

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.