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The Honorable Richard Lugar
The Honorable Daniel Patrick Moynihan
The Honorable Thomas A. Daschle
United States Senate

In response to your request and that of former Senators Alan Cranston and Brock Adams, we have issued a series of reports dealing with U.S. efforts to improve the administration of justice in developing countries, including reports on specific programs in Colombia, Panama, and El Salvador.[1] In these reports, we reviewed efforts undertaken by the Agency for International Development (AID), the Department of State, the U.S. Information Agency (USIA), and the Department of Justice. This report draws upon our previous work, as well as our review of programs in other Latin American countries and in countries of Central and Eastern Europe. This report describes (1) the lessons learned from 10 years of judicial reform experience in Latin America and (2) the U.S. government's management approach to judicial reform in the new democratic countries of Central and Eastern Europe.

Background

In the 1980s, the United States began to help Latin American countries improve their judicial systems as a way to counter political instability and support democratic principles and institutions. In 1983, Congress authorized the use of foreign assistance funds to initiate a bilateral judicial reform project in El Salvador to address concerns that the government of El Salvador was unwilling or unable to bring to justice individuals suspected of committing and covering up human rights abuses.

The major impetus to improve judicial systems in Latin America, however, emerged from a January 1984 report on Central America from the National Bipartisan Commission (the Kissinger Commission). The Commission recommended that the United States support democratic processes and institutions, in part, by improving the administration of justice. In response, AID, under the general policy guidance from the Department of

[1]Foreign Assistance: Police Training and Assistance (GAO/NSIAD-92-118, Mar. 5, 1992). Foreign Assistance: Promising Approach to Judicial Reform in Colombia (GAO/NSIAD-92-269, Sept. 24, 1992). Foreign Assistance: Meeting the Training Needs of Police in New Democracies (GAO/NSIAD-93-109, Jan. 21, 1993). Foreign Aid: Efforts to Improve the Judicial System in El Salvador (GAO/NSIAD-90-81, May 29, 1990). Aid to Panama: Improving the Criminal Justice System (GAO/NSIAD-92-147, May 12, 1992). Aid to El Salvador: Slow Progress in Developing a National Civilian Police (GAO/NSIAD-92-338, Sept. 22, 1992). El Salvador: Efforts to Satisfy National Civilian Police Equipment Needs (GAO/NSIAD-93-100BR, Dec. 15, 1992).

State, developed a regional program for Central America. AID has since incorporated judicial reform projects into its ongoing bilateral assistance programs to a number of countries in the region. In 1989, Congress directed that part of the U.S. assistance to Central and Eastern Europe be targeted at the development of democratic institutions, including an independent judiciary. The Department of State was given the responsibility for coordinating this assistance.

Results in Brief

AID has obligated about $169 million for judicial reform projects in Latin America, and has spent about $46 million. Operating within difficult political environments and in a sensitive area, AID has experienced both successes and disappointments. However, even in situations where its projects were less successful than hoped, the Department of State and AID learned lessons that can be applied to future judicial reform activities.

The most valuable lessons based on our work in Latin America were that

- imposing judicial reform on a country that is not ready for or receptive to change is generally ineffective and wasteful,
- addressing technical problems without confronting the political and institutional obstacles to reform is usually not productive,
- performing and using impact evaluations are important to make sound program management decisions,
- obtaining support for the program from the entire U.S. team in the recipient country has proven to be an important element of a successful project, and
- having adequate staff with experience in judicial reform is essential.

In some countries, some of these ingredients were present; however, we found that in countries where the administration of justice programs were marginal or where setbacks occurred one or more of these ingredients were missing.

AID has applied some of the lessons learned to new projects in Colombia and El Salvador. However, it has been slow to terminate projects that have experienced substantial difficulties. For instance, the United States has authorized more than $22 million over 9 years to support the Latin American Institute for the Prevention of Crime and Treatment of the Offender (ILANUD), but project assessments conducted by AID during that period disclosed significant performance problems and questioned the

need for continued U.S. support. Nonetheless, AID has continued to fund the project.

In Central and Eastern Europe, U.S. judicial reform efforts—called the Rule of Law Program—have been a low funding priority. The United States has allocated more than $1 billion in assistance for that region for fiscal years 1990 through 1992, but only about $3 million (0.3 percent) has been allocated for judicial reform. Nevertheless, a number of management problems could hamper the effectiveness of reform efforts, especially if they are expanded in the future. In particular, neither the Department of State, USIA, nor AID had (1) assessed the region's needs or formulated long-term goals or objectives before targeting short-term technical requirements and (2) clearly defined the lines of authority and responsibility among the participating agencies and embassies.

Judicial Reform Activities in Latin America Provide Lessons for Future Activities

AID documents show that most judicial reform efforts in Latin America experienced serious problems, resulting in a portfolio of marginally successful projects. Additionally, we reported in 1990 that after 6 years of U.S. assistance, El Salvador's judicial system still lacked the ability to deliver fair and impartial justice because, at the time, the Salvadoran government lacked the commitment to do so. Nevertheless, AID has achieved individual accomplishments, and it drew attention to the dire need to improve the delivery of justice to address human rights abuses and strengthen democratic values. Furthermore, while insufficient time may have passed to measure long-term results, AID and State can draw upon its experiences in its initial programs to avoid repeating some of the same mistakes. These lessons are summarized below and discussed in more detail in appendix I.

- Projects Launched Without Commitment From Host Governments Face An Uncertain Future. In compliance with congressional earmarks, AID pledged resources in El Salvador, Honduras, Guatemala, and Costa Rica, despite host government indifference to reform in three of these countries. Without host government support, these projects have not had the desired impact. Congressional earmarking of funds for judicial reform resulted in AID initiating large-scale projects before there was a reasonable chance for success. In commenting on a draft of this report, AID said it should not be criticized for attempting to carry out U.S. foreign policy, strongly supported by Congress, in less than ideal circumstances. It acknowledged that early efforts often failed to produce the anticipated improvements in administration of justice, but AID believes these programs have drawn

attention to reform issues while increasing the political willingness to proceed with more substantial reforms. AID cited El Salvador, Guatemala, and Honduras as examples where government support for reforms has grown substantially.

- Projects That Do Not Address Political and Systemic Obstacles Will Have Limited Impact. According to AID, its initial inexperience in the politically sensitive and complex area of judicial reform led AID to focus first on technical improvements to the judicial systems, such as case tracking and computerizing case management systems, rather than on political and systemic obstacles to reform. AID officials in El Salvador and Guatemala favored technical projects because they (1) believed that such projects were easier to design, implement, and manage; (2) assumed that technical changes could bring about substantive improvements; or (3) underestimated the extent that political considerations drove the host government's decision-making concerning the future of the judicial system. In commenting on this report, AID said that these project activities focused on long-term institutional development and, given the organizational chaos in the sector, were a valuable incentive to reform and generate a climate for change. Nevertheless, AID now acknowledges that addressing the attitudinal and political obstacles to reform are an essential first step.
- Impact Evaluations Are Important for Sound Project Management Decisions. AID rarely used impact evaluations to make decisions on its judicial reform projects. Project evaluations that were performed generally measured outputs, such as the number of people trained, books purchased, or computers donated, but did not indicate whether the projects resulted in reforms to the judicial system. In only one case, the program in Guatemala, did AID decide to terminate a project because it was poorly rated. In commenting on this report, AID said that most judicial reform projects were only from 3 to 6 years old, too short a time frame to measure significant change in institutional development. Nevertheless, AID said that it has recognized the need to develop alternative indicators of progress toward these more distant objectives and has devoted considerable effort toward resolving this problem. AID said that it is still looking for a satisfactory solution.
- Sufficient Embassy Support Is Necessary. Projects tended to be more successful in countries where the ambassador and other U.S. officials in-country (1) made judicial reform a high priority and (2) recognized that AID officials needed the help of other U.S. agencies to address some of the complex, politically sensitive issues. Judicial reform projects in Costa Rica and Honduras, for example, received little support and are experiencing difficulties. In commenting on this report, the Department of State and AID

said that embassies have been urged to implement an interagency approach to judicial reform assistance from the outset, and AID stated that even at embassies where an interagency committee did not exist or met infrequently, informal coordination still occurred as a matter of course. Agency documents and officials with whom we spoke indicate that coordination did not always occur. Nevertheless, our report on the program in Colombia shows that as important as good coordination is, the essential ingredient to a successful program is strong ambassadorial leadership.

- Project Implementation Is Hampered When Experienced Staff Are Unavailable. When AID began its judicial reform program in the mid 1980s, it did not have an experienced cadre of staff from which to draw. Additionally, personnel in the private sector with the requisite experience were also limited. In commenting on this report, AID said that as with most new programs, recruiting and hiring staff has lagged behind the initial funding cycle, but that the Bureau for Latin America and the Caribbean now has 51 personnel working directly on democratic initiatives. However, we found that as of February 1993, AID had only five staff members who had experience in managing judicial reform projects in Latin America. AID has had to rely extensively on contractors, and a number of projects ran into implementation problems.

AID Is Applying Lessons Learned to Programs in Colombia and El Salvador

Newer projects in Colombia and El Salvador should benefit from the U.S. judicial reform experience in Latin America. In Colombia, we found that AID used small grants to help build consensus for reform among the host country's judiciary, the private sector, and the executive branch. A 6-year, $36 million judicial reform project was launched only after the Colombian government demonstrated its commitment to reform. The Colombian government ratified and implemented a new constitution that helped establish an independent judiciary, provided measures to decongest the courts, and promoted improved means to investigate and prosecute criminal acts. U.S. officials believe that the government's commitment has become so strong that judicial reform would proceed even without U.S. assistance. In addition, the U.S. Embassy made the program one of its top priorities and took the lead in coordinating assistance among U.S. agencies.

AID officials in El Salvador signed the grant agreement with the government of El Salvador in September 1992. The new 5-year, $15 million judicial reform project will target consensus-building among host government officials and public awareness campaigns before beginning

large-scale projects. Under this project, the government of El Salvador must budget sufficient funds for the institutions targeted for assistance before U.S. funds are released. This project has multiagency involvement.

Support for ILANUD Continued Despite Poor Performance

AID's reluctance to terminate unsuccessful projects is illustrated by its continued support for ILANUD. When AID became active in judicial reform in Latin America during the mid-1980s, U.S. officials wanted to minimize their direct involvement in the region. AID, therefore, selected ILANUD—established in 1975 as a result of an agreement between Costa Rica and the United Nations—to implement a regional reform program. AID has provided more than $22 million to these efforts over the last 9 years, with very little financial support coming from the United Nations or other countries during this period of time.

One of the major goals of the project was to strengthen ILANUD as a regional institution so it could (1) carry out the training and other assistance included in the project and (2) continue to provide judicial reform leadership in the region beyond the life of the project.

A June 1988 project evaluation pointed out that ILANUD lacked the institutional capability to provide judicial reform assistance on a continuous basis and remained dependent on the United States for funding. Additionally, the evaluation found that ILANUD did not actively market its services but has waited for AID to identify potential projects and customers. Nevertheless, in December 1988, AID added $13.6 million to the project and extended its project completion date for an additional 2 years.

Subsequently, in its semi-annual project reviews, AID consistently rated the ILANUD project as one experiencing significant problems. As recently as November 1992, AID reported that ILANUD was not responsive to the needs of the justice sectors in other countries and does not significantly contribute to the improvement of criminal justice systems in the region. Nevertheless, the United States continues to provide more than 90 percent of ILANUD's budget, and the organization has been unable to obtain other donor support.

With the end of the Cold War and the growth in democracies in the region, U.S. officials became less concerned about minimizing the U.S. presence in the region and many AID missions started their own bilateral judicial reform projects. In response, an AID evaluation and some AID personnel

questioned the need for AID to continue to support a regional approach to judicial reform.

Nevertheless, AID continued to fund the project and increased funding by an additional $1.7 million in December 1992. In February 1993, AID's Office of Democratic Initiatives said it was once again re-evaluating the merits of continued funding.

In commenting on this report, AID acknowledged that ILANUD has not lived up to anyone's expectations, but that it has nevertheless contributed to judicial reform in the region. AID said that support through its regional program in Central America has steadily declined since 1990, but that some of this support had been replaced by direct grants from other AID missions. AID said that the present grant program expires in December 1993, and that future funding is dependent on how a number of management and funding issues are resolved.

A more detailed discussion of judicial reform efforts in Latin America is presented in appendix I.

Program Management Problems in Central and Eastern Europe

Given the small commitment of funds, and the desire to develop projects with immediate results, the U.S. management approach to administration of justice projects in Central and Eastern Europe is primarily short-term, technical assistance and does not address long-term goals or strategies. The United States is responding to immediate needs generally identified by the host government. Attitudinal and systemic problems are not directly addressed. Assistance consists primarily of activities such as workshops, seminars, resident liaisons, and exchanges. All Rule of Law activities of the participating agencies—State Department, AID, and USIA—are managed out of Washington, D.C., rather than by overseas staff.

Foreign officials have reacted positively to the limited U.S. assistance efforts. State, USIA, and AID officials believe the United States swiftly provided valuable assistance as these countries transitioned to democracies. Nevertheless, USIA was particularly concerned that the United States had not determined the long-term needs of the individual countries or developed clear strategies for meeting these needs. As a result, USIA was unsure what impact U.S. assistance would ultimately have on judicial reform.

Furthermore, State, AID, and USIA officials involved in directly managing the projects told us that lines of authority and responsibility among the participating agencies were not clearly defined. They said that in their opinion too much time was being spent managing this relatively small program. One USIA official cited the example of State's Bureau of Human Rights and Humanitarian Affairs wanting to review all USIA speaker and book program decisions after they had been approved through the normal USIA chain of command. Furthermore, State and AID program managers informed us that oversight and coordination in-country had been poor and that embassy staff had often been left out of the decision-making process. (These issues are discussed further in app. II.)

Recommendations

This report identifies several lessons that can be learned from the experiences U.S. agencies have had in implementing judicial reform programs in the Latin American region. We recommend that, where appropriate, the Secretary of State, the Administrator of AID, and the Director of USIA apply these lessons to future programs. This includes (1) ensuring that host countries are receptive to change before initiating large programs, (2) addressing political and institutional obstacles along with addressing technical problems, (3) ensuring that impact evaluations are used in making decisions about continuing the programs or projects, (4) ensuring that the entire U.S. country team in the recipient country is supportive of the program, and (5) ensuring that the programs are staffed with sufficient experienced personnel.

Since numerous AID assessments show that ILANUD has not accomplished its objectives, we recommend that the AID Administrator determine whether all U.S. funding support for ILANUD should be immediately terminated or phased out on an orderly basis.

With respect to judicial reform in Central and Eastern Europe, we recommend that, as coordinator for all programs in that region, the Secretary of State clarify the appropriate roles of participating agencies, including the U.S. embassies, to improve efficiency and coordination. If a decision is made to expand administration of justice programs in that region, we recommend that (1) the long-term judicial reform needs of each country be assessed before additional funds are committed; (2) strategic plans for meeting these needs be developed; and (3) the coordinator's office ensure that State, USIA, and AID projects are consistent with these plans.

Agency Comments and Our Evaluation

In commenting on a draft of this report, AID, the Department of State, and USIA provided extensive comments.[2] The agencies generally agreed with our recommendations; however, both State and AID expressed strong disagreement with the report, particularly our discussion of judicial reform in Latin America and the Caribbean. They said that the report failed to adequately describe the complexity of the administration of justice programs and the political environment within which they were being implemented.

Our report clearly acknowledges that administration of justice and judicial reform projects are very complex and politically sensitive in recipient countries. However, one lesson the agencies have had difficulty learning is how to terminate projects that, by their own assessments, consistently fail to achieve results commensurate with the money invested, such as ILANUD. Thus, we fully support the AID Administrator's statement at his April 29, 1993, confirmation hearing that "If money cannot be productively used in a particular situation, it should not be spent."

State and AID have clearly achieved successes in advancing judicial reforms in Latin America and the Caribbean. Among the achievements AID cited as most important were reforms in eliminating violations of human rights, creating a separate prosecutorial function, and growing government commitment to reform of the justice system in Guatemala. However, the Guatemalan President's declaration of rule by decree and suspension of constitutional rights on May 25, 1993, demonstrates that democratic reforms are fragile and can be quickly reversed when governments are not totally committed to sustaining democratic institutions. We believe that this experience further illustrates that imposing reforms on a country that is not receptive to change can be very problematic.

State, AID, and USIA acknowledged the management problems in Central and Eastern Europe and indicated that they had been recognized and were addressed in the summer of 1992. Furthermore, they stated that they are now beginning to implement long-term strategies as we recommended. However, some agency officials involved in managing these activities told us that despite the recognition of problems in the summer of 1992, the management approach still causes problems. They said that agencies share management and decision-making responsibility to the point where no one is clearly in charge. Although this may not be a serious problem at the

[2]We did not reprint Department of State and USIA comments because they are lengthy and were repetitive of AID comments, which have been reprinted in appendix III.

present time because the program is relatively small, if not resolved, it could become a much more serious problem as the program grows.

Scope and Methodology

We conducted our review of U.S. judicial reform assistance in Washington, D.C., and five Latin American countries—Costa Rica, El Salvador, Guatemala, Honduras, and Colombia. We interviewed and obtained information from officials at AID, USIA, and the Department of State. We also discussed judicial reform efforts with foreign government officials in the five Latin American countries we visited and with representatives of the Hungarian and Czech and Slovak Embassies in Washington. In addition, we reviewed legislation, legislative histories, and agency legal opinions on judicial reform, and we interviewed judicial branch officials, and representatives of national legal associations.

We performed our work from March 1992 to February 1993 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary of State; the Administrator, AID; the Director, U.S. Information Agency; the Director, Office of Management and Budget; and interested congressional committees. Copies will also be made available to others on request.

This report was prepared under the direction of Harold J. Johnson, Director, International Affairs Issues, who may be reached on (202) 512-4128 if you or your staff have any questions. Other contributors to this report are listed in appendix IV.

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Abbreviations

ABA	American Bar Association
AID	Agency for International Development
CEELI	Central and East European Law Initiative
ILANUD	Latin American Institute for the Prevention of Crime and Treatment of Offenders
USIA	United States Information Agency

Experience in Latin America Provides Lessons for Future Judicial Reform Assistance

Since the early 1980s, the Agency for International Development (AID) has implemented a number of judicial reform projects throughout Latin America. AID has experienced both successes and setbacks in implementing these projects and we have identified a number of lessons that can be drawn from these projects. AID's experience has shown that (1) the sustainability of reforms launched before host governments had demonstrated their receptivity to change is questionable, (2) projects that do not address the political and institutional obstacles to fundamental reform have a limited impact, (3) impact evaluations are important for sound management decisions, (4) project support from the U.S. embassy is essential to ensure effective project management, and (5) project implementation is hampered by the lack of experienced staff.

Projects Launched Before Host Government Has Demonstrated Commitment Face an Uncertain Future

State Department officials believed that the availability of funds for judicial reform in Latin America in the 1980s pushed AID into initiating large projects prematurely in El Salvador, Honduras, Costa Rica, and Guatemala. They noted that Congress, in an attempt to deal with the political instability in the region, earmarked funds for the region before host governments had demonstrated a willingness to implement significant reforms.

These early projects represent a substantial commitment of U.S. resources and the impact of these early efforts are largely uncertain. Although these early projects were often designed and implemented before the host governments had demonstrated their receptivity to change, AID and State contend that they have now tapped into a promising and essential source of support for democratic institutions. In contrast, in Colombia AID waited to begin large projects until the host government was committed to the reforms. So far, this appears to be a more effective strategy to prevent inefficient use of U.S. funds than providing large amounts of money early in the program as had been the case in some other Latin American countries such as the initial program in El Salvador.

El Salvador

In the early 1980s, Congress began earmarking funds for judicial reform in El Salvador to counter human rights abuses. Congress was concerned that the judicial system was unwilling or unable to bring to justice those responsible for, and covering up, a series of political murders and human rights abuses.

In 1984, AID began a $13.7-million project in El Salvador to create judicial investigative capabilities, protect key participants in pending judicial cases, improve court administration, and modernize penal and evidentiary codes, but without first securing from the El Salvadoran government a commitment to fundamentally reform the judicial system. In 1990, we reported that although certain aspects of the judicial system had improved, El Salvador continued to lack the ability to deliver fair and impartial justice to its citizens because the Salvadoran government had not demonstrated any real commitment to change.

On January 16, 1992, representatives of the government of El Salvador and the Farabundo Marti Liberation Front signed a peace agreement, bringing an end to 12 years of civil war. Embodied in the agreement, and demonstrated by subsequent events, is a government commitment to political and social reforms, including judicial reform. AID has built on this commitment, and its recognition that such a commitment had been previously lacking, when it developed a new $15 million, 5-year judicial reform project in 1992. The project will target consensus-building among host government officials before beginning large-scale projects. The grant agreement requires the government of El Salvador to budget sufficient resources for the institutions targeted for assistance before U.S. funds are released. Although the judicial branch remains skeptical of the reforms, the mission has had success working with the Ministry of Justice in writing legislation aimed at reforming the administration of justice.

Honduras

The United States began a judicial reform project in Honduras in 1987, even though the Honduran government had not demonstrated a clear commitment to reform its judicial system. By 1992, the project had been amended six times and costs had nearly quadrupled to $6.5 million.

In 1987, the Honduran Supreme Court and AID signed an agreement that, among other things, the government would implement a 1980 judicial career law to ensure a more independent and objective judiciary. The agreement stated that AID would withhold disbursements of a portion of the project's funds until the Supreme Court had instituted a system of hiring judicial personnel on merit rather than political affiliation. By 1991, it was clear to AID that the judicial branch would not meet the benchmarks set forth in the original agreement. AID decided to amend the agreement and eliminate the requirement so it could release funds. As of March 1993, the law had not been fully implemented, but AID had extended the project and obligated an additional $2.5 million to continue the efforts. An AID

evaluation published in June 1993[1] concluded that there was considerable uncertainty over whether the Honduran government had the political will to implement the new merit system for appointing and promoting judicial personnel.

In addition, AID continued to finance the public defender's office, the Justice's of the Peace, and the Public Prosecutor's Office. From 1988 to 1991, AID paid the salaries of 16 Honduran public defenders and 81 justices of the peace. Although the Honduran government budgeted for salaries in 1992, the monies were generated from the U.S. economic assistance program and spent in accordance with guidance provided by the United States. One public defender told us the public defenders do not believe the Honduran government supports their efforts. The 1993 evaluation found that even though the Honduran judiciary was able to submit "for the first time, coherent plans and well justified requests for budget increases" as a result of the U.S. assistance efforts, the Ministry of Finance was only able to provide modest increases. Furthermore, the study concluded that the judiciary still suffers from serious shortfalls in funding.

Costa Rica

Costa Rica is a long-standing democracy with a demonstrated commitment to human rights. To help Costa Rica modernize its judicial system, the United States initiated a $2.9 million, 3-year judicial reform project in 1988.

Consecutive AID/Costa Rica semiannual reports cited as severe impediments to project success the lack of Costa Rican funding or political support for (1) a legislative reference system, (2) improvements to the Judicial School, and (3) a planning commission. In November 1992, AID officials reported that Ministry of Justice officials were uncooperative and that project goals would not likely be met.

The AID mission stressed that because the Costa Rican officials believed their judicial system is relatively advanced, they were unwilling to look at its problems. Costa Rican officials with whom we met seemed more concerned about who in their government would manage the funds rather than the improvements the project was supposed to achieve. Nevertheless, AID continues to support reforms because it believes they are an important element in the Mission strategy to promote a more efficient government and in turn encourage economic growth.

[1]Strengthening Democratic Institutions: The Case of Honduras, Center for Development Information and Evaluation, USAID, Washington, D.C.(PN-ABG-011).

Guatemala

In 1987, AID began reform efforts based on a U.S. evaluation that reforming Guatemala's judicial system was necessary to eradicate the political, economic, and sociological divisions that existed. The evaluation identified a number of policy or legislative changes the Guatemalan government needed to make. However, AID decided that even though these changes were important, they were not vital to project implementation.

Over the years, however, the lack of Guatemalan political will stymied all U.S. efforts and led to the suspension of the project. After spending $6.1 million, the AID mission concluded that little discernable improvement had been made, and the host government had not really tried to follow up on, or implement, any of the reforms AID had proposed.

AID Focus on Technical Rather Than Political and Institutional Problems Limits Project Impact

AID projects focused on easier-to-manage technical assistance, such as judicial training seminars and computerized caseload management, rather than working on the institutional, political, and attitudinal changes necessary for fundamental, sustainable, reform. Both the former and the current AID judicial reform manager in El Salvador said that the early strategy was not successful, in part, because AID operated under the assumption that technical changes alone could bring about substantive improvements. For example, AID recognized that El Salvador's legal codes were outdated, and it funded a commission to rewrite them. AID and the Commission did not, however, sufficiently concentrate on getting the political support necessary to implement the reforms. Ultimately, few codes were actually revised or implemented because of the lack of political commitment.

In Guatemala, AID officials said that discomfort with the judicial reform project led AID to concentrate on commodity purchases and high-priced seminars and technical assistance that did not effect any real changes in the justice system.

Impact Evaluations Are Important for Sound Management Decisions

AID funded continuation of projects without critically evaluating their impact. One major stumbling block has been AID's inability to agree upon indicators to evaluate the impact of its work. AID has commissioned a study to develop effectiveness indicators but cautions that it is a difficult process. An AID official noted that countries often lack reliable judicial statistics and that AID needs to develop and analyze baseline data. Further, officials disagree on what indicators actually reflect improvements. For example, increased conviction rates and public perceptions of the system

have been proposed but not yet accepted as indicators. Each mission had been asked to develop its own indicators. A number of missions equated progress with such outputs as the number of people trained, books received, or computers installed. For example, in Honduras, AID cited the number of seminars and workshops given, observational trips taken, and public defenders employed as evidence of progress. However, none of these indicate whether the delivery of justice is actually improving.

Additionally, the evaluations AID has conducted were often performed too late, or the findings were simply ignored. For example, AID officials in Honduras approved a project extension before the results of an evaluation had been released. A mission official said that the need to obligate funds by the end of the fiscal year was more important than waiting for the results of the evaluation. In another case, despite repeated assessments that demonstrated the Latin American Institute for the Prevention of Crime and Treatment of Offenders' (ILANUD) institutional shortcomings, AID continued to extend U.S. contributions to this organization. In only one instance—in Guatemala—did AID critically assess its efforts and decide to terminate a project.

Total Embassy Support Is Needed to Ensure Sound Judicial Reform Project Management

Because of the complexity of judicial reform and the potential number of U.S. programs involved, both State and AID headquarters encouraged U.S. embassies to take a multiagency management approach. They recognized the political sensitivity of the program and that AID lacked the resources and capabilities necessary to single-handedly effect all the systemic changes required. For example, the United States Information Agency's (USIA) International Visitors Program can supplement AID judicial training, and the Justice Department's International Criminal Investigative Training Assistance Program and the Drug Enforcement Administration have ongoing efforts and training programs that could be used to help improve host country law enforcement activities.

We found that when the ambassador and other key U.S. officials in-country were committed to judicial reform and pulled together all of these available resources in a country strategy, the opportunities for success were enhanced. For example, as judicial reform became a U.S. priority in Colombia, the embassy coordinated efforts around an interagency country team, directly managed by the ambassador. In that embassy, various policy and assistance issues that could effect judicial reform were discussed in an interagency meeting and then cleared by the

ambassador. AID and other U.S. officials routinely met with Colombian government officials to discuss reform issues.

The situation was very different in Honduras and Costa Rica. Judicial reform was not a priority of the AID mission or the ambassador in either country, and both projects have not been achieving anticipated results. While embassy officials in Honduras told us that there is an interagency judicial reform team, it did not meet regularly. They said the team had met only once in the last 6 months and that the meeting was prompted by our visit.

In Guatemala, AID mission officials told us that a major impediment to the successful implementation of judicial reform efforts was that they did not receive sufficient attention from the embassy. AID and embassy officials now believe that no further judicial reform efforts should be initiated unless they have the full backing and support of the embassy.

Early Efforts Hampered by Lack of Experienced Staff

At the time of our review, AID had only five staff members experienced in managing judicial reform projects in Latin America. The AID/Washington office responsible for supplying policy guidance was often understaffed and also responsible for managing a variety of regional projects. According to some AID staffers, limited promotion opportunities and questionable upper-management support for the work caused experienced staff to move to other areas. Personnel ceilings and the downsizing of AID missions also created additional staffing burdens in the field, according to AID officials.

Given the absence of sufficient numbers of experienced AID personnel, AID used contractors to perform needs assessments, implement the projects, and evaluate results. AID officials believed that this reliance on contractors has had some negative impact. For example, in Colombia, AID let a contract to a Washington, D.C.-based consulting firm to perform the needs assessment and project design. After the contractor took more than 5 months to finish the work, AID/Washington rejected the proposal as incomprehensible and unworkable and redesigned it. Three years earlier the same contractor had designed a project in Guatemala that AID officials had described as a "disaster."

AID officials told us that given the sensitivity of dealing with a host government, they believe that experienced foreign service officers rather than contractors should represent the United States. AID staff in Guatemala believed that a flaw in their approach was that AID management was not

sufficiently involved in negotiations and progress reviews with the Guatemalan government. As a result, the government of Guatemala had misconceptions about the project.

Judicial Reform Efforts in Central and Eastern Europe

After the fall of the Berlin Wall in 1989 and the collapse of the Soviet Union in 1991, the countries in Central and Eastern Europe sought to incorporate democratic principles into their new governments and institutions. The United States agreed to help as part of its overall aid package to the region.

In Central and Eastern Europe, U.S. judicial reform efforts—called the Rule of Law Program—has been a low funding priority. Out of a total assistance package of more than $1 billion for fiscal years 1990 through 1992, about $3 million (0.3 percent) has been allocated for judicial reform. Nevertheless, a number of management problems could hamper the effectiveness of reform efforts, especially if they are expanded in the future as expected. In particular, the United States has (1) targeted short-term technical requirements without fully assessing needs or formulating long-term goals or objectives and (2) not clearly defined lines of authority and responsibility among the participating agencies and embassies.

Program Focuses on Immediate Technical Needs

A variety of factors led to the State Department's decision to implement technical judicial reform projects designed for achieving immediate results. The State Department's policy stipulated that all assistance should be practical, start up quickly, have an immediate impact, serve as demonstration projects, and be directed toward existing institutions. State Department officials believed that rapidly changing conditions precluded the development of long-term goals and plans. Funding levels were also a consideration. Developmental projects to modernize and improve institutional capabilities, such as AID has been implementing in Latin America, cost much more than State had been willing to allocate for judicial reform in Central and Eastern Europe.

As a result, long-term judicial reform issues, such as transforming and strengthening public institutions, have not been directly addressed. Instead, the United States has focused on immediate problems with the hope that cumulative assistance will have some positive long-term impact on the judicial system in the long run.

The American Bar Association Implements Largest Single Grant

The American Bar Association (ABA) has been the largest single grant recipient under U.S. judicial reform efforts in Central and Eastern Europe. It received about $1 million from fiscal years 1990 through 1992 to partially

fund its Central and East European Law Initiative (CEELI). Its program consists of the following:

1. Technical assistance workshops. These focus on a particular area of the law, such as a 1991 workshop with the Albanian Parliament to discuss the drafting of their new Constitution.

2. Legal training seminars. Each seminar addressed a specific theme, such as one with the Czechoslovak Law Institute of the Ministry of Justice to discuss the role and stature of the judiciary.

3. Urgent technical assistance. The ABA reviewed more than 60 draft laws on such issues as antitrust, tax, foreign investment, criminal law, and land use. Additionally, it critiqued the constitutions of Poland, Bulgaria, Romania, Lithuania, and Albania for the respective host governments.

4. Resident liaisons and legal specialists. As of February 1993, the ABA had advisers in 10 countries and provided specialists for specific projects such as Judicial Training School curriculum reform.

5. Sister law school program. More than 135 U.S. and 45 Central and East European schools have participated in activities such as faculty and student exchanges and joint research and reform projects.

State and USIA Activities

About $2 million of the fiscal year 1990 through 1992 funds paid for various USIA projects and those sponsored by the State Department's Bureau of Human Rights and Humanitarian Affairs.[1] Projects generally fall into four categories: informal analyses of the conditions of the judicial systems; legal consultants; workshops, seminars, and technical advice; and expenses for legal exchange students studying in the United States. For example, USIA is providing a long-term legal adviser to the Slovak Ministry of Justice and two long-term legal advisers to Romania in cooperation with the State Department. The State Department has conducted numerous

[1]The Bureau of Human Rights and Humanitarian Affairs is responsible for monitoring human rights abroad and overseeing how U.S. activities contribute to strengthening human rights.

fact-finding trips into these countries to informally assess needs and develop project proposals. Additionally, USIA used funds from its International Visitor's Exchange Program to supplement training activities.

Projects Not Being Evaluated

The general reactions from foreign government officials on U.S. assistance generally have been positive. For example, an East European Embassy official in Washington, D.C., emphasized that short-term advisers have been helpful in drafting and reviewing legislation. Overall, the State Department, AID, USIA, and the ABA believe their work has been instrumental in helping these countries rapidly develop constitutions, laws, and procedures appropriate to a democracy. However, the ABA, State Department, AID, and USIA have not evaluated any of these projects. Therefore, they do not know the specific impact of particular efforts.

A USIA official said he was unsure what impact such limited activities could have on changing long-term attitudes and institutional performance. He characterized the efforts as "hit-and-run" and was concerned that funds could be wasted. An official from the Czech Embassy emphasized to us that countries need more help in implementing institutional reforms.

According to AID and USIA officials managing the activities, while short-term, technical assistance was initially appropriate, some of the East European nations have sufficiently stabilized to consider the development of a longer term strategy. A USIA official suggested that this strategy could include (1) improving the criminal justice process, (2) developing programs in each country to train future members of the judicial sector, (3) modernizing the judicial processes to ensure accountability, (4) modernizing civil and administrative laws for economic development, and (5) instituting public education on the meaning and role of law in a democracy.

The former State Department Coordinator for Eastern European Assistance informed us that assistance to promote economic reform was State's primary funding priority. State Department officials more recently told us, however, that the new administration and Coordinator are much more interested in assistance to promote democratization and that more money may become available for Rule of Law programs.

Management Approach Causes Problems

State, AID, and USIA officials said that the Rule of Law program has been overwhelmed with time-consuming management problems, especially given the small amount of money involved—about $3 million over a 3-year period. They said that roles and responsibilities of the agencies are not clearly differentiated as they are in similar programs elsewhere in the world. One State Department official characterized the approach as a hybrid, and questioned the soundness of the approach taken.

For example, a USIA and an AID official commented that the Bureau of Human Rights and Humanitarian Affairs exceeded State's traditional role in supplying policy guidance and became directly involved in management decisions normally left to the individual agencies. They noted that there have been many lengthy meetings with the Bureau on routine USIA decisions, such as buying books valued at $3,500 and inviting speakers to a conference.

In addition to the unclear management structure in Washington, we were informed that embassy oversight in the recipient countries is limited. AID field personnel have very little oversight of ABA activities, and are generally only aware of who is in country. AID personnel do not monitor whether, or how effectively, program goals are being accomplished. Furthermore, AID has reported that coordination between AID and USIA in the recipient countries is limited. AID and State believe that embassy coordination and oversight has improved, but according to AID, Rule of Law projects remain a low priority. State Department officials said that embassy personnel are generally not aware of the details concerning various judicial reform projects. This has caused some problems. For example, the Bureau sponsored a consultant to the Justice Ministry in Bulgaria even though the ABA already had an adviser at the Ministry. Also, a U.S. adviser to the Romanian Justice Ministry recommended changes that were in conflict with what the U.S. Embassy had recommended.

Comments From the Agency for International Development

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

May 18, 1993

Associate Administrator for Finance and Administration

Mr. Frank C. Conahan
Assistant Comptroller General
United States General
Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Conahan:

I am pleased to provide the Agency for International Development's (A.I.D.) formal response to the draft GAO report entitled "FOREIGN ASSISTANCE: Promoting Judicial Reform to Strengthen Democracies" (GAO/NSIAD-93-149).

Enclosed are our detailed comments to the draft report. We have organized our comments around the two geographic areas of our Judicial Reform projects; namely, Latin America and the Caribbean, and Central and Eastern Europe.

Thank you for your personal involvement in this process, as well as for the courtesies extended by your staff.

Sincerely,

Richard A. Ames

Richard A. Ames
Chief Financial Officer

Enclosure: a/s

cc: A/AID, J. Brian Atwood
A-DA/AID, James H. Michel

320 TWENTY-FIRST STREET, N.W., WASHINGTON, D.C. 20523

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The GAO report, "Promoting Judicial Reform to Strengthen Democracies," addresses both the Latin American and the Central and Eastern European (CEE) programs and makes specific recommendations for both. The Agency for International Developments appreciates the opportunity to review the draft report. Our comments are divided into two sections; namely, Central and Eastern European Programs, and Latin American and Caribbean Programs.

Central and Eastern European Programs

Introduction

See comment 1.

According to the draft report (page 8),

"The United States did not draw upon the lessons learned in Latin America to develop its approach to judicial reform in Central and Eastern Europe. Rather, the approach is short-term, technical assistance without long-term goals or strategies. The United States responds to immediate needs generally identified by the host government. Attitudinal and systemic problems are not directly addressed...."

Two important differences distinguish the program in Latin America from the one in Europe. First, Europe presented very different problems from Latin America. In Europe, the U.S. Government was called upon to respond immediately to social, political and economic revolutions, albeit peaceful ones, in a dozen countries, while the Latin American program was designed to address narrower, more specific problems with the judicial system in an area which was not experiencing a region-wide revolution. Second, the program in Europe includes, but is not limited to, judicial reform -- it addresses more fundamental problems as well. Indeed, the Latin America program is called "Administration of Justice," while the Europe program is called "Rule of Law." The latter includes administration of justice in a much broader program aimed at general legal and (notwithstanding the language of the draft report) "attitudinal and systemic problems." Those two differences provide the

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context for the following remarks about the proposed GAO recommendations.

Comments on the Recommendations

1. Recommendation: "...clarify the appropriate roles of participating agencies,including the U.S. embassies, to improve efficiency and coordination;"

Response: While there may have been some confusion about the respective roles of the participating agencies in the past, we believe that confusion has been clarified. There are, at present, two grants in the Rule of Law area: one is a direct grant by A.I.D.'s Bureau for Europe (AID/EUR) to the American Bar Association for its Central and East European Law Initiative (CEELI); the other is a transfer, pursuant to section 632(b) of the Foreign Assistance Act, from AID/EUR to the United States Information Agency (USIA). In both cases, the Office of the Coordinator for Assistance to Eastern Europe (ST/D/EEA), pursuant to the Support for East European Democracy (SEED) Act, and AID/EUR, as the transferor agency, oversee the entire Rule of Law program. They set its general policy, define its general strategy, review the specific strategies and implementing proposals from potential transferees and grantees, and monitor and evaluate grantee and transferee performance. The A.I.D. Representatives (AIDReps), and the Embassies in general (including the USIS Public Affairs Officer), assist ST/D/EEA and AID/EUR in performing those functions on a country-by-country basis. The natural evolution of the AIDRep's role and the country team was formalized by the FY 1993 Appropriations Act which provided that the principal officer of the Agency for International Development in each country (i.e., the AIDRep) should have certain authorities and responsibilities.

Because of its own world-wide mandate, the State Department's Bureau for Human Rights and Humanitarian Affairs (ST/HA) also assists ST/D/EEA and AID/EUR in performing those functions. In particular, ST/HA serves two functions. First, it serves with USIA as co-chair of a working group, including representatives from ST/D/EEA, AID/EUR, and the Department of Justice (DOJ), which is responsible for the direct implementation of the transfer to USIA. Second, under the terms of the AID/EUR

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grant to CEELI, ST/HA is responsible for providing "policy oversight" to CEELI; this "policy oversight" is intended to ensure that the two grants (USIA and CEELI) operate consistently and that the CEELI program continues to support U.S. Government human rights policy. However, overall assistance oversight remains in the hands of ST/D/EEA and AID/EUR.

2. Recommendations: "...(2) assess the long-term judicial reform needs of each country; (3) develop strategic plans for meeting these needs; and (4) ensure that State, USIA, and AID projects are consistent with these plans."

Response: In part because of the immediate needs of the revolutionary context in CEE, the entire assistance program, including its Rule of Law component, were put into place without the long prior analyses and long planning strategic process which often (although not always) precedes an A.I.D. assistance program. Indeed, while the Latin American program is criticized for failing adequately to consider the receptivity of the host governments, the Europe program is criticized for "responding to immediate needs generally identified by the host government." However, as the GAO draft report recommends, it is time now to develop long-term strategies for the Rule of Law program. Indeed, the recently renewed grant to the ABA requires that CEELI provide country-by-country strategies by June, 1993. Those strategies will be developed with the AIDReps and submitted to AID/EUR in Washington. Moreover, USIA and ST/HA have been requested to provide similar country-by-country strategies prior to any FY 1993 transfers. CEELI, ST/HA, and USIA will be expected to address the long-term judicial reform needs in their country strategies to the extent they and the AIDReps believe that judicial reform constitutes one of the most important Rule of Law strategic objectives. Finally, AID/EUR has just completed an outside, independent evaluation of the Rule of Law program which has provided some guidance on long-term needs and strategies. While the draft evaluation report, still to be revised, discusses training, including judicial training, it does not single out judicial reform as an area of particular need throughout the region. Once the draft evaluation report is complete, the report will be provided to CEELI, HA and USIA for comment; EUR expects that appropriate recommendations on judicial

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reform will be reflected in the CEELI, ST/HA, and USIA strategies.

However, in addition to the strategies provided by CEELI and USIA together with ST/HA, ST/D/EEA and AID/EUR are undertaking a general strategic review of the entire assistance program for the reasons outlined above. To the extent that the Rule of Law program is included in the country strategy, its role will be discussed in that document.

Latin American and Caribbean Programs

Introduction

During the past ten years, the United States Government has undertaken programs with countries throughout Latin America and the Caribbean to strengthen the administration of justice (AOJ). The overall purpose of the program has been to encourage and support cooperating countries to improve the performance of justice sector institutions and their contribution to the creation and maintenance of democratic government. This is achieved by increasing their efficiency, efficacy, and accessibility to the population at large, while guaranteeing that judicial systems conform to national and international standards of justice and respect for human rights. An initial emphasis on criminal justice has gradually been expanded to include civil and commercial areas. These programs, financed primarily through the Agency for International Development and implemented in a collaborative inter-agency fashion, have been shaped by initial assessments of justice sector conditions and through ongoing dialogue with host country collaborators, including government ministries, courts and legislatures, professional associations, universities, foundations and other nongovernmental organizations (NGOs).

This innovative program has served as the catalyst for major reform efforts throughout the hemisphere. Ongoing initiatives include law revision and modernization; professional training and exchanges; public education campaigns and support for private

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legal reform institutes; development of merit systems for selection and promotion of judges; introduction of oral, adversarial criminal proceedings (including an expanded role for the public prosecutor and public defense); updated civil procedures; improvements in physical infrastructure (including automation and libraries); anti-corruption campaigns; alternative dispute resolution; and management reforms emphasizing an enhanced role for court and case management and professional court administrators.

The mix of activities and level of progress varies from country to country and project to project, but as further detailed in the Annex, there have been numerous significant advances. Among the most important are:

- Creation of judicial and sector wide reform planning bodies (Bolivia, Costa Rica, Honduras, El Salvador, Jamaica);
- Modifications of judicial appointment systems and introduction of other mechanisms to strengthen the judicial career and reduce political intervention in appointment system (Bolivia, Panama, Ecuador, El Salvador, Honduras);
- Creation of training programs to further professionalize sector personnel (Argentina, Bolivia, Colombia, Costa Rica, El Salvador, Honduras, Nicaragua, Panama, Peru, Uruguay);
- Adoption and implementation of revised criminal and criminal procedures codes, featuring public, oral, adversarial proceedings and eliminating measures (e.g., excessive use of pretrial detention) in violation of basic human rights (Costa Rica, Colombia, El Salvador, Guatemala, with significant progress in Ecuador, Panama, Peru, and Bolivia);
- Creation or strengthening of public defenders programs and other measures to guarantee the right to defense (Bolivia, Colombia, El Salvador, Panama, Honduras);

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- Creation or development of a separate prosecutorial function (Bolivia, Colombia, El Salvador, Guatemala, Honduras, Peru);
- Modernization of court administration and administrative systems (Argentina, Costa Rica, Honduras, Jamaica, Uruguay);
- Other steps toward the enhancement of the judiciary's functional, political and financial independence (Colombia, Costa Rica, Ecuador, El Salvador, Honduras).

In some countries (El Salvador, Panama, Honduras, Guatemala, Peru), financial independence has been augmented through significant increases in the percentage of the host government's budget assigned to the judiciary or the sector as a whole.

Aside from these specific accomplishments, A.I.D.'s AOJ programs have led to a heightened attention to justice reform issues throughout the region, and, in turn, to a series of reform activities initiated and funded by the national institutions themselves. A.I.D. programs have also encouraged interchange and communication among reformers throughout the region, allowing them to benefit from each other's experience and so increasing the overall momentum of change. As a result of A.I.D.'s leadership in this area, other international donors have started programs to respond to the increasing demand for improved administration of justice, in many cases building on efforts begun with A.I.D. support. Specifically, we would cite the new emphasis on "good governance" being implemented in the current programming of the Inter-American Development Bank (IDB) and the World Bank.

See comment 2.

The GAO Report

We believe that the GAO report never adequately describes the program it attempts to evaluate, the objectives it claims have not been met, nor the criteria used to make that determination. By focusing on specific project implementation issues and citing only a few projects, it overlooks the broad successes the program has had in making the administration of

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justice a vital issue in the region, as well as the many achievements in concrete reform activities. Many of these activities represent innovative approaches to the issue, even by the standards set by other sectoral reform initiatives.

See comment 3.

The GAO report is further flawed by errors of fact, by reliance on incomplete and out-dated information, by an apparent misunderstanding of the purpose and uses of basic A.I.D. documentation it cites (e.g., internal semi-annual reviews, whose often negative comments it seems to assume imply the recommended termination of projects, in fact, they are most often intended to improve); and by a selective and partial view of the geographic and functional scope of the program. Also, we note the report's dismissal of projects as "failures" is often based on near anecdotal consideration of only one of their several objectives, and that there is no information on newer programs in the Southern Cone which reflect lessons learned from the earlier Central American programs.

See comment 4.

Disturbingly, the GAO report's methodology seems inadequate in its heavy reliance on evaluative statements drawn from A.I.D. documents and informant interviews. The report does indeed establish that A.I.D. staff have differing and often critical views on the achievements of individual projects. This is interesting, but hardly the crux of a program impact audit, which one assumes will reach its conclusions through an independent, objective analysis of data on real performance, measured against pre-established, clearly defined criteria. As noted, the GAO report never established its own evaluation criteria, but seems to accept any negative opinion as evidence that something is wrong. In many cases, the opinions cited are too vague to identify the problem more specifically than a project's "failure to meet its objectives." In other cases, the conclusions drawn from them are over-generalized or even contrary to the source's apparent intent. For example, there is the case of the Honduran public defender who believed the Government of Honduras did not support the public defense program. However, information provided by USAID/Honduras on the government's actual budgetary allocations appears to contradict this "evidence." As another example, the (valid) statement that A.I.D. is once again re-evaluating its support to the Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD) is taken

See comment 5.

See comment 16.

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as tantamount to a negative assessment of the program. A.I.D. evaluates and re-evaluates virtually all its programs, especially those in complex and sensitive areas of reform.

See comment 18.

As the annex makes abundantly clear, this is a rich, varied and highly dynamic program. The GAO report's broad and often inaccurate generalizations, as well as its highly selective use of examples and unsystematic opinion sampling do considerable injustice to the full range of diverse projects that might have been reviewed.

See comment 6.

The report constantly belabors A.I.D. for its emphasis on "technical assistance" and "technical strategies" and its lack of attention to "institutional," "political," and "attitudinal change." All AOJ programs have been aimed at inducing structural or institutional change, including the transformation of the attitudes or political premises on which existing systems are based. Technical assistance and training are simply implementation modalities which address attitudinal as well as technological needs in a manner which avoids patronizing or ethnocentric values and encourages local initiative and "ownership." Further, the report never explains what strategies the GAO believes would be superior to those A.I.D. has followed. Thus, we can only conclude that the authors have confused technical assistance with technological change, and have consequently over-emphasized the role accorded to the latter while overlooking the ways in which training, technical assistance, and new technologies have been used to promote fundamental attitudinal and institutional reorientation.

See comment 7.

The remainder of this comment section focuses on the "problem areas" identified by the report and our assessment of their validity.

Projects Launched without Commitment from Host Governments

See comment 8.

The process of justice sector reform involves a wide range of players from the legislative, executive and judicial branches of government, as well as private practitioners and institutions. A.I.D. began to work in this area in the mid-1980s based on the findings and recommendations of the Kissinger Commission, as well

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as on strong Congressional interest in supporting an improved human rights climate in Central America. As a matter of fact, the **Congress earmarked Economic Support Fund (ESF) resources to be used for AOJ programs** beginning with El Salvador in 1983, culminating in a $20 million earmark in Fiscal Years 1987 and 1988. A.I.D. should not be criticized for attempting to carry out U.S. foreign policy under less than ideal circumstances. A.I.D. was directed to do so.

See comment 9.

Because justice sector reform was not then a high priority in any of the region's countries, these initial programs should be viewed as **experimental and pilot in nature, intended to generate demand and to build a consensus on reform.** They were designed to take into account the existing weaknesses in commitment and political will, not as unknowns, but as constraints to be challenged and overcome. Thorough, detailed justice sector assessments were conducted with extensive in-country collaboration and public discussion. Many of these sector assessments have served as a basis for subsequent reform programs. This same methodology was applied in Panama in 1990, resulting in significant new host country commitment to justice reform.

See comment 10.

Current data and updated analysis demonstrate that **government commitment to reform of the justice sector has grown** substantially in El Salvador, Guatemala, and Honduras. It was never a question in the case of Costa Rica, and we are puzzled by the GAO's contention that lack of support for reform was a problem in that country. While early efforts often failed to produce the anticipated improvements in overall sector performance, they have drawn attention to reform issues while increasing political willingness to carry out substantial reforms. For example, recent reform of the criminal procedures code in Guatemala reflects the substance of "failed" efforts of five years ago. This is a substantial achievement, not a failure, but an "idea whose time has come." The inventory of AOJ reforms in the Annex also demonstrates the growing momentum of reform efforts throughout the region, some of them achieved directly through A.I.D. projects, but many others the result of a more receptive political environment to which the presence of the A.I.D. projects has clearly contributed. Put in another way, **the program's strategy was to foster commitment, not to wait until it**

See comment 11.

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was present. Had we chosen that second course, we might still be waiting to begin our first project and many of the independent, but related national efforts might never have been realized.

Projects failed to Address Political and Systemic Obstacles

A.I.D. was the first to learn that effective and efficient administration of justice is far more than a technical matter. It is a reflection of the values and priorities of the broader society. Breaking a vicious cycle of low public expectation and poor performance is a major and continuing challenge. All of the projects and most of the project activities cited in the GAO report **focused on long-term institutional development.** Given the managerial and organizational chaos in the sector (a source of or contributor to more serious problems like human rights abuses and corruption), this approach necessarily includes technological components such as case tracking and computerized information systems. Often these concrete and discrete items have provided a valuable incentive to reform and generated a climate for change. **Technology transfer is not conducted in a vacuum, but in conjunction with training and technical assistance.** It is, therefore, grossly inaccurate to state that A.I.D. chose to address "technical problems rather than political and institutional obstacles to fundamental reform."

See comment 12.

For example, in Colombia and Honduras the emphasis of A.I.D. AOJ projects has been structural reform. In Colombia, based on prior work with NGOs, A.I.D. supported technical assistance which led to major reforms to the judicial system embodied in the 1991 Constitution. In Honduras, the major AOJ objective has been converting the judiciary's recruitment and promotion system from a patronage to a merit base. This constitutes a far reaching structural reform, which will provide more insulation from executive and legislative interference in judicial decision-making. In El Salvador, since 1991, the Judicial Reform project has addressed systemic and political obstacles to substantive reform. The FY 1991 ESF program included measures regarding the extension of terms of office of the Supreme Court magistrates and broadening the participation of interested groups in the judicial screening and appointment process -- both designed to increase

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judicial independence and reduce partisan interference in court appointments.

Management Decisions Not Based on Impact Evaluations

See comment 13.

Most judicial reform projects are relatively new -- between three and six years old. This time frame is hardly sufficient to measure, or effect, significant change in long-term institutional development goals. Nonetheless, A.I.D. has recognized the need to develop alternative indicators of progress toward these more distant objectives and has devoted considerable effort toward resolving this problem. A satisfactory solution has yet to be found, but most of the criticisms of existing indicators (e.g., over-reliance on outputs, or on uni-dimensional indicators which may skew a program toward undesirable results) were in fact raised by A.I.D. personnel, demonstrating the seriousness with which this problem has been treated. Furthermore, A.I.D. has always used evaluations to determine if programs should be modified to increase their potential impact. A.I.D. has commissioned a world wide assessment of the administration of justice program through its Center for Development Information and Evaluation (CDIE). The Center has concluded assessments on Colombia and Honduras and has begun to look at programs in Asia. The following are examples of the use of evaluation in management decisions.

-- Guatemala. The A.I.D. Mission undertook a comprehensive stock-taking exercise during which it suspended bilateral assistance to the justice sector, laid out a strategy based on lessons learned, and defined a clear set of policy benchmarks which would condition its re-entry into the sector. The Government of Guatemala has since implemented several important policy reforms which, in turn, have triggered a resumption of assistance.

-- El Salvador. An October 1990 assessment of the performance of the Revisory Commission on Legislation resulted in USAID/El Salvador's decision to terminate support to this entity and in its place work with the Ministry of Justice. A June 1991 assessment identified areas for A.I.D. support to strengthen judicial reform efforts; many of the recommendations are now

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being implemented and others will be supported through the Judicial Reform II project. A March 1992 assessment of the Attorney General's Office recommended changes to improve prosecutorial effectiveness. A.I.D. support for the Attorney General's Office is now conditioned on implementation of key recommendations.

-- Costa Rica. Contrary to the GAO's conclusions, the 1992 mid-term evaluation of the bilateral project declared the latter a relative success. Specific recommendations to further improve project performance have been incorporated in the final stage of the initial project, and were the basis for the design of the follow-on effort. These include a reduction of ILANUD's role in project implementation, and a new emphasis on court administration.

See comment 14.

Projects Lacked Sufficient Embassy Support

It is U.S. Government policy that the democratic initiatives program, including the administration of justice program, be conducted in an inter-agency mode under the leadership of the Ambassador and the country team. Since we began these programs, periodic policy guidance has been provided to the Embassies by the State Department. For example, in 1983, an inter-agency AOJ team sent to El Salvador made several specific recommendations, including the establishment of an Inter-agency Working Group to support judicial reform efforts. Ambassadors have chaired inter-agency AOJ committees in Colombia and Argentina since 1986 and in Guatemala beginning in 1987. Policy guidance to this effect was most recently distributed to the Chiefs of Missions of all Latin American diplomatic posts from the Assistant Secretary of State in April 1992 (State 114762, dated April 11, 1992). While giving discretion to the Ambassador for inter-agency and donor coordination in the field, it strongly encouraged the establishment of more formal committee structures throughout the region. Posts with significant AOJ programs have formal, functioning inter-agency committees chaired by either the Ambassador or the Deputy Chief of Mission. Even where such a committee does not exist formally (Costa Rica), or meets infrequently (Honduras), informal coordination among representatives of the involved agencies is a matter of course.

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See comment 15.

A.I.D. Had Few Experienced Staff

As with most new programs, the recruitment, selection and posting of new staff lags behind the initial funding cycle. Nonetheless, A.I.D. now has on-board a larger cadre of staff with more direct experience in Latin American judicial reform than any other donor. It has successfully recruited both U.S. and local experts to serve as project managers and implementers. It has hired additional U.S. direct hire staff to serve as program supervisors and plans to bring on additional, technically qualified staff through direct hire means and on details from other agencies. A.I.D. has also been successful in identifying and training current U.S. direct hire staff with appropriate backgrounds and skills to serve as project managers and supervisors. At present, the Bureau for Latin America and the Caribbean has a total of 51 personnel working directly on democratic initiatives, both in the field and in Washington. It should be further noted that contrary to the impression portrayed by the GAO report, **experts in Latin American judicial reform are in scarce supply and the Agency has literally had to create its own.** Unfortunately, a background in Latin America law or in U.S. judicial reform, while helpful, still does not provide the most appropriate experience for this entirely new area. Nevertheless, this long-term effort is well underway, democracy officer training courses have been established by the Agency, and we continue to build our ranks of "experts" by actively recruiting qualified individuals as contractors, as well.

See comment 16.

The Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD)

While ILANUD has not lived up to anyone's expectations, the GAO's contention that it has made no contribution to justice reform in the region is without foundation. The Institute has served to promote regional and national interest in AOJ reform and to establish the conditions for the development of national projects. It has been particularly useful as a vehicle for identifying and employing local experts to work on reforms in their own and other countries and for promoting exchanges of information. (Please note that this role directly addresses the GAO's concern in the immediately preceding paragraph!) ILANUD

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has had some marked successes in developing pilot programs in areas such as judicial training, judicial planning, judicial statistics, and legal libraries. Individual A.I.D. missions continue to make direct grants to ILANUD to implement specific programs, such as the development of a nation-wide detainee registry in Peru.

Support to ILANUD through A.I.D.'s regional program (the apparent focus of the GAO's criticism) has been steadily reduced since 1990; it now accounts for only one-third of project funding and forty percent of overhead. Some of the slack has been taken up by direct grants from other A.I.D. missions, which now account for roughly another third of the business base and indirect cost budget. However, such grants are based on the USAID's determination of ILANUD's comparative advantage in implementing specific kinds of projects and in no sense constitute a subsidy. Other donors, such as the European Community and individual European countries, are using ILANUD to implement AOJ projects particularly in Central America. A.I.D.'s present grant program with ILANUD expires in December 1993. Future funding is dependent on resolution of a number of management and funding issues which are presently being explored.

Comments on Recommendations

1. Recommendation: "To ensure that the host government supports the reform efforts before substantial U.S. funds are committed."

Response: A.I.D. largely agrees with the recommendation of the GAO report with respect to the need for greater host government commitment before substantial levels of funds are committed to government entities. A.I.D. does not agree that such commitment is necessary prior to undertaking substantial efforts to work with key NGOs in the sector (e.g., bar associations, law schools, think tanks, law reform groups, etc.). A.I.D. is, in effect, implementing this recommendation under its present project review and approval process with respect to large scale assistance to public sector judicial institutions. We intend to pursue the funding of modestly sized programs conducted through NGOs designed to stimulate judicial reform through research, public awareness, legal education and other related

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activities in the absence of host government commitment to judicial reform. We note, however, that the GAO's use of the Colombian program as an example of entry through a program of small grants is misleading, since the Colombian "small grants" totalled roughly $2.7 million, the size of a modest bilateral program in other countries.

2. Recommendation: "To ensure that decisions on continuation of project funding are based on impact evaluations."

Response: This recommendation is stated too narrowly. A.I.D. uses a combination of normal monitoring, progress evaluations and impact evaluations to determine whether projects should be modified to enhance the achievement of desired results or to determine whether projects should be terminated. A.I.D., of course, agrees that where impact is not being achieved, and is unlikely to be achieved through project modifications, projects should be terminated in an orderly fashion.

See comment 17.

3. Recommendation: "A.I.D. should discontinue funding the ILANUD program."

Response: This recommendation is too strong and allows no room for continuing the components of the ILANUD program which are progressing successfully. This recommendation should be re-worded as follows: "The A.I.D. Administrator should direct his staff to critically review ILANUD's progress to date and determine whether the program should be terminated or modified to allow for an orderly and appropriate phase down of major U.S. funding commitments."

See comment 18.

Annex: Summary of AOJ Accomplishments in Latin America

The following are GAO's comments on the Agency for International Development's letter dated May 18, 1993.

GAO's Comments

1. AID said that differences in the two regional judicial reform programs justify the use of distinct management approaches. AID states that when the Latin American program was designed the region was not experiencing regionwide revolution. This mischaracterizes the events that culminated in the Kissinger Commission Report, which recommended U.S. assistance to Latin American judicial systems. When U.S. assistance began, the region was embroiled in socioeconomic turmoil. As these countries democratized in the 1980s, judicial reform became increasingly important, culminating in a $20-million earmark for fiscal years 1987 and 1988. AID's comments that contrast the "Rule of Law" program with the "Judicial Reform" program ignores the recent efforts in Latin America to incorporate various aspects of the judicial process into their projects. We believe that despite these differences, AID has learned lessons that should be considered when implementing new programs in other countries. This may be particularly applicable if the administration of justice programs expand in Central and Eastern Europe.

2. The objective of our report was not to evaluate the individual Administration of Justice projects in Latin America. Rather, in light of the U.S. interest to promote and foster democratic institutions worldwide, our objective was to determine what lessons were learned from nearly 10 years of experience in Latin America. We did not establish our own criteria for a successful project, but relied primarily on AID's own assessments of their projects to determine whether the projects were reaching their intended goals. Based on interviews with mission personnel, host government officials, contractors, and officials in Washington, as well as an extensive review of project evaluations, we came to certain conclusions about what factors are essential to foster successful judicial reform projects.

While we did not attempt to enumerate all of AID's accomplishments in judicial reform in Latin America, we nonetheless recognize that it had successes as well as disappointments. Our goal was to identify the lessons learned from the experiences in Latin America that could be applied in future programs, not to criticize AID for specific actions it took along the way. However, we were particularly concerned that AID appeared to ignore the lessons learned from previous efforts. The Regional Administration of Justice Project Paper, specifically noted, for example, that AID's earlier

efforts to provide assistance to the Latin American justice sectors in the 1960s failed, in part, because AID (1) often mistook a country's willingness to accept money for a willingness to adopt the principles of judicial reform and (2) failed to appreciate that the institutions AID was trying to change were at the cultural core of the societies they were seeking to alter. Yet, these same conditions remained at the root of many of AID's most problematic judicial reform programs in the region.

3. Our conclusions were based on evaluations, mission reports, and staff assessments, as provided to us by AID. We did not imply that a negative comment in a semiannual review suggested that a project should be terminated, and we agree that such reviews should be used to develop corrective action. However, when the same problem consistently appears, and is presented as the principal reason why a project is less than successful, we believe that project termination should be considered. AID seems to indicate that such reviews justify maintaining the project and in many cases increasing project funding even when the projects, regardless of potential outcomes, are not meeting their goals. We did not review projects in the Southern Cone, but our report clearly acknowledges that AID's newer programs in Colombia and El Salvador have incorporated many of the lessons learned from earlier projects.

4. AID misinterpreted our reporting objective and was consequently critical of our methodology. Our objectives were to identify the lessons learned from AID's experience in Latin America and to identify early concerns about management of judicial reform programs in Central and Eastern Europe. It was not our objective, as AID asserts, to conduct an impact evaluation. To conduct such an evaluation would require the establishment, at the outset of the program, of expected outcomes with respect to changes AID hoped to achieve. If AID had established criteria and conducted objective evaluations, we would have used them. In their absence, we used the studies that had been conducted, as well as opinions of AID judicial reform project managers. Our methodology and reliance on AID documents and interviews enabled us to determine the lessons learned in administering sectorwide judicial reform projects. In this regard, we believe that views expressed by mission directors and others involved in implementing the programs are important in evaluating their success.

5. AID's contention that the government of Honduras' budgetary allocations for the public defender's office indicates host government commitment is misleading. Although the project documents indicate that the Honduran government would fund the Public Defender's program after 1992, we

were told by mission officials that the funds would come from host government-owned local currency generated by other U.S. economic support payments. Although these funds belong to the government of Honduras, the AID mission must agree on how they are used. We do not agree that this represents an independent commitment by Honduras to financially support the Office of the Public Defender. Public Defenders in Tegucigulpa told us that while the government of Honduras has promised to support their office, it is not doing so now and it is highly unlikely that such support could continue without further U.S. assistance. The AID project manager stated that the government prefers to spend its money on projects that have a greater demonstration effect, like highways and government office buildings, and tends to neglect democratic institution building.

6. Despite AID's comment, AID officials agree that political consensus to justice system reform must be present before technical assistance can be effective. For example, at the Rule of Law in United States Foreign Policy and the New World Order Conference in 1991, the Assistant Administrator for AID's Latin American and Caribbean Bureau stated that:

> As we move forward in this complex process we have learned some lessons. First, our assistance programs must look beyond the technical aspects, and must operate within the framework of overall U.S. policy in support of democracy and development. Put differently, foreign assistance has its limits and, to be effective, must respond to the political will and the public expectations in the recipient country. Institutional competence, political will to open up societies and economies to broader participation, and public awareness are all interrelated and mutually reinforcing. Our policy must address all three components of the process.

In an April 28, 1993, testimony before the Subcommittee on Western Hemisphere Affairs, House Committee on Foreign Affairs, the Acting Assistant Administrator for AID's Latin America and the Caribbean Bureau, stated that

> . . .internal challenges will have to be met for the most part by the people of Latin America and the Caribbean. External support for their struggle can help, and in some cases may make the difference. But there is no substitute for skillful, patient management by the Latin Americans themselves. Unfortunately, past efforts by external donors, while well meaning, have at times encouraged dependency rather than self reliance.

Additionally, sophisticated technological support will not benefit a country's judicial system when that country is ill-prepared or unwilling to

reform its judicial system. As the Mission Director in Guatemala stated, funneling significant resources into an underdeveloped justice system, at the wrong time, can be a "curse." He stated that host government initiative in judicial reform is a requirement: the framework for an improved justice system must be present before the United States agrees to fund the technical assistance component of a bilateral project.

In our May 1990 report, we found that AID had spent $2.3 million to establish a state-of-the-art investigative crime unit and that it was performing well. However, in August 1992, members of the Salvadoran Supreme Court informed us that they remained skeptical of admitting evidence obtained by the unit. In addition, a United Nations commission found that officials of the unit had mishandled evidence and covered up the military's involvement in politically sensitive war crimes.[1] While the unit has performed well technically, the fact remains that unless the judges accept the evidence in their courts, the impact of the unit on judicial sector improvements will be minimal. The Mission Director stated that the mission still did not see unanimous consensus for reform in El Salvador, but instead there were groups of reform-minded individuals that the mission planned to use to introduce widespread reforms in the justice system.

7. We did suggest what we consider to be a better project implementation strategy with our recommendation that AID ensure host government support for reforms before spending large sums of money with little prospect for genuine judicial reform. As consensus develops, AID could then proceed with technical assistance projects.

8. We recognize the less-than-ideal circumstances that AID operated under in the 1980s. We have modified the report to emphasize the difficulty of the environment under which AID worked.

9. AID states that it conducted detailed justice sector assessments and recognized the lack of host government interest in the reform efforts. Although AID recognized that major policy and structural changes were required before reforms could succeed and be sustainable, the agency did not adequately secure the host government's commitment to the reform efforts.

[1]"From Madness to Hope, the 12 Year War in El Salvador," Report of the Truth Commission for El Salvador, United Nations (Mar. 15, 1993).

AID cites Panama's 1990 Administration of Justice project as one that has significant host government commitment. We found in our 1992 report that although the Panamanian government had increased funding to the judicial system, financial support remained a concern. Furthermore, it is important to note that a nationwide referendum in November 1992 to approve, among other things, the constitutional changes required of the judicial reform program was rejected by the voters.

10. In Costa Rica and the three countries where AID said "government commitment to reform of the justice sector has grown substantially," the U.S. has spent over $17 million on judicial reform projects. Whether such commitment has in fact materialized is open to question. In 1984, AID began the $13.7 million project in El Salvador. The Mission Director in El Salvador told us that while the initial project created momentum, they fully recognize that the United States spent a lot of money without realizing many of the results it had hoped for. The mission conditioned the disbursement of fiscal year 1991 economic support fund cash payments on specific government policy actions regarding judicial reform. Now, mission personnel stated that they finally believe significant progress can be made in judicial reform now that the appropriate policy framework is in place.

AID cited Guatemala as a country in which the commitment to justice reform has grown substantially. However, the Guatemalan President's May 25, 1993, declaration of rule by decree, suspension of constitutional rights, and house imprisonment of members of the judiciary indicate that the political climate may not be supportive of reform. The Regional Administration of Justice Project Manager and AID Mission personnel in Guatemala indicated that they were uncertain whether the National Assembly would have the political will to write and pass the implementing legislation required to enforce the new codes. AID mission personnel said that although the new codes represented a first step, it by no means indicated the government's willingness to reform its judicial system.

AID cited the move toward a more independent judiciary in Honduras as an indicator of increased support. As cited in our report, AID signed an agreement in 1987 with the Honduran Supreme Court to implement a 7-year-old law that would ensure a more independent and objective judiciary. However, no action was taken on the law until AID agreed to finance the "tedious development" of the management structure, training, manuals, and documents that were required by the law. In effect, the Hondurans placed conditions on the United States before they would

implement the original conditions of the agreement. Also, the State Department's 1992 human rights report found that the country had an endemically corrupt and inefficient criminal justice system that was incapable of rendering a verdict and passing a sentence in a timely manner.

AID's own documents attest to the absence of Costa Rican government commitment for judicial reform. A document dated November 20, 1992, discussed the Costa Rica semiannual review and listed both the Justice Sector Improvement Project and the Regional Administration of Justice Project as having significant problems. The document states that achieving the Justice Sector Improvement Project's purpose has been hindered by the weaknesses of ILANUD in carrying out project operations and the uncooperativeness of the Costa Rican Minister of Justice. As a result, the project's planning and coordination goals are not likely to be met.

11. We agree with AID's strategy to foster a commitment to the reforms and not wait until it is present to begin activities. Our report does not suggest that AID withdraw from judicial reform activities when the host government does not demonstrate a willingness to accept reforms, but rather that AID support the growth of consensus to reform. As demonstrated in Colombia, small grants to private sector agencies to raise the public's awareness of the benefits of a reformed judicial system coupled with small pilot projects have shown promise. A consensus to reform was developed there with incremental grants that did not require a large scale, long-term financial commitment of U.S. funds.

The State Department has stated that it is U.S. policy to provide assistance only when a serious commitment to change exists. State reiterated that assistance is granted only when the Department believes that there is sufficient host government support to suggest that projects will be successful. If this has been U.S. policy, AID has not always followed it.

12. AID's examples of how it used technical assistance to foster the political will for judicial reform reenforces our position that technical assistance works only after a commitment to reform has been made. The Judicial Reform Project in Colombia began in 1991, 4 months after the new Constitution was adopted and shortly thereafter implementing regulations were passed by the constituent assembly. This was by design. According to the AID representative, the bulk of U.S. assistance funds would not be disbursed until the implementing regulations and the executive branch

working group were established to pave the way for the reforms to take hold.

In Honduras, AID has not insisted that the host government support judicial reform before funds are disbursed. As we stated in our report, AID originally required the Honduran government to demonstrate its commitment to the changes before AID would disburse additional project funds. AID had required that the government prove that 75 percent of all judicial positions were awarded on the basis of new, objective criteria rather than on the basis of political affiliation. When AID became aware that the government would not meet this condition, it responded by dropping the requirement. As a result, by 1992 the Honduran judicial system received $1.22 million in technical assistance, computer systems, and salary and administrative expenses, but has yet to fully implement legislation aimed at depoliticizing the selection of its judges.

13. AID states that these projects are relatively new, and our report recognizes that insufficient time may have passed to measure long-term changes. Nevertheless, AID has not used interim project evaluations to assess the impact the projects were having on the justice system. Rather, AID has gauged impact by measuring project outputs, such as the number of people trained or new code books delivered. Furthermore, problem areas highlighted in project evaluations were often used to justify project extensions and additional project funding in the absence of any clear indication that the project would ever meet its intended goals.

14. While official policy may in fact require a country team, or interagency approach, U.S. embassy and AID personnel indicated that the implementation of the policy depends on both the leadership of the ambassador and the priorities given judicial reform at the mission.

15. We recognize the difficulties that AID experienced while starting its judicial reform programs in Latin America. AID states that it has subsequently developed a strong, yet small, group of qualified experts in judicial reform.

16. As recently as November 20, 1992, an AID memorandum stated that it was unlikely

. . .that ILANUD has improved its capacity to assist in justice improvement in other countries, as initially envisioned in the project . . . and is not particularly responsive to the needs of

justice sectors in other countries. The result is a project which does not contribute as much as it should to the improvement of criminal justice systems throughout the region.

In March 1992, the Mission Director in Costa Rica indicated that AID still financed about 90 percent of ILANUD's operating budget. Even accounting for some additional donors, ILANUD continues to rely on AID to the point where we question its sustainability.

AID now contends that it will use ILANUD as a regional contractor with individual missions contracting with the foundation to implement specific projects. AID states that this in no way constitutes a subsidy. AID personnel have clearly indicated, however, that AID managers—not ILANUD—must identify a need and "sell" ILANUD to other AID judicial reform project managers. In June 1992, the Regional Administration of Justice Project Manager was in Guatemala City to determine if ILANUD could play a role in future AID projects in Guatemala, but with no ILANUD representative present. The AID manager said that no one from ILANUD was capable of doing this type of scoping work and that she still does the majority of the marketing for ILANUD's services throughout the region. Furthermore, the project manager stated that she has to review all of ILANUD's contracts because ILANUD does not know how to charge other donors sufficiently to cover their overhead costs.

Given these conditions, we are concerned that the agency could award contracts to ensure the foundation's sustainability rather than on the merits of each individual project. If ILANUD could present a competitive bid to an individual mission to perform work on a bilateral project and develop fair and reasonable overhead charges, then the mission should have the authority to use the foundation. Currently, ILANUD has not demonstrated its financial management abilities.

17. Our report has been modified to reflect AID's comments on our recommendations.

18. We did not reprint the Annex to AID's comments.

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