

STRATEGIC OBJECTIVE 2

FAIRER AND FASTER JUSTICE

SYSTEMS FACILITATED

USAID ASSISTANCE TO PANAMA

FY 2001 – FY 2003

Part II: PROPOSED STRATEGIC PLAN FOR PANAMA

This section of USAID/Panama's Strategic Plan is a revision of the plan originally submitted in November, 1999. This revision replaces Part II, Strategic Objective 2, and the section of Part III, Resource Requirements, dealing with Strategic Objective 2 of the original document. Additionally, because of changes that have occurred since the completion of the November, 1999 Strategic Plan, Annex A to this document provides current information to correct any inaccuracies in the former document.

Strategic Objective 2: Fairer and Faster Justice Systems Facilitated

a. Introduction

Statement of Strategic Objective

Reform of the justice system is a highly desirable element in the process of democratization and economic growth in Panama. USAID work in the criminal justice system during the period 1991-1997 supported Panama's newly restored democracy in its initial steps towards reform. This period saw the restoration of the rule of law in Panama, with the Government of Panama (GOP), USAID and the US Department of Justice's International Criminal Investigative Training Assistance Program (ICITAP) fostering significant improvements in judicial, prosecutorial and investigative systems. Although the original intent of USAID's AOJ program was that it be implemented over a short period of time in order to get the justice system back up and running after the 1989 military operation, it soon became apparent that this was not an overnight affair. Indeed, the program continued until 1997. However, in 1997, because of funding limitations and the expectation that the Inter-American Development Bank (IDB) would inaugurate a large, comprehensive Administration of Justice (AOJ) program of its own, USAID decided to terminate its AOJ program ahead of schedule and without having fully funded it. Even so, the justice system continues to struggle under growing strains, a situation that has become a cause for concern to the US Government (USG) Country Team in Panama. (See Problem Analysis: Slow, Inefficient, Ineffective Justice below.) Following discussions among the Country Team, the Department of State and USAID/Washington, USAID/Panama developed the strategy outlined in this paper to guide its re-involvement in the AOJ sector.

After more than a two-year hiatus from the justice sector and taking into consideration the results of a comprehensive assessment undertaken in 1998, USAID believes re-engagement in the sector is critically important despite significant investments by other donors. As an outgrowth of the above mentioned assessment and our own continued observations, we have concluded that promoting public confidence in judicial systems and engaging the public in successful reform of both the criminal and commercial justice systems is in the foreign policy interests of the USG and ultimately is key to Panama's future development.

USAID has a unique opportunity in the coming years to assist in promoting transparency and effective governance in a country that is still a young democracy in the process of consolidating its democratic systems. The new Moscoso government has expressed a commitment to reform, although it has yet to take actions in support of these objectives. Moreover, given its predecessor

program, USAID has proven expertise in supporting innovative reforms that will have significant positive impact in the country. Such programs have focused on the elevation of the role of civil society, promotion of the use of alternative dispute settlement mechanisms and enhancement of the professionalism of prosecutors and the judiciary. Further, given the political sensitivities in dealing with justice reform, some donors are limited when addressing ethics or the more politically delicate issues that must be addressed to promote better governance within the justice system. USAID has the experience, political clout and willingness to broach these sensitive issues.

Given the complexities of the system in Panama, USAID's past successful involvement with justice reform and the desires of our partners, we are establishing with this document a new Strategic Objective in the administration of justice that will build on work begun under a predecessor Special Objective (SpO). By filling important problem niches in the sector that are not being addressed by other donors, we believe that USAID can make a significant difference in restructuring the country's justice system.

USAID/Panama resources will be focused in three areas, and are designed to complement a larger effort by the GOP and other donors, as well as a fourth area covered by ICITAP.

The first element of the strategy will focus on the criminal justice system. USAID made a major investment in professionalizing the prosecutors during its previously mentioned AOJ program, but the job is not yet completed. There are both political and technical gaps in the relationships between prosecutors and investigators. Until these are addressed, improvements in the individual components of the justice system will yield limited returns in working towards the objective of bringing those who are guilty to trial and promptly releasing those who are innocent. USAID will work with ICITAP to address the gaps among the key components of the law enforcement system and to enhance the professionalism of judges, prosecutors and public defenders. USAID will also work to provide the disadvantaged greater access in criminal courts and to explore alternative sentencing mechanisms to reduce the prison population. The President of the Supreme Court has requested USAID to support training in support of implementation of alternative sentencing mechanisms already authorized by law and to provide training in ethics and anti-corruption principles in the criminal and commercial courts.

Secondly, USAID/Panama's strategy will address the commercial justice system. Our assessment of the sector indicated that the treatment of commercial disputes generates significantly more complaints and expressions of mistrust in government than do criminal disputes. We are concerned about the impact this will have on foreign investors, especially on US economic interests. Delays and failures in the commercial justice system clearly have more immediate economic impact than do similar problems in the criminal system and generally have a much broader impact on the populace because there are many more commercial than criminal disputes. Investors will have limited interest in Panama as long as the judicial system appears to be incapable of assuring fair and timely justice. In fact, US investors have experienced significant problems in the Panamanian judicial system. As a result, on May 15, 1998, Secretary of State Madeleine Albright, in a letter to former USAID Administrator Brian Atwood, requested him to reconsider his decision to close the USAID mission in Panama. One of Secretary Albright's cited reasons for the request was that recent events had demonstrated an inefficient

Panamanian judicial system subject to political pressure and manipulation and one that can unfairly prejudice US commercial interests.

Third, for Panama to have a better justice system and for improvements to be sustainable, it is desirable to involve civil society organizations. Necessary changes in the sector will not come from within the system alone. The USAID program will strengthen local NGOs to become advocates for and facilitators of judicial reform. We believe that existing efforts can be organized to create strong advocacy to initiate, sustain and broaden improvements in the justice system.

Finally, to ensure effective enforcement of the law, ICITAP efforts will be directed toward increasing the capacity and efficiency of investigators and prosecutors with the aim of improving collaboration between them and with the Panama National Police (PNP). ICITAP will work to improve the investigative capacity of both the PNP and the Technical Judicial Police (PTJ); to establish information management systems providing for interconnectivity between the PNP, PTJ and prosecutors; and to provide for the long-term sustainability of training for investigators.

We have elevated this objective from a SpO, as described in the USAID/Panama's May 1998 R4 submission, to a Strategic Objective. Notwithstanding the modest USAID resources allocated to complement the substantial commitments of other donors, we believe that it is within our manageable interest to work for more ambitious results than were originally proposed in our SpO.

Because of the complexity of the issues in the justice sector and in order to ensure that available resources are used to help solve only the highest priority problems for which we can reasonably assume success, the Mission is proposing a two-year pilot program to address priority needs not addressed by other donors in the justice sector. This experimental approach is also being used because of the urgent need to address the rapidly increasing pressures on law and order in Panama, due in large part to the spill-over effects of deteriorating conditions in neighboring Colombia. During this time, several approaches to the various elements of the strategy will be undertaken and evaluated with the intent of determining if they are succeeding. If so, the Mission will seek funding for an additional period of time to be determined by the evaluation in order to continue the program. If our review concludes the experimental approach has failed, we will cease program activities under this SO.

Problem Analysis

The organization of Panama's judicial system is complex and involves numerous players. Briefly, it consists of the Judicial Branch, which administers justice through a system of courts, and the Public Ministry (PM). The highest court is the Supreme Court of Justice (SCJ), which is organized into four chambers -- Civil, Criminal, Administrative, and General Business. There are also lower courts and tribunals, the Public Defenders' Institute, and the Judicial School. The Public Ministry, in turn, includes the Attorney General's Office (AGO) and the Solicitor General's Office (SGO), with two auxiliary bodies, the Technical Judicial Police (PTJ-equivalent to the FBI in the United States), and the Forensic Medicine Institute (IML). Other actors in the judicial sector include: 1) the Ministry of Government and Justice that is in charge

of the Panamanian National Police (PNP), the penitentiary system. Panama's night courts and the National Directorate of Immigration and Naturalization; 2) the "corregidurias" (a special jurisdiction of administrative courts similar to Justices of the Peace in the US); 3) the public records system; 4) the Ministry of Labor, insofar as it is responsible for mediating labor disputes; and 5) the Office of the Human Rights Advocate (HRA). Law schools and the bar associations, the latter responsible for ethics and discipline in the legal profession, are other important players in the sector.

USAID, whose involvement in the Panamanian justice system began following the 1989 military operation, contributed significantly to improvement of the country's judicial system through the implementation of its Administration of Justice Project. The purpose of the Project was to improve the operation and coordination of the justice system in its implementation of the investigative and trial stages of the criminal justice process. The Project had four components:

1. Assistance to the Judiciary and the Public Ministry to improve their operations;
2. Support to various operational aspects of the justice sector;
3. Expansion and improvement of the Public Defenders system, including its transfer to the Judiciary from the Ministry of Government and Justice; and
4. Assistance to the Judiciary and the Public Ministry to improve their planning and coordination.

The Project supported the development of career systems in both the AGO and the courts, and the integration of the PTJ into the AGO. It introduced improved records, case management and administrative systems, planning units, and innovations such as case intake, conciliation and evidence centers within the AGO to eliminate vices and abuses associated with the filing of criminal cases. Through a component for expediting cases, criminal case backlog was reduced. For example, Panamanian government statistics indicate an increase in the number of cases solved. The number solved in 1990 was 17,256. By 1997 the number had increased to 22,279 and in 1998 to 25,668.

The GOP also has made improvements in other areas. The budget for the judicial sector has increased gradually over the past few years. For example, in FY 1999 it was \$73,306,300 and in FY 2000 it is \$76,012,100. Specialized courts have been created including Maritime Affairs, Commercial Affairs, Family Disputes and Minors. In addition to increasing the number of judges, this has introduced simplified processes such as more reliance on oral as opposed to written arguments and limitation on the instances for appeals. Politicization of these courts has been a serious problem at times, however. Greater independence has been provided to the judiciary through institutional control over internal appointments and a reduction of legal impediments to internal reorganizations. The Supreme Court has begun to restrict certain executive and legislative actions via its interpretations of the Panamanian constitution.

Despite these advances, problems remain. The Mission's program will assist in addressing the areas identified below.

Corruption: In recent years, the media has increasingly reported, under the strictures of a comprehensive libel law, 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 that is inaccessible to the ordinary citizen or foreign business. Many businesspeople state clearly that the more powerful and influential will prevail, e.g., the one who gets to the judge first with the most money. According to a CID-Gallup poll published in 1998, 52% of respondents claimed that there is no justice in Panama. The major reason cited for this perception was the inequitable treatment of different classes of citizens. Salary structures and selection systems within the judiciary originally designed to protect the independence of the judiciary place low priority on competence and merit. These are two major obstacles to preventing corruption.

Lack of Access to the Justice System: As in many other countries, the poor do not have adequate access to legal services. The consequences are that the vast majority of people in prison are indigent, and they are much more apt to remain there longer than legally required. The same problem applies in the civil courts where the poor rarely, if ever, win their cases. There are only a handful of pro bono service systems for the poor (the Institute for Legal Defense, National University legal clinics and occasional NGO assistance, e.g., the Foundation for the Promotion of Women and CEALP –the Center for Popular Legal Assistance). Interestingly, there is little reported backlog of civil indigent cases. Our assessment suggests that this last point may reflect failure of the poor to file cases due to unavailability or high cost of legal representation, lengthy delays in the issuance of final decisions and structural biases working against the majority of citizens.

The administrative judges, the 587 corregidores who dispense justice at the local level, and eight night judges are the sources of a multitude of abuses that predominantly affect the poorest citizens. Charged with the oversight of misdemeanors, they are appointed by and serve at the pleasure of political authorities. They are not paid reasonable salaries and lack the professional discipline often imposed by effectively functioning bar associations. Being an attorney is not a requirement for occupying this position. Only in the province of Panama, are mayors now appointing lawyers as corregidores. In the rest of the country, however, most corregidores have not been trained in law and are not lawyers.

Slow, Inefficient, Ineffective Justice: The USAID assessment of 1998 indicated that backlogs in the courts do not primarily arise from code or procedural problems. While code and procedural issues merit monitoring to ensure that current reform initiatives continue, the findings of the assessment demonstrated that backlogs originate more in the organization and administration of the courts and the prosecutorial system, as well as in the lack of training of professional and administrative staff. Although the previous AOJ program was successful in increasing the number of cases solved per year, there is still a problem with the backlog of cases. According to a report from the Supreme Court, the large increase in the prison population during the last decade is due to various factors: an increase in violent crimes; an expansion and intensification of international drug traffic and consumption of illicit substances; an intensification of police operations in high-crime areas involving many arrests of suspects; an increase in the punishment for drug related crimes; the legal definition of new crimes; the use and abuse of preventive detention as the favorite preventive remedy at hand for prosecutors and judges; the almost inoperative application of other than preventive detention remedies and

replacement of short-term sentencing, conditional suspension of execution of the sentence, and parole; and the lack of adequate legislation.

Panama has on a per capita basis one of the largest prison populations in Latin America. Effective police work has contributed to an ever-increasing influx of cases. Panamanian prisons are overcrowded, and one of the reasons for this overcrowding is the overuse of pretrial detention. Currently, 59% of Panama's inmates are in pretrial detention. GOP statistics from January 2000 show that out of a total prison population of 7,934 inmates, 4,687 were in pre-trial detention and 3,247 had already been sentenced. Two particular complaints are the excessive use of pretrial detention for those charged with felonies, and prison sentences levied by administrative officials – the *corregidores* and night judges – that might be replaced by fines, alternative sentencing or reparations which are already provided for in Panama's legal codes. The press and NGOs have reported numerous cases of prisoners who have remained in pretrial detention for more than their possible minimum sentences and, in some cases, beyond the maximum possible sentence. Many sentenced prisoners are not considered for parole, even though eligible, because of deficient prisoner tracking systems that did not provide either reliable information on individuals or total numbers. Tracking was done manually and was highly inefficient. As a consequence, the location of detainees often could not be accurately established, and because of this, they frequently remained in jail much longer than necessary. More recently, the Government of Spain (GOS) has been assisting the GOP with this problem. It is now transferring this activity to the European Union.

As for the country's entrepreneurs, they too view the judicial system as slow, cumbersome and capricious. Consequently, they are interested in alternative dispute resolution, which despite its higher costs to the user, can reach resolution far more rapidly than if the case is taken to the commercial courts. The Panamanian Chamber of Commerce revived its center for mediation and arbitration of commercial disputes in 1994, but it did not become fully functional until 1999. An IDB program that included revision of legal and regulatory provisions of the commercial codes, institutional strengthening of the center, the training of mediators and arbiters, and publicizing the availability of mediation and arbitration services is the primary reason for the center becoming fully functional last year. However, due to its high costs, it is used more by large companies that are members of the Panamanian Chamber of Commerce than it is by small business or individuals.

Capacity of the AGO: The AGO is responsible legally for the work of all prosecutors in the country and the criminal investigators within the PTJ. Because of a protracted institutional and personal dispute pitting the AG against the General Director of the PTJ, morale has declined within the AGO and the PTJ, and performance dependent on effective collaboration between prosecutors and investigators has suffered. Other problems in the AGO and the PTJ that contribute to slowness of the justice system range from need for additional professional training to issues of communication between the PTJ and the prosecutors, as well as among the prosecutors themselves. The Office of the Attorney General has not yet established an office of professional responsibility, and there have been accusations that the prosecutors have dropped cases for political reasons.

Capacity of the Judiciary: The GOP has not been able to sustain most judicial training programs. Although the Judicial School has trained/retrained most judiciary staff, it has failed to develop a master curriculum and still seems uncertain about its role and mandate. The School remains dependent on donor resources for what courses it currently delivers and tends to subordinate course content to donor preferences. Additional funds alone will not resolve the problem. More attention needs to be given to making more efficient use of funds already available. For example, given the fact that prosecutors do not have their own training school, thought should be given to using Judicial School facilities and/or staff to provide training to prosecutors.

Lack of Demand for Reform: Panama's justice system is often criticized in the media and from within and outside of the government. Critics have included a former First Vice President who recently stated, "The people of Panama are totally frustrated with the systemic slowness, lack of credibility and corruption that impacts the economy and political life." The new President, Mireya Moscoso, outlined her position on the Justice Sector in her published campaign platform in which she states: "The efficient operation of the Administration of Justice system is an indispensable element for the consolidation of the government's democratic regime and for the economic development of the country. Citizens' perception of the quality of justice administered by the state reveals high levels of disapproval which demand a set of immediate measures aimed at consolidating profound reforms in the administration of justice toward achievement of an independent, reliable, strong, efficient, equitable and modern justice reform."

Despite recognition of the problem, there is a lack of any concerted private or public support for systemic change. While active in securing special legislation and in establishing its own arbitration mechanism to address its concerns, the commercial sector has not shown a strong interest in broader reforms to the civil courts. USAID's assessment in 1998 concluded that few people within the judiciary feel that the justice system really needs to be changed. Although some prosecutors have complained about the system and the Attorney General himself has said that it should be changed to make it faster, the judiciary, on the whole, has not expressed an overwhelming interest in change. The new President of the Supreme Court, however, says she is concerned about the negative perceptions the general public has about the justice system.

Modest work toward reform currently undertaken by NGOs in the sector is fragmented and probably cannot have any impact on improvements in attitudes, policies or procedures within the justice system without outside donor involvement such as that contemplated by USAID. In Panama, NGOs in the justice sector do not generally work together. No one, including business groups, is working to develop any coherent, comprehensive vision of the justice system, let alone a sectoral reform program. One natural outcome of this is that there is virtually no popular, articulated demand (as opposed to general complaints) for improvement in the system. There has been no catalytic force in civil society which might galvanize the media to do more aggressive reporting on the system. Indeed, editorial and reporting staff lack the training and sophistication to do it in any event.

Vision of Desired Conditions

The Mission's Strategic Objective -- "Fairer and Faster Justice System Facilitated" -- sums up our vision of what we would like our program to accomplish. We hope that we will have helped create a justice system that is perceived by the majority of people as being fairer and faster. By fairer, we mean that fewer people will feel that the judiciary in criminal and commercial cases is incompetent and/or corrupt. By faster, we mean that cases will be resolved/decided more quickly than they are now. By resolved/decided, we mean that a competent court has taken a formal decision, or a dispute has been resolved by an alternative dispute resolution mechanism.

The Mission believes that perceptions of the justice system will improve when two sets of conditions have been met. The first set is when users of the system feel that they have better access to the system. By better access, we mean that the general populace that makes use of the system (not just the judges, prosecutors and lawyers) has: 1) the sense that the justice system treats them more fairly and quickly; 2) a better understanding of how the system works; 3) a better grasp of what can be done to improve the system; and 4) ready access to services such as free legal counsel and/or affordable legal services. The second set is when the court systems and their operators do a better job of administering the system. By a better job, we mean that the operators are moving cases through the system faster, and that they have created - or at least, are moving to create - systems of dispute resolution that are more transparent and understandable, and less susceptible to corruption.

The shorter-term accomplishments described in the tables at the end of this document are those accomplishments expected at the end of the first two years. The strategy proposes to evaluate these short-term accomplishments during year two of the strategy period and, if continuation of the SO is warranted, to base all follow-on activities on the results of this evaluation. The vision described here is what is hoped to be the ultimate achievement of the entire strategy.

The Development Hypothesis: The development hypothesis is that Panama's justice system can be made fairer and faster by:

- enhancing access in the criminal courts for the disadvantaged and exploring alternative sentencing mechanisms to reduce prison population;
- enhancing cooperation and communications among the law enforcement entities and strengthening the institutional capacities of both the PNP and PTJ;
- improving commercial justice; and
- organizing civil society actors to work together to advocate for reforms, including attacking the problem of corruption.

Critical Assumptions

There are a number of key assumptions upon which achievement of SO2 depends.

- The new government will have the ability to follow through on its promise to implement reforms within the judiciary, and recent budgetary increases for the judiciary can be maintained, if not increased as they were in 1999 and 2000.

- Resources from any one donor are not sufficient to achieve the SO. However, taken together, particularly those of USAID, ICITAP, the IDB, and the Government of Spain, they are likely to be sufficient to do so. For this reason, we are showing in our proposed results framework the activities related to the IDB program and the ICITAP program, as well as those for the USAID program. In this regard, we will convene an informal donor-working group (consisting of the major donors – IDB, the Spanish, ICITAP and USAID) that will meet at least twice a year to manage the continuing division of labor.
- The disparate NGO community can be organized to work with the public at large for changes in the justice systems and to mobilize pressure within the legislative assembly to maintain progress toward reform. Organization of stakeholders to demand improvement in the justice system via civil society is necessary to sustain achievement of the Mission's AOJ program.
- USAID budget resources for the SO will be secured at request levels.

Commitment and Capacity of GOP and Other Donors

GOP

A number of recent developments suggest that the GOP may be willing to work with USAID/Panama to provide for genuine reform of the country's legal system. The previous administration created two Special Commissions to address justice sector issues on August 3, 1998. One commission was charged with three specific duties, including: 1) undertaking an assessment of the judicial system; 2) defining steps to be taken in the short, medium and long-term to improve its operations; and 3) proposing the requisite judicial and administrative instruments to achieve these objectives. Sectors represented on the commission included the Executive Branch, the Judiciary, the Legislative Assembly, the AGO, the Panamanian Bar Association, the Private Enterprise National Council and the Panamanian Chamber of Commerce. The other commission was charged with reviewing two draft proposals for reforming the existing Criminal Code and the Criminal Procedural Code. Its members represented the Executive Branch, the Judiciary, the Public Ministry and the Panamanian Bar Association. The reports have not been publicly released, and given the animosity between the past and current administrations, it is unlikely this will ever occur. USAID/Panama has been granted unofficial access to them and finds them to provide an accurate and objective description of the realities, both positive and negative, of the justice system in Panama. Also, in a meeting held at the Colegio de Abogados in February 2000, the commission on Administration of Justice arrived at similar conclusions. The President of the Colegio de Abogados informed USAID recently that the SCJ requested a meeting with them to reconcile the two reports and to begin work on implementing their recommendations. Most of the members of the commissions are still active actors in the judicial system. In fact, the only person who is no longer an actor is the representative from the Executive Branch, the former Vice-minister of the Presidency. USAID is working to promote the recommendations of both reports, especially within the Moscoso administration, as the one key entity not involved in the commission or the development of its report.

USAID/Panama engaged in discussions with President Mireya Moscoso in November 1999 in which she expressed her government's desire to improve the justice system. President Moscoso has repeatedly stated her strong interest in overhauling the justice system. She says her goal is to make the justice system more accessible and less susceptible to corruption – in short, goals identical to those of USAID. She and her team are seeking USAID assistance to improve the country's administration of justice and to undertake a comprehensive anti-corruption program within the GOP, the latter a new initiative that she has raised in discussions with the USG Country Team.

Other Donors

As the predecessor USAID program drew to a close, the IDB developed an AOJ program for Panama. To be implemented in stages, the first stage provides for \$18.9 million and is being disbursed over a four-year period that began in 1998. This program is larger and more comprehensive than either the predecessor or proposed USAID programs, complementing and expanding considerably USAID's programmatic activities within the criminal justice area. Priorities for the IDB include reduction of case backlog in the courts (criminal and civil), assistance in strategic planning and management, training and judicial career assistance, construction of joint administrative facilities for judges and prosecutors, and improvement of computer management information systems.

Other donors include the United Nations Development Program (UNDP), the Organization of American States (OAS), the European Union (EU), Spain, and several other small bilateral programs (the British, the Germans and the French) that are providing limited training and technical assistance. The UNDP has focused primarily on problems with the prison system, the issue of pretrial detention and the use of computers in addressing delays in criminal cases. The EU is funding a regional effort to organize studies and seminars in all Central American countries on their justice systems. The EU also has prepared a proposal to improve prison conditions and to continue the previous work in the area done by the GOS. The GOP is currently analyzing the EU proposal. Having provided assistance in the past, Spain is initiating a new program that consists of training for civil court staff, including judges and magistrates. Training will take place at the Judicial School and will include training of trainers.

b. Results Framework

Strategic Objective 2: Fairer and Faster Justice Systems Facilitated

Description

A fair justice system is one in which all accused are treated equally, the guilty are punished and the innocent exonerated. An expeditious system is one that determines guilt or innocence within the least possible time and within the parameters of a fair and just system.

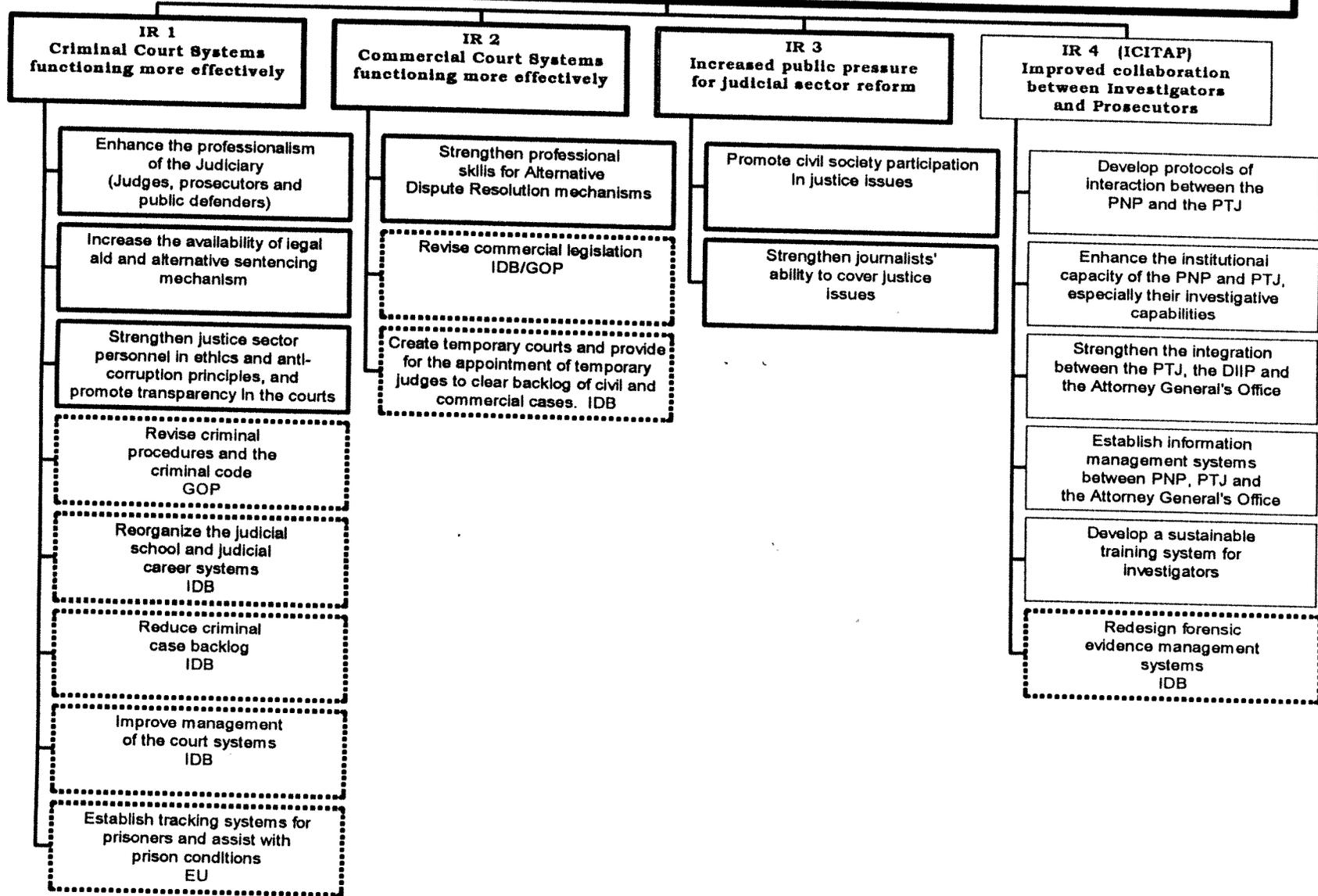
This Strategic Objective is designed to improve democratic governance in Panama by providing better access to the country's judicial system and improving the administration of justice within the country. An active and effective demand for change must come from an organized civil

society. If the effort to modernize the justice systems is to prevail, civil society must work together to define the most important justice sector problems, propose feasible solutions, advocate necessary changes in the sector and address corruption within Panama. The public and private actors in the justice system require assistance to implement critical reforms of the criminal and commercial justice systems. Technical assistance must be furnished to reduce the considerable backlog of criminal cases, and substantial reforms are required to bring civil/commercial legislation up to mandated international standards if Panama is not to be marginalized in the global economy. Finally, there is a critical need to enhance collaboration between investigators and prosecutors to ensure adequate investigation and prosecution of crimes.

USAID designated the proposed program based on a Mission-financed AOJ assessment and consultation with all the major actors in the sector. Given the modest availability of program funding and staff, and the considerable needs of the Panamanian legal system, the Mission proposes a modest pilot program of two years (2001-2003). The USAID program will be coordinated closely with that of the IDB, now implementing the first stage of its program but already planning follow-on funding.

**USAID/PANAMA
STRATEGIC OBJECTIVE 2**

FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED



Intermediate Result 1: Criminal Court Systems Functioning more Effectively

Description of Constraints

The most serious impediment to the criminal court system functioning more effectively is lack of access for the disadvantaged. The problem of access stems from the cost of justice in terms of both money, and especially time, and from the perception that should one take a case to court, the more powerful and influential will prevail. This is most prejudicial to the poor population, whose major obstacle is the cost and the scant provision of pro bono or subsidized legal services. The Institute of Legal Defense claims to provide counsel for almost two-thirds of the criminal cases seen by the ordinary judiciary and also offers limited services in family cases and cases dealing with minors. This is supplemented by the National University's legal clinic and a few NGOs, e.g., CEALP and FUNDAMUJER.

Owing to flaws in the judicial system, thousands of Panamanians are unjustly trapped in prisons. In almost all cases, the individuals involved are poor or of modest means at best. Poor prisoners do not have access to quality legal services. Victims are not helped to obtain adequate redress. A potential but significant solution for these groups would be to educate prosecutors, judges, public defenders and private attorneys in the use of alternative detention or sentencing remedies and to develop pro bono systems to increase citizen access to legal services.

In general, the Panamanian criminal courts are sufficient. Improvements in productivity, impartiality and speed are required. The major difficulties besetting the criminal justice system are slowness, the lack of due legal process and barriers to effective citizen access. The system also displays weaknesses in terms of quality, efficiency and transparency of procedures employed within the judiciary.

Contributing to these difficulties are: 1) weaknesses in institutional planning and management; 2) a paucity of training to assist in the development of judicial career opportunities and provide incentives for better performance; 3) deficiencies in criminal investigative capacity; 4) procedural shortcomings and barriers to access; and 5) scant citizen participation in attempts to improve the system.

Accomplishments/Reason for Engagement

USAID can report a number of achievements from its Administration of Justice Project. The Project financed: 1) the creation and initial operations of a Judicial School which served professional and administrative personnel of the courts including Public Defenders and the AGO; 2) the establishment of legal libraries in the Supreme Court, AGO, Judicial School and the nine regional legal centers; and 3) the provision of 233 small legal reference collections to individual professional staff. The USAID intervention also strengthened the Public Defenders' Program by consolidating its existing staff into a single organization, erecting facilities, providing equipment and, over the short-term, paying the salaries of seven additional defenders and their staff. The GOP eventually assumed responsibilities for all operating expenses and subsequently expanded the staff to 36 defenders and a comparable number of legal assistants that represented an increase of almost 100%. The PDI also opened offices in judicial centers outside the capital (Bocas del

Toro, Chitre, Colon, David, La Chorrera, Las Tablas, San Miguelito and Santiago). The US Department of Justice, through ICITAP, carried out a parallel program aimed at the investigative police and coordinated its work with that of the prosecutors trained by USAID. Since 1990, ICITAP has provided substantial amounts of technical assistance, training and equipment.

Illustrative Approaches

With the activities identified below, USAID/Panama will address the weaknesses outlined in the sector problem analysis and the intermediate results/constraints sections above. Through the training of justice sector personnel, we will enhance the professionalism of the Judiciary, including the AGO, and will improve the efficiency of the system. By increasing the availability of legal aid and training in the use of alternative sentencing mechanisms, we will address the lack of access to the justice system and the excessive number of prisoners in pretrial detention. Finally, we will address the problem of corruption by supporting ethics training and promoting transparency in the Office of the Attorney General and the judiciary.

Enhance the professionalism of the judiciary (judges, prosecutors and public defenders).

USAID will strengthen performance monitoring and evaluation systems for prosecutors and public defenders. The program will feed into and complement the IDB program to reorganize the Judicial School and provide for greater career opportunities for the judiciary. Initially, training will focus on the prosecutors. They will be trained in new investigatory techniques with the objective of improving both technical skills and inter-institutional communications. Limited training also will be provided for criminal judges and will focus on changes introduced in the codes over the past two years. Training will also cover the drafting of judicial codes, judgments and reports. Concurrently, USAID will work closely with the GOP, the IDB, the Spanish government and the European Union to develop a more detailed strategy for effecting change in the judiciary. This is expected to lead to the identification of additional priority training needs and the implementation of related training activities for prosecutors and public defenders. This activity will be linked to the ICITAP work on training investigators within the PTJ and the DIIP (Police Directorate of Information and Investigations, the plain-clothes detective division of the PNP). The overall intent of the training for all officers in the system is to assist in reducing the criminal case backlog and hence the considerable number of Panamanians in jail.

Increase the availability of legal aid and alternative sentencing mechanisms.

USAID will promote improvement and expansion of effective pro bono or subsidized legal services to provide assistance to poor and disadvantaged prisoners and victims of crime. The Mission also will examine the feasibility of widespread use of alternative sentencing mechanisms to help reduce the prison population and will explore the use of ADR as an alternative to the use of the formal justice system to address and resolve conflicts and disputes. Specifically, USAID will support a study of night/administrative court systems with a view towards determining means to make them fairer by using alternatives such as sentencing to community service, rather than incarceration, for misdemeanors.

Strengthen justice sector personnel in ethics and anti-corruption principles, and promote transparency in the courts. USAID will support ethics training during other courses provided for court professionals and support staff, with emphasis on judges, prosecutors and public defenders,

to sensitize them to the need to provide their services transparently. Ethics training will inform professionals in the judiciary of their obligations under law and regulation. The ultimate intent of this activity is to develop an ethos in the sector that prizes honesty, objectivity and impartiality, as well as intolerance for practices which contravene those principles. In order to promote transparency, support will also be given to the courts to improve dissemination of information. e.g., the format of the Judicial Registry will be redesigned to make it user-friendly. This activity will not only apply to the criminal sector, but will also involve the commercial courts.

The IDB program will emphasize work in four areas.

Revise criminal procedures and the criminal code. The previous administration established two high level commissions in 1998 to conduct an assessment of the judicial system and recommend corrective actions. Although the commissions' reports are not likely to be published, USAID is distributing their findings informally to the current government. The new government will determine any future steps for the revision of procedures and codes. The IDB, together with USAID and other donors, is prepared to assist the new government with technical assistance.

Reorganize the Judicial School and judicial career systems. The IDB will help the GOP reorganize the Judicial School with a view towards improving career opportunities for the judiciary and strengthening management of human resources within the judicial system. Specifically, this effort will include: 1) an in-depth review of the judicial career system and preparation of proposals for its improvement and consolidation; 2) the design and implementation of objective mechanisms for performance evaluations linked to an incentive system; 3) workshops and seminars to build consensus and implement recommendations for reorganizing, strengthening and increasing the autonomy and the institutional management of the Judicial School; and 4) the development of a sustainable training system which operates under agreement with universities, specialized agencies and other public or private entities to make better use of national and international resources.

Reduce the criminal case backlog. The IDB will help the GOP reduce the backlog of criminal cases by focusing on: 1) the design and introduction of a computerized information system of the penitentiary population; 2) the development of linkages for sharing information between the Judicial Branch, the Attorney General's Office and the prosecutors, and the Ministry of Government and Justice; 3) the procurement of computer equipment and the development and improvement of software; and 4) the preparation of a plan to reduce the number of prisoners awaiting trial, including a revision of related criminal legislation.

Improve management of the court systems. The IDB will initiate a longer-range effort designed to effect comprehensive and profound changes in the management of judicial services. This initial phase will concentrate on the establishment of two pilot regional judicial units in Panama City and Chiriqui. These units, once operational and evaluated, will be replicated in other regions of the country. The purpose of the activity is to redesign judicial management processes and systems for handling cases and to make the service more efficient and accessible. Specific activities include the final design of models for management and processes. In addition to an automated information system and the training of support staff, the IDB also will assist in the

development of physical infrastructure. The two pilot project for judicial units in Panama City and Chiriqui will include an office for court-appointed counsel, a mediation center for the judiciary branch, offices for prosecutors and the technical judicial police, a victims' assistance center and a community relations center.

Intermediate Result 2: Commercial Court Systems Functioning More Effectively

Description of Constraints

Increased socio-economic and technological changes in Panama during the past decade have resulted in a large number of complex business cases requiring equally complex legal solutions. The steady growth in the number of foreign and domestic companies operating in Panama has led to an increase in the number of commercial and legal transactions and, consequently, in the number of cases of litigation. As a result, the institutions responsible for dispensing commercial justice have simply been unable to keep up with the demand in an expeditious and adequate fashion.

Interwoven with the foregoing problem is the issue of corruption. This issue can manifest itself in many ways, ranging from questionable seizures/expropriations of lands held by citizens from Panama, the United States and other countries, to opaque bidding practices, to inexplicable court decisions against foreign or domestic investors, to the breach or abrogation of contractual agreements. Steps need to be taken to ensure transparency of conflict resolution systems, be they formal or informal. In addition, action is required to inculcate ethics and values of fairness, objectivity and balance within the system. Causes of the problems include: 1) laws that foster delays and inefficiency; 2) the need to strengthen human resources in the sector, including the improvement of skills in alternative disputes mechanisms; and 3) management deficiencies in the court system.

Important advances are already being made. One such advance is the private sector's reactivation of a center for the mediation and arbitration of commercial disputes in the Panamanian Chamber of Commerce, Industry and Agriculture. The center provides arbiters and mediators for disputes to be solved outside the court system at the Panamanian Chamber of Commerce. It was designed to help introduce alternative dispute resolution (ADR) mechanisms that can be used by parties to negotiate outside the court, thereby reducing the caseload of the regular courts. New legislation in 1999 reinforced the new arbitration law by providing that arbitration decisions may not be appealed. In December 1999, the new President of the Supreme Court of Justice asked USAID to support the training of court directed mediators and conciliators.

Accomplishments/Reason for Engagement

In its predecessor work within the justice sector, USAID did not focus on issues of commercial law. However, one of the conclusions of the 1997 final evaluation of USAID's Administration of Justice Project was that a new era in Panamanian justice had begun, and it needed to be consolidated in the criminal area and expanded to the civil justice area if Panama is to make democratic and socio/economic advances. Also, in the recommendations, the evaluators

recommended that USAID find a way to develop a follow-on project to begin as soon as practicable so that the valuable forward thrust was not lost, and so that the achievements could be expanded to the civil courts as well.

Illustrative Approaches

The USG foreign policy interest of promoting American business overseas requires that more be done to make commercial courts function effectively. The strategy proposes solutions to the problems identified in the sector problem analysis and the constraints description section for Intermediate Result 2 through the implementation of the activities identified below. In coordination with the IDB and the Spanish, we will strengthen the skills of court professionals who will be engaged in ADR activities, and promote the use of these mechanisms in order to address the problems of lack of access to justice and the slowness and inefficiency of the system. This activity will require close coordination with the IDB and the GOP in the approval of new legislation. To promote an open, transparent system and address the problem of corruption, when we sponsor seminars, workshops and training courses, we will include components on ethics and anti-corruption principles, as we described earlier in the criminal section.

Strengthen professional skills for Alternative Dispute Resolution mechanisms. In July 1999, legislation establishing arbitration, conciliation and mediation as alternative dispute resolution mechanisms was approved. Implementing this new legislation, especially taking into account that most Panamanians are not used to solving conflicts out of court, will require publicity to market the new options and training to improve the technical knowledge and skills of staff and professionals. The Panamanian Chamber of Commerce's Center for Conciliation and Arbitration has been successful in providing ADR mechanism outside the formal judicial system for large companies and individuals with cases involving large sums of money. Small businesses and individuals who are not served by this center, because of their inability to pay, will continue to depend on the courts for resolution of their cases. Therefore, USAID will support the courts in the first steps towards creating ADR mechanisms within the courts and will provide training to enhance the skills of court staff involved in the use of these mechanisms. The training will cover concepts, processes, experiences and lessons learned in other countries and will highlight the benefits to be gained as a result of the use of these mechanisms.

For its part, the IDB, in addition to its training of judges within a revitalized Judicial School, will use two mutually reinforcing approaches. The IDB Program will emphasize work in the following areas:

Revise commercial legislation. The IDB will assist the GOP to improve the legislative environment in which the commercial justice system operates. This involves an assessment of existing legislation with a view toward identifying the causes for delays and congestion in the courts. Changes will be recommended and new legislation proposed.

Create temporary courts and provide for the appointment of temporary judges to clear backlog of civil and commercial cases. The IDB program is crucial to bringing a sense of normalcy to the system. The enormous backlog of cases saturating the system and the delay in resolving

conflicts contribute to a lack of access to justice. The IDB program will involve the installation of temporary courts and the contracting of full time judges and support staff on an interim basis.

Intermediate Result 3: Increased Public Pressure for Judicial Sector Reform

Description of Constraints

Panama's NGO sector is not well organized, particularly in the justice sector. At present, there is just a handful of NGOs that deal with the sector and its issues. These include the Foundation for the Promotion of Women (CEALP), the Justice and Peace Commission, the Foundation for the Development of Citizens Freedom, the Panamanian Bar Association and Santa Maria La Antigua University (a private Catholic university). In those few cases where a group is active, it tends to focus on one issue. NGOs need to organize themselves better, both as individual organizations and as a group representing NGOs involved in the sector, and they need to develop and aggressively act on a common agenda for changing the system.

A recent survey focused on Panamanian NGOs revealed: 1) a general lack of institutional capacity and resources to develop proposals or conduct research that focuses on broad justice sector issues; 2) ignorance of modern fund-raising techniques, project design and management; 3) concentration on narrow and specific interests, with little attention paid to root causes of difficulties within the overall legal context; 4) inability or lack of interest of even the most notable private sector organizations to develop an agenda to address pressing judicial problems that are obstacles to investment, and to tackle the lack of credibility of the justice system in its treatment of the business community in Panama; 5) lack of coordination with other similar groups to devise strategies and form united fronts to press for greater legal reform; and 6) failure to make effective use of the media to disseminate ideas and proposals. Outside assistance is desirable to support the progressive build-up of civil society. Progress in creating and maintaining organized societal pressure will be key for continuing justice reform.

The media itself pays little attention to the justice sector and has little knowledge of the system. Indeed, information in general is lacking about the system and how it works, at least insofar as the general public is concerned. Incisive, aggressive reporting and editorial stances on the part of the media, both print and electronic, will play an important role in generating change both on its own and as a complementary force to NGO efforts.

Accomplishments/Reason for Engagement

Aside from a grant for civil education in the 1990's to a women's NGO, USAID has had little experience to date in working with civil society in Panama's justice sector. Other US Mission organizations also have had little or no involvement in the sector, with the Public Diplomacy Section's (formerly the United States Information Service) training of four journalists in reporting on administration of justice issues being the extent of that involvement. Recognizing the need for a targeted and sustained effort to stimulate the development of civil society in Panama, USAID proposes to work in the area of civil society development in Panama through the creation of an NGO forum for organizations working in the sector. This process could be key to the establishment of effective democratic governance within the country. USAID plans to

engage the group of NGOs listed above. It is the intent of this strategy that these NGOs will promote demand for reform and will assist in the identification of requisite legal modifications to produce this reform. While this will constitute a new area of focus for USAID, it will not represent a new intervention for the Agency. USAID has considerable worldwide experience in the development of civil society in the justice sector, and this can be brought to bear in Panama.

Illustrative Approaches

Increased pressure/advocacy for continued reform through civil society organizations is key to achieving sustainable change and improvement in the justice sector. In any society, it is ultimately the citizenry at large that must take lead in shaping its social institutions. With the activities identified below, USAID/Panama will help increase demand for reform, through the promotion of civil society participation in justice issues and the training of journalists. Civil society, with the help of the media, will then push for legal and regulatory reforms, as well as budgetary increases and openness in policy formulation and personnel assignments. Civil society, again with help from the media, will also play a pivotal role by leading efforts of the populace in its demand for transparency in judicial issues as a means to discourage corruption.

Promote civil society participation in justice issues. USAID will promote participation of civil society in justice issues and will help them organize to work together in this area. USAID plans to unite civil society organizations in a civil society forum to promote justice sector reform. A steering committee to initiate the forum will be established. We have already identified the possible members of this committee, based on their interest and capabilities. These organizations are the Panamanian Bar Association, the Foundation for the Development of Citizens' Freedom – Transparency International, the Commission of Justice and Peace, USMA – Panamanian Catholic University, and CEALP – Center of Popular Legal Assistance. The first purpose of the forum will be to organize a major justice reform conference to promote dialogue between civil society and justice sector officials. Another activity will be the creation of a fund, under the forum's umbrella, to promote empirical research on problems of judicial independence, efficiency, transparency and access to justice. The forum will also be the mechanism to help its members identify specific areas for strengthening. USAID will provide general training to both environmental and justice sector NGOs (those involved in our Strategic Objective 1) and particular training to selected NGOs in each sector on fund raising, proposal writing, and project and financial management.

Strengthen journalists' ability to cover justice issues. NGOs by themselves will have a difficult time advancing arguments for improvement in the justice system without the participation of radio, TV, print and electronic media. There is a healthy democratic debate in the Panamanian media every day on justice issues. However, the media itself suffers from lack of knowledge of the justice system and alternatives for improvement. To respond to the need for more professional and responsible justice sector coverage by the media, as well as pointed investigative reporting, USAID/Panama will sponsor appropriate training for reporters and media executives. Training for reporters will start with such basic concepts as the meaning of legal terms, organization and functions of the judicial systems, judicial processes, and the differences between criminal and commercial justice systems. Training will also include more philosophical concepts such as the protection of the rights of the accused through refraining from the

premature publication of information that may affect rights to a fair trial. USAID technical assistance and training will enhance the capabilities of reporters and other media professionals to produce in depth investigative reporting and incisive editorials as tools to promote change, advocate reforms and discourage corruption.

Intermediate Result 4: Improved Collaboration Between Investigators and Prosecutors.

These activities will be carried-out by ICITAP with its own funds. Activities described in this strategy are important complements to the USAID program, and ICITAP and USAID will coordinate closely on the overall approach to the justice sector.

Description of Constraints

Since the International Criminal Investigative Training Assistance Program (ICITAP) became operational in 1990, it has spearheaded the conversion of Panama's military apparatus into institutions that embody civilian law enforcement concepts and ideals. This complex and challenging process continues to this day. It involves recasting all aspects of administrative and operational activities to provide effective law enforcement services to Panama. More importantly, it entails changing the very nature and culture of the police forces. For this process to succeed, both the PNP and the PTJ must function as honest and effective public servants and protectors under civilian control and direction.

Much remains to be done to achieve a comprehensive, cohesive and sustainable investigatory system that works well with the remainder of the judiciary. Issues pertaining to coverage of investigative authorities, coordination with other sector entities (particularly between the PTJ and the prosecutors within the Public Ministry), sustainability of investigative training capabilities and information sharing with other justice system entities still exist. These factors taken together continue to hamper administration of justice throughout the country.

Sustainability is particularly important. Without it, returns from ICITAP resources invested in training of the PTJ agents over the last ten years will not be as robust as they otherwise would be. At a minimum, ICITAP will re-establish momentum for improvement and reform in law enforcement by focusing on support to the PNP and the PTJ to continue improving efficiency and effectiveness in core development areas and by supporting special investigative units.

Accomplishments/Reason for Engagement

After nearly ten years of training and assistance, both the PNP and PTJ are providing basic police services and investigative services as required under Panamanian law. They have institutionalized the concepts of civilian policing and respect for human rights. Both the PNP and PTJ are responsive to and under the direction of civilian-elected officials, although there is substantial tension between the commander of the PTJ and his supervisor -- the Attorney General. In recent public opinion polls, the PNP has been found to be one of the most trusted institutions in Panama. During the recent general elections for president and other offices, the PNP demonstrated a high degree of professionalism in the manner in which it allowed political demonstrations to take place while at the same time maintaining public order. The public trust

and confidence in the PTJ is also at a high level as a result of the PTJ's resolution of several high profile crimes.

ICITAP will continue to work to introduce a sustainable investigatory system within Panama, focusing on the PNP and PTJ. ICITAP can already point to a number of accomplishments; however, additional efforts are required to further develop the country's capacity to investigate crimes adequately. The GOP is depending on the USG for assistance in this area because of the very limited involvement of other donors.

Illustrative Approaches

USAID has continued support to the ICITAP program beyond its prior 1999 termination date, because we are concerned that a premature termination will jeopardize the sustainability of the results achieved by ICITAP in prior years. The sustainability issue pertains in particular to efforts to integrate the work of the PTJ with that of prosecutors and to establish an investigator training organization for the PTJ. It is clear from current tensions between the AGO and PTJ, as well as the PTJ's lackluster vision of institutional development, that sustainability of ICITAP achievements is not a closed case. Changing cultural mindsets with respect to teamwork and collaboration takes time. The ICITAP strategy envisions a modest effort focused on the long-term sustainability of these cultural/institutional changes.

Developing protocols of interaction between the PNP and the PTJ. Increased collaborative interaction between the PNP, particularly with the DIIP, and PTJ will help assure adequate investigation of crimes. There is limited presence of the PTJ outside of the cities of Panama and Colon. The PTJ must rely on the PNP in non-presence areas to initiate the investigation of criminal activities. However, the PNP officers do not have the same level of investigative expertise as the PTJ. Also, PNP police officers are routinely rotated from post to post resulting in a loss of institutional memory. To improve collaboration between the PNP and PTJ, protocols or guidelines will be developed that will be formally agreed to by both institutions. To this end, ICITAP will negotiate and implement appropriate Memoranda of Understanding between the PNP and PTJ. Training will be provided in the implementation of the protocols in both ACAPOL (the police academy) and the investigators' school. Finally, a procedural manual that will define the respective roles and responsibilities for both the PTJ and PNP in investigations will be developed.

Enhancing the institutional capacity of the PNP and PTJ, especially their investigative capabilities. Both the PNP and PTJ continue to experience difficulties in the investigation of crimes. Hence, assistance will be provided to help the PNP and the PTJ to upgrade and integrate more effectively their investigative activities. Although the PNP's investigative division (DIIP) has more officers than the PTJ, they do not provide nationwide coverage and are still lacking in training. Many cases are lost at the outset due to the PNP's inadequate treatment of evidence and other investigative missteps. To address the needs of the PNP and the PTJ, a unified basic investigative course will be developed. Assistance will be provided to ensure that all PTJ investigators and police officers assigned to DIIP investigative units complete the detective training courses. The PTJ staff suffers low morale, lack of professional skills, arbitrary assignments and high turnover. The PTJ encounters difficulties resulting from failure to adhere

to recruitment, selection, evaluation, promotion and training policies and procedures. ICITAP will provide technical assistance and training to assist in the establishment of an effective merit-based selection and promotion system linked to in-service training education and performance evaluations.

Strengthening the integration between the PTJ, the DIIP and the Attorney General's Office. There is a need to further integrate the criminal investigation process between the PTJ and the prosecutors supervised by the Attorney General (AG). The Public Ministry under the leadership of the present AG has undergone significant changes in some key areas. However, the overall structure and tensions between the PTJ and the Attorney General's Office (AGO) remains basically unaltered. This contributes to inefficiency in the investigation and prosecution of most types of crime. There is poor, inconsistent and fragmented communication between the prosecutors and the PTJ and over-formalization of investigation through strict adherence to the requirements of the Panamanian legal process. Many prosecutors and judges have not accepted the amplified investigative powers of the PTJ and -- under special circumstances -- the PNP and customs inspectors, under a series of reforms starting with the Organic Law of the PTJ in 1991 (Law 16). The prosecutorial establishment has been slow to utilize these liberalized processes preferring instead to conduct investigations in the traditional manner through the cumbersome written system. This system involves a number of labor-intensive steps and provides opportunities for judicial missteps. For instance, under the system, witnesses' statements are taken by untrained personnel.

Intensive training and technical assistance in preliminary investigations, in many cases joint training, will be provided to the PTJ, the DIIP and the AGO. This training will be designed to improve technical skills and to reinforce the role and responsibility of each of these key players in working together to assure effective and swift law enforcement.

Establishing information management systems between the PNP, PTJ and the Attorney General's Office. The lifeblood of any law enforcement system and ultimately the entire justice sector is the flow of information within the system. If the information moves efficiently, the law enforcement agencies can respond promptly to calls from the public and react quickly in fast-moving investigations. Assuming appropriate systems, that information can flow to prosecutors and the courts, thereby improving the whole system.

The PTJ is the leader among law enforcement agencies in Panama in the development of automated information management systems. The PTJ has an automated criminal records database which is accessible by the PNP. It also has a crime analysis unit that is capable of analyzing information from one investigation or various investigations and developing common elements that tie the facts together. The crime analysis unit is capable of processing complaints through the reception center where complaints are logged in efficiently. However, an automated case tracking system has yet to be installed within the PTJ, and this will be a focus of ICITAP assistance. Further phased systems development already is underway for the PTJ under the ICITAP program. This includes: 1) a pilot project that would link the crime reporting center in Panama City with agencies in Chiriqui, Colon and San Miguelito; 2) development of modules for processing images and their incorporation into existing systems; and 3) establishment of a wide area network involving the crime reporting center in Panama City and all the provinces, as well

as providing for interconnectivity of databases between the PTJ and other GOP entities such as the Public Ministry.

The prosecutors' office has not kept pace with the PTJ in the development of automated information management systems, and this also poses difficulties. Information systems in the prosecutor's realm are rudimentary and concentrate on mere numbers. Moreover, the results of PTJ and DIIP investigations often do not appear in prosecutors' case files. While this may seem a minor detail, this is a grave deficiency in a written system where documents serve as proof. If the evidence is not in a file, it will not be taken into account at any subsequent trial.

The PNP is by far the largest generator of crime-related information in Panama. While the PNP has direct access to some of the PTJ's computerized databases, the reverse is not true. The PNP's information databases have not been computerized for the most part. PNP has the requisite hardware. However, it does not have adequate software to make effective use of the hardware. This limits the PNP's ability to access its own criminal records on a timely basis and to provide automated records to other government agencies. It also affects negatively its ability to manage and supervise workloads and to generate the necessary statistical information required to do legitimate strategic planning.

ICITAP will provide technical assistance to support the development of software for both the PNP and the prosecutors in the Public Ministry, together with requisite training. This will facilitate effective interconnectivity between the PNP, PTJ and the prosecutors within the Public Ministry. Emphasis will be placed on the development of automated information management systems.

Developing a sustainable training system for investigators. The PTJ has not allocated the staff nor committed the funding necessary to sustain its investigative training system over the long-term. While ICITAP has trained trainers over the last few years, ACADET, PTJ's school for investigators, does not have a strategy to ensure its long-term sustainability. While not problematic in the near term, this may spell trouble within the next few years. Curricula will not be updated, new instructors will not be trained, and classes will shrink or disappear as ICITAP-trained instructors leave or retire from the PTJ.

To prevent this from happening, ICITAP will assist the PTJ to develop a strategic vision through a set of action plans. These plans will include a focus on the institutionalization of training activities. The PTJ must be able to provide training that will permit PTJ personnel to meet clear, well-defined job-related standards for merit-based recruitment, selection and promotion. As part of the strategic planning exercise, budgets for maintaining the school over the medium-term will be developed, as well as indicators and methodologies to measure the impact of the training. The basic curriculum will be developed jointly between the PTJ, the Public Ministry and ICITAP in close collaboration with the IDB and other relevant donors. Limited commodities such as computers and software, text books and reference material may be provided. Skills of training staff personnel will be upgraded where warranted and the training of trainers also will be pursued when the PTJ makes a commitment to identify a core group of trainers and to budget for the function.

The IDB will play a limited role in achieving objectives for IR 4, focusing on forensic management systems.

Redesign forensic evidence management systems. The management of physical custody of evidence generally is deficient. The Forensic Medicine Institute, in particular, is poorly organized. Its managers lack knowledge of specialized techniques, and this problem is compounded by inadequate equipment and infrastructure. There is constant risk that evidence will be lost through theft or destruction. Consequently, prosecutors cannot reliably produce proof of crimes. This contributes to a lack of confidence in the criminal justice system. Further, lack of evidence, equipment, and knowledge of new, scientific methodology often makes it impossible to determine the causes of many deaths. The IDB will focus on: 1) management and reorganization of the Forensic Medicine Institute; 2) the handling, classification, storage and safe-keeping of evidence; and 3) the repair of existing equipment and the procurement of new equipment.

c. Sustainability of SO Results

Democracy in Panama is still somewhat fragile despite ten years of progress and substantial accomplishments. Panama has re-established many of the essential laws and institutional structures fundamental to the justice sector; however, two decades of authoritarian rule have not been easy to erase. Frequent criticisms of the functioning of justice institutions variously blame inadequate systems, outright corruption, or individual incompetence for inequitable and unacceptably slow implementation of the law. More needs to be done to complete the job of justice sector reform.

A major reason is that civil society has not actively participated in the building of the justice sector. Experience from previous USAID justice reform projects has shown that promotion and even achievement of legal and technical reform within the institutions of the justice sector is not enough to guarantee change and effectiveness. To counteract the natural inertia and frequent political pressures within justice sector institutions, the development of improved technical capacity and expertise within the institutions must be complemented with internal and external monitoring, evaluation and pressure from civil society.

The sustainability of the justice system objective requires engagement of civil society to create and maintain organized societal pressure. Intermediate Result #3, Increased Public Pressure for Judicial Sector Reform, includes a number of specific activities whose lasting significance will be their cumulative contribution to the overall sustainability of the entire strategic objective and each intermediate result.

Building blocks for involvement of civil society in this SO do exist. The Panamanians press is vocal. Despite its primary concentration on sensationalist reporting, it has the potential to provide the basis for the development of informed public opinion on major public policy issues such as those arising from deficiencies within the justice system. Opposition political parties express themselves very strongly on justice sector issues and a number of organizations in civil society have already undertaken serious work in the justice sector on an individual basis.

The law enforcement community, especially narcotics-related units, has been receiving commodities and training from a variety of donors, including a number of USG agencies. These investments have not always had the impact they should due to fundamental weaknesses in the management of human resources, the inability of the law enforcement agencies to obtain the necessary budgetary resources to accomplish their missions and the way they work together. With a cohort of experienced officers reaching retirement in the PTJ and the PNP, establishing a sustainable strategy to assure the financing and implementation of training is an urgent priority. On March 1, 2000, President Moscoso dedicated the new PNP training facilities at the former Howard Air Force base, but the PNP still requires significant help, especially in the area of information management and training for managers and supervisors. The PTJ has yet to develop a vision and make a long-term commitment of people and resources to training. However, the most difficult issue that must be resolved for sustainable improvements in effective law enforcement remains the integration of the three key law enforcement entities: the PTJ, the PNP and the Office of the Attorney General.

d. Measuring Achievement

Collection of data for the indicators will be built into the implementation of the activities. The implementing contractor(s) will develop a tracking system that will assemble, format and analyze information and periodically report on progress. As required, USAID will also use the most cost-effective means for periodic surveys and seek opinions of focus groups concerning key issues.

Indicators and Targets for SO2 and IRs

Intermediate Result 1: Criminal Court Systems Functioning More Effectively

- Reduction in percentage of inmates held in pretrial detention.
- Number of persons convicted of administrative misdemeanors in the metropolitan area who receive alternatives to imprisonment as a sentence.

Intermediate Result 2: Commercial Court Systems Functioning More Effectively

- Number of court officials trained in the ADR system.
- Number of cases treated by ADR mechanisms.

Intermediate Result 3: Increased Public Pressure for Judicial Sector Reform

- A forum of NGOs is created to identify justice sector problems and promote justice sector reform.
- Number of journalists trained to cover justice issues.

Intermediate Result 4: Improved Collaboration Between Investigators and Prosecutors

- Establishment of case tracking to assure that investigations are prosecuted.
- Long-term plan for the sustainability of ACADET adopted

Part III. RESOURCE REQUIREMENTS

Program Resources Required for the Strategy Period

USAID has estimated the program resources required to reasonably ensure the achievement of the Strategic Objective over the planning period. The attached tables present the details of two options in compliance with the directives of 98 STATE 153699, which required that the Mission consider high and low options, subject to the availability of funds.

The high option is at a level of \$2.0 million per year in ESF resources to finance activities designed to achieve Strategic Objective 2. The low option envisions a level of \$1.0 million in ESF resources.

As stated in the introduction to SO 2, the Mission is proposing a program to identify and test approaches to solving the major problems in the justice sector. During this time, experimental approaches to the various elements of the strategy will be undertaken and evaluated with the intent of determining whether to continue the SO and, if so, for how long and through the use of which implementing mechanisms.

Due to the very limited funding for this SO, the Mission will hire local expertise to administer the pilot period of the activity. An in-depth progress review in 2002 will determine if the SO is to be extended and, if so, the nature and magnitude of activities beyond 2002. The final resource mix will be contingent on the results of the review.

Impact on SOs if Program funding levels are insufficient.

The low option would result in several consequences for the new ESF-funded AOJ program whose financing would be cut in half from \$2 million annually to \$1 million annually. While the Mission's work in the criminal justice system would be cut minimally, all other elements of the program would be cut more severely. The Mission's work to address the root causes of corruption through the strengthening of civil society NGOs/CBOs, work with the media and planned activities to institute alternative dispute resolution mechanisms to settle commercial disputes would be affected. That portion of the Mission's AOJ program addressing the criminal courts would be the least affected; the Mission remains most concerned about the large number of individuals, especially the poor, who are in pre-trial detention and those individuals placed in prison for extended periods of time for committing misdemeanors.

Program Management Requirements: Operating Expenses and Staffing.

From 1990 to the present, USAID/Panama has reduced its total staff from 85 to 50. This has resulted in a reduction from 13 US Direct Hires (USDH) to two (2), and a reduction from four (4) US Personal Services Contractors (USPSC) to one (1).

USAID/Panama's proposed program will require a period of Mission stabilization to an aggregate staff level of approximately 46 for most of the program's duration.

Operating Expense Resources Required:

USAID/Panama OE needs have decreased from \$1,597,671 in FY 1998 to \$1,500,000 in FY 1999 and to \$1,000,000 in FY 2000. OE levels in FYs 2001 and beyond are estimated to be \$1.0 million per year.

Assumptions underlying the above include:

Any additional cost due to the International Cooperative Administrative Support Services (ICASS) will be covered completely from USAID/Washington funds to the Mission for FY 2000.

FSN cost of living salary increases are 3% per year beginning in FY 1999 (in addition to regular step increases).

Increase in FSN Medical and Life Insurance premiums.

Staffing as reflected in the staffing chart.

ANNEX A

1. **The GOP's economic policy direction.** The original strategy document stated that the GOP was in the process of implementing an ambitious economic reform program that has accelerated fundamental structural changes. While this was true of the Perez Balladares government, it is no longer the case. Six months into the Moscoso Administration there is, as yet, no clear strategy for economic development. The government has not stepped up to tackle needed tax and administrative reforms and trade liberalization has slowed. They are going backward in the trade area.
2. **The GOP's commitment to privatization.** The original strategy document reviewed and commended the Balladares Government's privatization record and suggested that the Moscoso Government is likewise committed to privatization. This no longer appears to be the case.
3. **Panama's debt rating and structure.** The original strategy document stated in the Section on Major Development Constraints and Opportunities that Panama has been able to retain its investment grade debt rating. This has changed: Panama's debt is not rated investment grade by any rating agency. The five main rating agencies have Panama in a category just below investment grade. Moreover, Panama's excessive external debt remains a serious problem, contrary to what the strategy paper suggests.
4. **Panama's own financial resources.** The original strategy document does not state that Panama has 1.3 billion in government deposits and a similar amount in stock in recently privatized monopolies. This is a pertinent point which should be considered in any discussion of financial assistance to Panama.

T:SO 2 Justice/Strategy SO2 Final
Revised 3-28-00 – 3:00 pm.
PPD

USAID/PANAMA
STRATEGIC PLAN 2000-2002

"ESTIMATED PROGRAM BUDGET"
(High Option)

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	(planning period) TOTAL
SO2 Fairer and Faster Justice Systems Facilitated	1,600,000	2,000,000	2,000,000	0	0	0	0	5,600,000
IR-1 Criminal court systems functioning more effectively	772,000	1,127,500	1,071,500	0	0	0	0	2,971,000
IR-2 Commercial court systems functioning more effectively	450,000	450,000	450,000	0	0	0	0	1,350,000
IR-3 Increased public pressure for judicial sector reform	200,000	200,000	200,000	0	0	0	0	600,000
M&S Strategic Objective No. 2 (SO2) management and support	178,000	222,500	278,500	0	0	0	0	679,000
PROGRAM TOTAL	1,600,000	2,000,000	2,000,000	0	0	0	0	5,600,000

USAID/PANAMA
STRATEGIC PLAN 2000-2002

"ESTIMATED PROGRAM BUDGET"
(Low Option "C")

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	(planning period) TOTAL
SO2 Fairer and Faster Justice Systems Facilitated	1,000,000	1,000,000	1,000,000	0	0	0	0	3,000,000
IR-1 Criminal court systems functioning more effectively	597,000	552,500	496,500	0	0	0	0	1,646,000
IR-2 Commercial court systems functioning more effectively	75,000	75,000	75,000	0	0	0	0	225,000
IR-3 Increased public pressure for judicial sector reform	150,000	150,000	150,000	0	0	0	0	450,000
M&S Strategic Objective No. 2 (SO2) management and support	178,000	222,500	278,500	0	0	0	0	679,000
PROGRAM TOTAL	1,000,000	1,000,000	1,000,000	0	0	0	0	3,000,000

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED

APPROVED: 00/00/00 **COUNTRY/ORGANIZATION:** USAID/PANAMA

RESULT NAME (IR-1): Criminal court systems functioning more effectively

INDICATOR No. 1.1: Reduction in percentage of inmates held in pretrial detention

UNIT OF MEASURE:	YEAR	PLANNED	ACTUAL
<ul style="list-style-type: none"> ▪ Percentage of inmates held in pretrial detention 	2000 Baseline		59%
<p>SOURCE:</p> <ul style="list-style-type: none"> ▪ GOP prison statistics 	2001	56	
<p>INDICATOR/DESCRIPTION:</p> <p>This indicator will measure the percentage of detainees held in pretrial detention</p>	2002	52	
<p>COMMENTS:</p> <p>The Spanish Government and the European Union are providing assistance to the GOP to improve conditions in the prison system. An important element of the assistance is the establishment of an automated database to track the status of all detainees. USAID will make use of data generated by this system to evaluate the efficiency of the criminal court system.</p>			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-1): Criminal court systems functioning more effectively			
INDICATOR No. 1.2: Number of persons convicted of administrative misdemeanors in the metropolitan area who receive alternative to imprisonment as a sentence			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Number of alternative sentences 	YEAR	PLANNED	ACTUAL
	2000 Baseline		TBD
SOURCE: <ul style="list-style-type: none"> ▪ Court records 	2001		
INDICATOR/DESCRIPTION: This indicator will measure the number of people convicted of administrative misdemeanors in the metropolitan area who receive non-prison punishment. Administrative misdemeanor is defined as an offense consisting of a violation of an administrative rule or regulation punishable by imprisonment or non-prison punishments such as fine, bond, forfeiture or community service.	2002		
COMMENTS: There is no caseload management system for administrative misdemeanors. Currently, there is no promotion of alternative sentencing, although there is public support and support from the President of the Supreme Court. USAID will assist in the development of a pilot effort in metropolitan area districts of Panama, Colon and San Miguelito.			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-2): Commercial court systems functioning more effectively			
INDICATOR No. 2.1: Number of court officials trained in the ADR system			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Number trained 	YEAR	PLANNED	ACTUAL
	2000 Baseline	0	0
SOURCE: <ul style="list-style-type: none"> • Consultant reports 	2001	TBD	
INDICATOR/DESCRIPTION: <ul style="list-style-type: none"> • This indicator will track the number of Court officials trained in Alternative Dispute Resolution (ADR) mechanisms. 	2002	TBD	
COMMENTS: Caseload management of commercial disputes is a serious problem. The number of pending cases at any given time exceeds substantially the level of pending cases in the criminal system. However, adequate mechanisms for ADR are not yet in place. The intent is to train court officials into the use of and effectiveness of ADR mechanisms, so that in the future, demand for their use will increase and can reduce the number of cases entering the formal system.			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-2): Commercial court systems functioning more effectively			
INDICATOR No. 2.2: Number of cases treated by ADR mechanisms			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Number 	YEAR	PLANNED	ACTUAL
	2000 Baseline		19
SOURCE: <ul style="list-style-type: none"> • Court records and Chamber of Commerce records (and other private providers of ADR) 	2001	TBD	
INDICATOR/DESCRIPTION: Number of cases in which the parties formally enter into conciliation, mediation, or arbitration.	2002	TBD	
COMMENTS: The Panamanian Chamber of Commerce offers an arbitration service. USAID will provide training to the Court to support this service and assist in establishing court-provided ADR mechanisms.			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-3): Increased public pressure for judicial sector reform			
INDICATOR No. 3.1: A forum of NGOs is created to identify justice sector problems and promote justice sector reform.			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Yes/No 	YEAR	PLANNED	ACTUAL
	2000 Baseline	No	No
SOURCE: <ul style="list-style-type: none"> • Contractors' reports • USAID reports 	2001	No	
INDICATOR/DESCRIPTION: By the end of the first year the forum is created. On the second year the forum exists and has identified the major problems of the justice sector.	2002	Yes	
COMMENTS: During the first year the forum will be prepared. We anticipate that by the end of the year one, the forum will have met once. On the second year, the forum should have identified major problems within the sector and initiated dialogue with GOP institutions towards achieving a consensus.			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-3): Increased public pressure for judicial sector reform			
INDICATOR No. 3.2: Number of journalists trained to cover justice issues			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Number trained 	YEAR	PLANNED	ACTUAL
SOURCE: <ul style="list-style-type: none"> • Consultant reports 	2000 Baseline		TBD
INDICATOR/DESCRIPTION: Number of journalists trained to cover justice issues.	2001		
COMMENTS: Baseline will be monitored in 2000 and targets will be set at that time.	2002		

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-4): Improved collaboration between investigators and prosecutors			
INDICATOR No. 4.1: Establishment of case tracking aimed at assuring that cases investigated are prosecuted.			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Case tracking established to link cases turned over by the Technical Judicial Police (PTJ), PNP, or other sources to the Attorney General's Office (Yes/No) 	YEAR	PLANNED	ACTUAL
	2000 Baseline		TBD
SOURCE:	2001		
<ul style="list-style-type: none"> • PTJ records 	2002		
INDICATOR/DESCRIPTION:			
Case tracking of cases turned over by the PTJ or PNP to the Attorney General's office.			
COMMENTS:			
Starting in 2003, we will report the ratio of completed investigations to reported crimes.			

Performance Data Table

STRATEGIC OBJECTIVE No. 2: FAIRER AND FASTER JUSTICE SYSTEMS FACILITATED			
APPROVED: 00/00/00 COUNTRY/ORGANIZATION: USAID/PANAMA			
RESULT NAME (IR-4): Improved collaboration between investigators and prosecutors			
INDICATOR No. 4.2: Long-term plan for the sustainability of ACADET adopted.			
UNIT OF MEASURE: <ul style="list-style-type: none"> • Plan established (by 2001) and updated annually (Yes/No) 	YEAR	PLANNED	ACTUAL
	2000 Baseline	No	
SOURCE: <ul style="list-style-type: none">• Technical Judicial Police (PTJ)	2001	Yes	
INDICATOR/DESCRIPTION: <p>Existence of long-term plan, including long-term objectives, structure, course curriculum (basic skills, specialized skills and continuing education), permanent staff of trainers, and budget sources.</p>	2002	Yes	
COMMENTS: <p>Long-term plan to be approved in 2001 will provide a strategy for institutionalizing a vision for the PTJ training school, ACADET. Updates for budget and curriculum will be provided annually.</p>			