

**ESTABLISHING MOMENTUM TOWARD  
FAIRER AND FASTER JUSTICE IN PANAMA**

**EVALUATION OF USAID/PANAMA  
SPECIAL OBJECTIVE**

**REPORT ON PHASE TWO**

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**July 2003**

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## EXECUTIVE SUMMARY OF REPORT ON PHASE TWO

This is the second of two reports on an evaluation of USAID/Panama's special objective, "Momentum Toward Fairer and Faster Justice Established." A separate report on Phase One of the evaluation focused on the results of the ongoing program and prospects for the future. This report, on Phase Two, addresses the possible objectives, strategy and content of a future USAID program of expanded support for sustainable rule of law reform.

The Phase One report recommended that USAID's immediate priority should be to sustain the momentum that has been achieved through a one-year bridge program. The only practical way for USAID to maintain the continuity of its effort over the next year will be to extend the current special objective and also extend the period for performance by the implementing agents. During this one-year extension, USAID can develop the specific content of a possible new program and complete necessary administrative steps. During that same time, Panama will be making political decisions, including through national elections, that will shape the climate for reform.

The one-year bridge program should seek to advance three strategic priorities:

- Maintain the pace of justice system improvement and civil society advocacy;
- Provide a concrete basis of knowledge for policy dialogue with political candidates;
- Prepare for the initiation of a new program of support for sustainable rule of law reform, increased transparency and accountability.

The first intermediate result of the extended special objective under the bridge program should be to strengthen institutional capacity and inter-institutional coordination. Particular activities should concentrate on the following:

**Supreme Court.** USAID should assist the Supreme Court to institutionalize its capacity to guide the implementation of the Court's strategic plan and carry out related research, analysis and planning. Assistance to the Supreme Court should include completion of the USAID-supported case tracking system now in operation in one of the Court's four chambers. This would provide a useful service and also constitute a valuable demonstration of the benefits of modernization. USAID support for the Supreme Court's Office of Judicial Audit should be offered as a part of a strategic effort to strengthen the overall accountability of judicial personnel. Such an effort would combine enforcement measures with clear ethical standards, careful screening of applicants, continuing education of personnel, transparent procedures and an overall climate of strong values and high expectations of ethical conduct.

**Judicial School.** USAID should support selected activities to implement the strategic plan that USAID has been helping the Judicial School to develop. The School needs to build its capacity to carry out that plan on a sustainable basis. The Judicial School might also be involved in educational activities to increase accountability in the judiciary.

**Public Defender Institute.** As in the case of the Judicial School, USAID should follow up on its investment in the Institute's strategic plan with support for its implementation. Capacity to

formulate and carry out strategic plans is especially important for the Public Defender Institute because it is severely understaffed, under-funded, under-equipped and overworked.

***Access to Justice.*** USAID should support the evolution of policies and the development of strategic management capacity that will help to make alternative dispute resolution mechanisms widely available throughout Panama on a sustainable basis. A similar approach should contribute to the institutionalization of measures to raise the quality of administrative justice. These activities would consolidate USAID initiatives begun under the special objective and help to make them sustainable. USAID might also discuss with the Inter-American Development Bank the possibility of including a mechanism for community participation in one of the Bank-supported model regional justice centers now under construction. These discussions during the bridge program could lead to the establishment of a pilot community justice center (*casa de justicia*) under an expanded USAID program.

***Inter-Institutional Coordination.*** During the bridge period, USAID could begin a policy dialogue on issues of an inter-institutional nature. It could be very productive to engage the Judicial Council at the center of this dialogue. The Judicial Council has approved an action plan to improve the efficiency of the justice system. However, the Council is dependent on the Supreme Court for administrative support and tends to be reactive in its approach to issues. USAID might consider supporting the Council through a structure of technical working groups made up of experts from civil society as well as the public sector. USAID might also support a small technical staff to strengthen the Council's effectiveness. Particular activities might include a seminar to bring Panamanian jurists into contact with reformers from other Latin American countries where criminal procedures have been streamlined.

The second intermediate result of the special objective under the bridge program should be strengthened civil society through activities directed at three kinds of objectives:

***Advocacy.*** The first priority should be to sustain the current six-part program of the Citizens Alliance for Justice. In addition, USAID should consider new activities that may be especially important at this time. In particular, a study of the costs to Panama of judicial system weakness, inadequate transparency and corruption (especially in the justice system) could have decisive importance for public advocacy and could influence the overall climate for reform. Ideally, such a study would be undertaken by respected Panamanian research institutions and would address all significant costs – political, economic, social and environmental, including implications for a free trade relationship with the United States. Study results could provide a concrete basis for a dialogue between civil society and Presidential candidates, followed by a post-election dialogue with the winning candidate and his transition team. An additional specific activity during the bridge period would be to initiate civil society monitoring of justice system performance.

***Institutional Capacity.*** It would be highly desirable for USAID to provide technical assistance that would strengthen the capacity of the Citizens Alliance to monitor the performance of the judicial system. USAID might also consider additional capacity strengthening in areas such as fundraising, project finance, proposal writing and project implementation that would foster the financial sustainability of the Alliance. This kind of technical assistance should not be necessary beyond the bridge period.

***Broadening the Base.*** In order to maximize the impact of civil society activities, it would be helpful to look beyond the Citizens Alliance. In particular, the recent interest shown by the Panamanian Association of Business Executives (APEDE) in the justice sector offers an important additional perspective from the private sector. An additional aspect of expanded participation is the need to engage the media more directly. USAID should seek assistance from the US Embassy's Public Affairs Counselor, and might also consider a pilot training course for journalists at the Panama-based Latin American Journalism Center (CELAP).

Financial limitations and management discipline will impose a need to make choices among the elements recommended for consideration in the bridge program. Priorities can be selected by reference to the milestones to be attained and the need for immediate action during the bridge period – either to follow up on work already begun or to address time sensitive requirements.

Milestones for the bridge program include:

- vigorous civil society support for reform;
- judicial implementation of the Supreme Court's strategic plan;
- Judicial Council fostering of inter-institutional coordination;
- justice sector action to carry out additional reforms; and
- active discussion of justice and transparency in public fora.

USAID should assess progress toward those milestones before the bridge program ends in order to inform final decisions on the size and content of an expanded future program. The bridge program should be financed at a level of \$1 million through September 2004. A follow-on program can be designed within a notional framework of three alternative funding options: \$15 million over five years; \$10 million over five years; or \$1 million over two years. The first two options assume indications of a strong will and a broad consensus for reform. If those factors are absent, the third option would be limited to closeout activities and strengthening the ability of civil society organizations to continue their advocacy and educational efforts after the USAID program ends.

Consideration of a new USAID program of expanded support for sustainable rule of law reform should begin with an analysis of incentives and motivations. A challenge here is that the values that argue for reform are too often seen by Panamanian elites as being in conflict with interests that are served by the status quo. It will be necessary to show that values and interests can coincide in ways that are sufficiently compelling, and that the chances for success are sufficiently strong, to justify the risks and effort of reform.

The above-mentioned study during the bridge period of the costs to Panama of judicial system weakness, inadequate transparency and corruption should be a unique tool for identifying costs that can motivate reform. The ensuing dialogue should seek to show how national interests and societal values alike would be served by an effort to overcome those costs. Thus, criminal justice reform can advance both citizen security and human rights. Likewise, increased judicial security can promote integration into a free trade regime and economic growth as well as more equal treatment.

An expanded USAID program, beginning in 1994, should support Panamanian interests, values and expectations and command sustained efforts. The objective of such a program would be to strengthen the overall independence, fairness, efficiency, accessibility, transparency and accountability of the justice system. The program would seek to attain four intermediate results, with progress to be measured against established indicators.

The first intermediate result should be that civil society will promote and help ensure a strong political basis for justice reform. USAID would facilitate continued and intensified advocacy for justice and accountability reforms through selected support to an expanded range of civil society organizations. The private sector and the media would be expected to play major roles.

The second intermediate result should be that institutions will gain increased capacity to carry out reforms that will enhance fairness and efficiency in the justice system. USAID should continue to assist the Supreme Court and other entities of the justice system to adopt strategic plans and to carry out those plans. Institutionalizing the planning, budgeting and administrative processes within the agencies concerned will be an important part of that assistance. Work with individual agencies should be complemented by an effort to strengthen the management capacity of, and expand the scope of participation in, the Judicial Council.

Additional activities under this intermediate result would include assistance for implementing merit systems for the selection, evaluation and accountability of judges, prosecutors, public defenders and court administrators. The implementation of those systems would be monitored by civil society. In addition, USAID would provide assistance to streamline procedures in the criminal courts by reducing duplicative investigative phases and improving cooperation among courts, prosecutors and investigative police. In the civil courts, USAID would support judicial security for investment, property rights and contracts. This assistance would address the legal framework for the protection of economic interests, the mechanisms to ensure fair and efficient enforcement procedures, and improved case management to reduce court congestion and delays. Priorities would need to be identified through intensive discussion with the Panamanian legal community.

The third intermediate result should be that citizens will obtain increased access to prompt, fair and affordable means to resolve disputes. USAID should seek to improve the availability of public defenders, alternative dispute resolution mechanisms and a high quality of administrative justice. A pilot community justice center could be supported as a way to extend access to justice to communities that are remote from the capital. The essence of this activity would be the collocation of corregidores, mediators, public defenders and legal advisors along with the basic institutions such as the judge, prosecutor and police. The other important feature would be civil society participation in the governance of the center. Successful experience with a pilot center might provide a basis for replication in such remote areas as the Darien. Access to justice would be enhanced by expanded citizen education.

The fourth intermediate result of the expanded program should be that the justice sector will be characterized by increased transparency and accountability. Increasing the integrity of the justice system should be a crosscutting component of the USAID program. Activities with the

public sector should support the full range of sustainable reforms: ethical standards, selection and training of personnel, transparent procedures, increased investigative capacity and the will to sanction wrongdoers. These activities should be accompanied by heavy emphasis on developing the analytical and management capabilities of civil society organizations to maintain pressure for integrity by augmenting their advocacy programs with social auditing of justice and related institutions.

Program management will require continuous attention to a range of operational issues, budget allocations, coordination among US Government agencies, donor coordination and, most important, Panamanian ownership of reform issues and approaches to resolve them. All concerned US Government agencies need to work together to make the effort a true Country Team program. The continued interest and leadership of the Chief of Mission and Deputy Chief of Mission will be essential. Within an integrated US Government strategy, USAID needs to continue to be proactive in interagency consultations. The demands of program management warrant the continuation of the full-time rule of law expert on the USAID staff in Panama and the continuation of an on-site contractor chief of party. USAID's justice program will also support the strategic objective of protecting the Panama Canal watershed and buffer zones. In addition, it can support the strengthening of communities in the Darien through community justice activities.

Common interests of the donors and multilateral organizations would be served by improved communication among them. A principal purpose of donor coordination should be to encourage Panamanians to take the lead in shaping a national reform agenda and in organizing international support. The donors should promote the articulation of a national vision that relies on international cooperation as no more than a complement to local initiatives and local resources. Local ownership would be enhanced by a broadly participatory structure, possibly under Judicial Council leadership. The goal should be to foster a network of informed and committed reformers from the public sector and civil society who join forces to inform, guide and sustain the reform. USAID should be among those who meet periodically with representatives of such a network.

There remain many unresolved issues. Among them are how the Citizens Alliance and other civil society groups will evolve, who will provide political leadership, what combination of incentives and values will motivate reform, whether the US Government will remain committed over the medium term and whether it will deal effectively with the longstanding need for greater integration of police investigators and prosecutors. Managing these imponderables will require continuous adaptation as circumstances change over the life of the program.

Specific suggestions are contained throughout this report. The principal thematic recommendations can be summarized as follows:

1. Adequate FY 2003 funds, in the amount of \$1 million if possible, should be made available for obligation immediately. This will enable USAID to initiate the bridge program without an extended interruption of activities.

2. Arrangements should be made as soon as possible for the study of the costs to Panama of justice system weakness, inadequate transparency and corruption. It is important that the study be completed and its results widely disseminated before the end of 2003.
3. USAID's work with justice sector institutions should continue to concentrate on strategic planning and implementing capacity, with a stronger emphasis on interagency coordination and systemic improvement, transparency and accountability, and judicial security.
4. USAID's work with civil society should concentrate on the financial sustainability of the Citizens Alliance and on broadening the base and increasing the pace and intensity of advocacy, to include the private sector and the media.
5. USAID should help to institutionalize Panamanian capacities to increase access to justice for citizens of modest means. Areas for concentration include public defense and legal services for the poor, alternative dispute resolution mechanisms and community justice.
6. USAID's essential work to increase transparency and accountability in the administration of justice should reflect a comprehensive approach that strengthens public sector capacity as well as civil society oversight.
7. USAID should avail itself of opportunities to link its justice work in Panama with its other activities dealing with the Panama Canal watershed and community development in the Darien.
8. USAID management should continue to embrace a participatory approach to program management that includes adequate program implementation staff in country, country team collaboration, donor coordination and encouragement of Panamanian leadership and ownership, with reliable consultation and feedback mechanisms.

# I. INTRODUCTION

## A. Background and Purpose of the Evaluation

This is the second of two reports that respond to a request by USAID/Panama for an evaluation of its special objective, "Momentum Toward Fairer and Faster Justice Established." According to the scope of work, the purpose of the evaluation is "to assist USAID/Panama in determining whether the expected momentum for fairer and faster justice has been established and to help make a managerial decision on whether or not to continue working in the justice sector."

The scope of work divides the evaluation into two phases. The first phase was the subject of a separate report, submitted in June 2003, that focused on the results of the ongoing program and prospects for future USAID activity to support the rule of law in Panama. This report, on the second phase of the evaluation, addresses the possible objectives, strategy and content of a future, expanded USAID program. In particular, it seeks to answer the following questions set out in the statement of work:

1. What should be the focus of an expanded AOJ program to achieve maximum results? What are the highest priorities?
2. What would be the most effective type of AOJ program, taking into account other donor activities, the existing political environment, the status of the legal framework and other factors? What type of activities would the consultant(s) propose within this type of program and why?
3. What would be the expected results of the expanded program?
4. How would the expanded AOJ program relate to the Mission's other strategic objectives? How does it relate to other donor programs?

In responding to these questions, the evaluators have taken into account the following criteria, identified by USAID/Panama:

- A. *Strategic Compatibility*: Proposed administration of justice assistance activities must significantly contribute to the achievement of and fall within the Mission's strategy. Activities should also be compatible with and contribute to the Mission's other strategic objectives, particularly in the Panama Canal Watershed (PCW) and eventually in the Panamanian component of the Andean Regional Initiative.
- B. *Timing and Funding Expectations*: The Mission is interested in a program of activities which can achieve meaningful results over the next 4-5 years, starting in early FY 03.
- C. *Political Will and Willingness to Work Together*: Evidence of support within the executive branch, justice sector, the legal community and civil society organizations for specific elements of reform.

The Phase One report described the historical background of USAID involvement with the administration of justice in Panama. It made findings about the achievements of the current program with respect to its two major components – increased access to justice in targeted areas and an improved proactive role of civil society in justice reform. In addition, it set forth conclusions, identified unresolved issues, and summarized needed additional actions and lessons learned. Finally, it made recommendations for future programming. The executive summary of the Phase One report is at Annex 1.

## **B. Methodology**

The evaluation team for Phase Two relied upon the findings, conclusions, descriptions of unresolved issues and lessons learned, and recommendations set out in the June report on Phase One. That report provided the foundation for the team's current analysis and recommendations. In addition, the team has been able to draw upon the written materials and records of interviews compiled during our work on Phase One. Beyond this historical record, the team conducted an intensive program of additional interviews, meetings, site visits and research in Panama during the period June 15-27. Some of the interviews were with individuals who had been consulted in the course of Phase One; others were new. A list of persons interviewed and meeting participants during Phase Two is at Annex 2.

Evaluation team members tested their own judgments against the views of a group of 32 Panamanians from the public sector and civil society, who met as a consultation group near the end of the team's work in Panama. Consultation group members also completed a questionnaire that had earlier been used in Phase One, thus broadening the sample of responses. The responses address the benefits of an improved justice system, principal challenges, appropriate strategies, and the potential contributions of international cooperation. Aggregate responses to the questionnaire are summarized at Annex 3.

In order to facilitate comparison of the structures of the current Special Objective (2000-2003), proposed modifications to the current program during a brief extension (2003-2004), and recommendations for a possible new Strategic Objective (2004-2009), results frameworks for those three periods are presented in outline form at Annex 4.

The evaluation team for Phase Two was made up of James Michel, team leader; Norma Parker, specialist in rule of law programming; and Carlos Berguido, Panamanian legal specialist. James Michel is a former official of the Department of State and USAID with a strong background in rule of law programs. Norma Parker is also a former official of USAID, where, among other responsibilities, she played a leading role in the development of rule of law programs throughout Latin America and the Caribbean. Carlos Berguido is an experienced Panamanian attorney with a depth of knowledge of the Panamanian justice system and the conduct of business in Panama. Messrs. Michel and Berguido carried out the Phase One evaluation. Biographic summaries of the team members are set out at Annex 5.

As in Phase One, the evaluators wish to acknowledge the assistance of many people who have generously contributed information, insights and views that have enriched this report. Again,

special thanks go to Melva D'Anello, manager of the USAID/Panama justice program, who consistently provided accurate and timely information and thoughtful guidance that facilitated the work of the team. All opinions and judgments expressed in this report are those of the authors, who accept full responsibility for any errors of omission or commission in this document.

## **II. SUSTAINING MOMENTUM FOR REFORM (2003-2004)**

### **A. Objectives and Focus of Activities**

The Phase One report recommended that, for the immediate future, USAID's priority should be to sustain the momentum that has been achieved by continuing the work now underway. In this regard, the report observed that the timing is propitious for a bridge program over the next year. During that time, while USAID is developing the specific content of a new program and completing necessary administrative steps, the current term of the reformist President of the Supreme Court will end and national elections will be held in Panama. During the first year of the new Administration, the terms of office of the Procurador General, who directs the national prosecution service, and Controller General will expire. These events will shape the climate for reform.

A bridge program can help to maintain the pace of justice system improvement and civil society advocacy during this time of decision for Panama. Such a program can also help to provide a concrete basis of knowledge for policy dialogue on rule of law issues with the candidates and parties engaged in the political campaign that is already in its initial stages. In addition, it can prepare the way for the initiation in 2004 of an expanded program of support for sustainable rule of law reform.

An issue highlighted in the Phase One report is the widespread perception of corruption in the judicial system. Indeed, the perception is one of pervasive corruption throughout the public sector. It appears that this perception, rather than creating demand for reform, has contributed to a sense of resignation. This situation will have to be addressed if sustainable reform is to be achieved. The bridge program provides an opportunity to begin work on this crucial issue at a time when transparency and public integrity are sure to be debated in the election campaign. If these issues lead to a change in public expectations, there will be a greater likelihood of an improved environment for expanded efforts after the 2004 elections.

The only practical way for USAID to maintain the continuity of its effort during the one-year bridge program will be to extend the current special objective for one year and also to extend the period for performance by the implementing agents. The evaluators strongly endorse the actions taken by USAID/Panama toward those ends.

This section of the report proposes ways to shape the objectives and focus the activities under the bridge program so as to advance the three strategic priorities mentioned above:

- Maintain the pace of justice system improvement and civil society advocacy;
- Provide a concrete basis of knowledge for policy dialogue on rule of law issues with political candidates;
- Prepare for the initiation of a new program of support for sustainable rule of law reform, increased transparency and accountability.

Activities in furtherance of those objectives will need to be carefully selected and designed so that they can be accommodated within available funding for FY 2003. This report later addresses the budget issues and recommends that \$1 million be made available for the bridge program.

### **1. Strengthen Institutional Capacity and Inter-Institutional Coordination**

The first intermediate result of the special objective should focus on a continuation and expansion of the institution strengthening work already begun under the rubric of "Increased Access to Justice in Targeted Areas." This restructured intermediate result should place increased emphasis on the key issues of inter-institutional coordination and policy dialogue:

The starting point is the Strategic Plan for the Panamanian judiciary. The President of the Supreme Court led the development of this plan in 2002 with assistance from USAID and other donors. Since its adoption he has championed its implementation. The plan's six basic themes are emblematic of the judicial reform movement in Panama:

- Reengineering of judicial services;
- Analysis and improvement of administrative management;
- Revision of human resource systems for selection, training, evaluation, promotion and discipline;
- Development of technology;
- Increase in financing and budgetary independence;
- Increase in citizen participation and alternative methods of dispute resolution.

As noted in the Phase One report, this framework for reform merits support. It will survive only if it produces results that are apparent to both the operators and the users of the judicial system, as well as to the general public. Continued USAID support for the plan during the bridge period will help to produce those results.

There are additional reasons why USAID should support the implementation of the strategic plan. By demonstrating results, USAID support can provide a valuable incentive for continuing

and deepening the reform process. It can demonstrate the constancy of US Government support for justice reform during this politically charged year. And it can provide the basis for a policy dialogue in which specific activities are addressed in the overall context of their contributions to strengthened institutions and improved inter-institutional coordination.

Particular activities appropriate for USAID support include, first of all, those already begun but not yet completed under the Special Objective. In addition, there are opportunities for selected new activities that will advance the objective of strengthened institutions and inter-institutional coordination, foster policy dialogue and otherwise help set the stage for an expanded future program.

#### **a. Supreme Court**

In the Supreme Court itself, there is a need to institutionalize capacity to guide the implementation of the Court's strategic plan and to carry out research, analysis and planning on a continuing basis. The President of the Court has requested USAID technical assistance in the creation of a unit that would carry out those functions. Among other proposed activities, this unit would develop guidance for adapting and using new technology, develop a manual of good judicial practices, and update every two years the strategic plan for the judiciary.

This request should be given priority. USAID's previous support for the Court's strategic plan will have lasting value only if the planning process becomes continuous rather than a one-time event dependent upon outside assistance. Also, USAID is supporting strategic planning in subordinate institutions within the judiciary, specifically, the Judicial School and the Public Defender Institute. The point of departure for those efforts is the basic strategic plan of the Supreme Court. Thus, the institutionalization within the Supreme Court of the capacity to plan – and the related capacity to guide and monitor the implementation of plans – should have a beneficial impact throughout the judiciary.

In the future, the judiciary might develop a coherent network of planning offices of the various entities, with the Supreme Court unit (or, perhaps, a separate administrative office of the courts) at the center. During the bridge period, however, given the uncertain future of the Supreme Court's commitment to reform, USAID's focus should be on establishing a basic institutional capability in the Supreme Court. The initial emphasis should be on the unit's ability to help achieve timely and efficient implementation of the Court's current strategic plan, which is scheduled to remain in force through 2004.

An obvious example of a need for continuity in USAID support is the case tracking system now in operation in one of the Supreme Court's four chambers and installed but not yet operating in a second chamber. At relatively low cost and in a relatively short time, this system can be serving the entire Supreme Court. This would be a useful service to magistrates and staff and would also be a valuable demonstration of the benefits of modernization. On the other hand, leaving the system incomplete would be a waste of USAID's previous investment and would represent a failure of the Court's strategic plan that would be highly visible to skeptics within the judiciary.

Beyond its own merit, completing the case tracking system would provide an opportunity to initiate a dialogue on institutionalizing the way in which the justice system uses technology, one of the basic themes of the strategic plan. At present, a variety of case tracking systems and statistical information systems are in place or being planned, often sponsored by donors. There is an increasingly urgent need to rationalize the policy and practice of information technology management in the justice system. As discussed below, this issue has substantial inter-institutional aspects. However, rationalization and a strategic, institutional approach within the judiciary would be an excellent beginning that could establish the parameters for a later, system-wide effort. This should be an early task for the proposed new planning unit, discussed above.

Other issues where the Supreme Court has requested USAID assistance also provide opportunities for encouraging institution strengthening. For example, the Supreme Court has requested USAID assistance in strengthening the Office of Judicial Audit. This office is responsible for investigating allegations of misconduct by judges and other judicial personnel. Effective enforcement, of course, is an essential tool for establishing accountability and overcoming a legacy of unethical conduct and pervasive rumors of continued corruption. However, enforcement measures need to be combined with additional tools – clear ethical standards, careful screening of applicants, continuing education of personnel, transparent procedures that minimize opportunities for malfeasance, and an overall climate of strong values and an expectation that ethical conduct will be rewarded and unethical behavior will be discovered and punished.

USAID assistance should always contribute to the overall capacity of the system rather than provide temporary budgetary support of doubtful sustainability. Accordingly, any support for the Office of Judicial Audit should be offered as a part of a strategic effort by the Court to strengthen the overall accountability of personnel in the judicial system. These issues were addressed in Supreme Court President Arjona's most recent written request for USAID assistance (June 25, 2003). An initial focus on transparency, rather than a complete redesign of the judiciary's human resources system, would seem the most appropriate response during the bridge period.

#### **b. Judicial School**

The Judicial School, an official institution of the judiciary, is in the process of adopting a strategic plan for its institutional development. USAID has provided substantial technical assistance in the development of this plan. The principal objective of the plan is to enable the school to impart to judges, prosecutors, and other personnel in the judiciary and Public Ministry practical knowledge and values they will need in order to carry out their responsibilities.

As in the case of the Supreme Court's strategic plan, USAID support for implementation of the plan of the Judicial School can demonstrate results and thereby provide an incentive for continuing the reform process. If USAID were to end its involvement after the publication of the School's plan, significant results could not be expected. The Judicial School needs to develop its capacity to carry out the plan on a sustainable basis, and will need some initial financing.

USAID should consider supporting selected activities under the plan that would complement shared objectives, with an eye to the sustainability of those activities.

For example, there is the Supreme Court's request, described above, for USAID assistance to strengthen the Court's Office of Judicial Audit. If the Court were to show interest in a strategic approach to increased accountability in the judiciary, and if USAID wished to contribute broadly to that strategic approach, the effort could include initiatives with the Judicial School among other activities. Work with the Audit Office would strengthen enforcement capacity, while work with the Judicial School could provide increased capacity for initial and follow-up training in ethical values and practices. Work with other entities would address other aspects of judicial accountability.

### **c. Public Defender Institute**

The considerations mentioned in the foregoing discussion of the Judicial School also apply in the case of the Public Defender Institute. USAID assisted the Institute to develop its own strategic plan, which was published in June 2003. This plan is built on the six themes of the Supreme Court's plan, listed above. The capacity to formulate and carry out strategic plans is especially important for the Public Defender Institute because it is severely understaffed, under-funded, under-equipped and overworked. For the foreseeable future, it will have to rely on improved management more than any expectation of significantly increased resources. The recently adopted plan was developed in a highly participatory manner, involving the entire staff of the Institute. Thus, expectations are high for improved working conditions. The mere existence of a plan, however, will have little meaning without the capacity to implement it.

As in the case of the Judicial School, USAID should follow up on its investment in the Institute's strategic plan with support for its implementation. Specific activities should be chosen that will contribute to a strengthened institutional capacity and will also advance shared strategic interests. For example, USAID might consider supporting the capacity of public defenders to secure the release of indigent defendants from unwarranted pretrial detention within the context of a broader effort to build support for procedural reform of the inefficient and slow criminal justice system.

### **d. Access to Justice**

#### ***(1) Alternative Dispute Resolution***

The USAID-supported mediation center is an additional example of a promising beginning that remains at an early and fragile stage of development. The existing center operates under judicial branch (Órgano Judicial) auspices at a single location in the capital with a limited staff. All staff members, including the Director, are employed under temporary contracts. The center's caseload is growing and the use of mediation is expanding, including through new centers, some of which are sponsored by universities, others by the Human Rights Ombudsman (Defensor del Pueblo), and still others by the Technical Judicial Police (Policía Técnica Judicial).

There is a need to define policies as to how the state will support the use of mediation as a complement to the judicial system. For example, should the judiciary operate centers that accept cases other than those referred by courts? Should mediation services be provided free of charge to all, irrespective of ability to pay? Should private mediation be encouraged? If so, how will high professional standards be assured? How will mediation services be provided outside the capital city? There are also policy questions about what additional means of alternative dispute resolution, such as conciliation, arbitration and community-based approaches, should be developed and encouraged, and through what means those additional services should be made available.

Beyond the policy issues, there is a need to manage those issues strategically. The ability to plan and to carry out plans efficiently would help to assure the realization of the potential value of alternative dispute resolution mechanisms as a way to increase access to justice for ordinary citizens throughout Panama. In particular, continued USAID support for mediation through the judiciary's mediation center should focus on rationalizing and strengthening the institutional base for sustainable expansion of high quality mediation services.

An important part of any effort to increase access to justice by citizens should be a dialogue with civil society to learn directly about the needs and desires to be served. Such a dialogue might be a useful activity for USAID support during the bridge period. There might be a role for the Citizens Alliance for Justice (*Alianza Ciudadana pro Justicia*) in such an initiative. Promotion of alternative dispute resolution is one of the six lines of action in the Alliance's strategic plan. Also, the Alliance has been active in publicizing the judiciary's mediation center. A grant from USAID to the Alliance for a defined activity in this regard could be a further step away from dependency on general budget support and toward financial sustainability for the Alliance.

## *(2) Administrative Justice*

USAID has supported admirable work by the Citizens Alliance for Justice, in collaboration with the Procuraduría de la Administración, to improve the quality of justice administered by corregidores throughout Panama. This work has included providing to the corregidores the texts of laws they administer, as well as operating manuals and related training. It has also included wide dissemination of a citizen's guide to administrative justice.

These efforts deserve praise for improving the quality of the form of justice most often experienced by ordinary citizens. However, the improvement will not be sustained unless it is institutionalized. Corregidores serve at the pleasure of the mayors who appoint them and new appointees will be untrained. Moreover, adult education needs to be of a continuing nature, with periodic refresher courses and adjustment of content as laws and policies change.

Major implementing action may not be needed during the bridge period. However, this would be an opportune time to plan on how to institutionalize improvements in the work of the corregidores. For example, USAID might initiate a dialogue on this theme with the Procuraduría de la Administración and the Citizens Alliance. Among other issues, the dialogue could address how to finance and carry out a continuation of the work done by the Alliance, with a view to

assuring sustainability. The Procuraduría's training center for the modernization of public administration (Centro de Modernización de la Administración Pública) was involved in the earlier training activity, and might play an important role in the continuing professional education of corregidores. As in the case of alternative dispute resolution, this dialogue could begin to change the financial relationship between USAID and the Alliance from one of a general subsidy to one of payment for work performed. It could also facilitate planning for a phasing out of USAID support and a phasing in of Panamanian responsibility for continuous improvement in the quality of administrative justice.

### ***(3) Pilot Casa de Justicia***

If sufficient resources were available, a more ambitious initiative to increase access to justice would be to join forces with the Inter-American Development Bank in planning a pilot project to include a community justice facility in one of the two Bank-supported model regional justice centers. (The center at San Miguelito would probably be the more convenient from a logistical standpoint.) Under this concept, USAID would support the inclusion of a mechanism for community participation in the governance of a center that offered a broad range of justice services, including the presence of a mediator, a corregidor, a public defender and a legal counselor, along with the basic institutions that would otherwise be collocated there. As with alternative dispute resolution and administrative justice, the Citizens Alliance would be able to play a significant role in this initiative. A pilot effort that was planned during the bridge program could be implemented under the expanded USAID program as early as the fall of 2004, by which time construction of the center at San Miguelito should be completed. A broader effort, including the possibility of increasing access to justice for communities in the Darien, might be considered later if warranted by the experience with the pilot project.

### **e. Inter-Institutional Coordination**

The Phase One report noted the resistance by Panamanian justice institutions to thinking and acting as integral parts of a single system. The report recommended that USAID address this issue in a focused way, beyond the inclusion of individuals from a number of different institutions in the same training courses. Further interviews during Phase Two and responses to the questionnaire distributed during the evaluation confirm that Panamanians see this as a significant issue.

During the bridge period, USAID could begin a policy dialogue on issues of an inter-institutional nature, such as information systems and the streamlining of criminal and civil procedures in order to reduce unnecessary delay. It could be very productive to engage the Judicial Council at the center of this dialogue, and to do so in a manner that would strengthen the capacity of that advisory body to promote system-wide thinking and inter-institutional coordination.

In December 2002, the Judicial Council approved an action plan to improve the overall efficiency of the justice system. It is now meeting on a quarterly basis to review progress in key areas of impact, such as citizen perceptions of impartiality and independence, access to justice, an organizational culture of service, and improvement in the quality of justice. However, the

Council is dependent upon the Supreme Court for administrative support and tends to be more reactive than proactive in its approach to issues. USAID might consider support for technical working groups of experts in various issues – from civil society as well as from the public sector – nominated by the organizations that participate in the work of the Council. USAID might also consider supporting a small technical staff reporting to the Council. These features could help give higher visibility to inter-institutional issues and also strengthen the Council's effectiveness.

An advantage of focusing on the Council with respect to inter-institutional issues is that it is an existing institution with an accepted national identity. In addition, the Supreme Court has been flexible about allowing participation in the work of the Council by concerned organizations in addition to the statutory members. (The statutory members include the judiciary, the Procuraduría General, the Procuraduría de la Administración and the Colegio de Abogados.) The Human Rights Ombudsman, the Public Defender Institute and the Citizens Alliance for Justice all participate regularly. Presumably that flexibility would extend to including additional institutions, such as the Ministry of Justice and Government or the Technical Judicial Police, on areas of direct relevance to them.

A particular activity planned by USAID with the Judicial Council is a seminar to bring Panamanian jurists into contact with reformers from other Latin American countries where criminal procedures have been streamlined as part of the adoption of oral, accusatory justice systems. Such an event could be addressed in the context of a policy dialogue with the Council about criminal procedure. In this regard, the Council's December 2002 action plan contemplates analysis with respect to an accusatory criminal justice process.

An important aspect of criminal procedure reform is the current practice of prolonged pretrial detention for those accused of crimes. USAID's dialogue with the Supreme Court on this issue has stimulated a number of administrative measures to alleviate the situation. This dialogue has also called attention to the need to streamline the segmented and duplicative process that is the major cause of delay. Reform would involve consideration by Panama of how to adapt to local needs the experience of many Latin American countries that have moved from an inquisitory to an accusatory system. (Panama's mixed procedure contains both inquisitory and accusatory elements.)

The Supreme Court has requested USAID assistance in establishing a model courtroom that would facilitate learning about the logistical demands of oral hearings and continuous trials. This would not seem a high priority for the limited resources available under the bridge program. However, USAID might wish to consider how this proposal might contribute to improved inter-institutional coordination. Rather than regard the model courtroom proposal in isolation, it should be an integral element of a dialogue with the Judicial Council about a strategic effort to reengineer the structure of the criminal justice process.

## **2. Strengthen Civil Society**

The second intermediate result of the special objective should be strengthened civil society. The Phase One report described the progress made by the Citizens Alliance for Justice in developing

and carrying out a strategic agenda of public advocacy and education, and also in strengthening its management capacity. It will be especially important to strengthen further that capacity during the period of the bridge program, when issues of justice and transparency are sure to be prominent in the electoral campaign. In addition, in order to maximize the voice of civil society on these issues, consideration should be given to expanding the base of civil society activity through greater emphasis on the roles of the private sector and the media. As in the case of the first intermediate result, efforts to strengthen civil society should include the continuation of activities already underway as well as new activities that will advance the three strategic objectives of the bridge program.

**a. Advocacy**

The first priority should be to sustain the six-part program of the Citizens Alliance for Justice:

- Consolidation of the Alliance as an organization;
- Judicial independence and transparent administration of justice;
- Improvement of the corrections system;
- Reform of administrative justice;
- Promotion of alternative dispute resolution (ADR) mechanisms; and
- Citizens' legal education and dissemination of information.

In addition, USAID should consider new activities that may be especially important during the period of the bridge program.

A new activity that could have decisive importance for public advocacy during the bridge period, and could influence the overall climate for reform for years to come, is a country-specific study of the costs to Panama of weakness in the justice system, inadequate transparency and corruption (especially in the justice sector). Those costs are political, economic, social and environmental. A persuasive analysis, well publicized, could help to raise the profile of justice, transparency and corruption in the public debate. If the study were to find that, as some believe, these issues are preventing Panama from being included in a free trade relationship with the United States, the public reaction could be expected to be especially strong. However, the study should address all significant costs, not just those relating to trade.

Ideally, such a study would be undertaken by one or more respected Panamanian research institutions, would benefit from consultation with prestigious international organizations, and would be accompanied by a broad consultation with civil society groups that would build knowledge, support and local ownership. The study results could provide a concrete basis for a dialogue between civil society and Presidential candidates in late 2003 and early 2004, followed by a post-election dialogue with the winning candidate and his transition team. The overall

objective would be to use the study as a way to inform the internal policy debate and to promote consensus in favor of reform, based on objective research, solid facts, sound analysis and shared interests.

A study of this nature would be a major undertaking, requiring several months of work and a commitment of significant resources. Therefore, an early decision is needed on how to proceed. USAID could seek to complement any financing it might provide with contributions from the Panamanian private sector and from international donors.

A second specific activity for consideration later during the bridge period would be to initiate civil society monitoring (social auditing) of justice system performance. USAID support in this field could complement the study being undertaken by the Citizens Alliance with a grant from the United Nations Development Program. The timing for this activity would depend upon the availability of funds and the development of the institutional capacity of the Alliance. However, it would be desirable if monitoring could begin during the pre-election period.

#### **b. Institutional Capacity**

If the Citizens Alliance were to undertake an expanded role in civil society monitoring of the performance of the justice system, it would be highly desirable for USAID to provide technical assistance as soon as possible that would strengthen the capacity of the organization to carry out that activity. USAID might also consider additional capacity strengthening to foster the Alliance's financial sustainability, especially with respect to fundraising, project finance, proposal writing and project implementation. The past arrangement for technical assistance to the Alliance would be relevant to this kind of effort, in light of the principal consultant's experience with USAID and international organizations. There are obvious advantages of maintaining continuity in the relationship between the Alliance and the technical advisor. This kind of technical assistance should not be necessary beyond the bridge period.

#### **c. Broadening the Base**

In order to maximize the impact of civil society activities during the bridge period, it would be helpful to look beyond the Citizens Alliance to a broader range of institutions. In particular, the recent interest by the Panamanian Association of Business Executives (APEDE) in the justice sector offers an important additional perspective from the private sector. For example, at its annual conference this year, organized around the theme of "Justice, the Rule of Law and Economic Development," APEDE circulated a pro-justice reform declaration that has attracted broad private sector support.

APEDE might be included among organizations supporting an effort to quantify and report on the economic costs of judicial system weakness, inadequate transparency and corruption in Panama. USAID collaboration with APEDE in such an undertaking (perhaps including cost sharing with respect to the study) could help to assure a continuing role for this influential private sector organization in the effort to improve the administration of justice and increase

transparency in governance. Another organization that could be involved in the study, especially with respect to the costs of corruption, is the Foundation for the Development of Citizen Freedom (Fundación para el Desarrollo de la Libertad Ciudadana), the Panamanian chapter of Transparency International and a member of the Citizens Alliance.

An additional aspect of expanded participation to increase the impact of civil society is the need to engage the media more directly. One part of responding to this need will be to seek the assistance of the US Embassy's Public Affairs Counselor. A second possibility would be to take advantage of the presence in Panama of the Latin American Journalism Center (CELAP). The Center, originally established with a grant from USAID, has a strong capacity for training journalists. USAID might consider a pilot training course this year, when public awareness is especially important. A more sustained effort might be pursued later, perhaps as a regional project involving journalists from a number of countries with cost sharing by participating USAID Missions.

## **B. Benchmarks and Options for an Expanded Program**

### **1. Design Requirements**

The bridge program probably will not be able to include all of the elements suggested for consideration in the foregoing section. Financial limitations and management discipline will require that priorities be established and choices made with regard to program content. In making those choices, USAID should consider the milestones that the bridge program should seek to attain. Also, priorities can be selected by reference to the need for immediate action during the period of the bridge. In all cases, preference should be given to activities that can help to strengthen Panamanian institutions and positively influence a readiness to undertake reform.

Thus, high priority should be given to activities that are necessary in order to follow-up on work begun under the Special Objective, the value of which would be jeopardized by an interruption of effort. Examples include the implementation of strategic plans for the Supreme Court, the Judicial School and the Public Defender Institute and also the completion of the case tracking system at the Supreme Court.

A second level of priority should be accorded to new activities that are time-sensitive. Examples include the proposed study of the costs to Panama of judicial system weakness and related issues, expanding the base of civil society participation in the public debate on issues of justice and transparency, and working with the Supreme Court to increase accountability within the judiciary.

The lowest priority should be assigned to otherwise meritorious new actions that are not time sensitive and could be postponed until the beginning of an expanded project in 2004. Examples of this kind of activity include planning for the initiation of a pilot casa de justicia or institutionalizing the capacity of the Procuraduría de la Administración to enhance the professional quality of corregidores.

The bridge program should seek to attain the following milestones before it ends in September 2004:

- Civil society organizations are vigorously supporting justice reform and efforts to reduce corruption through advocacy, public dialogue and public education.
- The judiciary is implementing selected high impact activities from the strategic plan of the Supreme Court.
- The Judicial Council, or some other entity, is beginning to foster inter-institutional coordination.
- Panamanian justice sector institutions are carrying out additional elements of a reform agenda.
- Justice reform and transparency issues are being actively discussed in public fora.

USAID should discuss its expectations for the bridge program with Panamanian counterparts in a spirit of partnership. Then, before the bridge program comes to an end, and after the May 2004 elections, USAID/Panama should make an assessment of the degree to which those milestones are being achieved. That assessment would inform final decisions on the size and content of an expanded program for the 2004-2009 timeframe.

## **2. Budget and Program Options**

The costs of the bridge program will depend upon the specific programming choices made by USAID/Panama. Nevertheless, the evaluators believe that no less than \$1 million will be required to finance a range of activities sufficient to sustain momentum on efforts now underway and also to provide time-sensitive support to the policy debate and set the stage for a new program. Among other considerations, the proposed study of the costs to Panama of judicial system weakness, inadequate transparency and corruption is a very important tool for improving the climate for reform before a new government takes office. This activity represents an unplanned cost that would reduce funds otherwise available for other priorities. The Phase One report recommended that a means be found to augment the limited funding available for FY 2003, if possible. That recommendation bears repeating here.

Taking into account the results of the assessment of progress toward established milestones, the design of the follow-on project can be considered within a notional framework of three alternative funding options. The choice among these options should reflect the degree to which milestones have been achieved and the demonstrated readiness by Panamanian counterparts to undertake needed reforms. The next section of this report discusses programming issues within the framework of those three alternative funding levels. They are:

- Option A: \$15 million over five years (if there are indications of strong will and a broad consensus for reform, and if financing is available);
- Option B: \$10 million over five years (if there are indications of strong will and a broad consensus for reform, but more limited available financing);
- Option C: \$1 million over two years (the exit option in the event that the climate is not propitious for an expanded program).

### **III. EXPANDED SUPPORT FOR SUSTAINABLE RULE OF LAW REFORM (2004-2009)**

#### **A. Incentives and Motivations**

Opinion leaders in Panama are ambivalent about the nation's justice system. On the one hand, there is widespread dissatisfaction with the slowness, inefficiency and inadequate independence of the courts. On the other hand, Panamanian elites have learned how to conduct their affairs in ways that largely avoid reliance on undependable justice institutions. The perception described in a 1998 sector assessment prepared for USAID (cited in the bibliography for the Phase One report) seems harsh, but it finds an uncomfortably familiar echo in many interviews with informed Panamanians:

“It is commonly believed that the politically and economically powerful enjoy immunity in criminal cases and either avoid civil litigation or prevail in their disputes through a system of influence (which may well involve monetary considerations) the ordinary citizen or the foreign community cannot penetrate. Leadership's attachment to this organizational status quo impedes further reform and undermines public confidence in the sector.”

The values that argue for reform are thus too often seen as being in conflict with interests served by the status quo. The first challenge, then, is to find how values and interests can be shown to coincide in ways that are sufficiently compelling to justify the risks and effort of reform.

The excessive reliance on pretrial detention of those accused of crimes is an example of a situation that is perceived by many as reflecting a conflict between values and interests. The practice offends the value of respect for human rights and harms Panama's international image. On the other hand, it is seen by many as serving a societal interest in keeping criminals off the streets. Thus, the practice is tolerated, even though it is a principal cause of Panama having the highest per capita prison population in Latin America. More profound analysis might demonstrate that incarcerating more and more citizens has not diminished a rising crime rate and has increased the prospects that accused first offenders will become ruthless and efficient repeat offenders after spending a year or two in the penitentiary system awaiting trial. It may well be that Panamanian values and interests coincide on this issue. But this will have to be demonstrated persuasively.

In the same way, having a preferred access to decision makers and a degree of freedom from legal accountability can be perceived as valuable economic advantages, even though they offend the value of equal justice under law. Again, that conclusion might be challenged by analysis showing that potential investors were limiting their exposure in Panama because of inadequate judicial security. Thus, it might be concluded that increased assurances of judicial fairness and independence would translate broadly into economic benefit for Panama – and for those who previously had been satisfied with the limited rewards of the status quo.

Among the particular issues that should be explored in an analysis of costs, benefits and values, the most important is surely Panama's interest in achieving a free trade agreement with the United States and in being able to attract investment that would maximize the benefits of such an agreement. If US businesses are aggrieved by Panama's justice system, that will be an impediment to negotiations and also a limitation on Panama's ability to benefit from any agreement reached.

Another important issue is the environment. The pollution of the bay in the capital city is a constant reminder of the consequences of inadequate enforcement of environmental laws and regulations. Equally alarming are the continuing deforestation and soil erosion in the watershed that provides the fresh water on which the Panama Canal depends for its ability to function. Concerns about the loss of natural resources in remote regions such as the Darien are also growing and can be a part of the motivation for reform.

Section II of this report suggests a public dialogue during and immediately after the current election campaign, grounded in a persuasive analysis of the costs to Panama of weakness in the justice system, inadequate transparency and corruption (especially in the justice system). Such a study should be a unique tool for identifying costs that can motivate reform. The ensuing dialogue should seek to show how national interests and societal values alike would be served by an effort to overcome those costs. Thus, criminal justice reform can advance both citizen security and human rights. Likewise, increased judicial security can promote interests such as integration into a free trade regime and economic growth as well as values such as more equal treatment. In this regard, it is noteworthy that the issues mentioned here are generally consistent with the priorities identified by Panamanians who responded to the questionnaire used in the evaluation (see Annex 3).

A second challenge is to raise the level of confidence that reform can, in fact, bring about results that will serve identified national interests and societal values. This is one reason why it is so important to maintain continuity of progress and to demonstrate positive results during the period of the bridge program. However, reform is necessarily a continuous process. Any expanded program will need to reflect a compelling vision and long-term goals, combined with a flexible capacity to achieve and publicize interim results to help sustain momentum.

Thus a new USAID program of expanded support for sustained rule of law reform should support Panamanian interests, values and expectations in a manner that can command sustained efforts by political leaders, institutions and civil society. The incentives and motivations needed to sustain the effort underlie the recommendations of the evaluators with respect to objectives and activities for consideration in a program of expanded USAID support.

## **B. Objectives and Focus of Activities**

The objective of a new program of expanded support for sustainable rule of law reform would be to strengthen the overall independence, fairness, efficiency, accessibility, transparency and accountability of the justice system. Taking into account issues that might constitute motivation for reform, as discussed above, the evaluators propose four intermediate results for this strategic objective. They are:

- Civil society will promote and help ensure a strong political basis for justice reform.
- Institutions will gain increased capacity to carry out reforms that will enhance the fairness and efficiency of the justice system.
- Citizens will obtain increased access to prompt, fair and affordable means to resolve disputes.
- The justice sector will be characterized by increased transparency and accountability.

The following indicators would provide measures of progress toward those intermediate results:

- A substantial base of support from both political and civil society leaders will foster a process of continuous improvement of the justice system.
- Individual justice sector entities will begin to institutionalize long term planning, budgeting, and administrative capacities. Also, an inter-institutional planning and coordination mechanism will begin to operate for the sector.
- There will be measurable progress in achieving fair and efficient criminal and civil justice, including the effective combat of international crime, due process and a far more timely disposition of cases.
- Access to justice for citizens, including administrative justice and alternative dispute resolution mechanisms, will become more widely available, and public confidence in the justice system will rise.
- Transparency and accountability in the sector will increase.

### **1. Civil Society Will Promote and Help Ensure a Strong Political Basis for Justice Reform**

The groundwork for this component will have been laid during the bridge period. By June 2004, civil society organizations, including the media and the private sector, will have actively participated in a policy dialogue – first with the presidential candidates, and then with the new

president of the country. Civil society will also continue its ongoing policy dialogue with Panamanian justice sector institutions, including through the Judicial Council. Willingness to reform selected components of the justice system and to take the initial steps toward establishing a national system of integrity (transparency and accountability) will have been determined by the assessment of performance, measured against the milestones suggested in the preceding section of this report.

Policy dialogue would continue throughout the period of the new strategic objective under all funding options. USAID would facilitate continued and intensified advocacy for justice and accountability reforms through selected support to an expanded range of civil society organizations, including the Citizens Alliance for Justice, Transparency International and private sector groups such as the Panamanian Association of Business Executives (APEDE). The USAID assistance would build the capacity of these organizations, especially the Citizens Alliance, to conduct social auditing in order to monitor progress in carrying out reforms. USAID assistance would also help to build their research and analysis capabilities so as to improve their advocacy and monitoring capacities.

The private sector has a huge stake in the modernization of the justice system and the establishment of a system of national integrity. It should be expected to play a major role in dialogue with government and judicial officials, including in public meetings to focus attention on the need for reform. The leadership being shown by APEDE may offer a new opportunity in this regard. APEDE might well serve as a catalyst to mobilize a number of private sector organizations, such as the Chamber of Commerce, Industries and Agriculture, the American Chamber of Commerce, and sectoral groups representing major industries such as banking, insurance and construction. USAID should encourage this potential opportunity to add influential voices to the demand by civil society for political attention to issues of justice and integrity.

The media should be expected to play an important role in maintaining the reform momentum. Training of both print and electronic media journalists in the complex issues of justice and transparency reforms is critical to keeping the public informed and involved. USAID could support a grant to the Latin American Journalism Center (CELAP) for this type of training.

A partnership with civil society, the government and the judiciary would provide the strongest base for a long-term reform effort.

## **2. Institutions Will Gain Increased Capacity to Carry Out Reforms That Will Enhance the Fairness and Efficiency of the Justice System**

### **a. Strategic Planning, Budgeting and Inter-Institutional Coordination**

The weak capacity of public sector justice institutions to plan strategically and to manage the implementation of strategic plans has emerged as a significant impediment to reform. USAID has begun to address that impediment under the current special objective and would continue to do so under the bridge program, as discussed in section II of this report. In addition, there is an

evident need for inter-institutional coordination and system-wide thinking. The Supreme Court, through the implementation of its strategic plan and with the limited participation of the newly reactivated Judicial Council, is beginning to coordinate the agencies of the judiciary. Moreover, the President of the Court has expressed interest in extending the scope of Judicial Council efforts to the entire justice system.

As a key component of the new strategic objective, USAID should continue to provide assistance to the Supreme Court and other entities of the justice system to help them adopt individual strategic plans and strengthen their capacity to carry out those plans. Support for institutionalizing the planning, budgeting and administrative processes within the agencies concerned would be an important part of that assistance.

Work with individual agencies should be complemented by an effort to strengthen the management capacity and expand the scope of participation in the Judicial Council. As previously noted, the membership of the Council is established by law, but there has developed a practice of flexibility in permitting additional organizations to participate. It will be important that participation continue to be expanded in this same flexible manner to enable the Council to address on an informed basis issues involving coordination between member and non-member entities. Coordination between police investigators, prosecutors and judges is an example of a subject that would obviously benefit from the participation of the Ministry of Justice and Government and police agencies in the Council's deliberations. At some point, consideration might be given to a revision of the enabling legislation to expand both the mandate and the membership of the Council. However, that is not an urgent requirement.

#### **b. Selection and Accountable Performance of Judges and Other Personnel**

There is a critical need to address the process by which judges are selected and maintained in the system. Ideally the judicial career would be implemented in a manner whereby judges are selected on merit, receive training in how to be a judge, and are evaluated on their performance as judges. Likewise this approach to establishing a professional core of judges would also be applied to the Public Ministry, the Public Defender Institute and court administrators. The USAID program would provide assistance for implementing merit selection and performance evaluation systems. In this regard, it could provide familiarity with models from countries that are operating successful merit systems for the selection and evaluation of judges, prosecutors and other personnel.

Increased accountability is indispensable to improve the quality of judges. Building on the dialogue and initial activities under the bridge program, USAID should encourage the Supreme Court to proceed with an institutional approach to this complex subject. Such an approach should include ethics codes, continuing training in ethical values and practices, and strengthened capacity to investigate wrongdoing and sanction violators. Civil society, the Citizen Alliance for Justice in particular, should receive assistance to enable monitoring of judicial performance and the operation and enforcement of ethical standards. These issues should also be pursued with other officials in the justice system – prosecutors, public defenders, court administrators and

members of the legal profession. The Procuraduría de la Administración, which has developed an ethics program for public employees, might be a good collaborator in this field.

In addition to Panamanian experience and models of other countries, progress in issues of judicial selection and accountable performance might benefit from consideration of international standards. For example, the Caracas Declaration, adopted by the Presidents of Ibero-American Supreme Courts in 1999, sets forth a hemispheric consensus on issues of budgetary autonomy and independence; judicial selection, training and performance evaluation; and fighting corruption, including a code of ethics of the Ibero-American judicial civil servant.

### **c. Fair and Efficient Criminal Justice**

Available judicial statistics reveal a large number of cases backlogged in the criminal courts and a consistent pattern of delay in arriving at final decisions. One disturbing consequence of this inefficiency is the highest per capita prison population in the Hemisphere (11,000 prisoners, of which 6,000 are being held in pre-trial detention). A critical component of the strategic objective would be streamlining the procedures in the criminal courts by reducing duplicative investigative phases and improving cooperation among courts, prosecutors and investigative police.

In that light, the office that prosecutes drug offenses (Fiscalía de Drogas) has developed a model of administrative management and police/prosecutor cooperation with technical support from the US Departments of State and Justice. There has been some replication of this model in specialized anti-corruption and organized crime units of the Public Ministry. However, most prosecutors still operate under traditional, formalistic and archaic procedures that contribute to unnecessary delay. USAID could finance a pilot to extend modern management practices to other parts of the Public Ministry. Similarly, at the Option A funding level, USAID could finance pilot courts to demonstrate more efficient case management procedures and effective inter-institutional coordination.

One possibility would be to offer support for a pilot effort to improve the management of environmental law enforcement. This is an area where both the Public Ministry and the Supreme Court have requested USAID assistance. Strengthening Panamanian capacity to enforce environment protection of the watersheds around the Panama Canal would link the USAID strategic objective of "Panama Sustainably Manages the Canal Watershed and Buffer Areas" to the justice system strategic objective. Similarly, improved enforcement of environmental laws in the Darien would contribute to USAID's special objective of strengthening selected Darien communities.

Consultations with practitioners in Panama showed a clear preference to begin with administrative reforms and to pursue legislative remedies only where experience shows that there is no alternative. However, ultimately, the outdated criminal procedure code will have to be revised in order to address the structural problems of the sector. USAID could begin to address this need by supporting a more active program of interchanges with regional leaders in criminal justice reform, building on the experience gained in the bridge program. Countries such as Bolivia, Chile, Costa Rica, and the Dominican Republic would be excellent sites for visits by

members of the judiciary and legislators, together with representatives of the Public Ministry and the investigative police (PTJ). There, they could see first hand how justice sector reforms are being implemented under new criminal procedure codes. The Justice Studies Center of the Americas (CEJA) is a repository of the Hemisphere's experience with criminal procedure reforms and could be of assistance in this regard. USAID might also consider a grant to CEJA to visit Panama and advise the sector on procedural reforms.

If the interest and commitment to redraft the code were to become manifest, USAID could support technical assistance from other reforming Latin American countries to advise the justice commission of the Legislative Assembly in its work to develop proposed legislation. If and when a revised code should be enacted, USAID and other donors could begin the difficult process of training justice system operators to implement the reforms adopted. (Most countries that have adopted major procedural reforms have provided for delayed entry into force of new procedure codes to allow time for such training.) Even if a new code is not developed, some training of sector personnel will be needed to implement administrative measures intended to streamline the criminal justice process.

#### **d. Judicial Security for Investment, Property Rights and Contracts**

Panama is actively seeking a free trade agreement with the United States. This was a major theme in President Moscoso's recent official visit to Washington. Among the barriers to the negotiation of such an agreement is the issue of judicial security. Uncertainty about the legal protection of investment and the judicial enforcement of contracts and property rights is a significant issue. This issue could be even more significant if, instead of a bilateral treaty, Panama were to seek to "dock" to some existing agreement, such as that with Singapore or Chile, or the one currently under negotiation with Central America. In that case, Panama would have to satisfy not only the United States but also the other treaty party or parties.

USAID can assist in Panamanian efforts to strengthen the legal framework for protection of economic interests and the mechanisms to ensure fair and efficient enforcement procedures. Beyond the basic issues of judicial selection and accountable performance, discussed above, which are fundamental, efforts can be directed specifically at the performance of civil and commercial courts. Priorities for such efforts need to be identified through intensive discussion with the Panamanian legal community after consultation within the United States Government, in particular with the United States Trade Representative. There are a number of possibilities that could emerge from those discussions and consultations.

For example, court dockets are congested and cases often linger for years awaiting a decision. A project by the Inter-American Development Bank provided temporary relief by paying for temporary judges to help reduce the backlog. But that effort did not change the way cases are managed, and the backlog began to grow again as soon as the project ended. Court congestion is a current topic of interest, as indicated by the major conference on the subject sponsored by the Supreme Court in late May 2003 with support from APEDE. A USAID program might introduce pilot courts for civil and commercial cases that would demonstrate more efficient case management and effective inter-institutional coordination, similar to what is being proposed for

the criminal courts. A case tracking system that could help to measure the progress of cases in the various courts and to identify causes of delay would seem highly desirable to establish an empirical basis for such an activity.

Another possibility might be training for judges and other actors in the system to familiarize them with international standards agreed to by Panama and also with related economic issues and business practices that are relevant to the cases presented in civil and commercial courts. Training of this nature might be considered in the strategic plan of the Judicial School.

USAID could also support interchanges with leaders in civil and commercial justice reform within the region, especially with regard to possible reform of the civil procedure code, in order to help speed the movement of cases through the court system. A need for procedural reform was suggested in the consultation group meeting organized by the evaluators. It was pointed out during the meeting that as new specialized areas of the law have been introduced into Panamanian jurisprudence, there has been a tendency to create new courts and new procedures. One distinguished professor advised that, as a result of this practice, by his count there are now 37 different procedures in force in Panama, not including the criminal justice system. An effort toward greater unity and simplification would seem to be needed.

Activities of this nature could go a long way in strengthening and institutionalizing judicial security. While the specific focus of any USAID activity in this area must be determined after consultations, the nature of that activity should be consistent with the overall emphasis of USAID's program on sustainable improvement through strengthened institutional capacity.

### **3. Citizens Will Obtain Increased Access to Prompt, Fair and Affordable Means to Resolve Disputes**

Access to justice services is very limited for citizens of modest means. This scarcity exists for both civil and criminal justice matters.

In the criminal justice system, with only 40 public defenders to serve the whole country, it is understandable that the poor do not receive adequate legal assistance and make up the bulk of the prison population. USAID should continue to support the strategic plan of the Public Defender Institute, including the expansion, training, and improved management of public defenders to increase efficiency and bring them more in line with the numbers and levels of competence of the prosecutors. Public defenders should be available throughout the country.

More generally, USAID should continue the efforts initiated or expanded under the bridge program to increase the availability of mediation and other alternative dispute resolution mechanisms within a sound policy and management framework. The objective should be to institutionalize these means for increasing access by ordinary citizens to services that will help them to resolve many of their disputes in a reasonable time and at reasonable cost. In the same vein, the expanded USAID program could help to give permanence to a process of continuously improving the quality of administrative justice. Institutionalizing training for corregidores, for example, could be an important contribution to improved access to justice.

As suggested above in section II of this report, a pilot community justice center (casa de justicia) could offer a way to extend access to justice in municipalities that are remote from the capital. Depending on the outcome of initial consultations with the Inter-American Development Bank, an integrated approach to providing justice services at the community or local level might begin by expanding the range of services offered at one or both of the regional centers being constructed with IDB financing. Other possibilities would be to engage directly interested municipalities that want to expand citizen access to justice services.

In either event, the essence of the pilot activity would be to support the collocation of corregidores, mediators, public defenders and legal advisors along with the basic institutions that would be present, such as the judge, prosecutor and police. The other important feature of the community justice center would be to include civil society representatives in its governance and to encourage cooperation among all the public agencies involved. Local governance would give voice to the people as to their priorities and desires for justice services. The goal is to bring justice directly to the people and to involve them in defining the services they need.

As suggested above, successful experience with a pilot effort might provide a basis for replication in remote areas such as the Darien. The special objective of strengthening selected Darien communities contemplates efforts to strengthen the organizational capacity of local governments and community-based organizations. This results framework would easily accommodate activities to improve access to justice at the community level, including through participatory structures. The Government of Panama has established a special program to address the needs of this poor and isolated region and the Inter-American Development Bank is providing major financial support (in excess of \$80 million). It seems likely that this increased attention will produce an increase in disputes and that appropriate means to resolve those disputes should be a part of community development plans for the region.

Citizen education in the administration of justice and in transparency and accountability is another potential activity for increasing access to justice. The number of civic education courses has been reduced in the schools and, apart from the work of the Citizens Alliance for Justice, there is not much adult education on these topics. It might be useful to work with the Alliance on a more intense civic education program. In this regard, the Alliance might benefit from exchanges with other organizations in the NGO network that carry out extensive education efforts, such as the Peruvian Institute for Education and Human Rights (Instituto Peruano de Educación en Derechos Humanos y la Paz – IPEDEHP).

#### **4. The Justice Sector Will Be Characterized by Increased Transparency and Accountability**

Lack of transparency in public administration is a serious problem in Panama. It is certain to be an issue in the negotiation of a free trade agreement with the United States and generally diminishes the integrity of democratic governance. The issues are multiple. They include allegations of corruption in the management of the ports, slowness in implementing the civil service law and general norms for conduct of public sector employees, a regulatory structure that

makes the transparency law ineffective, standards and procedures that inhibit the prosecution of public officials for illicit enrichment while exposing investigative journalists to criminal libel charges, and a lack of transparency in public bidding on commercial contracts.

An expanded USAID program needs to include a crosscutting result of increased transparency and accountability in the justice sector. As noted in the Phase One report, addressing this issue will be an important part of any credible reform. USAID should build upon the efforts begun under the bridge program to increase the integrity of the justice system. Activities for consideration in USAID's cooperation with the public sector include those that support the full range of sustainable reforms: ethical standards, selection of personnel, training in ethical values and practices, transparent procedures, increased capacity to investigate alleged misconduct, and the will to sanction wrongdoers in an open and public manner. Moving beyond the judiciary, consideration should be given to cooperation on this crosscutting issue with the Public Ministry, the Comptroller General and the organized bar.

Another important aspect of increasing transparency and accountability in the justice sector is to strengthen oversight by civil society. Working with the media and the private sector, a group like the Citizens Alliance can raise the public's awareness of the accountability and transparency issues to a higher level. It can also increase public confidence that citizens can effectively demand greater integrity from public institutions and thereby overcome the prevailing sense of resignation and public apathy. USAID should place heavy emphasis on developing the analytical and managerial capacity of civil society organizations to maintain pressure for integrity by augmenting their advocacy programs with social auditing of justice and related institutions. Ultimately, the goal is to develop political will to reduce corruption and build a national system of integrity based on a code of conduct for Panamanian public servants.

### **C. Discussion of Options**

The program described above assumes that funding will be available at the Option A level of \$15 million for the life of the project over five years. If the Option B level of \$10 million for the life of the project is selected, activities directed at major reform of the criminal and civil procedure codes and attendant training of the operators of the system would not be undertaken. Specific criteria should be developed with respect to funding the proposed pilot activities with the Public Ministry, courts and community justice. For example, if political will exists in the Public Ministry to replicate the administration, management, and coordination systems in use in the drug prosecution office, that pilot activity would be funded and some other activity, perhaps the community justice pilot, might have to be dropped. Other criteria could be developed such as the costs of the pilot, whether another donor was willing to provide funding, and the prospects for early scaling up from the pilot activity to national impact.

Under Option B, the crosscutting result addressing transparency and accountability would be focused on public sector capacity and civil society monitoring. More expansive efforts, such as reaching out to the organized bar, would not be included. In the end, the components remaining under Option B will depend on USAID's assessment of the milestones achieved under the bridge and the availability of funding in the 2004-2009 period.

At the Option C level of \$1 million over two years, only limited closeout work with the public sector and the activities of civil society in maintaining reform momentum and raising awareness of transparency and accountability issues would be funded. There should be budget space within the \$1 million to support selected social auditing activities. This option should be closely coordinated with another large donor that, in theory, could pick up those remnants of the USAID program that might remain of interest. It allows two years for the Citizens Alliance and other civil society organizations to identify other funding sources so that USAID's departure from the sector would leave behind a continuing process of advocacy that might find success in generating political will at a later time.

#### **IV. PROGRAM MANAGEMENT**

Program management will require continuous attention to a range of operational issues, budget allocations, coordination among US Government agencies, donor coordination, and most importantly, Panamanian ownership of reform issues and approaches to resolving them. USAID should assure that proposed changes in mission management structures for the region will not inhibit the continuation of an on-site contractor chief of party and supporting technical assistance and consultation resources. Experience under the special objective has demonstrated the importance of having this capability in country.

The budgets for both the bridge and the follow-on programs are provided exclusively from the Economic Support Fund (ESF) controlled by the Department of State. For the bridge period the ESF is part of the Andean Regional Initiative. Discussions in Washington and Panama indicate that about \$750,000 in 2003 will be made available for the bridge program. As suggested above, a level of \$1 million would better assure progress during this crucial period. Based on the FY 2004 budget request to Congress, USAID/Panama is hopeful that \$3 million each year will be allocated for this program in 2004-2009. However, given the uncertainties in estimating budgets for future years, it is necessary to be prepared for the possibility of lower funding levels.

##### **A. Integrated United States Government Effort**

USAID needs to share responsibility for the success of this undertaking with the other US Government agencies at post. All concerned agencies need to work together to make the effort a true Country Team program. In this regard, the continued interest and leadership of the Chief of Mission and Deputy Chief of Mission will be essential. It is the understanding of the evaluators that the Deputy Chief of Mission will lead efforts to coordinate efforts by the narcotics assistance section, public affairs section, and the economic and political sections of the Embassy with USAID's development work and the operational law enforcement cooperation of the Department of Justice, including the Drug Enforcement Agency. The evaluators strongly applaud this development, which places Country Team coordination of law enforcement cooperation within the broader framework of democracy, good governance and the rule of law.

Among other benefits, this structure for coordination will allow experience gained by any of the concerned agencies to inform efforts by any other agency working in the field of justice. For example, DEA can identify reliable collaborators and share lessons learned in strengthening the impressive management system of the drug prosecutors as USAID seeks to promote replication of that model in other parts of the Public Ministry. In turn, USAID's efforts to strengthen institutional capacity in other parts of the Public Ministry can help to increase the benefits of operational law enforcement cooperation.

A coordinated Country Team approach will help to avoid conflicts and duplication of effort. It will also begin to relate operational law enforcement cooperation more directly to the longer-term development of sustainable change in the organization, administration, and operation of justice institutions. Fair and efficient justice is a common objective sought in operational law enforcement and in institutional development. Coordinating the two approaches so that law enforcement results and institutional development are mutually reinforcing will advance both US and Panamanian interests. The program implementation strategy, therefore, should have a dual focus of building Panamanian institutional capacities while also meeting US operational needs.

## **B. The Role of USAID**

### **1. Rule of Law**

Within an integrated US Government strategy, USAID's role is to identify and respond to development priorities and opportunities within the overall framework of its country strategy and areas of concentration. With respect to the rule of law, section III of this report suggests that those areas include fostering civil society advocacy and demand, strengthening the capacity of justice sector institutions, expanding access to justice, and increasing transparency and accountability in the justice system. These activities are central to USAID's overall mission in Panama. This is not necessarily the case for all agencies represented in the Country Team.

Accordingly, USAID should continue to be proactive in assuring that the other agencies are kept informed, in eliciting their cooperation and assistance, and in adapting USAID activities to broad national interests identified in interagency consultations. For example, the public affairs section should be an important resource for engaging the media; priorities in enhancing judicial security should be informed by consultation with the economic section (and guidance from the US Trade Representative in Washington); the narcotics assistance section and USAID need to coordinate closely to assure a consistent US policy and to achieve optimum results. In particular, cooperation with the NAS will be essential to promote the integration and coordination of the various Panamanian agencies involved in the criminal justice system.

The broad scope and intensive nature of a justice and accountability program, with all the individual elements that need to be coordinated, warrants the continuation of the full time rule of law expert on the USAID staff in Panama. The incumbent in this position has substantial experience in implementing justice development programs and has demonstrated the stature necessary to engage effectively senior levels of the Panamanian government, US agencies, multilateral agencies and other donors.

## **2. Linkages to Other Strategic Objectives**

As described in section III, the USAID objective of expanded support for sustainable rule of law reform will also support the strategic objective of protecting the watershed of the Panama Canal and its buffer zones. The justice program would provide training and technical assistance to increase the capacity of the Public Ministry and the courts to protect the environment through more efficient enforcement of environmental laws. At the same time, that support for environmental law enforcement would also expand the use of modern and efficient management in the justice system.

The justice program can also support the special objective of strengthening communities in the Darien by including community justice activities among the various local community services to be extended to this remote area. Communities in the Darien could also be the sites of *casas de justicia* and a focus of other efforts to expand citizen access to alternative dispute resolution and an improved quality of administrative justice.

### **C. Donor Coordination**

The major program of international cooperation in the justice sector is the \$27 million project of the Inter-American Development Bank (IDB), now nearing completion. A principal focus of that project has been the improvement of physical infrastructure in the courts and the Public Ministry. The construction of two regional justice centers in San Miguelito and David, financed under the project, is scheduled for completion in the second half of 2004. The IDB will send a mission to Panama in September 2003 to review performance under the current project and consider a possible follow-on activity. Based on discussions with IDB staff in Washington and Panama, it appears that a new project is likely if one is requested by Panama.

The Spanish Cooperation Agency is the other significant donor. Its program of technical assistance involves case tracking, information technology, training in civil and criminal procedure, centers for judicial notifications (*centros de comunicaciones judiciales*) and communications support for the Supreme Court's judicial audit unit. Spain also sponsors visits by Spanish jurists to share knowledge with Panamanian counterparts. A recent visit by several judges from Seville provided information on a study of the costs of the judiciary in Spain. (The methodology for that study could be useful in developing studies of Panama's justice system.)

The European Union has provided limited support to the prison system and sent a study mission with a broader focus to Panama in May 2003. A second visit is expected in September, but there are no clear indications as to the likelihood of an expanded EU program.

The United Nations Development Program maintains a regional office in Panama. It has a continuing interest in access to justice issues, but does not have an active program. UNDP did, however, provide financial support to the Citizens Alliance for Justice for a study of the operation of Panama's justice system to be conducted later in 2003.

In meetings with representatives of USAID, Spain, IDB and UNDP, the evaluators found an unfortunate absence of information sharing, let alone program coordination, and only limited interest in the subject. However, all expressed a willingness to attend periodic meetings if organized by Panama, perhaps through the Judicial Council. UNDP expressed willingness to host donor meetings if requested to do so.

The evaluators believe that common interests of the donors and multilateral organizations would be served by improved communication and coordination among them. An informal international group made up of the principal donors and international organizations could usefully meet on a periodic basis to share information and discuss how to avoid unnecessary inconsistencies in policy, technology or financing in their respective programs relating to justice and transparency. It might be advantageous for such a group to meet under UNDP auspices. UNDP has subject matter expertise and local knowledge. At the same time, because it does not have a major program of its own, others might be more likely to accept it as a disinterested facilitator.

A principal purpose of donor coordination should be to encourage Panamanian leaders to take the lead in shaping a national reform agenda and in organizing international support in a manner that will complement local initiatives and resources. In particular, donors can make clear to their Panamanian counterparts that all are interested in supporting sustainable improvement of the justice system and that none is interested in piecemeal projects to offset shortfalls in operating budgets. Ideally, Panama should assume the leadership of the donor coordination mechanism as early as possible. This would imply a national vision with identified priorities and some structure, perhaps under the auspices of the Judicial Council, to perform that function.

#### **D. Local Ownership**

The Phase One report concluded with the observations that justice reform was a manifestation of democratic governance, that a reform process was internal to each society, and that international cooperation needed to be based on shared goals, an agreed division of labor and respect for local ownership. The report recommended that USAID obtain guidance and feedback from a Panamanian consultation group to assure that the USAID program will be locally owned.

After further extensive consultations during Phase Two (see Annex 1), including a half-day meeting with a group of 32 reform-oriented Panamanians from both the public sector and civil society, the evaluators believe that a consultation mechanism for USAID is only a part of a broader structure that is needed. As suggested above in section II of this report, USAID might begin a dialogue now with a view to strengthening the role of the Judicial Council as a body that could promote system-wide thinking. With USAID and, perhaps, other donor assistance, the Council might establish a small technical staff and organize technical working groups of experts on the various subjects included in the Council's very broad action plan. The technical groups, drawn from civil society and the public sector, could make periodic reports to the Council to facilitate overall coherence of the effort and to sustain momentum.

The evaluators met with many talented and committed Panamanians who might be willing to donate some of their time to such a participatory reform process. These individuals included representatives of justice sector institutions, NGOs, businesses, universities and law firms. If a participatory structure, presumably under Judicial Council leadership, were to emerge, then USAID should consult regularly with those participating in that structure. The goal should be to foster a network of informed and committed reformers, from the public sector and civil society, who join forces to inform, guide and sustain the reform. USAID should be among those who meet periodically with representatives of such a network.

## V. UNRESOLVED ISSUES

The Phase One report described the ultimate unresolved issue as being “whether a broadened, more organized base of civil society demand and strengthened capacity of justice sector institutions will combine to motivate basic structural reform.” That general statement of the issue incorporates a host of imponderables that will need to be addressed throughout the life of the bridge program and any expanded follow-on activity.

Among the unresolved issues that will require continuing attention are the following:

- How will the Citizen’s Alliance evolve as a central force for civil society? Will it develop the capacity to carry out social monitoring of judicial performance and publicize accountability issues on a continuing basis? Will it develop the capacity to secure and implement grants and attract diversified contributions so as to achieve financial sustainability?
- How will other civil society groups become involved in issues of justice reform and transparency, including groups such as the media, the private sector and environmental NGOs that are not part of the Alliance?
- Where will the reform movement find political leadership within the public sector after the term of the current Supreme Court President expires? Can that leadership be expanded and become less dependent on the political fortunes of any single individual?
- What combination of incentives and values is most likely to capture and hold public opinion and be persuasive with political leaders so as to motivate reform? Free trade, physical security from crime, human rights, social justice, environmental protection and other issues are all at play. How can motivation be sustained over the time that will be required to convert reform from a temporary to a continuous process, from a process in need of external support to one that will be self-sustaining?
- What degree of support is the US Government willing to commit to a medium-term effort to strengthen the rule of law, transparency and accountability in Panama? Will adequate financial resources be provided over the life of an expanded program? Will USAID programmatic activities have adequate management backstopping and coordinated Country Team support? Will a way be found for the US Government to deal effectively

with the longstanding need for greater integration of police investigation and the prosecution of criminal cases?

- Will donors and international organizations work together to advance common interests and encourage Panamanian ownership of reforms?

The evaluators have attempted to structure their analysis and recommendations in a manner that takes these questions into account. Where possible, they have included suggestions for addressing them. However, the imponderables will remain and will require continuous adaptation as circumstances change over the life of the program.

## VI. RECOMMENDATIONS

This section consolidates the principal themes addressed throughout the report. It seeks to present them in the form of concrete recommendations of an overarching nature. It does not repeat all the specific suggestions contained throughout the report.

First, it is imperative that FY 2003 funds be made available for obligation immediately in order to initiate the bridge program without an extended interruption of activity. Now that some momentum has been achieved, it should not be allowed to wane because of administrative delays. If at all possible, an allocation sufficient to permit a bridge program of \$1 million over the next year would be highly desirable. This will be a year of decision that will shape the climate for reform in Panama. Reduced funding this year would have a much higher cost in terms of program effectiveness than a comparable reduction in some future year.

Second, the study of the costs to Panama of weakness in the justice system, inadequate transparency and corruption, proposed in section II of this report, is extremely time sensitive. Arrangements should be made as soon as possible (presumably through a grant from the institutional contractor to a local research institution). If the study is to be an important tool for public debate during the election campaign it should be completed and its conclusions widely disseminated before the end of 2003.

Third, in its work with justice sector institutions USAID should continue to concentrate on building capacity to plan strategically and to carry out strategic plans. It will be important to test proposed activities against criteria that measure relevance to systemic improvement. In this regard, more concentrated attention to interagency coordination and a stronger emphasis on transparency and accountability will be important. These are crosscutting issues of central importance to the attainment of the program goal. Increased attention should also be given to judicial security for investment and for contract and property rights. This will be an increasingly important issue for Panama's economic development as an active participant in global and regional commerce, including through free trade relationships with the United States and other trading partners.

Fourth, in its work with civil society USAID should seek to strengthen the capacity of the Citizens Alliance for Justice to attract resources and become financially sustainable. Areas for

technical assistance include, in particular, social monitoring of justice system performance, fundraising, project finance, proposal writing and project implementation. In addition, USAID should seek to broaden the base and increase the pace and intensity of civil society advocacy for improvement in the administration of justice, including by engaging the private sector and the media.

Fifth, USAID should continue its efforts to increase access to justice for citizens of modest means, including through alternative dispute resolution, higher quality administrative justice and participatory community justice mechanisms. Institutionalizing these capacities will help to make the rule of law a practical reality rather than an unrealizable ideal for most Panamanians.

Sixth, USAID's essential work to increase transparency and accountability in the justice sector should reflect a comprehensive approach that will strengthen public sector capability to prescribe, disseminate and enforce ethical standards and values as well as oversight by civil society, including the media and the private sector.

Seventh, USAID should avail itself of opportunities to link its work in the justice sector with its other objectives. Increasing the capacity of the justice system to enforce environmental laws will contribute to sustainable management of the Canal watershed and buffer areas. Likewise, introducing community justice mechanisms in the Darien will extend needed government services and help strengthen communities in this remote region.

Finally, USAID management should continue to embrace a participatory approach that includes Country Team collaboration, donor coordination and encouragement of Panamanian leadership and ownership, with reliable consultation and feedback mechanisms. In particular, USAID should consult regularly with representatives of a network of informed and committed reformers from the public sector and civil society who engage in participatory structures to advance coherent and continuous improvement in the administration of justice. At the same time, it will be essential to have a capable program implementation staff in country, including a USAID program manager and a resident chief of party for the institutional contractor.

# **ESTABLISHING MOMENTUM TOWARD FASTER AND FAIRER JUSTICE IN PANAMA**

## **EVALUATION OF USAID/PANAMA SPECIAL OBJECTIVE REPORT ON PHASE ONE JUNE 2003**

### **EXECUTIVE SUMMARY**

This is a report on Phase One of an evaluation of USAID/Panama's Special Objective, "Momentum Toward Fairer and Faster Justice Established." Phase One focuses on the results of the ongoing program and prospects for the future. A second phase will address the possible objectives, strategy and content of a future program if USAID decides that such an analysis is needed. The purpose of the evaluation is "to assist USAID/Panama in determining whether the expected momentum for fairer and faster justice in Panama has been established and to help make a managerial decision on whether or not to continue working in the justice sector."

USAID has been supporting the administration of justice in Panama since 1990. A major 1992 program was terminated prematurely in 1997, when a severe budget crisis caused USAID to plan the closing of the Panama mission. However, the planned closure was reversed and an evaluation of the terminated justice program recommended a follow-on activity to sustain momentum and extend achievements beyond the earlier focus on criminal justice.

USAID/Panama undertook a new study of Panama's justice system in 1998, and incorporated a new justice program in its proposed strategy for 2000-2006. Reviews by USAID in Washington, interagency deliberations within the country team in Panama, and uncertainties about contractual arrangements delayed significant start-up activity until the middle of 2001. The first year of performance was plagued by the need to learn how to re-engage after a four-year interruption, continued disagreements over program objectives and content (leading to a restructured results framework), and management problems of the institutional contractor.

Significant progress in achieving momentum toward increased access to justice became evident beginning in 2002, with the election of the current Supreme Court President. Early in his tenure, Magistrate Adán Arnulfo Arjona made clear his desire to initiate a comprehensive, strategic reform of the judiciary and USAID has responded. Over the past 18 months, the USAID program has attained more clear direction, sharper focus and an emphasis on strengthening the capacity of Panamanian institutions. It has proved to be a flexible mechanism for helping Magistrate Arjona transform his desire for reform into a concrete plan, and for supporting the implementation of that plan.

Meanwhile, USAID's work to achieve momentum in civil society's role proceeded more smoothly. This work, which began in 2000, has concentrated on the institutional development of

the Citizens Alliance for Justice, a coalition of 12 organizations, and support for an Alliance strategy and work plan of public advocacy for justice reform. The USAID program has been a major factor in elevating public interest and participation in the administration of justice.

Specific findings of the evaluation with respect to increased access to justice focus on six themes addressed by the USAID program:

***Pretrial detention.*** Panama has a very high prison population, with more than one-half of those incarcerated serving in pretrial detention. A USAID-financed diagnostic study has prompted the judiciary to take some helpful administrative measures. However, the basic problem is a structural one that will require basic political decisions and major changes in how criminal law is administered, including a reform of Panama's complex system of criminal procedure. USAID-sponsored training is producing interest in procedural reform at the grass roots level. Yet, there is no indication of a political readiness for imminent action on needed reforms.

***Alternative dispute resolution.*** USAID has helped to make the Supreme Court's mediation center operational and has provided training for its small professional staff. A public information campaign by the Citizens Alliance and five pilot courts supported by USAID are increasing the volume of cases referred to mediation. USAID is also supporting an expansion of mediation services through additional centers that are being established at several universities. There is a need for strategic planning capacity to assure that this expanding field develops in a sound and sustainable manner as an integral part of a justice system that broadly protects individual rights, strengthens democratic governance and facilitates economic progress.

***Dissemination of Supreme Court and other appellate court decisions.*** The USAID-supported judicial registry has made Supreme Court decisions broadly available in a matter of days and has facilitated research in the Supreme Court's jurisprudence. This body of accessible knowledge should help the lower courts to reduce errors, inform litigants as to whether appeals are likely to prosper, assist journalists and the public to monitor judicial performance and generally promote greater uniformity in how similar situations are treated in the judicial system.

In addition to the registry, USAID is supporting related information technology initiatives in the Supreme Court, including a standardized format for judicial decisions and a case tracking system. These efforts require coordination with automation activities in other justice institutions so that there will be a single, coherent system-wide information system. Again, there is a need for strategic planning capacity.

***Public defenders strengthened.*** USAID has assisted the Public Defender Institute to develop a strategic plan. This will be an important tool for strengthening the capacity of the Institute to plan and carry out its heavy responsibilities. With only 40 attorneys to attend to a pretrial detainee population of 6,000, the Institute remains a weak, underfunded and understaffed dependency of the judiciary.

***Enhanced professionalism of justice system operators.*** USAID has assisted the Supreme Court's Judicial School to develop a strategic plan. The focus is on practical ways for judges to carry out their professional responsibilities, with an emphasis on values. In addition, USAID has

provided courses, seminars, simulated trials and related activities that have emphasized inter-institutional collaboration and the potential benefits of procedural reform. Additional effort will be needed, especially to improve working relationships between police investigators and prosecutors. This particular need was identified by the USAID program, but did not receive needed support from the Departments of State and Justice. The Judicial Council may offer a venue for increasing inter-institutional cooperation and systemic thinking about the administration of justice.

***Improved quality of administrative justice.*** USAID has worked through the Citizens Alliance to provide legal and operational resources and training to the more than 500 corregidores who decide small claims and impose penalties for minor offenses outside the formal judicial system. The Alliance has also developed and distributed a citizen's guide to administrative justice. These activities are improving the quality of the form of justice most often experienced by ordinary citizens.

Specific evaluation findings with respect to the role of civil society in justice reform focus on two themes:

***Increased capacity to influence policy making through advocacy.*** The USAID-supported Citizens Alliance has adopted a strategic plan and annual work plans to support judicial independence and transparency, prison reform, administrative justice reform, alternative dispute resolution and citizens' legal education. The Alliance has engaged senior officials on this ambitious agenda in a constructive way and has earned trust and respect. The Alliance now participates in the deliberations of the Judicial Council. It also carries out an extensive program of national fora, workshops, training activities and publications. It has an informative web page, a newsletter and weekly radio and television broadcasts.

***Increased management, networking and fundraising capacity.*** The Citizens Alliance is now a nonprofit corporation with an established governance structure, operating procedures, a financial system and a full-time executive director. The Alliance is a member of the Network of Civil Society Justice Organizations of the Americas and participates in international conferences on themes relating to its strategic interests. While still financially dependent on USAID, the Alliance is diversifying its sources of financing through grant proposals to international organizations, in-kind contributions and dialogue with private firms interested in corporate social responsibility.

It can be concluded that, despite a slow start, USAID, through its Special Objective, is achieving momentum toward fairer and faster justice. Evidence of that momentum includes the following:

- Pretrial detention is a public issue;
- Mediation is gaining ground as an efficient way to resolve disputes;
- The judicial registry is increasing timely access to court decisions;
- The Supreme Court, the Public Defender Institute, the Judicial School and the Citizens Alliance have begun to build institutional bases for strategic planning and action;
- The quality of administrative justice has improved in the corregidurías;

- The Citizens Alliance has brought civil society into the debate and other groups are showing increased interest in the administration of justice.

Of particular importance, USAID was able to help the Supreme Court President develop and begin to implement a strategic plan that can provide a framework for improving the quality of the judiciary. In this way, USAID is showing positive results that create incentives for continuing and deepening the process of reform. The momentum that has been achieved justifies continued USAID investment.

Of course, uncertainties remain. Principal among them are the sustainability of the Supreme Court's strategic plan, institutional capacity to deepen the reform effort, the existing constraints of limited inter-institutional cooperation, and how best to address perceptions of corruption in the judiciary. The ultimate unresolved issue is whether a broadened base of civil society demand and strengthened institutional capacity will combine to motivate needed basic structural reform. A case in point is the need for criminal procedure reform to increase efficiency and due process and serve shared US-Panamanian interests in combating international crime.

Experience has demonstrated that many of the specific issues are symptoms of broader, structural problems that have system-wide implications and require fundamental reform. USAID, therefore, will need to address incentives and capacities for structural reform in its future programming. It is clear that a proactive civil society will be a vital ingredient, and that public sector institutions will need the capacity to plan strategies and manage the implementation of their strategic plans. USAID support for systemic change is inherently intensive work, requiring a physical presence for day-to-day management.

For the immediate future, USAID's priority should be to sustain the momentum, continue the work underway and, if possible, augment the limited FY 2003 funding. Timing is propitious for a bridge program over the next year, during which time the election of the Supreme Court President and national elections will shape the climate for reform in significant ways.

For the medium term, USAID should concentrate on key ingredients of reform where it can have a substantial impact, including civil society demand, institutional capacity, inter-institutional coordination and system-wide thinking. The subject matter of USAID's program should address themes of shared US-Panamanian interests. Possibilities include fair and efficient criminal justice; independence, integrity and transparency; judicial security for investment, property and contract rights; and access by citizens to prompt, fair and affordable means for resolving their disputes. Efficient coordination of related US Government programs and a mechanism for donor coordination (ideally under Panamanian leadership) should enhance USAID effectiveness.

Finally, justice reform is essentially an internal process that involves changes in political culture and changes in relations between citizens and public institutions. USAID should consider a consultation mechanism to obtain guidance and feedback from reform-oriented leaders in government and civil society in order to assure that the agenda in USAID's program is an agenda that has local roots and local ownership.

## PERSONS INTERVIEWED AND MEETING PARTICIPANTS

### **Panamanian Public Sector**

Gimara Aparicio, Jueza, Juzgado XVI de Circuito Civil, I Distrito Judicial

Adán Arnulfo Arjona, Presidente, Corte Suprema de Justicia

Rosa María de Bolaños, Directora, Centro de Modernización de la Administración Pública

Cynthia Camargo, Asistente del Magistrado Presidente, Corte Suprema de Justicia

Luis Mario Carrasco, Magistrado, II Tribunal Superior Penal, I Distrito Judicial

Cristina Ciniglio, Coordinadora, Proyecto Mediación, Corte Suprema de Justicia

Argelis Escudero, Coordinadora, Proyecto Registro Judicial, Corte Suprema de Justicia

Gabriel Fernández, Director Nacional, Instituto de Defensoría de Oficio

Alma Montenegro de Fletcher, Procuradora de la Administración

Andrés Fuentes, Coordinador de Asistencia Internacional, Corte Suprema de Justicia

Jorge Gianareas, Asesor del Magistrado Presidente, Corte Suprema de Justicia

Hipólito Gil Suazo, Director, Escuela Judicial

Mercedes Arauz de Grimaldo, Procuradora General Suplente de la Nación

Waleska Hormechea, Jueza, Circuito Mixto de San Miguelito

Rosendo Miranda, Fiscal Primero Especializado en Delitos Relacionados con Drogas

José Manuel Pérez, Director Ejecutivo, Programa de Desarrollo Sostenible de Darién, Ministerio de Economía y Finanzas

Guillermo Ríos, Defensoría del Pueblo

Guido Rodríguez, Defensor del Pueblo Adjunto

Angela Russo, Magistrada, Tribunal Superior de Familia

Ricaurte Soler, Director, Centro de Mediación, Organo Judicial

José Antonio Sossa, Procurador General de la Nación

Juan Antonio Tejada Espino, Defensor del Pueblo

Simón Vega, Asesor del Programa de Mediación, Corte Suprema de Justicia

**Panamanian Civil Society**

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Fernando Berguido, Presidente, Capítulo Panameño de Transparencia Internacional

Roberto Brenes, Vicepresidente Ejecutivo y Gerente General, Bolsa de Valores de Panamá

Dayra Casteñedas, Abogada, Cámara de Comercio, Industrias y Agricultura

Magali Castillo, Directora Ejecutiva, Alianza Ciudadana pro Justicia

Raúl Delvalle, Presidente, Cámara de Comercio, Industrias y Agricultura

I. Roberto Eisenmann, Presidente, Fundación para el Desarrollo de la Libertad Ciudadana

María Alejandra Eisenmann, Abogada

Ana Matilde Gómez, Abogada

Carlos Ernesto González, Frente Nacional contra la Corrupción

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Francisco Martinelli, Abogado, Cámara de Comercio, Industrias y Agricultura

Angélica Maytín, Directora Ejecutiva, Fundación para el Desarrollo de la Libertad Ciudadana

Jorge Molina, Abogado

Maribel Cuervo de Paredes, Directora Ejecutiva, Centro Latinoamericano de Periodismo

Carlos Alberto Vásquez, Presidente, Colegio Nacional de Abogados

**United States Government and Contractors**

Fay Armstrong, Rule of Law Advisor, Bureau of Western Hemisphere Affairs, Department of State

Maria Barron, Democracy Officer, Bureau for Latin America and the Caribbean, USAID

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Andrew Bowen, Economic Officer, US Embassy Panama

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Donald Terpstra, Public Affairs Counselor, US Embassy Panama

David Wattlely, Legal Attaché, US Embassy Panama

**International Community**

Félix Alderete, Inter-American Development Bank

Marta Isabel Alvarado, United Nations Development Program

Bernardo López-López-Ríos, Embassy of Spain

Paloma Morazo, Agencia Española de Cooperación Internacional (AECI)

## QUESTIONNAIRE RESPONSES

### Introduction

The following is an English translation of a questionnaire that the evaluators distributed to individuals who participated in three group meetings during the evaluation. One group was made up of private attorneys in civil and criminal practice; the second group included representatives of universities and NGOs; the third group included judges and other public officials as well as attorneys, business leaders and other representatives of civil society.

The 30 responses received indicate a definite pattern as to which issues were considered most important. While the sample is quite small, the results are nevertheless interesting. The number of individuals who chose a given answer is reported below for each question. The several additional issues raised by respondents were quite varied and did not reveal any particular patterns. Accordingly, they are not reported in this annex.

As shown below, according to the responses received, the most important issues in each of the four themes addressed in the questionnaire were as follows:

- A. The most important benefits of a more fair, efficient and accessible system of justice are to protect citizens against arbitrary or corrupt government misconduct and to assure greater equality of treatment.
- B. The most important challenges for Panama's justice system are inadequate support for reform within the political leadership and slowness and inefficiency.
- C. The most important strategy for responding to these challenges is to strengthen the human and institutional capacity of justice system operators.
- D. The most important contribution of international cooperation is to improve the efficiency of the courts and related organizations.

The responses also indicate some inconsistencies. For example, protection against arbitrary or corrupt government misconduct was identified more than any other factor as a highly important benefit of reform. Yet, corruption was identified as only the third most important challenge to be overcome, after inadequate political will and slowness and inefficiency of the courts.

It is also noteworthy that legislative reform was given such a low priority as an area for international cooperation.

There follows the text of the questionnaire, together with a tabulation of how respondents answered the questions.

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## Questionnaire

This questionnaire elicits views from a wide range of interested Panamanians concerning the benefits of improving the nation's justice system, the principal challenges, the appropriate strategies, and the potential contributions of international cooperation in support of national efforts. Responses will be compiled by independent consultants, without attribution to any individual, for consideration in the planning of future programs of cooperation by the United States Agency for International Development.

### A. How can a more fair efficient and accessible system of justice contribute to a more secure, stable, just and prosperous Panamanian society?

1. Many claims are made about the benefits of a predictable legal environment, an objective and independent judiciary, and the availability at reasonable cost of reliable services to help resolve disputes and the safeguard the security of person and property. Please indicate which of the following benefits you believe should be given high priority, which should be given medium priority, and which should be given low priority as objectives of an effort to improve Panama's justice system.

#### BENEFITS

ISSUE	HIGH	MEDIUM	LOW
a. Protect citizens against common delinquency	19	8	3
b. Protect citizens against arbitrary or corrupt governmental misconduct	25	2	3
c. Facilitate peaceful commerce, fair competition, productive investment and economic development	17	10	3
d. Assure more fair and equal treatment and diminish unfair advantage or impunity based on political influence or social or economic status	24	5	0

2. Are there other benefits to be gained from an improved justice system that are equally important or more important than those listed in question 1, above? If so, please identify them and indicate their relative importance.

### B. What are the challenges?

3. The following factors have been identified in various studies as important challenges for Panama's justice system. Please indicate which of these considerations you believe should be regarded as high priorities, which should be regarded as medium priorities, and which should be regarded as low priorities.

**CHALLENGES**

ISSUE	HIGH	MEDIUM	LOW
a. Inadequate judicial independence and excessive corruption	19	8	2
b. Slowness and inefficiency in courts and other institutions	21	8	0
c. Excessive reliance on imprisonment as the preferred form of punishment.	19	11	0
d. Inadequate access to justice and legal services, especially for the poor and disadvantaged	15	13	1
e. Inadequate support for reform within the political leadership	22	6	1
f. Unwillingness of justice system institutions to work together toward a shared vision	10	19	0

4. Are there other challenges for Panama's justice system that are equally important, or more important, than those listed in question 3, above? If so, please identify them and indicate their relative importance.

**C. What strategies are needed to respond to the challenges?**

5. Many different strategies can be relied upon in efforts to improve the administration of justice. Several areas of possible strategic emphasis are described below. In responding to the challenges you have identified as high priorities, please indicate how much emphasis should be given to each of the following strategic approaches.

**AREAS OF STRATEGIC EMPHASIS**

APPROACH	HIGH	MEDIUM	LOW
a. Foster political commitment	18	11	0
b. Increase civil society demand	16	12	1
c. Modernize laws and procedures	19	10	1

d. <b>Revise the structure and organization of courts and other institutions</b>	<b>22</b>	<b>8</b>	<b>0</b>
e. <b>Strengthen human and institutional capacity of justice system operators</b>	<b>27</b>	<b>3</b>	<b>0</b>
f. <b>Promote willingness of justice system institutions to work together toward a shared vision</b>	<b>21</b>	<b>9</b>	<b>0</b>

6. Are there additional strategies that should be used to respond to the priority challenges? If so, please identify them and indicate how much emphasis should be given to them.

#### D. What should be the contribution of international cooperation?

7. The Inter-American Development Bank, the United Nations Development Program, the United States, the European Union, Spain and others have programs of support for Panamanian efforts to improve the justice system. These programs of international cooperation address a number of areas, described below, that Panamanian judicial authorities and civil society organizations believe warrant the investment of additional resources or require additional knowledge. Please indicate the degree of relative importance you attach to each of these areas.

#### AREAS OF INTERNATIONAL COOPERATION

THEME	HIGH	MEDIUM	LOW
a. <b>Expand justice services to poor and disadvantaged populations</b>	<b>18</b>	<b>11</b>	<b>0</b>
b. <b>Improve the efficiency of courts and related organizations</b>	<b>26</b>	<b>4</b>	<b>0</b>
c. <b>Introduce less costly, more expeditious means to resolve disputes</b>	<b>23</b>	<b>7</b>	<b>0</b>
d. <b>Modernize codes of law and procedure</b>	<b>12</b>	<b>17</b>	<b>0</b>
e. <b>Improve training of judges, prosecutors, public defenders and other justice system operators</b>	<b>21</b>	<b>9</b>	<b>0</b>
f. <b>Increase public awareness of issues and public participation in the discussion of policy reform</b>	<b>19</b>	<b>10</b>	<b>0</b>

8. Are there other areas where international cooperation would be especially helpful? If so, please identify them and indicate their relative importance.



# USAID Panama

## Results Framework for Special Objective (SpO), 2000-2003

### MOMENTUM TOWARD FAIRER AND FASTER JUSTICE ESTABLISHED

**Indicators:**

- Ind 1: Total Score of Pre-Trial Pilot Projects Implemented (milestone)
- Ind 2: Level of Completion of Alternative Dispute Resolution Pilot Projects (milestone)

**Justice Sector Development Context:**

- Only 38 public defenders for a population of 2.8 million.
- Backlog of 58,000 cases in civil courts.
- Limited coordination of civil society input in the Justice Sector reform process.
- Administrative law judges impose sentences of up to one year of incarceration without legal representation or possibility of appeal.
- Panama's judicial system remains inquisitorial while Central American systems have adopted adversarial procedures.

**Strategic Mechanisms:**

Supreme Court

Pilot projects in Criminal and Civil Courts

**Critical Assumption:**

- Justice Sector reform remains a high priority for the GOP and civil society.

Intermediate Results

**Intermediate Result 1**  
Access to Justice in Targeted Areas Increased

**Indicator:**  
Level of Improvement in Dissemination of Judicial Opinions & Pending Case Status (milestone)

**Intermediate Result 2**  
Proactive Role of Civil Society in Justice Sector Reform Improved

**Indicator:**  
Level of Civil Society Advocacy for Justice Sector Reform (milestone)

**Intermediate Result 3 (ICITAP)**  
 Collaboration between Investigators and Prosecutors Improved

Key Outcomes

Pre-trial detention reduced

Use of Alternative Dispute Resolution mechanisms to reduce backlog of commercial cases introduced

Dissemination of Appellate Court and Supreme Court judicial opinions increased

Public Defenders strengthened

Civil society advocacy capacity to influence policy-making process increased

Management, networking, and fundraising capacity of the Citizens Alliance for Justice (ACPJ) increased

Activity Types

**PRE-TRIAL**

- Conduct assessment to identify a) # of pre-trial detainees, and b) causes for long-term pre-trial detention
- Launch pilot project to improve pre-trial process
- Upgrade skills of public defenders
- Upgrade skills of prosecutors
- Introduce bailiffs in courts

**ALTERNATIVE DISPUTE MECHANISMS (ADR)**

- Conduct assessment to identify # and types of potential ADR cases in current system
- Launch pilot ADR for filed cases

**JUDICIAL REGISTRY**

- Enable publication of monthly, up-to-date judicial opinions and pending cases (internet, CD and hard copy)
- Launch web-site

**CIVIL SOCIETY ALLIANCE (CSA)**

- Consolidate Alliance
- Establish self-financing Alliance
- Integrate CSA into judicial reform strategy
- Implement Public Outreach programs
- Help spark public debate for changes in administrative justice (respect for human rights, due process, legal representation)

**TRAINING OF TRAINERS AND PILOT COURT STAFF (through the Judicial School)**

- Train pilot court staff, prosecutors and other justice sector officials (oral procedures, ethics)
- Train public defenders in oral procedure, negotiation, etc
- Seminars for Colegio Nacional de Abogados (oral procedure, ADR)



# USAID/Panama

## RESULTS FRAMEWORK FOR SPECIAL OBJECTIVE (SPO)

### SUSTAINING MOMENTUM FOR REFORM (2003-2004)

**Milestones:** To be assessed before initiating the Expanded Support for Sustainable Rule of Law Reform Project (2004-2009).

- \* GOP justice sector institutions are carrying out elements of reform agenda.
- \* Civil Society Organizations are supporting justice reform efforts through advocacy, public dialogues, and public education.
- \* Selected high impact activities from Supreme Court strategy are being implemented.
- \* Judicial Council or some other entity is beginning to foster inter-institutional coordination.
- \* Justice reform issues are being actively discussed in public fora.

Intermediate Results

#### Intermediate Result 1

Institutional Strengthening and Inter-Institutional Coordination.  
Indicator: (to be determined)

Strategic plans of individual judicial organizations being implemented.

Strategic plans of selected justice institutions developed.

Policy agenda for reforms developed by GOP institutions and CSOs.

Judicial Council or other is designated to discuss broad-based justice reform with other GOP agencies and civil society

Design and Program Options for new project initiated.

Key Outcomes

#### Intermediate Result 2

Civil Society Strengthening  
Indicator: (to be determined)

Advocacy capacity strengthened

CSOs Institutions made more sustainable

CSOs engaging in social auditing.

Citizen Alliance membership expanded

Private sector actively engaged in justice issues.

Activites

#### Institutional Strengthening

- \* Judicial School
- \* Public Defender Institute
- \* Mediation Center
- \* Supreme Court
  - Case-tracking
  - Judicial auditing
  - Model courtroom
  - Strategic planning
- \* Public Ministry
- \* PTJ (dialogue only)

#### Inter-institutional Coordination

- \* Expand Judicial Council
- \* Policy Agenda
- \* Judicial Security for investment/property
- \* Pilot Activities in access to justice/local justice

#### Advocacy

- \* Study on costs to economy
- \* Bldg. a shared vision
- \* Comm. Just.
  - adm just.
  - mediation

#### Inst. Capacity

- \* Fund-raising sustainability
- \* Research/anal.cap.
- \* Social aud. capacity.

#### Expand Base

- \* Priv. Sec.
- \* Media
- \* Expand Alianza membership
- \* More active A/C activities



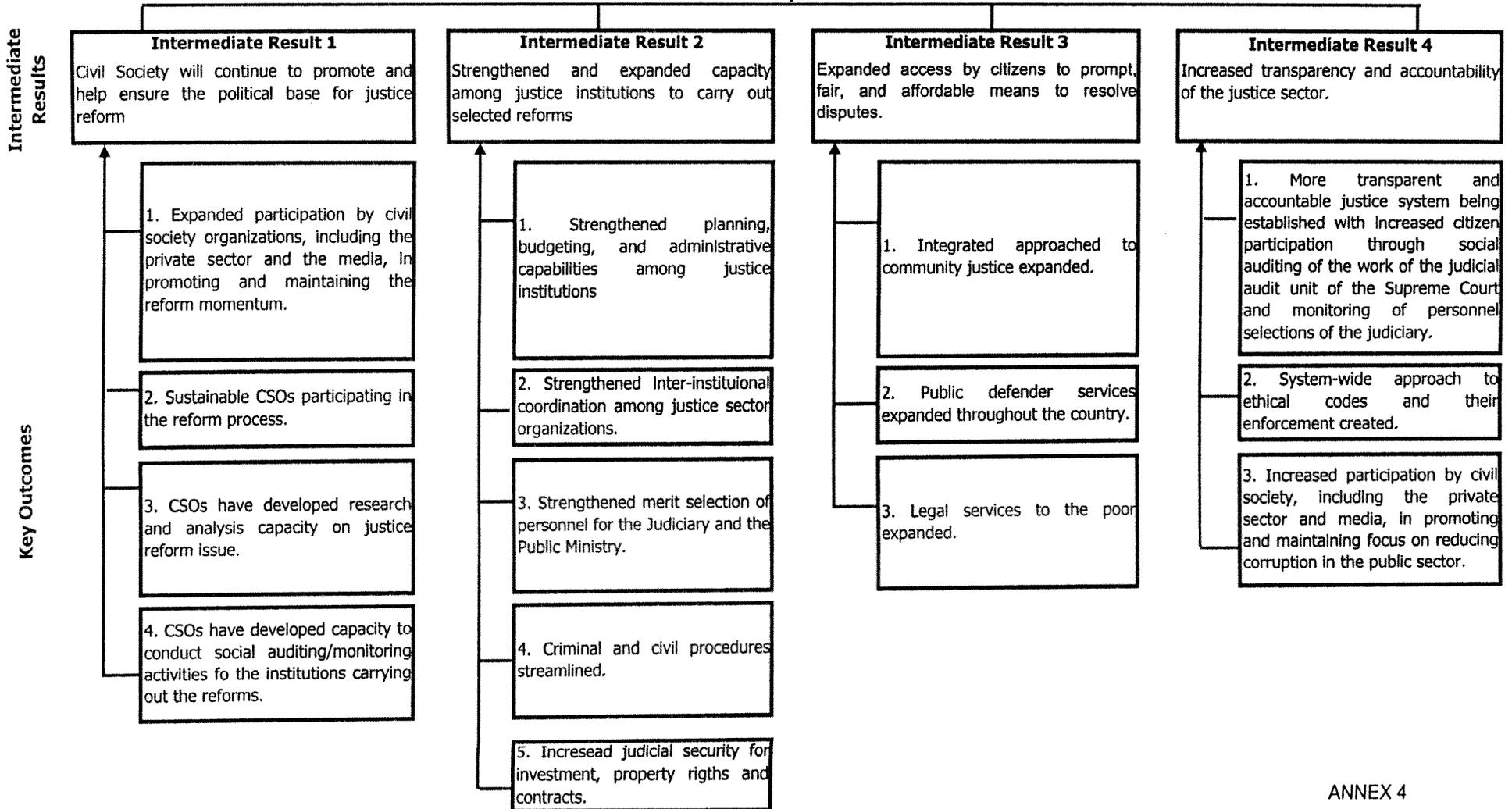
# USAID/PANAMA

## Results Framework for Expanded Support for Sustainable Rule of Law Reform Project (2004-2009)

**Objective:** To strengthen independence, effectiveness, transparency, and accountability of the justice system.

**Indicators:**

1. A substantial base of support will exist for continuous improvement of the justice system from both political and civil society leaders.
2. A long term planning, budgeting and administrative capacity will begin to be institutionalized in the individual entities; an inter-institutional planning and coordination mechanism will begin to operate for the sector.
3. There will be measurable progress in achieving fair and efficient criminal justice, including effective combat of international crime, due process and timely disposition of cases.
4. Access to justice for citizens will increase, and public confidence in the justice sector will rise.
5. Accountability and transparency of the sector will increase.



## BIOGRAPHIC SUMMARIES OF EVALUATORS

**James Michel** advises private firms, international organizations and the United States Government as an independent consultant in international development cooperation. He previously had a long career of public service with the United States Government and with the Organization for Economic Cooperation and Development. He joined the U.S. Department of State as an attorney in 1965 and served in that Department as the Principal Deputy Legal Adviser and as the Principal Deputy Assistant Secretary of State for Inter-American Affairs. After serving as U.S. Ambassador to Guatemala from 1987 to 1989, he joined the U.S. Agency for International Development in 1990 as Assistant Administrator for Latin America and the Caribbean. He later served as Counselor, Acting Deputy Administrator and as the Acting Administrator of USAID. In January 1994 he was elected Chair of the Development Assistance Committee of the Organization for Economic Cooperation and Development, where he led international efforts to coordinate the development cooperation policies of the major donors until his return to USAID in 1999. He left government service at the end of 2000 to work independently in support of international cooperation for economic and social development.

**Norma Parker** has been a consultant in democracy and rule of law for the past four years, after a 23- year career in the Foreign Service with the US Agency for International Development. She has consulted on rule of law projects in Peru, West Bank/Gaza, and the Eastern Caribbean and helped USAID to develop the democracy strategy in Peru during and after the departure of President Fujimori. She also managed a large anti-corruption project for Latin America and the Caribbean and participated in anti-corruption assessments in Honduras and Ecuador. She was recalled by USAID to serve as senior democracy advisor in 2001 where she advised USAID on democracy programs throughout Latin America and guided the program of technical cooperation for the 2001 presidential elections in Nicaragua on behalf of the National Security Council. Along with State Department colleagues she was instrumental in the establishment of the Justice Studies Center of the Americas. In her government career, she served as Deputy Assistant Administrator of USAID's Latin America and Caribbean Bureau; as Director of South America and Mexico Affairs, where she helped direct the Andean Drug Initiative; and as Director of Democratic Initiatives, where the first programs in rule of law and election assistance were conceptualized and funded.

**Carlos Berguido** is a lawyer in private practice in Panama. He has held senior positions with a number of Panama's leading banking and insurance institutions, including the Caja de Ahorros (1990-1993), Metropolitana de Seguros (1993-1994) and ASSA Compañia de Seguros (1994-2002). He is a member of the Board of Directors of the Panamanian Association of Business Executives (APEDE), and chairs APEDE's permanent committee on excellence in justice. Mr. Berguido is a qualified arbitrator and is a founding director of the Center for Mediation and Arbitration at the Panama Chamber of Commerce. He is the author of numerous articles in his fields of professional specialization. He holds degrees from the University of Richmond (in business administration) and from the University Santa Maria La Antigua (in law and political science).