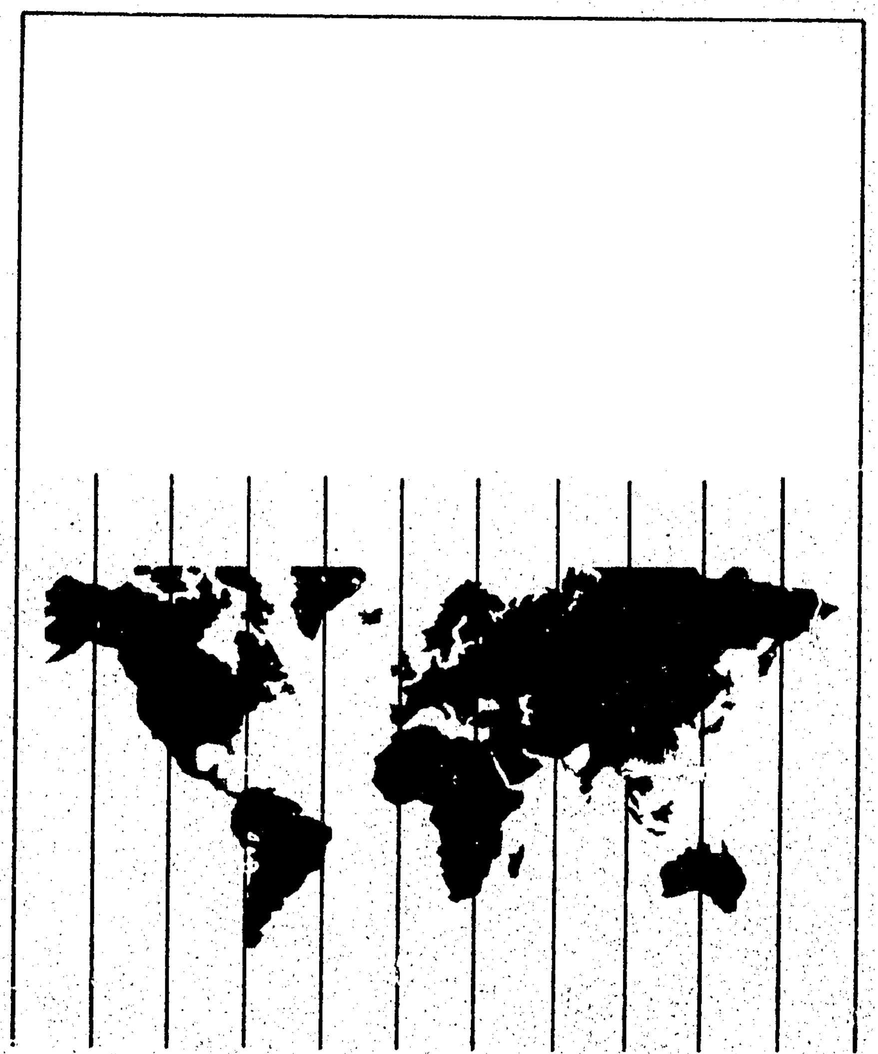
UNITED STATES
AGENCY FOR INTERNATIONAL DEVELOPMENT

THE INSPECTOR GENERAL



Regional Inspector General for Audit

TEGUCIGALPA

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ISN 70341

AUDIT OF REGIONAL ADMINISTRATION OF JUSTICE PROJECT USAID/COSTA RICA

Audit Report No. 1-515-90-013
June 25, 1990

AGENCY FOR INTERNATIONAL DEVELOPMENT

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June 25, 1990

MEMORANDUM

TO: USAID/Costa Rica Director, Carl Leonard

FROM: RIG/A/T Acting, Lou Mundy Lou Mundy

SUBJECT: Audit of the Regional Administration of Justice Project, USAID/Costa Rica

The Office of the Regional Inspector General for Audit/Tegucigalpa, has completed its audit of the Regional Administration of Justice Project, USAID/Costa Rica. Five copies of the audit report are enclosed for your action.

The draft audit report was submitted to you for comment and your comments in their entirety are attached to the report as Appendix 1. The report contains three recommendations. Recommendation 2 is considered closed upon final report issuance, and requires no further action. Recommendations 1, 3d, and 3f are considered resolved but cannot be closed until further action is taken. Recommendation 3a, 3b, 3c, 3e, and 3g are unresolved. Please advise me within 30 days of any additional actions taken to implement Recommendations 1, 3d, and 3f and any further information you might want us to consider on Recommendation 3a, 3b, 3c, 3e, and 3g.

I appreciate your cooperation and courtesy extended to my staff during the audit.

EXECUTIVE SUMMARY

The National Bipartisan Commission on Central America recommended in its January 1984 report that the United States help strengthen Central American judicial systems. In response to this report, Section 534 of the Foreign Assistance Act provided assistance to strengthen the administration of justice in countries in Latin America and the Caribbean. Authority for Section 534 was delegated to A.I.D. which coordinated resultant activities through the Inter-Agency Working Group on the Administration of Justice (Group). The Group, chaired by the Department of State, recommended the Regional Administration of Justice Project (Project) in late 1984.

A.I.D. selected as the Project's grantee the United Nations Latin America Institute for Crime Prevention and the Treatment of Offenders (Grantee) in order to limit U.S. involvement and encourage the participation of the participating countries. Prior to this Project, the Grantee had received several A.I.D. grants, of which the last in 1984 was to devise justice improvement projects in the countries of Central America, Panama, and the Dominican Republic.

A.I.D. and the Grantee signed the five-year Project agreement on March 22, 1985. The original grant was for $9.5 million, of which $2.5 million went to Florida International University in June 1985 under an A.I.D. cooperative agreement. Four Project amendments have increased funding to a total of about $25 million and have extended Project life by two years. The Regional Administration of Justice Office (Regional Office), located within the Agency's Mission in San Jose, Costa Rica, was responsible for the monitoring of the Project.

The Regional Inspector General for Audit/Tegucigalpa conducted an audit of the Project from May 9 to October 20, 1989. Our audit objective was to determine if the Project had adequate administrative and financial systems and controls.

The audit found that the Project lacked a system to measure project progress and impact. Also, A.I.D. had not clearly defined management responsibilities for the Project. Due to these management problems and other factors certain financial and administrative controls needed improvement to comply with A.I.D. regulations.

The report contains three findings. First, A.I.D. Handbook and good management practices require project managers to develop monitoring systems to measure project progress and impact through quantifiable objective indicators. The Project did not have adequate measurable indicators to monitor progress and impact toward achieving its main purpose of strengthening the Grantee and its goal of fostering the transformation of national justice systems. Management recognized that Project progress was not being measured adequately and made an attempt to develop quantifiable indicators through the contractor performing the mid-point evaluation. The contractor did not develop the indicators as required because according to the contractor there was not adequate time to perform this task. Until the quantifiable indicators are developed, management cannot determine Project progress or impact and thereby monitor the Project effectively. The report recommends that quantifiable indicators be developed and implemented in order to evaluate Project progress and impact on an ongoing basis. USAID/Costa Rica agreed with the recommendation and stated it had requested the contractor to develop quantitative indicators and once developed will incorporate them into the existing monitoring system. This recommendation is resolved, however, we request USAID/Costa Rica review its previous contract to ascertain that the contractor was not previously reimbursed for this task prior to contracting with them again for the same purpose.

Second, A.I.D. regulations state that the management and monitoring of regionally funded projects is the responsibility of A.I.D. and that personal service contractors can only be used when adequate supervision is available. The field project officer, a personal services contractor, exercised authorities beyond those allowed by A.I.D. regulations. This happened because A.I.D. management did not adequately supervise the field project officer due to a lack of clarity in the delegation of authority from A.I.D.'s Bureau for Latin America and the Caribbean. This situation contributed to the problems found with certain financial and administrative controls (see Finding 3). The report recommends that clearly defined management responsibilities be established. The Acting Assistant Administrator for the Bureau for Latin America and the Caribbean defined management responsibilities under the Project in a letter to the Mission Director dated October 10, 1989. This action meets the intent of our recommendation, thus, this recommendation is closed upon issuance of the final report.

And last, although USAID/Costa Rica was delegated authority for most routine implementing actions by A.I.D.'s Bureau for Latin America and the Caribbean, it did not establish the proper financial and administrative controls to comply with A.I.D. regulations. Our review noted several areas in which the lack of these financial and administrative controls resulted in inappropriate actions in the administration of the Project and may have resulted in several hundreds of thousands of dollars of inappropriate expenditures. As a result management lacked the assurance that Project funds were expended properly and that the Project was administered properly. The report recommends seven specific actions to strengthen Project financial and administrative controls. Based on USAID/Costa Rica's comments Recommendation 3, parts a, b, c, e, and g are unresolved and parts d and f are resolved.

Office of the Inspector General

Office of the Inspector General
June 25, 1990

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REGIONAL ADMINISTRATION OF JUSTICE PROJECT
USAID/COSTA RICA

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PART I - INTRODUCTION

A. Background

The National Bipartisan Commission on Central America recommended in its January 1984 report that the United States help strengthen Central American judicial systems. Specific recommendations were made to use U.S. economic assistance to: 1) enhance the training and resources of judges, judicial staff, and public prosecutors' offices, 2) support modern and professional means of criminal investigation, and 3) promote availability of legal materials, assistance to law faculties, and support for local bar associations.

Section 534 of the Foreign Assistance Act provides assistance to strengthen the administration of justice in countries in Latin America and the Caribbean. Authority for Section 534 was delegated to A.I.D. which coordinated resultant activities through the Inter-Agency Working Group on the Administration of Justice (Group). The Group, chaired by the Department of State, recommended the Regional Administration of Justice Project (Project) after a visit to the participating countries in late 1984 by some members of the Group assisted by staff from Florida International University (FIU). FIU wrote the project paper.

A.I.D. selected the United Nations Latin America Institute for Crime Prevention and the Treatment of Offenders (Grantee) as the Project grantee in order to limit U.S. involvement and encourage the participation of the participating countries. The United Nations and the Government of Costa Rica formed this organization by agreement in 1975. It is one of about six United Nations affiliates around the world formed to work on crime prevention and the treatment of offenders in its respective region. Prior to this Project, the Grantee had received several A.I.D. grants, of which the last in 1984 was to devise justice improvement projects in the countries of Central America, Panama, and the Dominican Republic.

A.I.D. and the Grantee signed the five-year Project agreement on March 22, 1985. The original grant was for $9.5 million, of which $2.5 million went to FIU in June 1985 under an A.I.D. cooperative agreement. Four Project amendments have increased funding to a total of about $25 million and have extended Project life by two years. The Regional Administration of Justice

Office (Regional Office), located within the Agency's Mission in San Jose, Costa Rica, was responsible for the monitoring of the Project.

The original participating countries were Costa Rica, the Dominican Republic, El Salvador, Honduras, and Panama. Guatemala became a participating country in 1986 and Panama was dropped in 1987 due to its changed political conditions. The six South American countries of Bolivia, Colombia, Ecuador, Peru, Uruguay, and Venezuela joined in 1986 to participate in regional training activities only.

The initial activities of the Project were grouped into four components--training, technical assistance, institutional development, and extension facility. Under the training component the Grantee functioned generally as an expeditor of training. The Regional Office managed the scholarship program. Project technical assistance efforts were mainly pilot projects directed either at a participating country or at the Grantee. Under the institutional development component the Grantee, with the assistance of FIU, was to increase its capacity to serve as regional leader. This component also provided funding to the International Institute of Human Rights to assist in its development. The extension facility component provided funding of activities specific to each participating country.

Amendment number four to the Project agreement, dated March 10, 1989, made considerable changes to the Project. These changes were the deletion of almost all of the extension facility component, the addition of projects in court case management and judicial school, the addition of agrarian law and environment protection law, the addition of selected technical assistance to six South American countries, and the requirement that the Grantee produce its own institutional development plan.

B. Audit Objectives and Scope

The Regional Inspector General for Audit/Tegucigalpa conducted an audit of the A.I.D. Regional Administration of Justice Project (Project). Our audit objective was to determine if the Project had adequate administrative and financial systems and controls.

We performed the audit field work from May 9, 1989 to October 20, 1989, in Washington, D.C.; Miami, Florida; San Jose, Costa Rica; and Guatemala City, Guatemala. At these locations we observed Project activities in operation, and reviewed Project documentation. We also obtained documentation on Project activities in the Dominican Republic, El Salvador, and Panama. We interviewed responsible A.I.D. officials in Washington, D.C., Costa Rica, Guatemala, Honduras, and the Dominican Republic; the Grantee directors for each major Project activity; justice sector representatives and officials of the national sector assessment teams in Costa Rica and Guatemala; and officials of Florida International University, the International Institute of Human Rights, and Checchi and Company.

The audit covered Project activities from March 1985 to October 1989, Project funds controlled by USAID/Costa Rica through fiscal year 1989, and the Grantee costs from March 1985 to July 1989. Our analysis of Project performance was based on compliance with the A.I.D. regulations, requirements of the Project agreement as clarified in the project paper, objectives of Project activities, and on our verification of the progress reports made by the Regional Office.

Our examination of the Project's training classes, which had a target of 80 classes for over 3,000 participants, included a selection of ten classes in 1988 and 1989. These ten classes were judgmentally selected to obtain a variety of locations, types of training, and training topics in order to ascertain the Grantee's training system and procedures. For the scholarship activity, our work at the Regional Office was limited by the available documentation.

We reviewed Project funds processed at USAID/Costa Rica and the Grantee. At the Mission, we selected current balances and charges for examination. At the Grantee, we selected large dollar amounts from its 1988 and 1989 financial statements for a compliance test. We also relied on two financial and compliance audits of Grantee financial statements for the Project through 1988 conducted by a certified public accounting firm.

We limited the review of internal controls and compliance to the issues affected by the audit work performed to accomplish our objective. The audit was performed in accordance with generally accepted government auditing standards. However, the evidence we have available, although competent and relevant, is limited in sufficiency. A large portion of the workpapers were destroyed in an airplane mishap on October 21, 1989. To compensate for this evidence limitation, we subsequently re-obtained key documents on those issues in this report which were contested by Project management.

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PART II - RESULTS OF AUDIT

The audit found that the Project lacked a system to measure project progress and impact. Also, A.I.D. had not clearly defined management responsibilities for the Project. Due to these management problems and other factors certain financial and administrative controls needed improvement to comply with A.I.D. regulations.

Project activities were generally progressing satisfactorily, as training objectives for the number of activities and participants exceeded the requirements of the Project agreement. Also, technical assistance in the areas specified by the Project agreement had been or was being provided. As examples, at least one set of about 1,200 basic legal books was shipped to each of the five participating countries' Supreme Court libraries, a criminal justice statistics project in the Dominican Republic was expected to release its first data report in the fall of 1989, and a jurisprudence and legislation computer compilation project in Costa Rica has input substantial amounts of the Costa Rican code.

To improve on the management and financial controls over the Project, this report presents three findings: 1) the Project lacked a system to measure progress and impact, 2) management responsibilities under the Project were not clearly defined, and 3) certain financial and administrative controls over the Project needed improvement.

The report recommends that USAID/Costa Rica and the Bureau for Latin America and the Caribbean develop quantifiable indicators and implement a system to use them, define their management responsibilities, and establish appropriate financial and administrative controls over the Project.

A. Findings and Recommendations

1. The Project Lacks a System to Measure Progress and Impact

A.I.D. Handbook and good management practices require project managers to develop monitoring systems to measure project progress and impact through quantifiable objective indicators. The Project did not have adequate measurable indicators to monitor progress and impact toward achieving its main purpose of strengthening the Grantee and its goal of fostering the transformation of national justice systems. Management recognized that Project progress was not being measured adequately and made an attempt to develop quantifiable indicators through the contractor performing the midpoint evaluation. The contractor did not develop the indicators as required because according to the contractor there was not adequate time to perform this task. Until the quantifiable indicators are developed, management cannot determine Project progress or impact and thereby monitor the Project effectively.

Recommendation No. 1

We recommend that USAID/Costa Rica and the Bureau for Latin America and the Caribbean:

a. require that Checchi and Company fulfill its contract with regard to developing quantifiable indicators to measure project progress; and

b. implement a system which will use the quantifiable indicators developed in part a. to evaluate Project progress and impact toward the achievement of its purpose and goals.

Discussion

A.I.D. Handbook 3 provides guidance for project design for problem identification, measuring project success, and monitoring. It also states that at the project paper stage, the target levels of goals, purpose, and outputs should be fully defined and listed in the logical framework.

The Project goal was to foster transformation of national justice systems into systems based upon independent and strengthened judiciaries which will support democratic institutions and command popular confidence in the fair and impartial application of the law. The designers of the Project identified the objectively verifiable indicators as 1) an increase in public confidence in the justice system, 2) achievement of higher levels of judicial branch training and education, and 3) an indication that the judiciaries are becoming progressively more independent from the executive branch of government. These indicators were not quantified thus Project progress toward attainment of its goal could not be measured.

According to the Project paper, the Project purpose was to strengthen the capabilities of the Grantee and other institutions, and to provide services for improving the administrative, technical, and legal performance of the participating countries' justice systems. The designers of the Project identified the objectively verifiable indicators as 1) Grantee capability upgraded to the point where it can serve as a regional source for training and improving technical assistance, 2) the Interamerican Institute for Human Rights capacity upgraded to the point where it can serve as a regional source for human rights information, workshops and conferences, 3) the Supreme Courts control of their court systems' budgets, and 4) the Supreme Courts ability to function effectively as administrator of the national court systems. As can be seen these indicators were not quantified nor easily defined and did not serve to effectively measure Project progress toward achieving its stated purpose.

Instead, project management measured progress in terms of outputs achieved under the Project. Outputs measured were activities such as number of training courses provided, pilot projects established, and sector assessments performed. These activities were not quantitatively linked with the accomplishment of the Project purpose, that is, the institutional strengthening of the Grantee. For example, the Project advisory services component was to provide technical assistance to a statistics project. However, the verifiable indicators established to measure success were to develop a pilot project and to improve the national capability to collect and use statistics in justice system management. The two indicators were not quantifiable and not linked to Project purpose. Thus the indicators used did not provide an effective means to measure Project progress toward the institutional strengthening of the Grantee.

A.I.D. management recognized that Project progress was not being measured adequately and contracted with Checchi and Company in early 1988 to perform a project midterm evaluation. In addition, the contractor was tasked with developing quantifiable indicators to measure project progress. However, the contractor did not develop the indicators because, according to the contractor, there was not adequate time to perform this task.

In March 1987, A.I.D.'s Bureau for Latin America and the Caribbean cabled the missions with action plan guidance which provided illustrative quantifiable indicators for administration of justice projects. However the cable did not require specific action, thus the contractor has still not performed the task and fulfilled the contract and A.I.D. management does not have a system to measure Project status. Without such a system management does not have the ability to determine objectively the degree of success of the Project at any point during project implementation nor determine where resources should be directed to take any corrective action which may be indicated.

Management Comments and Our Evaluation

Mission management stated that it was generally in agreement with the specific points of the finding but strongly disagreed with the general assertion that the project lacks a system to measure progress and impact. With respect to the recommendation, management generally agreed with both parts but suggested part (a) be reworded to avoid leaving the impression that Checci and Company did not fulfill its contract with the Mission.

In order to implement the recommendation management stated it had requested Checci and Company to develop a set of quantitative indicators to be incorporated in the system for measuring Project progress. Once developed, the quantitative indicators will be incorporated into the existing monitoring system.

Management's comments were responsive to the recommendation and based on the plan of action outlined in their comments this issue is resolved. We do have one remaining concern. We believe USAID/Costa Rica should enforce its prior contract with Checci and Company rather than contract with them again for the same purpose. In their comments the Mission stated:

> The contractor did not develop the quantifiable indicators specified in its scope of work and the Mission acknowledges that it should either have amended the scope to eliminate that requirement or required that the contractor supply the indicators.

We believe the Mission should review its prior contract with Checci and Company to ascertain that they were not previously reimbursed for the purpose of developing indicators prior to contracting with them again for the same purpose.

2. Management Responsibilities Under the Project Were Not Clearly Defined

A.I.D. regulations state that the management and monitoring of regionally funded projects is the responsibility of A.I.D. and that personal service contractors can only be used when adequate supervision is available. The field project officer, a personal services contractor, exercised authorities beyond those allowed by A.I.D. regulations. This happened because A.I.D. management did not adequately supervise the field project officer due to a lack of clarity in the delegation of authority from A.I.D.'s Bureau for Latin America and the Caribbean. This situation contributed to the problems found with certain financial and administrative controls (see Finding 3).

Recommendation No. 2

We recommend that USAID/Costa Rica and the Bureau for Latin America and the Caribbean clearly define their respective management responsibilities under the Project, especially with respect to the supervision of the field project officer.

Discussion

A.I.D. Handbook 3, Supplement A states that the responsibility for the management and monitoring of regionally funded projects rests primarily with A.I.D. Project management is described as the process whereby A.I.D. oversees and monitors all aspects of a project including its implementation. The principal functions of implementation are contracting or granting funds, administering a contract or grant, making payments to a contractor or grantee, and monitoring the performance of a contractor or grantee.

Supplement A also requires the designation of a project officer located in A.I.D./Washington to manage a regionally funded project and the designation of a field project officer to assist the local project officer. The Supplement further provides that the field project officer is to backstop and support the A.I.D./Washington project officer with respect to matters requiring field participation such as the oversight of contractors' and grantees' field operations and project progress reporting.

Finally, A.I.D. Handbook 14, Appendix D states that personal services contractors "...may only be used when adequate supervision is available...." and may not be used to make "...decisions involving governmental functions such as planning, budget, programming, and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized A.I.D. direct-hire employees."

Field Project Officer - The project officer in A.I.D./Washington selected a personal services contractor (PSC) to be the field project officer in Costa Rica. In administering his duties under this Project the PSC exercised authorities which were beyond those allowed by the regulations. The PSC made decisions concerning the Project which should have been made or approved by U.S. direct hire personnel. These decisions involved Project budgeting, programming, and personnel selection. In one case, a PSC assistant assigned to the Project authorized (in the name of the PSC project field officer) the Grantee to use Project funds totaling $25,000 for activities outside the scope of the Project agreement without obtaining the proper A.I.D. management approvals. The PSCs were allowed to exceed their authorities because they were not adequately supervised. According to USAID/Costa Rica management this was due to a lack of clarity in the delegation of authority from A.I.D.'s Bureau for Latin America and the Caribbean. Due to this confusion USAID/Costa Rica's role in implementing the Project was not clearly defined.

Delegation of Authority - The field project officer was not properly supervised due to the lack of clarity in the delegation of authority from the Bureau for Latin America and the Caribbean's (LAC) Acting Assistant Administrator to the Director of USAID/Costa Rica. The delegation of authority made by LAC in August 1985 to perform certain routine Project administrative and implementing actions was revoked by a December 1985 cable because the authority had been previously delegated prior to August. The cable also explained that USAID/Costa Rica should consult with LAC prior to exercising implementation authorities that would present policy issues or significantly alter the direction of the Project. A LAC official said that this meant USAID/Costa Rica was responsible for Project implementation. However, USAID/Costa Rica officials stated that many implementation matters involved policy issues, thus the field project officer consulted directly with LAC per the instructions in the December cable.

Conclusion - The resulting confusion over supervisory responsibilities under this Project, particularly when the field project officer was a PSC, allowed certain financial and administrative control problems to occur under the Project. Although the PSC was converted to a U.S. direct hire status by A.I.D. in July 1989, several of these issues remain. These issues are discussed in detail in Finding 3.

Management Action - The Director, USAID/Costa Rica received a letter dated October 10, 1989 from the Acting Assistant Administrator/LAC which defined the responsibilities of the Mission and of the LAC Bureau with regard to the Project. In part the letter provides that the "...Mission bears principal responsibility for program management.... [while] ...the policy and programmatic aspects of the project vis-a-vis other countries and the proper liaison and coordination with other USAID missions and LAC governments remain the primary responsibility of LAC/DI [Democratic Initiatives staff]...." Thus, the Mission Director or his designee has direct supervisory responsibility for the field project officer on Project aspects assigned to the Mission, while for functions in connection with LAC/DI and the Project activities beyond Costa Rica, the field project officer will report to the LAC/DI Director.

Management Comments and Our Evaluation

Management's action taken during the audit meets the intent of the recommendation. Recommendation 2 is closed upon issuance of this report.

3. Financial and Administrative Controls Over the Project Need Improvement

Although USAID/Costa Rica was delegated authority for most routine implementing actions by A.I.D.'s Bureau for Latin America and the Caribbean, due to the confusion surrounding this delegation discussed previously, it did not establish the proper financial and administrative controls to comply with A.I.D. regulations. Our review noted several areas in which the lack of these financial and administrative controls resulted in inappropriate actions in the administration of the Project and may have resulted in several hundreds of thousands of dollars of inappropriate expenditures. As a result management lacked the assurance that Project funds were expended properly and that the Project was administered properly.

Recommendation No. 3

We recommend that USAID/Costa Rica:

a. determine the amount of unsupported training costs claimed by the Grantee under the Project and either obtain support for these costs or recover the funds from the Grantee;

b. determine and recover the amount of unallowable in-country participant training costs claimed by the Grantee;

c. establish procedures which will screen claims and disallow costs which are unsupported or unallowable;

d. enforce established procedures which ensure that project implementation letters are used to effect changes to the Project;

e. establish procedures to properly determine and verify personal services contractors' salary rates;

f. include both past and any future recommendations made by audits and evaluations in the Mission's recommendation follow-up system and monitor such recommendations until they are properly resolved and closed; and

g. ensure that Agency procedures for the selection of scholarship recipients are implemented and documented.

Discussion

USAID/Costa Rica was delegated the authority to implement routine actions under the Project by A.I.D.'s Bureau for Latin America and the Caribbean. However, due to confusion over the exact responsibilities delegated (finding 1) USAID/Costa Rica did not oversee and enforce the proper financial and administrative controls in implementing the Project.

Problems were noted in the following areas during the audit: 1) payment of unsupported and unallowable training costs, 2) improperly authorized and executed Project actions, 3) approval of an excessive salary for a personal services contractor, 4) lack of an audit/evaluation recommendation follow-up system, and 5) selection of scholarship recipients was not properly documented.

Payment of Unsupported and Unallowable Training Costs - The Grantee paid itself a "cuota de inscription" to cover the costs of coffee, flowers, cocktails, document reproductions, and other incidentals associated with conducting training classes. The charge ranged from $50 to $150 per person depending on the length of the training class. No receipts of actual expenses incurred were submitted to USAID/Costa Rica to support these claimed costs. USAID/Costa Rica accepted these claims as valid Project expenditures. For example, during 1988 two three-day seminars were sponsored by the Grantee in Honduras. For these seminars the Grantee claimed $17,850 in "cuotas de inscription" which was computed at $50 per participant times 357 participants. The only support provided USAID/Costa Rica for this claim was a listing of the participants names. Since the Grantee had sponsored over 3,500 participants in its training efforts as of December 1988, the unsupported claims could be substantial.

The Grantee also paid participant training allowances to in-country participants. Allowances paid included hotel and transportation for out-of-city class attendees and lunch costs for in-city attendees. These costs are unallowable as A.I.D. regulations do not allow benefits to be paid to in-country training participants, that is, persons of the host country. Agency policy is that these in-country training costs should be paid with host country counterpart support. Allowances paid to or for in-country trainees should have been disallowed by USAID/Costa Rica.

USAID/Costa Rica should determine the total unsupported and unallowable training costs paid under the Project and either obtain support where applicable or recover the costs from the Grantee.

Improperly Authorized and Executed Project Actions - As previously discussed in finding 1, A.I.D. regulations limit the decision making responsibility of personal service contractors (PSCs) in implementing projects. Final decisions pertaining to budgets, planning, programming, and personnel selection are to be made by U.S. direct hire personnel only. The Regional Office in USAID/Costa Rica was administered by a PSC field project officer. In a letter dated April 7, 1989, the field project officer's program assistant (also a PSC) authorized the Grantee to use approximately $25,000 in Project funds for bilateral project costs. The authorization was given because the Grantee needed funds for the bilateral project but had not received any. This action was inappropriate since a PSC does not have the authority to grant such an authorization. In addition, authorizations of this nature should be properly communicated through a project implementation letter (PIL).

In a similar instance, the Project provided funds to the Interamerican Institute of Human Rights (Institute) through the Grantee. These funds were to provide the Institute institutional strengthening in the form of three additional staff and a management analysis study. Instead, the Institute hired two staff and used approximately $28,000 to purchase computer equipment. This was done without the proper authorization by USAID/Costa Rica management.

In a third situation the deadline for a Project agreement covenant was postponed by the field project officer without issuance of a PIL. In this case Amendment No. 4 to the agreement, dated March 10, 1989, included a covenant for the grantee to submit an institutional development plan by August 31, 1989 for A.I.D. review and comment. The field project officer informally extended this deadline to October 30, 1989. The field project officer stated that since the Grantee was aware of when the plan had to be submitted he believed the use of the PIL was not necessary. However, A.I.D. Handbook 3 provides that PILs will be used for communicating with the grantee on matters involving project implementation.

In summary, approximately $53,000 in Project funds were expended without the proper authorization. Also, project implementation decisions were made without the proper communication with the Grantee, that is, the use of PILs.

Excessive Salary Approved for Personal Services Contractor - Agency regulations provide procedures for establishing salaries and periodic salary increments for PSCs. USAID/Costa Rica did not properly establish the salary rate for a PSC hired to assist in administering the Project. In negotiating the contract salary, USAID/Costa Rica granted a nine percent raise over the salary shown in the employee's application. The PSC's former employer was USAID/Peru. USAID/Costa Rica did not obtain the PSC's previous contract from USAID/Peru to verify the rates and establish the appropriate salary--a prudent contracting practice. Our review of the PSC's employment record with USAID/Peru disclosed that the PSC had received an eight percent raise only seven months earlier from USAID/Peru. As a result USAID/Costa Rica negotiated a contract which allowed the individual a salary increase of 17 percent in less than a year. Of the nine percent raise negotiated by USAID/Costa Rica, three percent was for an increase above current earnings; however, since the PSC's current earnings were based on a 7-month contract, two percent should have been the increase. Thus an error of one percent was made. The Mission should establish proper procedures to verify contractor salaries.

Lack of an Audit/Evaluation Recommendation Follow-up System - The A.I.D. Handbook establishes missions' responsibilities in taking actions on recommendations made by audits and project evaluations. Especially, the Handbook provides that recommendations made to improve project implementation and grantee accounting for Agency funds require management action to assist the grantee in implementing the recommendations or to state reasons why the recommendations were not appropriate.

A certified public accounting firm, Price Waterhouse, issued an audit report on the Grantee for the year ended 1987. The report recommended certain actions be taken by the Grantee and A.I.D. to improve the accounting and management controls over Project funds. Our review of the Price Waterhouse draft audit report on the Grantee for the year ended 1988 disclosed that the firm had again recommended actions on a number of issues which were in the 1987 report because the Grantee and A.I.D. had not taken appropriate actions to resolve the issues.

The contractor, Checchi and Company, performed a midterm evaluation on the Project to assess progress, identify problems, and make recommendations for corrective actions. The final report was issued in June 1988 and contained 46 recommendations for management actions to improve the Project. As of our review, there was no evidence of actions taken by management to resolve the recommendations. Project management stated that although there was general agreement with the findings they had not established an action plan to implement the recommendations.

In both reviews cited the recommendations were not put in the Mission's follow-up system for implementation and closure. The recommendations were made to assist management in improving the Grantee accountability, performance, and effectiveness in project implementation. These improvements had not been achieved because USAID/Costa Rica did not take the necessary actions to resolve the recommendations. The recommendations, as well as any future recommendations, should be entered into the Mission's follow-up system and monitored until they are resolved and closed.

Selection of Scholarship Recipients Was Not Properly Documented - A.I.D. regulations set procedures for the selection of scholarship recipients.

These procedures include the performance of a training needs assessment and the use of Agency established selection criteria. A USAID/Costa Rica Regional Office official stated that two staff of the Regional Office selected over 50 scholarship recipients based on the recipients' acceptance by the University of Costa Rica to study postgraduate criminal or agrarian law, their university grade point average, their current position, and other criteria. However, the Regional Office staff maintained no record of their selection process and did not perform a training needs assessment. As a result, the selection methods employed by the Mission were not documented and thus lacked definitive justification for over 50 scholarship students selected. The Mission should ensure that Agency procedures for the selection of scholarship students are implemented and documented.

Conclusion - We have recommended seven specific actions to strengthen Project financial and administrative controls, controls which are essential to providing management with the assurance that Project funds were expended properly and that the Project was administered properly.

Management Comments and Our Evaluation

Recommendation 3a - Mission management stated that while they accept the finding they believe the recommendation should be eliminated. Management was unsure of the feasibility and practicality of this part of the recommendation and whether funds could be recovered from its implementation.

The Office of the Inspector General cannot eliminate this recommendation based on the Mission's comments. The fact remains that the Grantee claimed costs which were not supported and USAID/Costa Rica paid these claims as valid Project expenditures. These claims could be substantial as the Grantee sponsored over 3,500 participants in its training efforts. Since the quota ranged from $50 to $150 per participant the total claims could range from $175,000 to $525,000. We believe USAID/Costa Rica should make an effort to determine the validity of these costs or recover the funds from the Grantee. Recommendation 3a is unresolved.

Recommendation 3b - Mission management stated that it did not consider in-country training costs unallowable and that it was discriminatory to charge host country trainees for meals and lodging when they do not charge others. Management also noted that host country owned local currency is not always available to cover these costs.

As noted in the Mission's comment we believe that in-country training costs are to be funded with host country counterpart funds, not A.I.D. funds. As our interpretations of A.I.D. regulations appear to be at an impasse, we suggest USAID/Costa Rica resolve this issue through an opinion of the Agency's legal counsel. Recommendation 3b is unresolved.

Recommendation 3c - Mission management commented that they believe proper procedures are in place to screen claims and disallow costs which are unsupported or unallowable.

We are unable to determine from the Mission's comments if this issue has been resolved or not, thus for purposes of tracking this recommendation it is considered unresolved. Our review indicated that procedures were not in place during the period audited with respect to the training costs previously discussed. If the Mission's comments mean that procedures have now been established to screen claims and disallow costs RIG/A/T requests these procedures for review so the recommendation may be closed.

Recommendation 3d - Mission management agreed with the recommendation. Accordingly, the Mission Director plans to distribute a memo to all responsible Mission staff stressing the proper procedures to be used in effecting project changes.

We believe the action outlined by the Mission meets the intent of the recommendation. Recommendation 3d is resolved and may be closed upon receipt of documented evidence that the planned action has been implemented.

Recommendation 3e - The Mission agreed with the recommendation and provided an excerpt of appropriate language it plans to include in future contracts for personal services.

We commend the Mission for the improved language it plans to include in future contracts as it will further protect the U.S. Government's interests. However, the Mission's comments did not address its plans with regard to establishing procedures to determine and verify personal services contractor's salary rates. Recommendation 3e is unresolved.

Recommendation 3f - Mission management agreed with the recommendation but did not fully agree with the underlying finding. Management stated that the Mission's audit tracking system is now being revised to include evaluation recommendations and, in the case of grantee contracted audits, those recommendations identified by the independent auditors as material, reportable conditions.

The Mission's comments adequately address the intent of our recommendation. Recommendation 3f is resolved and may be closed upon receipt of documented evidence that the planned action has been implemented.

Recommendation 3g - The Mission did not concur with our recommendation. Contrary to our assertion that the Regional Office staff maintained no documented evidence of their selection methods and did not perform a training needs assessment, the Mission contends that the process is documented from "beginning to end" and that participants were selected in accordance with Handbook 10 training needs assessment requirements. However, the Mission did not provide any support for their comments so that it could be evaluated. As a result, Recommendation 3g is unresolved. This recommendation may be resolved and/or closed through either the implementation of the recommendation as stated or by furnishing our office documented evidence of the training needs assessment and selection method for the scholarship students selected.

B. Compliance and Internal Controls

Compliance

Our audit disclosed four issues of noncompliance as follows:

1. The Bureau for Latin America and the Caribbean did not provide quantifiable or measurable indicators for the Project purpose and goals as required by Agency regulations (Finding 1).

2. USAID/Costa Rica did not require the contractor (Checchi and Company) to fulfill its contract with regard to developing quantifiable indicators to measure Project progress (Finding 1).

3. USAID/Costa Rica and the Bureau for Latin America and the Caribbean did not adequately manage the Project nor supervise the personal services contractors of the Regional Office as required by Agency regulations (Finding 2).

4. USAID/Costa Rica did not provide the proper financial and administrative controls over Grantee training costs, certain Project actions, the approval of salary for a personal services contractor, the follow-up of recommendations from an audit and an evaluation, and the selection of scholarship recipients as required by Agency regulations (Finding 3).

We limited the review of compliance to the issues affected by the audit work performed in accomplishing our objective.

Internal Controls

Our audit disclosed four internal control problems as follows:

1. Agency management did not adequately supervise the personal services contractors of the Regional Office (Finding 2).

2. USAID/Costa Rica did not establish adequate internal controls over the Grantee's training costs and claims, the use of project implementation letters, and the salary rate of a personal services contractor (Finding 3).

3. USAID/Costa Rica did not follow up and monitor audit recommendations (Finding 3).

4. The Regional Office did not document the selection of scholarship students (Finding 3).

We limited the review of internal controls to the issues affected by the audit work performed in accomplishing our objective.

AUDIT OF
REGIONAL ADMINISTRATION OF JUSTICE PROJECT
USAID/COSTA RICA

PART III - APPENDICES

- 19 -

AGENCY FOR INTERNATIONAL DEVELOPMENT

UNITED STATES A. I. D. MISSION TO COSTA RICA

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June 11, 1990

MEMORANDUM

TO: Mr. Coinage N. Gothard, Jr., RIG/A/T

FROM: Carl Leonard, Director, USAID Costa Rica D. Wurster for

SUBJECT: Draft Audit Report; Regional Administration of Justice

The Mission has reviewed the subject draft audit report and is pleased that our comments to date have generally been reflected in the draft. However, we do not agree with some of the findings and related recommendations contained in the subject draft report and would like you to consider the comments below before issuing the final audit report. For your convenience, the comments contained herein have been arranged to coincide with the format of the draft audit report.

Executive Summary

Much of the wording of the Executive Summary may need to be changed based on your evaluation of the comments in this memorandum. Consequently, we make no specific comments on the Executive Summary section of the report.

PART I - INTRODUCTION

Background (page 1)

Page 1 of the draft states that "The Group . . . approved the Regional Administration of Justice Project . . . ", which is in error. The working group did not approve the Project; the AA/LAC and LAC approved the Project through the DAEC. The working group had only an advisory role.

Page 3 of the draft (second paragraph) gives the misleading impression that the changes to the Project included in Amendment No. 4 to the Project Agreement were arbitrary and without justification. The changes to the Project Agreement were made based on the experience to date and were necessary to meet the Project's underlying goals. Please reconsider the wording of this paragraph.

Audit Objectives and Scope (page 4)

Page 5 of the draft (second paragraph) indicates that the RIG relied upon audited financial statements prepared in accordance with AICPA standards. While this is technically true, the Mission takes great pains to assure that grantee-contracted audits are performed in accordance with Government Auditing Standards issued by the Controller General of the United States. The paragraph should make mention that the audits were conducted in accordance with such Standards. Moreover, the audits were technically "financial and compliance" audits rather than "financial" audits; please modify the wording accordingly.

PART II - RESULTS OF AUDIT

Page 7 of the draft (second paragraph) states that Project activities "were generally progressing satisfactorily . . . ". We agree fully with this observation but the text of the draft from pages 9 through 13 gives the reader a totally different perspective. On balance, we believe that indications of satisfactory progress be made in these pages (e.g. training objectives for the number of activities and participants exceeded requirements of the project, technical assistance specified in the Project agreement had been or was being provided, at least one set of about 1200 basic legal books was shipped to each of the five participating countries, a jurisprudence and legislation computer compilation project substantially advanced, etc.)

Finding No. 1 - The Project Lacks a System to Measure Progress and Impact (page 9)

The Mission is generally in agreement with the specific points of the finding but strongly disagrees with the general assertion that the project lacks a system to measure progress and impact.

The Project does have a system for ongoing monitoring and evaluation of progress, performance and interim effects. The system utilizes, financial data, levels of inputs and outputs, and a limited number of key indicators that measure progress toward the main objectives of the development activity. These measurements are identified at the output, purpose, and goal levels of the logical framework (Attachment A). The system is in compliance with Handbook 3, Supplement to Chapter 12, section 3.3.5, Methodology Report No. 7, and is supplemented by periodic internal and external evaluations as well as independent audits. Moreover, the information captured by the system is recorded in the semi-annual reports issued to Washington.

Because of the nature of the overall project goals, and the likelihood (as noted in the Project Paper) that their achievement even under the best of circumstances would require more than the five (now seven) year life of project, it has in some cases been necessary to assess progress and impact in terms of intermediate indicators. These intermediate indicators have been substituted for some of the quantifiable impact indicators mentioned in the project Log Frame. For example, while indicators of impact were proposed to measure progress in strengthening public sector confidence (measureable through public opinion surveys), intermediate impact has had to be evaluated in terms of the establishment of reform programs, national commissions, number of training programs, and the commitment to adopt administrative reforms. These are objective indicators, in that their presence or absence can be determined objectively and they can be quantified as well whether on a numerical scale or in terms of number of programs, trainees, etc.

Recommendation No. 1 (page 9)

"We recommend that USAID/Costa Rica and the Bureau for Latin American and the Caribbean:

> (a) require that Checci and Company fulfill its contract with regard to developing indicators to meausure Project progress; and
>
> (b) implement a system which will use the quantifiable indicators developed in part (a) to evaluate Project progress and impact toward the achievement of its purpose and goals."

Although the Mission generally agrees with both parts of this recommendation, we suggest that part (a) be reworded to say "... require that Checci and Company develop indicators to measure Project progress". We suggest this modified wording to avoid leaving the impression that Checci and Company did not fulfill its contract. The Mission has requested Checci and Company (who has agreed) to develop a set of indicators to be incorporated in the system for measuring project progress. LAC/DI is also considering contracting another firm, with more experience in this type of work, to develop indicators of a more broad nature for all its programs. This would not duplicate Checci's efforts rather it would help to refine and perfect what they develop.

Once additional quantitative indicators are developed, they will incorporated into the existing monitoring system, assuming that valid data is available to implement them. As explained below, data represent a special problem in the justice area. It is one thing to define a measureable indicator; it is quite another to access or establish the data base required to operationalize it. Public opinion polls are excellent indicators of public confidence but if existing polls do not include relevant information, additional polls would have to be commissioned at substantial cost. We will instruct both firms to take this into consideration in developing their indicators.

Discussion (page 10)

As stated above, we believe that the finding that "The Project Lacks a System to Measure Progress and Impact" could be misleading in that it implies the total absence of a monitoring system; the draft only questions the ability of the existing system to assess progress and impact in quantitative (as opposed to qualitative) terms. As noted in our response to Record of Audit Finding (RAF) No. 4 on page 9, the project is not devoid of measurement indicators.

Any system for measuring progress and impact must be composed of qualitative as well as quantitative indicators and recognize the distinct role played by each. The indicators used by the Project monitoring system are both quantitative and qualitative. The findings in the draft audit report, however, dismiss the quantitative indicators as referring only to output (page 11).

Page 12 of the draft (second paragraph) gives the impression that the mid-term evaluation was conducted solely for the purpose of developing quantifiable indicators which was not the case. The paragraph should reflect that this was a normal mid-term evaluation to which the indicators were added as an extra assignment. The contractor did not develop the quantifiable indicators specified in its scope of work and the Mission acknowledges that it should either have amended the scope to eliminate that requirement or required that the contractor supply the indicators. Nevertheless, the overriding thrust of the work was to perform an evaluation as opposed to development of indicators.

Quantitative indicators are not the only acceptable measures for evaluation. Except in the most simple and straightforward projects, a combination of quantitative and qualitative indicators is actually preferable since it is more likely to tap the various dimensions of intended change. A system which contemplates both quantitative as well as qualitative indicators is more cost effective when basic data do not already exist and would have to be generated by the project as is the case here.

The most important factor in the adoption of a system of indicators is the complexity of the changes to be assessed and the danger that only certain dimensions will be included (i.e. those which most readily lend themselves to quantification) which may distort findings and potentially endanger the project itself. This happens where an effort to demonstrate progress in terms of quantitative indicators diminishes attention to the wider changes originally sought. Exclusive reliance on the quantifiable indicators is likely to undermine the validity of the results to be measured. Efforts to increase the variety of quantitative measures are in turn limited by the costs of generating the additional data.

While the problem of producing indicators is most difficult in terms of the goal of improving national systems, events such as the establishment of national commissions, bilateral projects, training programs, and other reform activities are appropriate indicators of progress.

In complex processes of social change, movement toward a long term goal may not be directly measurable or observable until all the pieces are in place and have had an opportunity to interact. Reasonable progress toward such a goal, may have to be assessed over the short run in terms of intermediate outcomes. These may or may not be quantifiable, but with very few exceptions, they must be considered hypothetical indicators of progress -- ie. best guesses as to the necessary and sufficient conditions for achieving the long term goal.

The project paper discusses several characteristics of the project which complicate efforts at evaluating and establishing quantifiable indicators for overall achievement of the main goal. The mere fact that "immediate basic changes" in national justice systems take longer than the estimated life of project (at that time five years), makes the development of quantifiable indicators nearly impossible. Thus, while potentially measurable indicators of these long term changes were suggested in the Log Frame, it was not felt that it would make sense to establish mechanisms to measure them, at least until the final evaluation.

The benefits of developing long term quantitative impact indicators are deemed minimal and the costs are likely to be high. Unlike more traditional AID functional areas (agriculture and health), collection of basic statistics in the justice sector is not an ongoing activity in any of the participating countries, and thus the project would have to bear the full cost of setting up and maintaining the entire measurement system in each of the participating countries. The design and establishment of some of these systems of judicial statistics is part of project activities. However, given the time required, it is likely that only toward the end of the project will we be able to begin measuring changes, and even then, only in a few countries. In the case of other indicators (public opinion surveys), it was felt that the high costs would not warrant the likely inconclusive results.

Specific quantitative measures (number of courses, pilot projects, technical assistance, etc.) were used as indicators of ILANUD's increased capacity to deliver services. While "doing more" is not the sole criterion for determining institutional strengthening, we do not understand why the findings contend that this is not "quantitatively linked" to the overall objective. It should also be recognized that while these activities are outputs in terms of the entire project, they represent impacts in terms of ILANUD's own development. Qualitative indicators have also been used, focusing on sophistication and appropriateness of the Institute's services and of its own internal organization and procedures. The mid-term evaluation and a second in-country evaluation of ILANUD provided evidence as to improving the regional and national image of the ILANUD, while pinpointing specific weaknesses in its internal operations.

While we believe that the Project monitoring system with its quantitative and qualitative indicators has produced a realistic assessment of progress and of probable impact it has been the qualitative assessments which have been most helpful in revealing potential problems and guiding readjustment of efforts. Over the long term the project itself will improve the utility of quantitative indicators by developing new data bases and by testing models of change.

<u>Finding No. 2 - Management Responsibilities Under the Project Were Not Clearly Defined</u> (page 14)

The Mission has no comments on this section of the report (pages 14 through 18).

<u>Recommendation No. 2</u> (page 14)

This recommendation is already closed as indicated on page 18 of the draft audit report and needs no further action nor comment.

<u>Discussion</u> (page 14)

The Mission has no comments on page 14 of this section of the draft audit report.

<u>Field Project Officer</u> (pages 15, 16)

Pages 15 and 16 of the draft audit report correctly point out that a PSC made decisions concerning the project which should have been made or approved by U.S. Direct Hire personnel. Such activity was and is against Mission policy and the Mission has corrected this problem once it's delegation of authority to manage the project was clarified.

However, the example on page 16 of the use of $25,000 for activities outside the scope of the Project agreement is a poor one. Regional Administration of Justice project funds may be used to benefit a single country regardless of whether a bilateral project has yet been established. This is explained in detail in the Mission's response to Records of Audit Findings dated December 12, 1989, pages 16 and 17, and relates to RAF No. 9. The example should be eliminated from the audit report.

<u>Delegation of Authority</u> (page 16)

The Mission has no comments on this section (pages 16 and 17) of the draft audit report.

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Conclusion (page 17)

The Mission believes the statement that ". . . several of these issues remain . . . discussed in detail in Finding 3" is not accurate. This paragraph should be toned down based on the comments on Finding No. 3 below.

Finding No. 3 - Financial and Administrative Controls Over the Project Need Improvement (page 19)

While the Mission agrees that the confusion surrounding the delegation of authority had an impact in administrative actions taken, we do not agree that the confusion resulted in hundreds of thousands of dollars of inappropriate expenditures as asserted in the draft audit report.

Recommendation No. 3 (page 19)

"We recommend that USAID/Costa Rica:

(a) determine the amount of unsupported training costs claimed by the Grantee under the Project and either obtain support for these costs or recover the funds from the Grantee,

The Mission is unsure as to the feasibility and practicality of this recommendation and whether or not recovery of funds is likely to result from its implementation as explained below.

(b) determine and recover the amount of unallowable in-country participant training costs claimed by the Grantee.

The Mission does not agree with this recommendation as discussed below.

(c) establish procedures which will screen claims and disallow costs which are unsupported or unallowable.

The Mission does not agree with this recommendation as discussed below.

(d) enforce established procedures which ensure that project implementation letters are used to effect changes to the Project.

The Mission, of course, agrees with this recommendation. It is established Mission policy, supported by a well developed system of Mission Orders, that all important project changes are formally effected through Project Implementation Letters, and only by authorized Mission personnel. The fact that these procedures were not followed at times in this project suggests a need to emphasize again their importance. Accordingly, the Mission Director will distribute a memo to all USDH, and PSC Mission staffmembers reminding them that: 1) project implementation actions are to be properly documented and authorized through project implementation letters; and 2) only USDH personnel have authority to make commitments on behalf of AID. Relevant existing USAID Orders on this subject will be attached to this memo.

(e) establish procedures to properly determine and verify personal services contractors' salary rates.

The Mission agrees with the recommendation and plans to include the following language in future contracts:

> "The salary herein specified was negotiated with the Contractor based on the contractor's assertion as to past earnings. USAID policy is to attempt to verify past earnings; should the verification process reveal inadvertent overstatement of past earnings or inclusion of allowances, bonuses, incentives or commissions that USAID policy does not consider as part of past earnings, Contractor agrees that this contract will be amended with salary reduction, by the amount of past earnings which were overstated retroactively to the date services commenced hereunder."

(f) include both past and future recommendations made by audits and evaluations in the Mission's recommendation follow-up system and monitor such recommendations until they are properly resolved and closed, and

The Mission agrees with the recommendation but does not fully agree with the underlying finding as discussed below.

(g) ensure that Agency procedures for the selection of scholarship recipients are implemented and documented."

The Mission does not agree with this recommendation as discussed below.

Discussion (page 21)

The Mission does not agree with the contention that it did not oversee and enforce the proper financial and administrative controls in implementing the project as detailed throughout this response, nor that it paid unsupported or unallowable training costs.

Payment of Unsupported and Unallowable Training Costs (page 21)

-Registration Fees (page 21)

The registration fees ("cuotas de inscripcion" or "cuotas") which the auditors questioned were conceptually a fixed rate charge by ILANUD to cover the direct costs of the training. To this extent the Mission considers them allowable costs.

In accepting the rates proposed by ILANUD the Mission allowed a margin on these charges , probably not more than 25%, based on the difficulty of calculating the actual costs and also based on the following circumstances.

Between March, 1985, and the signing of the 1989 ILANUD project amendment in early 1989, ILANUD was not allowed to charge AID for overhead (although the previous negotiations with ILANUD, and ILANUD's budgets, had assumed that overhead would be paid). The overhead was not allowed because the project budget included virtually all of ILANUD's costs, both direct and indirect. The "cuotas" were charged by ILANUD to the AID grant during this period. Part of AID's rationale for allowing a generous margin on the "cuota" rates was to partially replace the overhead payments which had been taken out of the grant budget before the grant was signed.

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However, in retrospect, it seems clear that any overhead charge, even if it was implicit rather that explicit, was not justifiable during this period because AID was paying virtually all of ILANUD's costs, both direct and indirect. Therefore, to the extent that the "cuotas" included an overhead charge they are unallowable.

The problem now is that it is impractical, and, the Mission would contend, unnecessary, to determine the extent to which the "cuota" charges should be allowed. It is impractical because of the difficulty of finding and totalling all of the receipts related to the miscellaneous training costs. It is unnecessary because when the "cuota" revenues were collected they were credited to a general fund in ILANUD, and the miscellaneous direct training costs were paid out of the same general fund. The difference between the "cuota" revenue and the actual miscellaneous training expense remained in the general fund and has been applied to other legitimate ILANUD costs as supported by ILANUD audited financial statements.

We believe that a negotiated settlement of these costs would in all likelihood not result in a recovery of funds by the U.S. Government. This is because ILANUD does not now have the financial resources to repay a significant amount of disallowed costs. Probably there would simply be an after the fact recognition that certain costs paid out of the general fund during this period are to be regarded now as project costs.

In the 1989 amendment to the project ILANUD was permitted to begin charging overhead, and after that the practice of charging "cuotas" stopped.

Given the circumstances, the Mission believes that pursuing the issue further with ILANUD would be counterproductive. The Mission accepts the finding but asks that the recommendation be eliminated.

- <u>Participant Training Allowances</u> (page 22)

The unallowable in-country training costs, as described by the auditors, present a complicated problem for ILANUD. ILANUD officials argue that they cannot very well discriminate against judicial officials from the host country by charging them for meals when they do not charge others. Also, judicial officials that attend courses in a city which is not their own should not, in good conscience, be required to pay for their lodging. If this logic were applied within the U.S., a participant from Los Angeles attending a course in New York could not receive per diem or lodging. Not a very logical course of action. If the regulations are to be interpreted as the auditors contend, we believe a waiver or special permission should be sought.

It should be noted that host country owned local currency is not always available to cover costs such as those described. The particular AID Missions and Host Countries may not be willing to program host country owned local currency for these purposes. A specific example of this can be found in a case where host country owned local currency was sought from Ecuador and was not obtained.

Our reading of AID regulations does not indicate that paying training costs to in-country trainees is unallowable. AID regulations (Handbook 10, page 16-6) stipulate that in-country training costs of participants cannot be paid with AID funds, but must be paid with host counterpart. While we assume that this is the regulation on which the finding and recommendation are based, we note that the regulation does not refer to <u>in-country trainees</u> (that is individuals receiving training <u>only</u> in their own country), but to <u>participants</u>; <u>participants</u> are defined as individuals

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receiving training outside their own country (see Handbook 10, page 1-3). Since the individuals referred to receive training only in their own country, they were in-country trainees and not participants; hence the regulation does not apply to them (see Handbook 10, page 2-6).

In summary, the Mission believes that proper procedures are in place to screen claims and disallow costs which are unsupported or unallowable, and does not consider that the costs claimed were unallowable.

Improperly Authorized and Executed Project Actions (page 22)

The Mission acknowledges that established Mission procedures were not followed in the cases cited. The Mission's suggested actions are presented in relation to Recommendation No. 3, item d.

Excessive Salary Approved for Personal Services Contract (page 24)

The Mission does not agree with the finding but it does accept the recommendation on salary verifications. Though salary verification is recognized as prudent contracting practice and was not done in this case, form SF-171 does provide some assurance of the veracity of salary history. The contractor's salary, negotiated based on the SF-171, was not in excess of the increase permitted as detailed in our response to Record of Audit Finding (RAF) No. 7. USAID/Costa Rica's offer to the contractor was within AIDAR guidelines except for the 1% error mentioned in the draft audit report. We do not believe that a 1% error warrants use of alarming bold faced print that "Excessive Salary" was paid to a contractor. The final report should tone down the finding as an issue of minor non-compliance with procedural requirements which had no major impact on the Project or other operations of the Mission.

Lack of an Audit/Evaluation Recommendation Follow-up System (pages 25, 26)

The finding follows from the AID Handbook's statement of missions' responsibilities in regard to actions on recommendations made by audits and project evaluations. The statement can be summarized as requiring that "recommendations made to improve project implementation and grantee accounting for Agency funds require management action to assist the Grantee in implementing the recommendations or to state reasons why the recommendations were not appropriate." The finding contends that in the specific case of the midterm evaluation by Checchi and Company, and two audits by a public accounting firm, that the recommendations were not put in the Mission follow-up system and that project management had not taken action to resolve the issues. It concludes that "improvements had not been achieved because USAID/Costa Rica did not take the necessary actions to resolve the recommendations." (page 26).

The omission of the evaluation recommendations from the Mission's evaluation follow-up system was caused by the fact that the Mission formerly played a limited administrative role in the management of the project. Now that the Mission's role has been expanded and clarified, the evaluation recommendations will be included in the Mission's followup systems.

The Mission believes that the RIG's conclusion that "improvements have not been achieved" is not entirely warranted. While the Mission cannot pretend to have achieved results in all of the forty-six areas recommended by the project evaluation, it is taking steps to implement the recommendations. The understaffing situation in the RAJO office was remedied by the addition of a PSC, as per recommendation no. 2 of the evaluation. Nonetheless, the backlog of work from the previous three years has not been completely eliminated, and, because the evaluation focused on long range, substantive targets for the project, their complete implementation will take at least the rest of the life of project.

The omission of the audit recommendations from the Mission's audit tracking system was a weakness which is now being corrected. The Mission's tracking system formerly tracked only RIG audit findings, not findings of grantee contracted audits. The Mission's system is now being revised so that it will include, in the case of grantee contracted audits, those recommendations identified by the independent auditors as being material, reportable conditions.

In the case of the two audits, the Mission would note that none of the observations requires major changes in ILANUD's operating procedures nor do we believe that they have significant implications for overall project performance. For the most part, the audit recommendations involve clarification of specific actions or policies in terms of Costa Rican law or AID regulations, which are in the process of being made.

Selection of Scholarship Recipients Was Not Properly Documented (page 26)

It is not clear from the draft audit report which AID regulations are referred to.

The selection of scholarship recipients is documented from beginning to end with cables. The RAJO Office at the Mission in Costa Rica cables the missions in all participating countries asking them to identify scholarship candidates, providing the selection criteria to be used and describing the selection method. According to the cables, missions are to interview candidates and then cable RAJO with their nominations and specific information regarding each. When the University of Costa Rica's (UCR's) Graduate Admissions Committee selects those students admitted into the Graduate Legal Studies Program, this Office cables the information to missions and requests they indicate their preference regarding the nominees from that country admitted by University. Final selection is made by RAJO based on acceptance by the University Graduate Admissions Committee and communications with nominating Posts. The RAJO Office then cables missions regarding nominees who will receive scholarships. RAJO maintains a file with documentation on each scholarship recipient, including all cable traffic supporting the selection. Therefore, we argue that the selection methods employed by the Mission are indeed documented, and that justification for the scholarship students selected does exist.

The auditors base this finding on two issues, a) no Training Needs Assessment was performed, and b) Agency-established selection criteria were not utilized. We challenge each issue as follows:

- No Training Needs Assessment was Performed

The UCR Graduate Law Scholarship Program originally came into existence in 1984 through a Grant to the UCR and was expanded through a subsequent Grant Agreement with the UCR in 1985. As was discussed in the Program Description of the PIO/T prepared for the 1984 Grant, the U.S. Interagency Working Group on the Administration of Justice, which originally approved the scholarship program, had "identified a common area of need for better opportunities in legal education as well as for continuing professional development of legal and judicial personnel".

Beginning in 1986, the Project continued to support the scholarship program after the 1985 academic year as anticipated in the 1985 Agreement with the UCR. Since the Mission had assumed responsibility for an already existing program started in response to an already identified "common area of need", it would not have occured to us that a formal Training Needs Assessment was required. Nevertheless, as stipulated in Handbook 10, the scholarship recipients are selected in accordance with this recognized need. Accordingly, candidates awarded scholarships are career public sector lawyers involved in the administration of justice, whose skills and career potential could be enhanced by a year of specialized study, and whose public sector positions afford them the opportunity to contribute to their country's legal institutional development through improvements in the administration of justice in their specialized fields.

- Agency-Established Selection Criteria were not Utilized

Handbook 10 states that for the selection of participants, AID missions and host country counterparts should "agree on selection criteria which conform to AID-wide criteria and meet the requirements of the country and, in some-cases, the development project. These criteria are to be incorporated into project agreements, contracts, and grants".

Both the 1984 and 1985 Grants to the UCR incorporate the selection criteria for scholarship recipients, which the Project has continued to follow since assuming responsibility for the program in 1986. This would indicate that AID and the host country counterpart (UCR) had agreed upon and approved the criteria. Furthermore, as discussed below we argue that, when applicable to this Program, these criteria do fundamentally conform to AID-wide criteria. According to the AID-wide selection criteria set out in Handbook 10, candidates:

1) are citizens and residents of the host country.

Since this is a regional scholarship program, this does not really apply. However, the candidates are citizens and residents of the country from which they are selected.

2) possess maturity, emotional stability, and leadership potential enabling them to complete training successfully in an alien environment, away from family and friends.

This criterion is met by virtue of the type of candidate required for this scholarship program. Candidates are chosen from career track legal professionals who have been made aware of the intensity of the study program and the sacrifices involved.

3) are physically fit as evidenced by a medical examination.

All scholarship recipients are required to present a medical certification for purposes of the health and accident insurance provided them under the scholarship in accordance with Handbook 10 regulations.

4) possess adequate English or third country language proficiency to meet program requirements, except in programs which are conducted in the nominees' native language.

All scholarship recipients come from Spanish-speaking Latin American countries, and instruction is in Spanish.

5) have sufficient academic and/or other experience to meet prerequisites that enable them to complete programs successfully.

All candidates must be "Licenciados" in Law or Juridical Sciences and present copies of their diplomas.

6) have completed their military requirements or are exempt from conscription.

Not Applicable.

7) have not previously been trained under AID sponsorship outside the host country.

Not Applicable.

Handbook 10 also stipulates that participants should have a clear understanding of Project goals and that they are obligated to return home after the training and work in a position where the training may be effectively used. Accordingly, during the interview we stress the importance of the requirement that candidates be career track public sector lawyers as a means of fulfilling the Project's general goal of enhancing Latin American legal institutional development through improvements in the administration of justice. The candidates are also required to obtain a written commitment from their employers that they will be reinstated in their present or a better position upon completion of the training.

The Handbook further states that the criteria are to be made known to all candidates. This requirement is met both verbally during the interviews, and in written form through newspaper advertisements and pamphlets announcing the scholarship program.

<u>Compliance and Internal Controls</u> (page 28)

The Mission has no comment on this section of the report (pages 28 through 30) except that it should be reviewed in light of the Mission's comments above.

Mission response to draft audit report on the RAJO project

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