to the enactment of legislation which has favorably strengthened democratic institutions in the balance of power between the Honduran armed forces and the civilian government.

☞ The role of analysts is also evolving to include providing assistance to Honduran legislators in the drafting of bills.

☞ The USAID developed CIEL, in its function as the Central American Institute for Legislative Studies (*ICEL*), has begun to provide technical assistance to other Central American legislative research and information centers.

B. SUPPORT TO ELECTORAL SYSTEMS - THE 1989 AND 1993 ELECTIONS

When counting the national elections for a constituent assembly, prior to the subsequent Presidential elections of 1981, there have been five consecutive fair and free elections in Honduras through 1993.

The consolidation of democratic governments in Latin America and the Caribbean greatly depends upon the increase in popular confidence in the electoral process and the institutional capacity to manage it. The U.S. supports national institutions through technical assistance, training and commodities to support the establishment of solid laws and processes, election administration, and to set up fraud prevention mechanisms and to educate the citizens in the electoral process.

USAID provided assistance in the electoral processes during national elections in Honduras in 1985 (under the regional program), and in 1989 and most recently in 1993 under the USAID Honduras program --including providing paper, special ink for the voting process and assistance in computerizing the voter registration to reduce voter fraud. The U.S. has had an important support role in the democratic transition and institutionalization of electoral processes. In the last national elections of 1993, USAID Honduras financed training for trainers of over 65,000 vote count monitors. In addition, through the Institute for Free Electoral Support (IFES), USAID provided support for teams of international observers for elections.

Besides providing assistance to the Central American countries individually, USAID provides technical support, training and research programs to CAPEL, a division of Interamerican Human Rights Institute, in San Jose, Costa Rica⁶.

Enhancing Voter Registration and Improving the Electoral Process

The electoral support component of the SDI project was directed to strengthening of the Honduran National Tribunal for Elections (TNE) and the National Registry of Persons (RNP).

With the signing of the SDI Project in August 1987, the USG committed to assist the GOH in cleansing the Honduran civil registry, as well as financing election activities. In the late 1980s, USAID efforts toward accomplishing this objective, mainly channeled through the Strengthening Democratic Institutions project, were geared to assist in the professionalization of the TNE and the RNP, enhancing their capacity to manage an effective voter-registration process and

⁶ The creation of CAPEL was a Latin American initiative, which resulted from a Foreign Affairs Ministers Conference in October, 1982. CAPEL provides services and other resources to public and private institutions, as well as to individuals throughout the region. As of 1984, an increase in available funds has allowed CAPEL to rapidly expand its programs. The center maintains close contact with elections experts in Latin America and Europe to provide technical recommendations and participate in training programs, research projects and observation visits. CAPEL has in the past provided technical recommendations to Honduras to improve and computerize the voters register. The center has developed training courses on electoral legislation in Guatemala, Costa Rica and Honduras, co-sponsored by the Electoral Tribunals, the Bar Associations and Universities in each of these countries. CAPEL's information center, collects and distributes materials on electoral legislation, rights and processes, and maintains permanent records on election results of all the countries in the region. Through its collaboration with national organizations, CAPEL is building a valuable network of individuals and institutions committed to promoting well-managed, free and competitive elections.

guaranteeing universal suffrage.

The National Elections Tribunal of Honduras has been in existence for the last 15 years as a result of a decree by the then "Jefe de Estado" (Executive branch) and is the institution that plans and manages procedures for election activities as well as supervises the National Registry of Persons. The plenum of TNE is comprised of five (5) members: one representative from each of the four political parties legally inscribed and one Supreme Court representative who is assigned by the government in power as a "tie-breaker".

The National Registry of Persons (RNP) was created in 1983 and acts as the institution which supports the electoral process by managing the civil registry and issuance of National ID cards (cedulas), and the registration of births, deaths, marriages, divorces and newly enfranchised citizens. The national ID card serves the functions of a social security card, a general identity card, and a voter identification card. It is required in all legal processes for adults and is issued to citizens 18 or older.

USAID support to the 1989 National elections was provided mainly through technical assistance to ensure an efficient and transparent electoral process, in-service training of TNE and RNP administrative personnel and of election workers and general commodity support for actually holding the elections. This assistance not only supported open and fair elections in 1989 but firmed up the TNE and RNP institution-building process to improve the adequacy of future elections planning and execution and the progressive strengthening of democracy at large.

☞ It is fair to say that the Honduran democratic process is taking deep-seated roots and that USAID assistance has contributed to Honduras' commitment to democratic elections.

However, some institutional and jurisdictional problems at the TNE and RNP still remain. The RNP, which should otherwise be a strictly civil registry and technical census office remains under the TNE tutelage and thus much politicized. Career service laws for both institutions, that would establish their functional independence from each other, have long been debated in the national arena and firm legislation to that effect, though proposed for this year, remains doubtful in the near future. Also, civil registration lists and records remain vulnerable to abuse and the turnover of qualified, trained personnel, remains high, mostly for partisan reasons.

Currently, public debate on and efforts toward major electoral reforms are being promoted mainly by civil society, non-governmental organizations, some of which are supported by USAID. Proposed reforms at the Constitutional level and of the Law of Elections and Political Organizations include, among others, those pertaining to making the TNE and the RNP functionally independent; establishing the plebiscite and referendum as means of public consultation for issues of national interest; and, transforming Honduras' system for election of legislators from the current party slate/closed list system to a mixed or open system wherein voters can select by individual name a candidate representing their local district. Also, there is a bill pending legislation to ensure a politically-independent Judiciary, with procedural reforms for the nomination, election and tenure of Supreme Court justices.

USAID Support for the 1989 Elections

About \$4.5 million of commodities and services were programmed for supporting the election and the cleansing of the civil registry.

Commodity Support:

☞ \$1 million worth of commodities were provided, two-thirds of which was offshore. This included ballot paper, computer paper for electoral lists, printing of ballots, indelible ink, cardboard cases for transporting electoral supplies to all polling places, fax machines, ultraviolet lamps, batteries, security tape, ballot boxes and office supplies for voting tables.

Technical Assistance:

☞ A local company was contracted to conduct three seminars to help the National Elections Tribunal (TNE) and the National Registry of Persons (RNP) devise plans and procedures for carrying out the election.

☞ A subcontractor to the institutional contractor for the project provided consultants to assist the TNE's computer division with computer programs for a wide variety of election information needs, including compilation of the lists of eligible voters.

Training: CAPEL, the affiliate of the Inter-American Institute of Human Rights for electoral advisory assistance, sub-contracted to provide a training program for election workers.

☞ Using the training the trainers concept, 64,336 supervisors, instructors and election workers received training.

☞ A training manual on the electoral process (Cartilla Electoral), which could be used for future electoral training purposes. (It was revised and used during the 1993 elections.)

Public Information: Three successful voter education campaigns were conducted with USAID technical and financial assistance.

Election Observers: USAID supported an observer mission of 19 to Honduras. Each Honduran political party was permitted to nominate observers.

Summary: The election support in general went well except for a failure of the TNE to manage the FAX network to report election results. (This activity was handled successfully by CAPEL in the 1993 elections). Unfortunately, a late start and lack of experience by a USG contractor resulted in failure to cleanse the registry and generate an accurate voter list, forcing the Congress, at the last minute, to change the law so as to permit voting by leaving one's ID card to be mailed back later (*sobre blanco*). Following the elections, the TNE took direct charge of the registry cleansing activity using ESF local currency counterpart funds and some small assistance for spare parts and commodities from USAID.

☞ The 1989 elections resulted in free and fair elections resulting in the defeat of the incumbent government and a peaceful transfer of power from Liberal Party President Jose Azcona Hoyo to Nationalist Party President Rafael Leonardo Callejas.

USAID Support for the 1993 Elections

☞ About **\$820,000 in commodities and services** were expended for support of the 1993 elections. The TNE utilized ESF local currency funds to finance salaries and rent.

Commodity Support:

☞ \$400,000 worth of commodities were provided, three-fourths of which was bought offshore. This included ballot paper, computer paper for electoral lists, paper for printed forms and materials, cardboard cases for transporting electoral supplies to all polling places, security tape, ballot boxes and office supplies for voting tables.⁷ Plastic laminate, laminating and die cutting machines and paper inserts were also purchased for the RNP.

Computerization and Cleansing of Electoral Rolls (Depuración del Censo):

☞ The National Registry of Persons (RNP), using co-programmed ESF local currency, finished the computerization of the national registry, and thus the electoral rolls, in September, 1993.

Poll Worker Training: This activity was managed for USAID by the International Foundation for Electoral Systems (IFES). IFES subcontracted with a local private voluntary organization (PVO) to do the actual training. As in the 1989 elections, the "training the trainers" concept was utilized. Training sessions began in October, 1993 and ended on November 26. Keeping a record of poll workers trained proved to be difficult for the PVO. In Honduras, all four political parties are traditionally very protective about revealing the names of the people they assign as poll workers for fear that activists from other parties might "bribe" their people into affecting the votes received by their party.

☞ Existing records show that approximately **65,450 poll workers were trained**, even though it is suspected that an *additional* 20,000 people were probably trained.

International Election Day Observers: IFES provided USAID with an official proposal regarding the type of program they would be willing to undertake in response to the TNE request. The TNE sent a second letter requesting that IFES supply the number and names of observers USAID would be supporting. A delegation of twelve observers was organized by IFES, headed by former U.S. Ambassador Jack Vaughn. The election observation activity was a success.

Summary: The 1993 elections represented the fourth sequential free Presidential elections. A major change in the law allowed voters, for the first time, to vote for mayors separately, albeit on the same ballot (*voto separado, papeleta única*). It should be noted that while both major parties voted for this separation, they fought the actual implementation tooth and nail since the majority of their mayoral candidates were not popular at the local level. The USG encouraged a "real" separation of the vote, through separate ballots, separate photos, or at least the inclusion of names of the mayoral candidates. In spite of major lobbying by the Honduran Association of

⁷ The TNE had originally requested financing of indelible ink to mark fingers of voters who had already cast their vote, however USAID did not finance the purchase because ink samples provided by US suppliers did not pass what became known as "the chlorox test" (i.e. the ink could be removed from the fingers with "chlorox" or other solvents-particularly if the finger is pre-dipped in chlorox). In addition, the TNE required a higher concentration of silver nitrate (25%) than what is considered safe by US standards (3% to 5%). As a result of both issues, the TNE formally retracted its request for USAID to finance the ink.

Mayors (AHMON), the major parties insisted that only the Presidential candidates picture be on the ballot and that the columns for mayors only read "mayor and municipal council" (*alcalde y corporación municipal*). The two major parties trained their activists to explain the ballot in such a way as to only vote for the party; on the other hand, the two small parties actively taught voters how to split their votes.

Future support in the electoral process strengthening area is likely to be limited to USAID support for electoral reform NGO advocate groups, i.e. organizations promoting changes in the electoral law that will modify the closed list system used by the political parties. It is believed that if Hondurans can vote for their representatives by name, that legislators, as already have the mayors, will be more responsive to their individual districts and local constituencies.

☞ The 1993 elections resulted in another change in the governing political party and a peaceful transition. Liberal Party candidate Carlos Roberto Reina assumed the Presidency on a campaign platform promoting a "moral revolution".

☞ In early 1994, 81% of Hondurans polled opined that the 1993 Honduran elections were fair and open.⁸ Low profile USAID elections support has contributed to their confidence in the electoral system.

⁸ USAID financed CID-Gallup poll of June 1994

C. ADMINISTRATION OF JUSTICE AND RULE OF LAW PROGRAMS - (1987 - 1995)

From its inception in 1987, the USAID Honduras Administration of Justice (AOJ) program focussed on developing structures in the Judiciary that would improve the effectiveness and correctness of justice in Honduras while providing more access for the poor to the Court's legal services.

Summary and Overview

1. Administration of Justice Achievements

AOJ initiatives in the Strengthening Democratic Institutions (SDI) Project have resulted in the following achievements from 1987 through 1995:

a. Strengthening Court and (separately) Public Ministry⁹ Administrative Systems and Structures

(1) Development of Judicial Career Law and Court Grievance Board regulations which, if properly applied, will result in full implementation of the Judicial Career Law; also, Public Ministry Career Statute and implementing mechanisms.

(2) Reorganization, systemization, and computerization of the basic administrative systems for Accounting, Budget, Personnel, Payroll and Inventory for the Judiciary; and for the new Public Ministry.

(3) Development and implementation of a computerized information base jurisprudence system (Folio) to enable judges, public defenders and public prosecutors to access decisions in similar cases;

(4) Development of a statistical information system for both the Court and Public Ministry, enabling Court and PM leadership to analyze and make personnel, procedural policy and resource allocation decisions based on statistics of case volume and processing around the country;

b. Creation of a Nucleus of Highly Professional & Ethical Judicial Functionaries

(1) Creation of "Experimental Programs" and provision of training, technical assistance and logistical support for hiring of fully qualified, law school graduate, competitively selected and retained judges, public defenders and public prosecutors, leading to increased levels of professional legal services provided by the Court and Public Ministry, resulted in improved quality of justice available to Hondurans and especially the poor.

⁹ In 1995 alone, USAID supported the Public Ministry with some \$1.6 million dollars in technical assistance, training and logistical support to get the new organization fully operational and ensure administrative, prosecutorial and forensic medicine staff are adequately trained and equipped. The challenges for the PM to be a credible and effective organization in its first 18 months of operation have been daunting, but independent analysts have judged it to be one of the more effective and well organized Ministries, if not the most effective, in the Honduran government.

(2) Technical assistance, training and logistical support provided to the Court's Inspector General's Office enabling the IG to effectively fulfill its role to investigate complaints filed against judicial personnel and to conduct periodic inspections of lower-level and Appeals Courts;

(3) Strengthening of the Judicial School programs of instruction for Magistrates, Judges, Public Defenders and Public Prosecutors.

(4) Continuing legal education for lawyers in coordination with the Honduran Bar Association;

c. Judicial Reforms

(1) Technical assistance, administrative support, equipment, training and observational travel provided for Honduran officials and especially the National Judicial Reform Commission in its role of analysis and coordination of judicial reforms.

(2) Technical assistance, observational travel and training in comparative criminal procedures systems and strengthened Penal Codes provided, resulting in submission of bills to the Congress for a new adversarial system based Criminal Procedures Code and stronger sanctions against public sector and white collar crime, crimes against women, the environment and children.

(3) Analysis of requirements to achieve reform of registry procedures and reconciliation and computerization of land records;

(4) Support to non-government democracy and legal reform advocacy organizations (Nos) overseeing the judicial system and promoting reforms resulting in public and media debate on key judicial reform issues.

d. Forensics Medicine Strengthening

(1) Four post-graduate scholarships were provided for Forensic Medicine training in Costa Rica resulting in higher quality of Forensic Medicine services provided by Public Ministry forensic medicine practitioners;

(2) Support (training, commodities, cost building construction) for the Public Ministry's new Forensic Lab;

(3) Conferences and workshops for Police, Public Ministry and Court personnel, fostered improvements in crime scene coordination, increased respect for human rights of accused, and improved collection and presentation of evidence;

e. Public Information and Education on the Justice Sector

(1) Public information and interactive adult education radio campaigns to educate the public, and especially rural area adults, on democracy, the legal system and their rights and responsibilities under the Law;

(2) Supreme Court and Public Ministry multi-media public information campaigns, Conferences and workshops with NGO partners on the need for justice sector reforms resulted in more than 80% of Hondurans polled supporting immediate passage of key Constitutional reforms for a more independent Judiciary;

(3) Enhanced public understanding on how to access Court and Public Ministry services through multi-media public education campaigns resulting in twenty-fold increase in criminal complaints filed by the public with PM prosecutors in 1995 as compared with 1993 when prosecutors were assigned to the Judiciary.

In late 1994, a USAID SDI project strategy committee concluded that the outputs of SDI Components No. 2 (Legislative Enhancement) and No. 3 (Voter Registration/Elections Support) had been largely accomplished and that the remaining resources under the project should take advantage of the opportunity afforded by the government of Honduran President Reina by focussing on promoting key policies that will lead to an independent and corruption-free court and a robust and professional Public Ministry prosecutors office effectively combatting public sector corruption, crimes against women, children, minorities, the environment and violation of human rights.

2. Sustained Development Enhanced through an Anti-Corruption Focus

By 1995, the SDI Rule of Law program began to focus almost exclusively on the objective of achieving *"More Ethical and Effective Investigatory and Judicial Systems"* and *"More Honest Judicial Decisions."* *This purpose contributes to the democracy program strategic objective of "More Responsive Democratic Processes, with Greater Citizen Participation".*

The right of citizens to meaningfully participate in democratic processes, transcends participation in the electoral processes. In order to hold government accountable to the people, the citizenry should be afforded the opportunity to use the justice system on an equal footing with all classes and sectors within the society. By enjoying equal access to and standing within the justice system, the public can contribute significantly to good governance, to the strengthening of democratic processes which operate independently of political power structures and vested interests.¹⁰ The levels of voluntary public participation in judicial processes can be interpreted

¹⁰ Latin American Justice Systems are in a general state of crisis - If problems in Latin American legislative branches can threaten the consolidation of democracy, the problem is at least as great if not greater in the legal system. Like the legal system, the judiciary in Latin America has little history of effective independence from political control of the executive branch or, as has happened more recently in Honduran history, legislators who are lawyers promoting and sometimes controlling judicial nominations and appointments based on primarily political criteria. In Honduras, as in much of Latin America, the entire judicial system is run by the central government. Judges are poorly paid, ill trained, lack professional and/or ethical staff, and are highly vulnerable to both political and economic pressures. Their task is frequently complicated by antiquated, cumbersome and non-transparent civil and criminal procedures codes requiring judges to be investigator, judge and jury in the same case.

as both an expression of confidence in the system and as an act which strengthens the proper and consistent application of rules by government officials. Citizen participation in democratic processes, therefore, is an essential element for establishing legality and - in conjunction with the idea of justice and democratic structure - **legitimacy**.

☞ By promoting the Rule of Law and helping Honduran partners combat public sector corruption, USAID is contributing to long term and sustainable gains in most areas of development.¹¹

The Rule of Law in Honduras has historically been weak and remains so. As one well known Honduran jurist has noted, the *force of law* has been converted by political and economic interests into the *law of force*, i.e. the ability of powerful special interests to impose their will and outcomes within the justice system. While this characterization of the vulnerability of the justice system to undue influence remained true in 1995, it is certainly less true than in previous years.

3. USAID Rule of Law Program (1995-1996)

In 1995 the Strengthening Democratic Institutions Project (522-0296) set out with Honduran government and NGO partners to achieve the program objective of "*More Ethical and Effective Investigatory and Judicial Systems*" through an anti-corruption, government accountability strategy based on four major results:

1. Independent, Depoliticized and Honest Court
2. Court Inspector General Oversight and Investigations
3. New Criminal Procedures Code and Strengthened Penal Code
4. Effective Public Ministry Prosecutions

The USAID Honduras democracy strengthening spotlight narrowed to focus almost exclusively on Rule of Law issues in 1995 in recognition that program objectives in the legislative strengthening and elections support areas had been successfully concluded. The focus on Rule of Law and predominantly criminal law and combatting public sector corruption was based in the

The problem is complicated even more by the poor quality and rampant corruption of the police and by spiraling crime rates. When combined with problems created by long standing traditions of virtual immunity for military, political, and economic elites, the end result is a judicial system incapable of functioning effectively. As University of Miami Professor Richard Millet has emphasized, "*This situation strikes at the heart of the democratic process. If citizens whose rights are violated by the state have no potentially effective remedy for such violations, then democracy can scarcely be said to exist. If the state is unable to promote justice and defend individual rights, then faith in and support for the system rapidly declines.*"

¹¹ Ambassador Fernando Cepeda Ulloa of Colombia, speaking at an April 1993 Inter-American Development Bank conference on the "State, Development, and Stability", aptly summed up the situation: "Who could believe, at this point in the twentieth century, that a society is governable when the legal system, whether because of its content or its unequal application, maintains and consolidates privilege and ignores the basic aspirations and demands for equal opportunity by the bulk of its population. Governability is up for judgement when there is no just, effective, legitimate, recognized and respected legal foundation. An unjust legal system contributes to the spread of criminality and, with that, diverse expressions of violence and, in the majority of cases, a culture in which most follow the slogan: one obeys but does not comply with the law (*la ley se obedece pero no se cumple*)" cited in Millet, Univ. of Miami North South Center Bulletin #12, 1995

understanding that a strong and apolitical justice system, effectively representing the interests of society, creates a strong environment for sustained development.¹²

Concrete results in the above areas will have (and indeed already have had) a very positive impact on all USAID Honduras Strategic Objectives regardless of the sector; good governance and greater public functionary accountability contribute to development in health, municipal and rural development, education, small business development, the environment, etc. Most of these GOH/USAID program areas have experienced, from time to time, limitations based on irregularities or criminal malfeasance, i.e. the failure of certain Honduran functionaries to be accountable to the Honduran people.¹³

Rule of Law Program Components

1. Effective Prosecutorial System - the Honduran Public Ministry

During the government administration of President Rafael Leonardo Callejas (1989-93), USAID provided technical assistance to the Honduran National Judicial Reform Commission for analysis used in drafting of the Public Ministry Law. This law was passed by the Congress in the last days of 1993 and in late 1994 USAID began support to the new organization. The Honduran Public Ministry is roughly equivalent to a combination of the U.S. Attorney General's Office, the FBI, the DEA and National Forensic Laboratory. It became fully operational in 1995 and is described by USAID Rule of Law contractor regional experts as arguably "one of the most powerful Public Ministry's in Latin America, on the order of Colombia and Venezuela in the authority and organization granted under the Public Ministry Law.

The year 1995 represents a watershed for accountability of public officials in Honduras, in no small part due to USAID technical assistance, training and logistical support provided the new Public Ministry.

☞ For the first time in history, the GOH, through its new Public Ministry, is actively investigating and prosecuting criminal cases against corrupt public officials, judges, powerful civilians, and military officials, some of whom have been incarcerated. USAID is providing important technical assistance and training to Public Ministry prosecutors and Medical Forensic personnel, thus ensuring cases are well prepared and managed.

☞ The Public Ministry is widely and measurably recognized by Hondurans as an effective force against corruption and impunity. In a recent CID-Gallup poll, 71% of educated adults

¹² The regional Alliance for Progress; begun in 1961 and ,by 1967, subject of disillusionment, cynicism, frustration and program cuts; was unable to achieve desired levels of sustainable development results in part because the program never implemented its worthy socioeconomic goals within a framework of government accountability and rule-of-law. The Alliance danced around the difficult issues of public sector corruption and government accountability and transparency. For background on problems related to the Alliance for Progress implementation, see Federico Gil, *Latin American-United States relations*, pp 238-250, Herring, pp 927-943; Skidmore & Smith, pp. 347-349

¹³ USAID Honduras internal document, "Strengthening Democratic Institutions in Honduras: A Strategy for Strengthening Democracy in Honduras through a Rule of Law Program (1995-1997), revised version dated February 13, 1995.

opined that the new Public Ministry was strengthening the independence of the Judiciary.

The Public Ministry is Contributing to the Rule of Law

USAID is helping Honduras establish the Rule of Law as a way of life for its people. The newly-formed Public Ministry (PM), which receives USAID institutional building support and technical assistance, has vowed to be an independent entity, representing the interests of society and the rights of the people-at large, regardless of their economic and social status. The PM received from citizens 22,000 criminal complaints in 1995 and is prosecuting 12,000 of them. In the same year, PM special prosecutors formally filed high profile criminal charges in 73 corruption cases, 59 environmental cases, 20 human rights cases, and 453 cases involving particularly serious crimes against women and minorities. In addition to these cases managed by some 35 Special Prosecutors, the other 150 PM prosecutors assigned to criminal and military courts around the country filed an additional 11,098 criminal cases as compared to 5000 in 1994 and only 900 in 1993 when prosecutors were still under the Court.

Full adjudication of the some 12,000 cases presented by the USAID supported Public Ministry to the Court's judges has proven to be much more difficult to achieve than originally anticipated. Corruption cases are especially problematical, these cases are frequently more complicated and politically sensitive and this year involved accusations against powerful political and economic interests (including both the previous and current President, Minister and Vice Minister level officials and more than 30 mayors of municipalities). Most of these accused enjoy defense teams very skilled in introducing delaying tactics, and using influence, to forestall adjudication.

A debilitating combination of factors result in even the most energetic and well qualified judges being unable to deal with the increasing flow of PM cases; these include the current cumbersome Criminal Procedures Code (CPC), ill-qualified Court Clerks and lack of basic logistical resources.

2. Complementary Role of ICITAP Programs

In addition to USAID's contributions to Rule of Law in Honduras, USAID financed the U.S. Department of Justice U.S. International Criminal Investigation Assistance Program (ICITAP) using USAID "150 funds" to provide complementary support which is vital to sustain the democracy, civilianize and professionalize Honduran police forces, and avoid the military's return to power. In 1995 the program provided some \$800,000 of technical assistance and training to the Criminal Investigation Department (DIC) of the Public Ministry and more than \$1 million are programmed in 1996 to meet additional Public Ministry DIC requirements as well as enable an

orderly transition of the police under military control to a civilian police force.¹⁴

3. Combatting Judicial Corruption - the Inspector General of Tribunals Office

The SDI program has provided technical assistance, training and logistical support to the Court's Inspector General of Tribunal Offices which are responsible for routine inspections of lower-level and Appeals Courts as well as conducting investigations based on publicly filed complaints of judicial corruption or incompetence. In addition, the SDI program provided technical assistance to the Supreme Court which resulted in the Court approving increased authority and autonomy of the IG inspectors and reduced opportunities for intervention by special interests to impede successful completion of on-going investigations. The remarkable progress made in combatting judicial corruption since the Supreme Court/USAID program began in 1992 is evidenced in the following chart.

Inspector General of Tribunals Judicial Corruption Investigations and Sanctions 1991 - 1995					
CY	'91	'92	'93	'94	'95
Public Complaints Received	0	21	215	258	469
Investigations completed	0	16	182	197	401
Investigations pending at end of year	0	5	33	61	68
Permanent dismissals of Court functionaries as a result of Investigations	0	0	16	46	64
Judicial Corruption cases investigated by the IG of Tribunals of the Supreme Court of Justice of Honduras between 1991 and 1995. Source: IG of Tribunals records.					

¹⁴

The weakness of the Honduran police and the crime waves in the two major Honduran cities, like elsewhere in Latin America, pose threats to the democratic process. High levels of personal insecurity contribute to the loss of faith in the system and, in some countries have produced a willingness to embrace authoritarian alternatives. In such situations, there is a real temptation to use the military in police roles, they are available and already on the payroll. In the post-cold war, most militaries are seeking new missions. The long term results for nascent democracies, however, can be disastrous for sustainment of democratic governments and military subordination to the same.

☞ In 1994, 31 criminal cases involving Judicial corruption were referred to the Public Ministry by the Inspector General Offices resulting in incarceration of judges, Court Clerks and lawyers. The conditions of impunity in which judicial corruption has traditionally flourished are being greatly reduced as a result of Public Ministry and IG of Tribunals cooperation..

4. USAID Support for Criminal Procedures Code Reforms

The current criminal procedures code is antiquated, cumbersome, quasi-secretive; and, in the practice, leads to entirely written trials which afford little protection to the accused and often violate the Constitutional principles of liberty and presumption of innocence. Under the current CPC, the judge is investigator, pre-trial and trial judge and sentencing judge all in one.

Two USAID program-supported measures undertaken in 1995 seek to improve the speed and quality of criminal justice in Honduras; a new Criminal Procedures Code bill which has been submitted to the Congress by the Supreme Court and an interim measure, a judicial instruction, to foster more effective application of the current antiquated criminal procedures.

a. Drafting of the New CPC

☞ USAID Honduras provided observational travel and international technical assistance to the CPC workgroup which was responsible for drafting the reform. As a result the new Criminal Procedures Code (CPC) was submitted by the Court to the Congress in 1995 and is on the Congressional agenda for 1996. If enacted in its current form, it promises to transform the Honduran inquisitional-based Criminal Procedures Code into an adversarial type system providing plea bargaining, increased transparency in public and oral pre-trial hearings and trials, and greater protection for the accused and victims alike.

☞ In 1995, the SDI program financed rigorous certification training for each of 401 Judges, Prosecutors, Public Defenders and Law School professors in a 72 hour course which included comparative law, precepts of an adversarial system and intensive training in the new CPC reform.¹⁵ The course was noted for its demands upon the professionals who took the training and only 273 of the 401 who began the course were ultimately certified in the new CPC.

b. Delay Reduction Measures Pending Approval of the New CPC

The second measure developed with benefit of USAID program technical assistance led to a judicial instruction (*Auto Acordado*) issued by the Supreme Court in December of 1995. This instruction constructs for judges a conceptual and procedural bridge between the current Criminal Procedures Code and the new code. The measure emerged as a result of USAID program-financed *delay reduction* analysis, which in turn led the Supreme Court to issue the judicial instruction to accelerate the pace of criminal cases passing from the investigative phase (*Sumario*) to the trial phase (*Plenario*). The *Auto Acordado* requires a new discipline among judges to get

¹⁵ Once the new CPC is approved by Congress (expected in mid 1996), the program will support its implementation through additional training of judges, public defenders, prosecutors and court inspectors (the first iteration of training was completed in 1995).

cases out of the pre-trial investigative phase to trial within 30 days, and warns judges that compliance will be monitored by the Inspector General and Public Ministry and sanctions will be imposed for those who don't comply.

☞ USAID technical assistance led to the development of this initiative which requires judges to apply certain basic principles of speedy process which, while contained in the current Criminal Procedures Code, have been ignored in practice. The *Auto Acordado* and the new CPC has already begun to reduce the serious congestion of criminal cases in pre-trial phase and promises to reduce the time accused are held in pre-trial detention.

c. The National Judicial Reform Commission - A Vanguard for Change

The National Judicial Reform Commission (NJRC) was created in 1985 with Regional USAID Administration of Justice and ILANUD support. The NJRC was and is now comprised of members of representatives of the Supreme Court, Ministry of Justice, Attorney General's Office, Solicitor General Office, Ministry of Planning, National University, and the Honduran Bar Association. From 1987 through 1993, the SDI project provided technical assistance and financial support for the undertaking of a full range of legal reform issues. With support from USAID, the NJRC was well known as one of the most active and cost effective reform commissions in Latin America.

☞ By the end of 1993 it had completed 22 reform activities and had another 16 in preliminary review, pending implementation. The NJRC programs successfully completed included defining and forming the Judiciary's aforementioned experimental programs, formalizing administrative reforms related to MUNIS implementation, implementing the Jurisprudence automated system (FolioViews), drafting the Judicial Organization Development Plan, drafting the study to incorporate Judicial employees into the social security system (since fully implemented) and work to strengthen the Court statistical system.

☞ In 1995, the NJRC completed revisions of two "cookbook type" procedural manuals for Judges and finalized drafting of regulations for the Inspector General of Tribunal Office which strengthens the legal authority of the IG in searching out judicial corruption; these regulations were approved in June of 1995 by the Supreme Court Pleno.

5. Judicial Career Law Adherence Programs

USAID support for the building of a corps of professional, ethical and impartial Judicial functionaries

International assistance provided by USAID provided technical assistance for drafting of Career Law implementing regulations, job and salary classification manuals and Career Law grievance procedures. Beginning in 1991, the SDI Project financed technical assistance to strengthen the Judicial Career Law. This support was three-fold: (1) to the Court's Office of the Director of the Judicial Career Law and (2) to the Court's Personnel Grievance Board, as a means to protect individual Court employee rights in a highly politicized work place. The investigation, reporting and sanctioning of judicial misconduct are integral to the Judicial Career Law program and were met by SDI support for the third element (3) expansion of the previously discussed Inspector General of Tribunal office and the providing of technical assistance and training to enhance its

investigatory capability.

A professional Career service for both the Court and Public Ministry institutions is essential to achieve the objective of better qualified and more ethical and efficient judges, court officers, Public Ministry prosecutors and other employees. USAID, the Judiciary and the Public Ministry have worked together to develop formal instruments which attack those aspects of the personnel selection process which tended to promote patronage, actively encourage corruption and reduce the professional standards required of functionaries and employees entering into and retained by the judiciary and Public Ministry.

15 The USAID/Court program has provided technical assistance for the development of the Regulations, Job Classification and Salary Manuals and Grievance Board regulations which are integral to the Court's administration of the Judicial Career Law.

Continued policy dialogue and strict monitoring of the Court's adherence to the Judicial Career Law is essential to ensure the professional and ethical quality of judicial personnel. This area has continually been one of special attention for the program and positive results have been achieved.¹⁶

6. USAID-Court Experimental Programs for Judges, Public Defenders and Prosecutors

The creation of so called "experimental programs", fully financed by the project and local currency counterpart (ESF) program funds, was designed to increase the professionally-qualified, law school graduate court functionaries selected in accordance with Judicial Career Law criteria, thus increasing the availability of quality judicial services for Hondurans with special benefit for the poor who traditionally were unable to afford professional services of highly qualified lawyers.

The experimental Court programs included experimental programs, variously, for judges, assistant judges, public prosecutors (phased out with that function now passed to the Public Ministry), and public defenders. In addition, the Inspector General Program was and is managed under strict Career Law criteria. In addition, SDI project assistance provided support to the Judicial School to raise the professional knowledge of Judicial functionaries thus enabling them to carry out their duties more effectively.

¹⁶ Nevertheless, compliance by lower level functionaries in 1995 has not been uniformly consistent with the spirit and/or the letter of the Judicial Career Law. Consequently, the program office, in coordination with our senior level Court partners determined that the way to attack distortions to personnel selection, assignment and sanction policy, was to provide increased authority to the IG of tribunals to work directly with the Public Ministry to root out judicial corruption. The Supreme Court Justices approved new regulations permitting the IG to have increased autonomy of action and direct coordination with the Public Ministry. The Supreme Court is seriously considering delegating authority to the IG to administratively and immediately suspend any Court functionary or judge from a case, when reasonable evidence that a serious irregularity or crime has been committed. The new authority granted the IG should act to ensure adherence to Career law precepts and standards is adequately enforced.

The steady increase in the number of fully qualified law-school graduates since 1992 is manifest in the following table:

Law School Graduate Judicial and Public Ministry Functionaries Human Resources for the Honduran Criminal Law System 1992-1996					
CY	'92	'93	'94	'95*	'96**
Judges	81	39	73	85	115
Assistant Judges	0	18	8	14	32
Public Defenders	31	49	49	104	104
Prosecutors	19	40	44	196	188
Total	131	146	174	399	439
* Prosecutors transferred from Court to Public Ministry ** as of March 1996 Salaries of all experimental program personnel were financed with USAID program local currency counterpart funds (ESF) from 1992 through 1994; as of 1995 GOH national funds finance all recurring costs such as salary.					

a. Judges Program: In Honduras in 1988, most of the Judges imparting justice were not law school graduates (Judges *Letrados*); indeed many of them were simply appointed as judges as a favor for their party loyalty. Between May 1988 and December 1991, program funds (ESF) financed salaries and other support for 120 law school graduates to work as Court of first instance judges (*Letrados*). Court appointed career judges and court contracted assistant judges continued in the program through 1995 when the Court fully integrated the program and all associated costs into the regular court structure and budget.

b. Public Defender Program: The Public Defender program was created in 1989 with USAID program financial support to provide Constitutionally-mandated free legal services for the poor. The program has financed a sustained increase in the number of Public Defenders. These law school graduate professionals have been competitively selected and are highly qualified to provide professional legal services to the poor.

Focused on the serious problem of "prisoners without sentences", program funds supported increasing numbers of Public Defenders (PDs), from 31 in 1993, to 104 by the end of 1994. Beginning in 1995, the PD program became fully financed by national funds of the Judiciary and is now considered an integral part of the regular Court organization providing defense services to any Honduran unable to pay for his or her own defense.

Experimental Programs have become fully sustained and integrated by the Court

☞ In late 1994, USAID and the Court mutually recognized that the experimental programs of the Court created as part of the institution-building effort had become largely institutionalized and appeared to be sustainable as integral programs and/or organizations within the Court if the Honduran Congress adequately funds the Judiciary. The Court fully integrated the USAID/Court "experimental" programs into the permanent Court structure and salaries of these judges and public defenders are now fully financed by the Court.

Defending the Poor

In 1995, the Public Defenders managed 4,699 criminal cases for detained defendants in a country where the prison population never exceeded 7,945. In the same year, Public Defenders accomplished the following:

- ▶ secured freedom for 1,537 accused who could not afford to pay for legal services;
 - ▶ earned 430 dismissals, which included
 - 103 final sentences,
 - 25 commutations of sentence, and
 - 21 suspensions of the sentence
- The other cases were, variously, prisoners who had completed or exceeded their maximum legal period of incarceration, prisoners whose files had been lost or misfiled, and other cases in which the principle of innocence until proven guilty had been violated.

c. Public Ministry Prosecutors Program:

The USAID program was also instrumental in starting and supporting the Public Prosecutor program in 1992. By 1994 there were 44 public prosecutors operating under the program and in 1995 the program was phased out of the Court as the prosecutor function passed to the Public Ministry.

In the first weeks of the Public Ministry (PM), the Honduran Attorney General, Dr. Edmundo Orellana, was determined to meet and exceed Judicial Career Law selection criteria for all Public Ministry staff, to include the 196 new public prosecutors to be hired in late 1994 and early 1995.

☞ In 1995, the new Public Ministry assumed all Public Prosecutor functions from the Court and is fully financing and sustaining a highly professional corps of 196 non-political, merit selected prosecutors with national/non-program funds.

The \$1.6 million dollar USAID program investment in the Public Ministry since 1995 in technical assistance, training for prosecutors and medical forensic staff is already paying dividends in more justice for the average Honduran and less impunity for powerful elites.

☞ The number of public corruption or abuse of authority complaints filed with the Public Ministry and subsequently prosecuted (73 cases in 1995) has increased significantly with accompanying publicity. In less than 18 months of operation, the Public Ministry has become recognized by the majority of Hondurans as an effective and credible organization combatting corruption and impunity on behalf of Honduran society.

AN EXTRAORDINARY PROCESS - SELECTION OF PUBLIC MINISTRY PERSONNEL

The Public Ministry (PM) contracted a well-known and respected NGO human resources organization to conduct the hiring of all prosecutor and Criminal Investigation Department (DIC) agents as well as support staff. Applicants were tested in general and specialized knowledge; in addition, a five hour battery of psychometric exams was administered and evaluated by trained psychologists. For those who passed the exams, background checks were conducted.

Of some 2400 lawyers who applied for positions as prosecutors, only 196 were found professionally and ethically qualified to join the PM. The success and credibility earned by the PM is due in no small part to the bold and unprecedented rigorous and apolitical personnel selection process.

The strict adherence to Career Statute hiring requirements were basic principles of the USAID experimental programs. They were long understood and promoted by Attorney General Orellana, who prior to being selected by the Honduran Congress to be the Attorney General of Honduras, had been a USAID partner on Judicial Career Law issues from his previous position as Deputy Coordinator of the National Judicial Reform Commission.

☞ Public Ministry cases adjudicated by the Court, involving corruption in government, has resulted for the first time in Honduran history in accusations against high level civilian and military functionaries, some who have already been jailed.

☞ In a country known for the cynicism of its population related to the justice sector and impunity of powerful elites, in a September 1995 CID-Gallup poll 71% of Hondurans with high-school education opined that the actions of the Public Ministry were strengthening the independence of the Judiciary. In the same poll, 79% of all Hondurans polled supported the Public Ministry's handling of investigations of current and former public functionaries for illicit enrichment while in public office.

7. Strengthening Judicial Administrative and Jurisprudence Systems

The project financed modernization of the administrative systems of the Court; and separately, of the new Public Ministry; through introduction of a fully integrated administrative, accounting and budget system. the "Municipal Information System" (MUNIS), which permits maintenance, compilation, control, and transparent reporting of personnel and financial data and actions. Also provided was technical assistance and financing to create an automated jurisprudence system (FOLIO), which allows Honduran judges, Public Defenders and Prosecutors to access decisions of the Supreme Court to establish precedence for rulings.

☞ With technical assistance, training and equipment support provided by the Project's institutional contractor, a modern integrated administrative, personnel, accounting, budget system (MUNIS) is functioning for both the Judiciary and the Public Ministry.

☞ The Court is making use of an automated jurisprudence system (Folio) which has stored in it over 3,000 Supreme Court decisions. The system is currently connected to some 70 terminals and use by lower-level courts is being expanded in 1996.

8. The Real Property Registry Program

The Program was included in the Strengthening Democratic Institutions (SDI) project Administration of Justice (AOJ) component because property fraud is, quite probably, the single biggest source of fraud and corruption in the Honduran judicial system. The objective of this activity was to establish a modern, transparent system to guard the rights of investors in Real Property.

Technical enhancement of the Real Property Registry (RPR) process, to promote speed, accuracy and completeness of document retrieval. When illegal or erroneous entries or modifications to documents do occur, a properly safeguarded automated system will enable more accessible and retrievable audit trails. In the absence of well defined, historically traceable (cross referenced) land registry documentation, the weaknesses existing in the system today will continue; e.g. honest mistakes not readily identified, and/or ample opportunities for Property Registry personnel and the Judicial system to unscrupulously manipulate and illegally divert property titles and deeds.

Work under the RPR activity of the AOJ component consisted of two USAID financed diagnostics providing analysis of pilot project requirements to create a modern, automated, and streamlined search and retrieval system for property deeds in Tegucigalpa and Comayagua. Due to other priorities and program financial constraints, the pilot program has not been undertaken, however the IDB is looking at property registry modernization activities in Honduras and has made use of the USAID developed assessments.

USAID Honduras has paved the way for Real Property Registry Reform in Honduras, the Court in conjunction with other international assistance organizations investing in registry modernization will have the benefit of this preliminary but comprehensive analysis..

D. CIVIL SOCIETY DEMOCRACY AND JUSTICE SECTOR REFORM PROGRAMS

The new SDI strategy recognized the importance of fostering civil society entities, especially democracy and legal reform advocacy groups that can educate the Honduran population and work with the Congress to achieve the important justice sector reforms, mentioned above, which will consolidate the Rule of Law in Honduras. Continuing in 1996 with work begun in 1995 with the Supreme Court, the Public Ministry, the Human Rights Commissioner's Office, the Honduran Foundation for Democracy and Development (FDDH) and other interested NGOs, the program envisions an increasing important role for reform minded groups and apportionment of increasing percentages of the overall SDI budget to support these efforts.

1. USAID NGO Partners Promote a Constitutional Amendment for a More Independent Judiciary: To foster an Independent Judiciary fulfilling its role as an equal power of the state, along with the Executive Branch and the Legislature, a USAID NGO partner organized a workshop with international Judicial Reform experts participating to analyze, with various Honduran public and private sector notables, a Constitutional Amendment to delink the selection of Supreme Court Justices from the four year Presidential electoral process. The measure, which would provide greater independence of the Supreme Court from and vulnerability to political processes, was subsequently promoted by an NGO using funds from a USAID grant. The NGOs formed a coalition of other NGOs and financed a national campaign advocating a more independent Judiciary. The Supreme Court, which has the privilege of submitting legislation related to the justice sector, submitted the bill to the Congress for consideration in late 1995.

☞ Technical analysis of the bill as well as a nation-wide public information campaign was provided by a USAID Cooperative Agreement Grantee, the democracy/legal reform advocate NGO "Foundation for Democracy and Development of Honduras" (FDDH). The bill is being considered for Congressional debate in 1996. If passed, the Constitutional Amendment will enable *sustained* independence of the Judiciary from the other branches of government and political influences, thus empowering the common citizen through equal standing (vis-a-vis powerful interests) before the law.

2. USAID GOH Partners Reach out to Civil Society - Public Ministry Linkages with NGOs: In addition to fostering the legal reform advocacy and justice sector "watchdog" function of selected NGO partners, USAID has also provided SDI program grant funds for a Public Ministry "NGO outreach program". This program has included, in 1995 and early 1996, a series of PM sponsored national Conferences, each developed around a specific NGO area of interest. Conferences have been conducted on legislative reform and PM/NGO cooperation on topics of, variously; crimes against the environment, violation of human rights, ethnic groups and minorities issues, and violence against women and children. The conferences and workshops have resulted in strong ties between Public Ministry Special Prosecutors and selected Honduran NGOs, with corresponding operational benefits resulting.

☞ USAID support for the Public Ministry "NGO outreach programs" has fostered a strong partnership between the PM and NGOs which has become a powerful tool to empower the average Honduran in seeking redress for crimes against individual and collective rights. Additionally, these PM/NGO linkages have enabled the Public Ministry to benefit from NGO

expertise and specialized knowledge in preparation of specialized cases of national impact.

PART III. SDI PROGRAM IMPACT ON CIVIL-MILITARY BALANCES

The USAID Strengthening Democratic Institutions Project in Honduras has provided incidental, but important, support to the civilian government's programs in institutionalizing the Honduran military's respect for and subordination to democratically elected civilian government rule.

At the turn of the century in Honduras, there was no liberal revolution of comparable depth to those experienced by Guatemala and El Salvador. As a result, armed bands serving local caudillos and an endless series of civil wars were rampant well into the twentieth century.¹⁷ Costa Rica's six week experience with military rule in 1948 led to the abolition of the national army in 1949.¹⁸ On the other hand, Honduras, between 1946 and 1981, was governed 22 years by the military and it was not until 1981 that a democratically elected civilian government came to power to begin a succession of peaceful and democratic changes in government. Even after the 1981 elections, within the context of the East-West cold war, the Central American situation was heavily influenced by agents and processes alien to the national dynamics of the Isthmian countries, a reality that affected each of them differently. This influence was thought by some regional analysts to be decisive in the cases of Honduras and El Salvador by tending to erode these countries' sovereignty and self-determination while delaying evolution of civilian supremacy over the armed forces.¹⁹

Military Rule - a comparison:

Honduras has had 22 years of military rule in the period 1946-1996 as compared with only six weeks for Costa Rica for the same period.

Country - Military Rule

Costa Rica:	Six weeks in 1948
Honduras,	1946 - 48
	1956 - 57
	1963 - 74
	1974 - 78
	1978 - 80

Source: Maniruzzaman,
Military Withdrawal from Politics,
pp.225,227

Up until the Honduran Constitution of 1981, the constitutional status of the Honduran Armed Forces was eloquent testimony to the inability of civilian governments to curb the armed forces effectively. The Honduran constitution of 1957 gave the armed forces more freedom of action

¹⁷ Only in the 1940s were the modern armed forces organized, keeping a low profile until 1963 when the young army deposed President Ramon Villeda Morales only ten days before the scheduled election of his successor Villeda Morales had put into place a series of socioeconomic reforms, but historians [see Herring Op Cit] describe him as "politically inept and vacillating...immediately losing control of both the executive and legislative branches of the government". In order to grant civilians stronger control over the army, the civilian President created a parallel military corps (the National Guard), a move that prompted the 1963 coup. The officer that overthrew Villeda Morales became the country's leading political character for more than a decade, Colonel Oswaldo Lopez Arellano.

¹⁸ Talukder Maniruzzaman, *Military Withdrawal from Politics*, Ballinger Publishing Company, Cambridge, Massachusetts, 1987, p 227 In 1948, the candidate supported by the middle class won the presidential elections in Costa Rica. The armed forces intervened to prevent the president-elect from taking office and declared martial law. A six week middle class revolt resulted in a revolt which led to the Army as a permanent institution being proscribed. As Maniruzzaman concludes, "Civilian supremacy in Costa Rica has prevailed since the 1948 revolution, proving the common axiom that 'there is only one absolutely sure way not to have an army revolt: no army.'" ¹⁸

¹⁹ see Gabriel Agulcra, "The Armed Forces, Democracy, and Transition in Central America, p 24 In Louis W. Goodman, Johanna S.R. Mendelson, Juan Rial, *The Military and Democracy - The Future of Civil-Military Relations in Latin America*, Lexington Books, Lexington, Massachusetts, 1990.

than any Latin American document since Paraguay's constitution of 1844, the Paraguayan instrument being written under the direction of an avowed military dictatorship. Article 319 of the 1957 Honduran Charter provided that when any difference arose between the Chief of the Armed Forces and the national President, it would be submitted to the consideration of Congress, which would resolve the issue by majority vote. No Constitution in Latin America gave the military more discretionary power than the Honduran instrument.²⁰ The 1981 Honduran Constitution subordinated the military to the Executive Branch recognizing the civilian President's role as Commander in Chief of the Armed Forces, but left removal of the senior military commander, the Commanding General of the Armed Forces, to the Congress.

While elections since 1981 have resulted in peaceful and legitimate changes of civilian government, the *inordinate influence of the military in national affairs was still quite notable through 1992*. Indeed, it was not unusual to hear Hondurans make reference in conversation to "the government *and* the military", in recognition that the military traditionally maintained its autonomy/independence from the civilian government.

It was not until 1993 that subordination and accountability of the military to the civilian government command structure, and even more importantly the justice system, was institutionalized through legislative reforms and subsequent practice. In March of 1993, responding to the issue of historical military impunity in the legal system, the Honduran Congress, with support from legal reform analysts assigned to the USAID developed, equipped and trained Center for Information and Legislative Studies (CIEL), drafted and enacted legislation which required criminal or civil cases involving military functionaries to be automatically referred to the civilian court system if there is jurisdictional dispute between the military courts martial and civilian judicial systems.²¹ From 1993 to 1996, all criminal cases in which jurisdictional disputes arose were referred to,

**Honduran Military
Subordinated to Rule of Law**

In 1995 and 1996, 10 high ranking active duty and retired military officers have been charged with human rights abuses stemming from the 1980s regional conflict.

With these prosecutions and other criminal charges having been filed by the PM against military officers for criminal conduct related to environmental abuse, narco-trafficking and communicating threats against public functionaries; increasingly, Honduran military officers, soldiers and police are increasingly mindful of honoring their public trust and policing their own ranks.

As a result of Public Ministry effectiveness, the culture of impunity among public officials, including the military and police, is diminishing. USAID support which strengthens the professional and organizational capabilities of Public Ministry. Prosecutors has indirectly contributed to a Honduran military and police force more respectful of civilian governance and Rule of Law.

²⁰ John J. Johnson, *The Military and Society in Latin America*, Stanford University Press, Stanford CA, 1964, pp 162, 233

²¹ These were the interpretations of Articles 90 and Article 91 of the Honduran Constitution of 1981, the so called *Fuero de Guerra* or "wartime articles"

In 1995, after the Conference of Central American Presidents of Legislatures held in Managua, Nicaragua, the CIEL was designated regional Center for Legislative Studies and Information (ICEL). It is designated to be the model for and provide technical assistance to other regional legislative centers

prosecuted, and tried by the civilian court system.

In addition to the legislative reforms which appropriately subordinated the military to the jurisdiction of the civilian court system, the \$1.6 million dollars in technical assistance, training and logistical support which in part has strengthened the capabilities of the Public Ministry Special Prosecutors, has enabled the offices of Special Prosecutors for Human Rights, Special Prosecutors against Public Corruption and Special Prosecutors for the Environment to effectively manage and prepare criminal cases involving high ranking Honduran Army and Police officers.

In 1995 and 1996, 10 high ranking military officers have been charged with human rights abuses stemming from the 1980s regional conflict. In addition, a number of more junior officers and enlisted men have been criminally tried and sentenced for acts ranging from narco-trafficking to assault, threats to do bodily harm, car robbery and common crimes. With these prosecutions, the Honduran military is manifestly and increasingly respectful of its public trust and more effectively subordinated to the democratically elected civilian government. An effective Public Ministry has resulted in reduced military impunity.

☞ USAID Rule of Law program efforts as well as the earlier cited legislative reform efforts of the Congressional legislative research center (CIEL) have contributed to the subordination of the Honduran military to the civilian justice system and government authority.

PART IV - CONCLUSIONS

The USAID democracy and rule-of-law programs have achieved impressive results towards the strategic objective of *"More Responsive Democratic Processes, with Greater Citizen Participation"*.

Sustained Free and Fair Democratic Elections

☞ Greater Confidence in Electoral and Democratic Processes based on four consecutively free, fair and open national elections;

Legislature Strengthening

☞ Modernized legislative administration systems and creation of a Congressional Center for Information and Legislative Studies that has contributed since 1993 to important legislation, providing more and better quality information to Honduran legislators;

"More Honest and Effective Investigatory and Judicial Systems"

☞ A Judiciary with modern administrative, jurisprudence and statistical systems supporting courts and employees nationally; more qualified (professionally and ethically) and better trained judicial functionaries and employees;

☞ Effective Justice and public sector corruption "watchdog" organizations such as the Court IG of Tribunals, the Public Ministry and an increasing number of NGO legal reform advocacy and "watchdog" groups.

☞ Innovative Judicial reforms developed by USAID supported National Judicial reform Commission, Supreme Court, Public Ministry and NGO partners, which when enacted promise greater independence for the Judiciary and timely, transparent and more humane imparting of justice for all.

Increased citizen participation in democratic rule-of-law processes has increased as a result of the programs supported by USAID, thereby, assisting the process of establishing legality and - in conjunction with the idea of justice and democratic structure - **legitimacy** for the deepening Honduran democracy.

PART V - ATTACHMENTS

-Bibliography

-Financial Tables

Table A: Summary Life-of-Project USAID and GOH contributions (1987-1997)

Table B: Summary Financial Plan by Project Component

(USAID HONDURAS - DEMOCRACY BUILDING PROGRAMS)

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