

*A.I.D. Technical Report No. 10*

# **A Strategic Assessment of Legal Systems Development in Honduras**

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The views and interpretations expressed in this report are those of the authors and should not be attributed to the Agency for International Development.

# TABLE OF CONTENTS

	<b>Page</b>
Preface . . . . .	v
Summary . . . . .	vi
Glossary . . . . .	ix
Map . . . . .	x
1. Introduction . . . . .	1
Purpose of the Assessment . . . . .	1
Assessment Issues . . . . .	2
A Note on Methodology . . . . .	3
Why Honduras? . . . . .	5
2. A.I.D. and AOJ in Latin America . . . . .	7
U.S. Policy Objectives and the Emergence of AOJ . . . . .	7
Democratization in Honduras: A U.S. Policy Focus . . . . .	8
Origins of the A.I.D. Honduras AOJ Project . . . . .	9
The Bilateral SDI-AOJ Project . . . . .	10
3. Impact of the AOJ Project . . . . .	15
The Honduran Judiciary . . . . .	15
The Judicial Career Law . . . . .	18
The Judicial Budget . . . . .	20
Judicial Services . . . . .	21
Public Prosecutors and Public Defenders . . . . .	21
Justices of the Peace . . . . .	26
Summary . . . . .	30
4. Lessons in Project Management . . . . .	30
Contracting Arrangements . . . . .	30
Technical Assistance . . . . .	31
Coalition Building and Strategic Planning . . . . .	32
Conditionality . . . . .	33
Sustainability . . . . .	34
Reassessment . . . . .	35

## TABLE OF CONTENTS (cont.)

	<b>Page</b>
5. Assessment of the Honduras AOJ Strategy . . . . .	36
The Goals of the AOJ Strategy . . . . .	36
Organizational Change Strategies . . . . .	37
The Problem of Demand . . . . .	39
AOJ as a Replicable Strategy . . . . .	40
 Bibliography	

## **PREFACE**

**T**his strategic assessment of the Agency of International Development's (A.I.D.) Administration of Justice (AOJ) program in Honduras represents the second of an ongoing series of field studies intended to produce an overall evaluation of the Agency's experience in that sector.

The Center for Development Information and Evaluation (CDIE) assessment team, consisting of two lawyers and two social scientists, spent 4 weeks in Honduras during August and September 1992, analyzing the impact of the AOJ program. Extensive document review and large numbers of interviews were undertaken with Hondurans associated with the judicial system. The assessment team is particularly indebted to these many individuals who with great patience assisted the team in its work. Similarly, the team wishes to acknowledge the assistance of Emily Leonard and Karen Otto from the A.I.D. Mission.

## SUMMARY

*The Nature of the Report.* This report is based on a 4-week Center for Development Information and Evaluation (CDIE) team field study to Honduras in August and September 1992, and constitutes the second country study of the U.S. Agency for International Development's (A.I.D.) Legal Systems Development (LSD) assessment, more commonly known in the Latin America region as the Administration of Justice (AOJ) program. An initial study was undertaken in Colombia in early 1992, and future field studies, some of which will be in Asia, will be undertaken, with an overall assessment synthesis anticipated in 1994.

The central objective of the study series is to derive strategic lessons for the Agency's LSD programs as part of its Democratic and Governance Initiative. Thus, this study of Honduras is not intended as a project evaluation. Rather, its emphasis is on issues that provide more general insights in improving our understanding of how to formulate more effective LSD strategies in countries like Honduras.

*Why Honduras?* Honduras was selected for study for several reasons. First, Honduras exemplifies many of the classical political/socioeconomic characteristics of early developing countries. Second, Honduras manifests many favorable conditions that would contribute to a successful LSD effort. Finally, Honduras has been the recipient of a substantial and ambitious A.I.D.-sponsored LSD effort. In brief, Honduras constitutes an excellent learning laboratory in offering instructive policy lessons for donor agencies undertaking LSD programs.

*Host-country Setting and U.S. Policy Concerns.* The Honduran judiciary is shorthanded of staff and resources, burdened with antiquated judicial procedures, and has not been able to cope with a burgeoning backlog of cases. There are frequent allegations that many judges are corrupt and incompetent, and the courts have not been able to deal effectively with cases of human rights violations and incidents of politically motivated crimes. The U.S. has sought to assist the Government of Honduras in addressing these weaknesses by undertaking a bold and ambitious effort to enhance the professionalism and institutional capacities of the judicial branch.

A.I.D. investments in the Honduran judiciary reflect an emphasis of U.S. foreign policy interests, which emerged in the early and mid-1980s, in strengthening the country's nascent democratic institutions. Assistance to the Honduran judiciary began in the mid-1980s, through a regional project, and in 1989 a substantial bilateral project was initiated to further enhance the effectiveness and efficiency of the justice system.

*The A.I.D. LSD Strategy.* The A.I.D. Mission has pursued a three-pronged strategy which focuses on (1) implementing a judicial career law, (2) increasing the judicial budget, and (3) enhancing the quality of judicial services. Priority has been given to the first element of shifting the judiciary from a system of appointments based on patronage to one based on merit and professional qualifications.

*Program Impact.* With respect to implementing a judicial career service, A.I.D. has assisted the judiciary in developing computerized systems to compute salary scales and job classifications, along with technical manuals and procedures for the recruitment, examination, selection, performance appraisal, and promotion of judicial officials and judges based on merit. These systems are now ready for implementation and their introduction will require a major change in the way the political parties in Honduras relate to the judiciary. The parties derive power and financial resources from patronage, which is pervasive throughout the Honduran Government. The judicial career measures represent a significant departure from these traditional modes of judicial appointment and will therefore constitute a major test of commitment to reform on the part of the Honduran political elite.

A.I.D. has expended considerable resources in computerizing the judiciary's entire budget, accounting, procurement, and auditing procedures. These procedures have recently been introduced, enabling the judiciary for the first time to prepare budget submissions that reflect better articulated program priorities, and demonstrate a command of the way it manages and expends its resources. These improvements should, it is hoped, help convince the Ministry of Finance to allocate larger budget to the judiciary. It is too early, however, to arrive at any definitive conclusions about the future prospects for increases in the judicial budget.

The third major component of the LSD strategy focuses on improving the provision of judicial services by hiring a young cadre of attorneys who serve as prosecutors, public defenders, and justices of the peace. In interviews with a sample of these individuals, it was apparent that they were highly dedicated to their work and felt that they had improved the quality of judicial proceedings. However, they also indicated that major structural reforms will be needed in the justice system in order to achieve significant gains in judicial efficiency and effectiveness.

## **Strategic Issues and Tentative Conclusions**

1. Proponents of the Honduran judicial reform effort insist that building a judicial career service based on merit rather than patronage is necessary for achieving more accountable and credible judicial performance. However, given the kinds of opposition civil service reforms encounter in many early developing countries, consideration of alternative strategies to ensure higher levels of professional requirements in judicial appointments and performance may be more appropriate or feasible in improving judicial performance in some countries.

2. An improved judiciary along with supportive increases in budgets is in some measure a reflection of political coalitions and constituencies which have an interest in judicial reform. A major challenge for a donor agency is to craft strategies which can assist the formation of coalitions within and without the judiciary to support a reform agenda.

3. A focus on judicial reform, as represented in the Honduran strategy, makes accessible the direct benefits of the law to a small fraction of the population involved in individual legal disputes. For early developing countries, some examination is needed in exploring strategies which would spread the benefits of the law to larger segments of the population.

4. The prospects for sustaining the judicial reform effort in Honduras are still uncertain as changes in political leadership could create setbacks. Legal strategies, therefore, need to consist of a diversified portfolio of activities, with investments in both the judiciary and the nongovernmental organization sector, thereby ensuring that a reversal in one area need not jeopardize advances in others.

5. Given the political sensitivities associated with programs in legal systems development, for any one project it would appear necessary to devise contracting arrangements that would allow a Mission to exercise close control over the provision of technical services.

6. Building elite coalitions supportive of substantive judicial reform, in which fundamental roles are redefined in the way the judiciary renders justice, will require a level and kind of technical assistance distinctly different from the kinds of technical assistance provided in modernizing court administration.

7. The Honduran experience suggests that over time a donor can work in a collaborative manner with a host government in addressing politically sensitive issues involving judicial reform.

The Honduras legal development program is reaching a critical threshold in which the good faith and commitment of the Government of Honduras to judicial reform will have to be fully evident in order for the application and consolidation of the innovations sponsored by the A.I.D. project to proceed. Thus, the next several years will be crucial in determining whether the Honduras strategy is appropriate for Honduras, and perhaps for other countries like Honduras. For this reason, it is recommended that CDIE consider monitoring the Honduran case, on a periodic basis, as an important bellwether learning experience in the Agency's portfolio of legal development projects.

## **GLOSSARY**

- A.I.D. - Agency for International Development
- AOJ - Administration of Justice
- AHSOSEL - Honduran Association of Legal Services
- CDIE - Center for Development Information and Evaluation
- CDSS - Country Development Strategy Statement
- ESF - Economic Support Funds
- ICITAP - International Criminal Investigative Training Assistance Program
- ILANUD - Institute for the Prevention of Crime and Treatment of the Offender
- IMF - International Monetary Fund
- LSD - Legal Systems Development
- NJRC - National Judicial Reform Commission
- NGO - nongovernmental organization
- PID - Project Identification Document
- SDI - Strengthening Democratic Institutions
- TNE - National Elections Tribunal
- UNDP - United Nations Development Programme

## **MAP OF HONDURAS**

# 1. INTRODUCTION

## **Purpose of the Assessment**

The following study is a strategic assessment of the Honduras Administration of Justice (AOJ) project. It is important to stress that this assessment is not a project evaluation, which seeks to measure project success or failure. Rather, as befitting its identification as strategic, this assessment seeks to reveal issues and problems which flow from the Honduran experience in order to provide more general insights into improving our understanding of how to formulate more effective strategies in legal systems development for countries like Honduras.

The U.S. Agency for International Development (A.I.D.) is a relative newcomer to the area of AOJ and legal systems development. The strategic assessment of the Honduras effort has served to generate more questions than answers. Thus, the reader should view this study as a discussion paper, written with the intent of stimulating discussion and debate about the assumptions and strategies embodied in the Agency's approach to AOJ and legal systems development.

The Honduras assessment is part of a series of studies being undertaken by the Center for Development Information and Evaluation (CDIE) to examine A.I.D. programs, as well as other donor experience, in legal systems development. In July 1992, a field study of the A.I.D. AOJ program in Colombia was completed, and a field study of the Honduras program, completed in September 1992, represents the second study in this series.

The next phase of the CDIE assessment effort will focus on A.I.D., Ford, and Asia Foundation legal development programs in Asia, where, in contrast to the AOJ Latin American program, a wider range of strategies have been implemented to address judicial performance and legal development. In early 1994, a synthesis of the field studies is scheduled to be written, which will highlight policy issues, lessons, and recommendations with respect to legal systems development as part of the A.I.D. Democracy and Governance Initiative.

The order of presentation in this paper involves an initial focus on assessment and methodological issues, followed by a review of the A.I.D./Honduras AOJ project and an analysis of its impact, an assessment of the AOJ strategy and its relation to issues of democracy and governance, and a discussion of issues relating to project management.

## Assessment Issues

The CDIE series of assessments in legal systems development is designed to focus on strategic questions concerning the Agency's best use of resources in making judicial systems and legal services more accessible, effective, and efficient in support of the rule of law. In this sense, these assessments explore fundamental questions concerning the link between legal systems development and democracy and governance and how A.I.D. might devise strategies to strengthen the interaction between these subsystems. A more detailed analysis of the conceptual framework used for legal systems development assessment is presented in "Research Design Paper: Analysis of A.I.D. Legal systems Development Projects" (A.I.D. 1992).

Legal systems, which include both the formal institutions of the judiciary and informal mechanisms and resources (alternative mechanisms for dispute resolution, legal aid, and a panoply of newer nongovernmental organizations (NGOs), nontraditional "legal services" efforts), can serve many purposes which relate to democracy and governance. Legal systems can check and ensure that government and its various branches act in an accountable and constitutional manner. Legal systems can also serve as a source of redress and protection for citizens subject to the illegal acts of other citizens or government. Finally, legal systems can assume a proactive role in targeting and empowering those in society who suffer from exploitation and major injustices.

In this context, this assessment seeks to bring greater clarity and enlightenment in addressing the following questions.

1. How does a donor agency define its objectives for enhancing legal systems in support of democratization and governance? More specifically:

- Is the development of legal systems seen as a means to enhance government accountability and legitimacy, to hold the executive and legislative branches accountable to constitutional principles, to expand legal services to a broader mass of the population, or to empower marginalized sectors within the society?
- Should the rationale for an emphasis on legal systems development be more closely linked to economic development objectives as well as political development goals in recognition of the close interaction between these two facets of the development process?

2. Is there any particular sequencing involved in the development of legal systems? More specifically:

- Might it be easier to initially strengthen commercial legal systems on the assumption that advances in this area will spill over into improvements in the civil and criminal legal systems?

- Are basic structural and institutional reforms of the judiciary required, such as civil service reform in the appointment of judicial personnel, before anticipating major improvements in judicial performance?

3. Once objectives are defined, what kinds of strategies are effective in reforming institutions and in building the necessary coalitions in and outside of government to achieve and sustain a process of change? More specifically:

- Can pressures for improvement be generated from within the formal institutions of the judiciary or must outside public pressures be brought to bear?
- Are certain sectors of society more receptive to serving as constituencies for legal system reform?
- Must a legal systems development effort also include interactions with political parties, the police, military, and the national legislature in achieving perhaps fundamental constitutional and institutional changes in the way these actors interact with the judicial sector? If such changes are not forthcoming or feasible, can one work around the edges of the justice and political system and still achieve significant gains in addressing major issues of democracy and governance?

In addition to the larger strategic issues of legal systems development, there are also practical questions concerning the kinds of managerial resources a donor agency must have to effectively design and implement projects in this area. There are also questions concerning how progress is measured in arriving at answers about whether a project is succeeding in its intended purpose.

It would be presumptuous to assume that the Honduras AOJ project would provide definitive judgments on all of these questions. At a more modest level, what is hoped it can do is shed light on some of the questions, which can then be used to refine and enrich our inquiry and analysis in subsequent case studies.

## **A Note on Methodology**

A major objective of the assessment team in Honduras was to gather data on the impact the Honduras AOJ project is generating with respect to effectiveness, efficiency, and accessibility of the justice system. The team soon found that this was a difficult task, as no monitoring and information system was in place to gather data of this nature. And as is frequently the case, no baseline data had been gathered at the beginning of the project which could serve as benchmarks to measure project impact. A mid-term evaluation of the project was undertaken in 1990, which addressed management issues and not project impact (Development Associates 1990). An evaluation was undertaken in 1990 of one project component, but that was not informative on larger impact issues.

In 1992, as part of its contractual obligations, the AOJ contractor administered a series of questionnaires to members of the judiciary regarding the effectiveness of the project. While this evaluation gave some sense of perspective on the progress of program implementation and participant attitudes, a further analysis of the data files revealed a considerable amount of missing data, suggesting that much caution should be exercised regarding the use of the data.

Because of the general absence of project-generated impact data, and the limited amount of time the team had in the field, the team decided to concentrate on gathering qualitative data from interviews with a focus on the judiciary itself, devoting particular attention to the three longest standing and most critical core components of the AOJ project: (1) the Judicial Career Law, (2) the judicial budget, (3) and the activities associated with improvements in judicial services. Sufficient time was not available to explore the A.I.D.-supported International Criminal Investigative Training Assistance Program (ICITAP) activities with the Honduran police, an activity administered by the U.S. Department of Justice.

The assessment team spent most of its time in Honduras undertaking extensive in-depth interviews with a wide range of individuals within or closely associated with the judicial system. The primary focus of the interviews was on exploring the respondents' perceptions concerning the impact of the AOJ project. A total of 87 individuals were interviewed, listed as follows:

- 5 justices of the peace
- 7 public prosecutors
- 8 public defenders
- 28 prisoners
- 6 staff members of the A.I.D. Mission
- Prison Warden
- Assistant Prison Warden
- 3 Georgetown University consultants
- Head of the Honduran Bar Association
- Dean of the Law School—University of Honduras
- 3 administrative staff in the judiciary
- Director of the Judicial School
- Assistant to the Director of the Judicial School
- 10 members of the Honduran Association of Legal Services (AHSOSEL)
- 6 members of the National Judicial Reform Council
- 3 members of the U.S. Embassy
- Director of the Peace Corps
- Director of the United Nations Development Programme (UNDP)

In the majority of instances, all of the interviews with Hondurans were conducted individually to ensure confidentiality. Finally, prior to its departure to Honduras the assessment team was briefed by the head of the home Georgetown University Office serving as the contractual agent for the A.I.D.-financed AOJ effort in Honduras. Also, the

team received a half-day briefing from Mark Rosenberg, the Director of the Latin American and Caribbean Center at Florida University.

## **Why Honduras?**

The reader will ask why we selected Honduras as part of the CDIE field series. In our view, Honduras merits attention for the following three significant reasons:

1. Honduras exemplifies many of the classical political/socioeconomic characteristics of early developing countries.
2. Honduras manifests many favorable conditions that would seem conducive to a successful AOJ effort.
3. Honduras is the recipient of a substantial and ambitious A.I.D.-supported AOJ initiative.

Each of these points requires further elaboration. First, what is it about Honduras that makes it so representative of many of the countries where A.I.D. has an active assistance program? Honduras is a small country with an impoverished population. It is dependent on two or three major export crops for generating foreign exchange. Its recent history involves indulging in import substitution policies and state-owned enterprises and is now undergoing an International Monetary Fund (IMF) economic restructuring program. The private sector in Honduras is small but growing steadily, and the Government is a major employer under pressure to expand public sector jobs.

Socially, there are wide and growing disparities of income and wealth in Honduras. Some claim the small middle class is shrinking and that certain segments of the population, such as low-income landless farmers, have experienced a decline in their welfare.

Honduras has a weak civil society and civic culture. The labor unions are an important but divided interest group. They have been coopted by the political establishment, and their members receive incomes several times the national average. The two major political parties are controlled by a moderate but highly centralized elite. For the past decade, the Government has been under the stewardship of elected civilians; however, in the past the military had not hesitated to overthrow a civilian government, and they remain a powerful political force. Finally, Government institutions are highly politicized, and political parties frequently ignore democratic rules and norms in seeking advantages over the opposition.

Second, while Honduras has a lot of liabilities, it also has, unlike many countries, some big assets. Honduras is ethnically homogenous, its class consciousness is low, it lacks a social cum political/military oligarchy which lords it over the peasantry. The military is an autonomous force, which although at times repressive, also has had a record

of some constructive efforts in agrarian and governmental reform. The political parties are pragmatic, not wedded to any ideological doctrine, and tend to govern with an emphasis on decision-making through elite consensus and coalition building (Schultz 1992).

Finally, Honduras is one of the countries where AOJ has become a centerpiece of the A.I.D. Mission's democracy program. For the period 1989 to 1995, A.I.D. and the Government of Honduras have targeted approximately \$11.733 million to fundamentally alter the heart of the Honduran judicial system. These resources are Economic Support Funds (ESFs), with A.I.D. providing \$6.593 million and the Government of Honduras \$5.141 million from the ESF-counterpart local currency fund.

In summary, given the characteristics Honduras shares with many developing countries, and the conditions which seem relatively favorable to a robust A.I.D. effort, Honduras should constitute an excellent learning laboratory offering a rich harvest of instructive lessons and issues for policymakers and programmers who might be seeking to plant and cultivate the seeds of judicial reform in similar settings.

## **2. A.I.D. AND AOJ IN LATIN AMERICA**

### **U.S. Policy Objectives and the Emergence of AOJ**

The Agency's concern for judicial reform in Latin America arose in the context of a range of political developments in the small nations of Central America in the late 1970s and early 1980s. In Nicaragua, a Marxist-Leninist communist movement known as the Sandinistas had seized power by toppling the rightist Somoza dictatorship. In El Salvador, the Government was embroiled in an increasingly violent civil war with the leftist guerilla movement. In a context of increased superpower rivalry and evident Soviet/East Bloc involvement in the region, there was growing U.S. concern that the entire area could become less stable and gravitate in a direction fundamentally inimical to U.S. foreign policy interests.

The 1984 report of the National Bipartisan Commission on Central America, otherwise known as the Kissinger Commission, highlighted the need for greater U.S. economic and political development assistance in order to combat extremist movements from both the left and right. In particular, the report stressed that "the U.S. should encourage the Central American nations to develop and nurture democratic cultures, institutions, and practices, including strong judicial systems to enhance the capacity to redress grievances concerning personal security, property rights, and free speech; free elections; and free and democratic trade unions" (*Report of the National Bipartisan Commission on Central America* 1984, 51).

Reagan Administration policies in Central America reflected the centrist position of the Kissinger Commission's recommendation. U.S. policy sought to encourage the development of moderate and progressive ruling coalitions. Translated into action, this policy gave high priority to the holding of free and honest elections in the hope that governments would become more stable, representative, and legitimate in the eyes of their constituents.

In the mid-1980s, the emphasis on judicial reform also became a cornerstone of the Reagan Administration policy in Central America. This emphasis initially came to the fore in response to the killings of the nuns in El Salvador in 1983 and growing U.S. public and congressional concerns about human rights abuses in the region. Under congressional stipulation, A.I.D. launched a program to strengthen El Salvador's judicial branch, with projects focusing on modernizing investigative capacities and the penal code, among other things.

The attention given to judicial reform represented a fundamental shift in strategy in addressing human rights issues. Under the Carter Administration, human rights issues were front and center on the foreign policy agenda, and A.I.D. provided assistance to numerous human rights NGOs in the Third World. In the Reagan Administration, there was concern that an overzealous emphasis in support of human rights movements, and the attendant political pressures they might generate, could serve to weaken the popular legitimacy of many fragile, incipient Third World democracies. The Reagan Administration believed instead that it would be better to strengthen these governments by enhancing their judicial capacities to prevent and redress human rights abuses.

Thus, on the heels of the El Salvador program and the impetus of the Kissinger Commission report, A.I.D. gradually expanded its judicial reform effort, now identified as AOJ, throughout the Central American/Caribbean region. In 1985, A.I.D. provided a grant to the Latin American Institute for the Prevention of Crime and Treatment of the Offender (ILANUD), a small United Nations affiliated institute, to expand its training and technical assistance activities in judicial reform throughout the Central American region.

While A.I.D. continues to fund ILANUD, the Institute has assumed a lower profile, as A.I.D. Missions in the region have also launched their own bilateral AOJ projects. By the late 1980s, in response to the ascendance of popularly elected democratic governments in South America, the program spread to that area. Thus, in many Latin American countries, the AOJ effort is now part, and sometimes the centerpiece, of a much broader, multifaceted A.I.D. democratization program, which has evolved over the past several years and which was recently enunciated as a major strategic objective for the entire Agency (A.I.D. 1991).

## **Democratization in Honduras: A U.S. Policy Focus**

By the mid-1980s Honduras appeared as an island of relative tranquility in a sea of political turbulence. Its neighboring countries were either locked in civil war or under the heels of right- or left-wing dictatorships. In this volatile context, and because of its relative stability and strategic geopolitical location, Honduras rapidly emerged as a major focus of U.S. foreign policy interests. Foremost in this regard, the U.S. sought and won Honduran cooperation in aiding the Contra forces along the Nicaragua-Honduras border. This collaboration soon involved the provision of a large flow of military and economic assistance from the United States, and by the mid-1980s the A.I.D. Mission was one of the largest in the world.

The substantial size of the A.I.D. assistance program reflected an effort to reform Honduras's sagging economy and to strengthen its nascent democratic institutions in the hope that it could become an exemplar of political moderation and thereby serve as a counterweight to more extremist forces in the region. The A.I.D. Mission viewed achievements in generating economic growth as being dependent on advances in the political sector as "international and local private investment . . . remained at low levels

attributable, in part to the perceived weak democratic institutions within the country and political instability of the region" (A.I.D. 1987, 5).

Thus, in 1985 on the political front, the Mission initiated assistance in a voting registration campaign and in the administration of the national presidential and congressional elections. After elections, observation visits were made to the United States and local seminars were organized for congressional delegates to enhance their legislative skills. Assistance to the Honduran judicial system also began in the mid-1980s, primarily through training, technical assistance, and commodity purchases from the ILANUD regional AOJ program. A full-fledged assessment of the justice sector, under the sponsorship of ILANUD and Florida International University, was initiated in late 1986.

Concurrent with the completion of the judicial sector assessment, the A.I.D. Mission initiated the development of a bilateral project entitled Strengthening Democratic Institutions (SDI), which, after considerable delay, began implementation in early 1989, with ESF funding of \$16.5 million along with substantial ESF-generated host-government-owned currency and in-kind contributions. This project provided institutional development assistance to the National Elections Tribunal (TNE), the National Registry of Persons, the Honduran Congress, and Judiciary.<sup>1</sup>

The first phase of the judicial component of the SDI project ended in September 1992. In that month, the Mission approved a follow-on 3-year amendment to the project for \$5.3 million along with additional host government contributions. The amendment reflects the fact that the Mission has made strengthening of democratic institutions in Honduras one of its five strategic objectives. The Mission's FY 1992 to FY 1996 Country Development Strategy Statement (CDSS) highlights the period from 1993, when national elections are to be held to select the successor of the Callejas administration, to 1996 "as a major watershed period...for consolidating Honduran democracy" (USAID/Tegucigalpa 1991, 1).

## **Origins of the A.I.D. Honduras AOJ Project**

The antecedents of the A.I.D. AOJ program in Honduras can be traced to the early 1980s, when, for the first time, a group of senior Honduran officials, in cooperation with ILANUD, undertook a study to improve the country's penal system. The study made a

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<sup>1</sup>The TNE organizes and administers elections, certifies the leaders of the political parties, and supervises the National Registry of Persons. The Registry creates the national electoral census, which determines a citizen's right to vote. Control over these two important agencies has been a source of continual intrigue and competition among the political parties, who then seek to use the agencies to their own advantage (Rosenberg 1989).

number of proposals, including the implementation of a Judicial Career Law, the creation of a judicial school, the strengthening of public prosecutors and defenders, and the organization of a governmental system of free legal defense. In retrospect, this study was a harbinger of things to come, as many of these same proposals became major elements of the subsequent A.I.D. effort in judicial reform (*Programa de Cooperacion, 1983*).

Specific action to support these proposals began in earnest when ILANUD, a recipient of a large A.I.D. grant in 1986, began to finance a series of short-term training courses for Honduran judges in subjects such as the new Honduran penal code of 1982, family law, civil rights, administrative law, the evaluation of judicial personnel, and the training of justices of the peace. From 1986 to 1992, ILANUD funded 127 courses in Honduras.

ILANUD provided logistical and technical assistance for the courses, which on average lasted 4 to 5 days, with faculty from the University of Honduras Law School serving as course instructors. The Honduran relationship with ILANUD was coordinated through the National Judicial Reform Commission (NJRC), originally established in 1984 as an unofficial body but authorized in November 1985 as the official coordinating body for judicial reform.

The NJRC continued to serve as the main liaison mechanism with ILANUD throughout the 1980s, developing course and project proposals, which it then advanced to ILANUD for approval and funding from an A.I.D. AOJ grant. Meeting weekly, the NJRC is currently chaired by a member of the Supreme Court and comprises middle-level officials from the Ministry of Government; Secretariat of Planning, Coordination, and Budget; Office of the Attorney General; Director of the Central Penitentiary; Secretariat of Finance and Public Credit; and the Ministry of Labor.

In addition to being the primary resource for the legal training of Honduran judges, ILANUD assisted the Supreme Court in establishing a judicial school in late 1987, which then became the vehicle through which the ILANUD-funded courses were offered using faculty from the Law School at the Honduran National University and judges from the court as instructors.

## **The Bilateral SDI-AOJ Project**

Aside from the regional ILANUD AOJ effort, the A.I.D. Mission in the mid-1980s began designing its own AOJ bilateral effort as one component of the larger SDI project. In January 1987, the Project Identification Document (PID) was approved. The follow-on project paper, approved in August 1987, states that the goal of the SDI effort is to "strengthen Honduran democracy"; at the purpose level it is to "improve the capability of key democratic institutions," such as the judiciary; and at the output level it is "to strengthen the court system making it more efficient and responsive to the Honduran populace in matters concerning civil and criminal justice and better able to

execute its functions as a mediator of inter-governmental conflicts" (USAID/Tegucigalpa 1987, Annex B).

Not until May 1988, 10 months after the Project Paper approval, was the Request for Proposal released. In January 1989, the Mission contracted with Georgetown University to begin implementing the SDI project. This delay of nearly a year in the release of the proposal would later have significant repercussions on the ability of the project to meet the scheduled delivery of services to the judicial sector.

With respect to the judicial component of the SDI project, the A.I.D. Mission has pursued an institution-building strategy which emphasizes three basic elements: (1) adoption and implementation of a Judicial Career Law; (2) an increase of the judiciary's budget; and (3) enhancement of the quality of judicial services.<sup>2</sup> Each of these elements is described in its respective order.

*Judicial Career Law.* In 1980 the Government of Honduras, then under military control, enacted a Judicial Career Law, providing for a nonpoliticized system of appointing judges and other justice system personnel. The law provides tenure for judges, attorneys, and the entire support staff within the judicial branch, which consists of 1,800 to 2,000 employees. Only the nine members of the Supreme Court would remain as before, elected by the National Congress (Corte Suprema de Justicia 1988). In effect, the law provides for the full professionalization of the judiciary, absorbing its personnel into a career service and thereby greatly reducing court appointments through patronage and further insulating judges from possible outside political pressures and intimidation.

Throughout the 1980s, the Government of Honduras, now under civilian control, did not act to implement the Judicial Career Law. In addition, budget manipulations by the executive and legislative branches served to compromise the independence of the court. In the late 1980s, as part of its effort to strengthen democratic institutions, A.I.D. made the execution of the Judicial Career Law the centerpiece of its AOJ effort. To assist the Government of Honduras in implementing the Career Law, A.I.D. has supported the judiciary in developing salary scales and job classifications, along with technical manuals and procedures for the recruitment, examination, selection, performance appraisal, and promotion of judicial officials and judges based on merit. A computerized personnel records system became part of the overall improvement in administrative procedures.

*The Judicial Budget.* One of the major goals of the SDI project has been to increase the budget for the judicial branch. According to the Honduras Constitution, the

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<sup>2</sup>The judicial component of the SDI project also includes elements which are still in an early stage of development or application and therefore not covered in this assessment. These elements include the introduction of software for archiving and retrieving court cases and a pilot system to reconcile and computerize land records. Finally, because of time constraints, the assessment team did not examine the role and impact of the ICITAP, which is part of the AOJ effort but is administered by the U.S. Department of Justice.

judiciary should receive a budget equal to 3 percent of the national budget. However, in general it receives less. In order for the judiciary to make a better case for an increase before the Ministry of Finance, A.I.D. has provided funds and technical assistance in the development of a computerized budget/accounting system. This action has entailed the development of manuals and procedures in accounting, procurement, payroll, inventory, and auditing.

*Judicial Services.* The third element of the judicial component has focused on improving the provision of judicial services by raising the number and professional qualifications of those who are actually involved in the rendering of justice. A.I.D. provided initial funding for hiring 81 justices of the peace, 31 public defenders, and 18 public prosecutors. All have since moved on to the government payroll. Before the SDI project began funding public defenders, only a few public defenders were available. The courts thus also assigned private attorneys to represent indigent defendants. Since these attorneys received no pay for their service, they spent little time on cases. The Law School at the University of Honduras has a clinic which provides law students to represent a small number of cases. The creation of a full-time public prosecutor's group, and of court-funded public defenders, was intended to energize these functions, which heretofore had played only a passive and marginal role in judicial proceedings.

All of the candidates for the judicial positions required a law degree. (Most of the previously hired justices of the peace, for instance, had little formal education and many were illiterate.) Finally, in contrast to the past practice of hiring based on patronage, A.I.D. insisted that these new entrants be recruited through competitive examinations in accordance with the Judicial Career Law.

In addition to these institution-building activities, assistance was to be provided in support of a public information campaign on the Judiciary. The Project Paper indicates that two campaigns were to be launched, one in 1988, and the other in 1989, and each was to be designed to reach more than 83 percent of the population with less than a sixth grade education. This information campaign would inform citizens of their rights under the law and the judicial services available in the protection of their rights. It was hoped that such information would make the public more vigilant in monitoring the performance of the justice system and in demanding access to and services from justice officials.

From a strategic perspective, the Project Paper states that the elements were designed for "improving the judicial process and its support mechanisms and improving access of the Honduras population to effective legal services" (USAID/Tegucigalpa 1987, 25). Further, the Project Paper explicitly states that the "project will not focus directly on the political goal of strengthening the power of the Judiciary vis-à-vis the other branches of government." Clearly, however, if the measures promoted by the project were adopted they would have the effect of moving the judiciary into stronger and more independent position vis-à-vis the executive and legislative branches by the following:

- Absorbing the court personnel into a career service and thereby greatly reducing court appointments through patronage and further insulating judges from possible political pressures and intimidation
- Assisting the judiciary in making a more cogent and well-justified budget presentation to the Ministry of Finance, thereby gaining more budgetary resources in expanding judicial services

Indeed, the Project Paper acknowledges that the professionalization of the judiciary might be opposed by the two major political parties. In order to ameliorate this situation, it states that, after the 1989 election, some kind of mechanism "such as with political representatives, could be utilized to maintain a relatively even political party split based on competency requirements to mirror the virtue of the current situation in that the major parties are represented equally both among judges and support personnel" (USAID/Tegucigalpa 1987, 27).

The prospect of securing the cooperation of the political parties in the reforms of the judiciary seemed promising at the time the Project Paper was prepared. According to the Project Paper the political parties had indicated their support for the project and their willingness "to sacrifice some immediate partisan resources—patronage jobs...to make the system work" (USAID/Tegucigalpa 1987, 73). Furthermore, because the incumbent Azcona Administration was an unofficial coalition government at the time, there was relatively even representation of the political parties in the judiciary personnel. Therefore, converting these people to a career service would not seem to impact unfavorably on either party. Thus, some indication of the proverbial need for "political will" seemed evident.

One of the assumptions of the project was that its success would depend on "enhanced elite political commitment to a rejuvenated judicial process" (USAID/Tegucigalpa 1987, Annex B). Whether the phrase "enhanced elite political commitment" can be read as present or future tense is not clear; but the Mission did feel that covenants and conditionality were appropriate in case political will began to flag. Thus, on October 14, 1987, A.I.D. and the President of the Supreme Court signed a Memorandum of Understanding outlining conditions and covenants with respect to the judicial reform element of the SDI project. Paraphrased, the conditions precedent are as follows:

- Prior to disbursement, except for \$100,000 and for technical assistance, the Supreme Court shall furnish to A.I.D. evidence that the Judicial Career Law guidelines and by-laws have been accepted by the Supreme Court and the schedule to begin implementation has been approved.
- Prior to any disbursement of assistance after December 31, 1989, except for technical assistance, the Supreme Court shall provide evidence that all new judicial sector personnel, except Supreme Court Justices, are being hired under the new career personnel system and that 75 percent of all judicial personnel currently employed have been hired under that system.

Paraphrased, an important covenant reads as follows:

- Within 1 year after the promulgation of the Judicial Career Law guidelines and by-laws, all new employees shall be hired utilizing objective, technical hiring criteria and shall be included under the career personnel system. (This covenant was later amended to indicate that the intent was not to get rid of current employees in order to hire 75 percent new employees.)

In summary, the initiation of the AOJ component of the SDI project represented a bold and ambitious effort to transform a key political institution, an institution that goes to the very heart of the Honduran political system. An effort was to be made to introduce a meritocracy into a system generally governed by the laws of patronage and clientalism. For the judiciary, this would represent a major reconfiguration of power in its external relations with the executive and legislative branches, bringing the judiciary, at least in the formal sense, more in line with the recognizable attributes of a modern democracy. The dynamics internal to the judiciary would also change, as personalistic rule and favoritism would now have to give way to the discipline and regularized procedures of a more rationalistic Weberian bureaucracy.

Whether these transformations constitute the necessary as well as sufficient conditions for improving the accessibility and the rendering of justice in Honduras would remain to be seen. Assuming that such would be the case, the project designers recognized that they were taking on a formidable and politically sensitive challenge and that patience and a protracted period of time would be required to achieve measurable success. In this regard, the SDI project was seen as the first phase of a long-term effort lasting 10 or more years. This was their judgment in 1987 (USAID/Tegucigalpa 1987, 18).

It is now 5 years later, certainly a short period of time when seeking to induce fundamental change in institutional and political processes, but it is hoped sufficient for determining whether the vision of the A.I.D. designers and their Honduran counterparts might be coming to fruition. Thus, we now turn to the story of what has evolved over the past 5 years.

### **3. IMPACT OF THE AOJ PROJECT**

#### **The Honduran Judiciary**

**B**efore embarking on an assessment of the AOJ experience in Honduras, brief background comments are warranted in depicting judicial conditions in Honduras. Honduras has a legacy of authoritarianism, weak democratic norms, and highly politicized governing institutions, which have inhibited the development of a strong civil and democratic order, where human rights are protected and laws are enforced against those who violate them. While Honduras has not accumulated a record of human rights abuses and impunity nearly as pervasive as Guatemala and El Salvador, a persistence of intermittent violations and judicial inaction has cast doubt over the Government's past commitment to guaranteeing the rights of its citizenry (see U.S. Department of State 1991).<sup>3</sup>

In the past decade, crime in Honduras has increased, and the courts, shorthanded of staff and resources and burdened with antiquated judicial procedures, have not been able to cope with a burgeoning backlog of cases. Indeed, the backlog is such that many of the accused are detained for months and years, frequently for minor offenses, awaiting indictment, trial, and sentencing. Approximately 80 percent of the prison population is currently awaiting sentencing.<sup>4</sup>

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<sup>3</sup>The judicial branch of the Government of Honduras comprises 320 justices of the peace, who hear minor cases and are distributed among the 291 municipalities in Honduras. Above them are 64 justices of letters, who conduct court trials for more serious offenses. Finally, there are 10 courts of appeal, and above all these courts is the nine-member Supreme Court.

<sup>4</sup>The 1986 judicial sector assessment undertaken by Florida International University indicates that of the 3,635 penitentiary inmates in Honduras, only 20.6 percent were convicted offenders; the remainder were pretrial detainees and a small minority were prisoners "on deposit," meaning that they were being held because of the influence of a family member or enemy without any recourse to release. The sector assessment further indicates that the average time spent awaiting trial is approximately 17.6 months (Florida State University 1987, 15). Based on data gathered by the team from the Warden of the Tegucigalpa Penitentiary in 1992, the situation has not changed from that found by the sector assessment team in 1986. Thus of 4,230 inmates in 1992, only 866 have had a trial. In addition, based on interview data, the team found that the average time for awaiting trial is close to 2 years.

Long delays in judicial procedure are compounded by frequent allegations that many judges are corrupt and incompetent. In addition, most courts are accessible to many Hondurans only through long distance travel, and few Hondurans can afford the services of a lawyer. As a consequence, some citizens employ a traditional means of rendering justice—taking the law into their own hands and meting out punishments against thugs or disputants in family feuds and vendettas. Similarly, the police, frustrated with the courts, have recently resorted to torture to extract confessions, and occasionally to extrajudicial killings of alleged criminals in their custody.

These deficiencies are reflected in the perceptions the public and legal professionals hold with respect to the performance of the justice system. The judicial sector assessment undertaken by Florida International University in 1987 included a polling sample of public and judicial officials. The poll represented a national weighted sample of 361 adults, 309 legal functionaries (e.g., public prosecutors, public defenders, and judges) and 239 lawyers. The most obvious finding among the national sample of adults was the perception of the Honduras justice system as not always just, with corruption rampant, costs high for involvement with the system, and inefficiency slowing the system. The sample of views of legal professionals (e.g., lawyers, public prosecutors, public defenders, judges) was at little variance with those of the public, and in several instances were even more negative about the judicial system (Florida State University 1987, Annex 2).

The lack of adequate law enforcement and a strong judicial infrastructure assumes greater social significance with respect to chronic tensions generated by seizure of land by peasant groups in rural areas and squatting in urban centers. The killing of peasants by police or the military, sometimes in apparent league with larger landowners seeking the peasants' eviction where land rights are contested, is known to occur in Honduras. This problem is compounded by inadequate legal procedures and safeguards for land titling.

In all of these instances, the credibility of the judicial system is frequently compromised by the public perception that the powerful and privileged can turn judicial proceedings to their advantage through political connections and bribery. That there might be a double standard for justice is most conspicuous in the failure of the Honduran legislature to clarify the jurisdiction of civil and military courts in cases involving both the military and civilians. In recent years, there has been greater public outcry that cases involving crimes committed by members of the military against civilians should be tried in civilian courts. In a number of prominent cases, the military, under public pressure, has simply fired military personnel allegedly involved in crimes, thus making them clearly subject to civilian tribunals without raising constitutional questions.

Irregularities in judicial proceedings and law enforcement have the potential for breeding considerable public cynicism about the efficacy and legitimacy of any regime that claims to be a democracy. This is particularly the case when a government itself is either implicated in politically motivated crimes or turns a blind eye to such crimes when committed at large. In this regard, Honduras has had some recent experience that

demonstrates how the institutions of a fledgling democracy can be easily disfigured by political forces and actions antithetical to democratic principles.

In the early 1980s, elements of the Honduran military became increasingly concerned about the possible spillover effects of leftist movements in El Salvador and Nicaragua inciting the spread of subversive movements in Honduras. Indeed, while there were increased terrorist incidents by small guerilla bands, on the whole the members of such movements were few and lacking in organization. However, in order to contain their growth the head of the Honduran military launched a counterinsurgency, which soon became linked with efforts by the police and its investigatory agency, as well as quasi-military groups, to suppress anyone who might constitute a rallying point for left-of-center political dissent or reformism.

Thus, in the early 1980s, a wave of politically motivated harassments began: kidnappings, torture, and murder of students, labor and peasant leaders, and human rights advocates. By 1984, this campaign began to wind down; however, Honduras was left with a legacy of over 100 "disappearances" and with none of the perpetrators having been brought to justice.

On a much lesser scale, isolated incidents of politically motivated killings, harassment, and torture persisted into the late 1980s and 1990s, many of which were linked in reports by human rights groups to members of the military and police. Currently, there are still reports of persons held for periods longer than 24 hours in incommunicado detention by the police, who fail to comply with writs of habeas corpus. Many court judges are reluctant to pursue these cases and others like them. In some instances, judges have been subjected to physical intimidation when they have sought police compliance with due process rights (Amnesty International 1991, America's Watch 1992).

Aside from being cowed by the police and military, the judicial branch has frequently had to bow to the political whims of the executive branch. In the early 1980s, the President of Honduras illegally removed several judges. The judicial branch has also been caught in the crossfire of conflicts between the national Congress and executive branch. In the mid-1980s, the President of Honduras arrested a Supreme Court nominee named by Congress to replace one of his followers.

In summary, the judicial branch's functioning as an instrument for ensuring law and order and the protection of individual rights leaves room for considerable improvement. Its weak role reflects the fact that the Supreme Court has little autonomous power vis-à-vis the other major actors within the political system.

In spite of the fact that the rule of law and the instruments to enforce the law remain weak in Honduras, the country is not a society gripped by fear or pervasive violence. Since the mid-1980s, the political climate has improved, with fewer incidents of politically motivated violence. The peaceful transition of newly elected governments occurred in 1985 and 1989. It was in this context that A.I.D. launched its SDI project. This report will now examine the impact of the three major elements contained within the

AOJ component of the SDI effort: Judicial Career Law, judicial budget, and judicial services.

## **The Judicial Career Law**

Based on interviews with personnel from the top to the lower rungs of the judiciary, there was near unanimity of opinion that it will be difficult to fully institutionalize the Judicial Career Law within the judiciary. It might remain temporarily in operation, but for the near future without a continued donor presence, such as with A.I.D., there would likely be a revival of patronage appointments for judicial personnel.

Because of the lack of confidence in the prospects for the faithful enforcement of the Judicial Career Law, many of the public prosecutors, public defenders, and justices of the peace who came into the justice system under the law feel they occupy a vulnerable and precarious position and that in the future they could be subject to transfer or dismissal without cause. They feel that although they are working to make the justice system more effective, the same system will not likely shield them from the intrusions of patronage politics. As one justice of the peace put it, "We protect the citizens, but who protects us?"

In some measure, this pessimism about the prospects of institutionalizing compliance with the Career Law may simply reflect that those interviewed are burdened with the weight of historical experience. If a career service has never been in place, it is difficult to envision that possibility for the future. Nevertheless, the lack of optimism about the Judicial Career Law also stems from the lack of strong, demonstrable support from the court leadership for the Career Law. This lack of support has forced the A.I.D. Mission to repeatedly prod the court to move ahead with the necessary procedures and regulations associated with the Career Law reforms and to take a hands-on approach in closely tracking the court's compliance with the new system.

In some measure, the absence of vigorous court leadership could be attributed to the fact that the project is only 4-years old and breaking new ground in sensitive political areas where there are risks and uncertainties, which it is hoped in time will dissipate as the court leadership becomes more comfortable with the reforms. The prospects for attaining this more optimistic scenario become somewhat problematic when past reform efforts and the larger set of macropolitical dynamics are examined within which the court is inextricably embedded.

The historical record indicates that the Judicial Career Law was not a product of a political or legislative process. Rather, it was enunciated by executive decree in 1980 under a military government. The two dominant political parties were not involved in this decision, which is important because the lifeblood of the political parties is patronage, and historically they have been loath to surrender this prerogative to any form of civil service reform.

In 1967, the military introduced a governmentwide civil service system to combat the patronage system. With A.I.D. technical assistance, a new civil service commission was able to advance the cause of civil service reforms throughout the 1970s under military governments. However, with the restoration of civilian government in the early 1980s, the commission's role rapidly diminished and patronage became pervasive throughout the government, descending from the top of the executive hierarchy down to the lowest of functionaries (e.g., drivers, janitors). With each election of a new government, massive turnover of government employees occurs, with some major exceptions, such as the Ministries of Health and Finance. The losing party or coalition is ejected and replaced by loyal followers of the successor regime.

Patronage is a critical resource and medium of exchange in the Honduran political system. Political power derives less from holding formal positions of authority in fragile government institutions or adherence to embryonic norms of democracy than to the capacity of elites to compete in building alliances with patrons and clients in competition with rivals. Patronage is the glue which enables leaders to build and hold coalitions together.

Patronage is also the primary source of financial resources for the two major political parties. Given the high unemployment rate in Honduras, the dispensation of government jobs are political plums which are in high demand. The incumbent political party dispenses the rewards of government employment to its followers and then taxes their salaries on a regular basis to beef up the party coffers. Indeed, even those hired to the judiciary under the A.I.D.-supported career merit system still pay the tax levied by the incumbent political party.

The advantages of the patronage system explain why the political parties have not been enthusiastic champions of the Career Law. The judicial branch consists of approximately 1,800 to 2,000 employees, constituting a large patronage base from among the approximately 25,000 employees in the government sector. But other reasons may account for the fact that the Judicial Career Law and judicial reform in general have not appeared on the parties' political agenda. Would the parties, and for that matter the legislative and executive branches of government, want a stronger and more independent judiciary?

As it now stands, there is a general equilibrium of expectations between the various branches of government. All are relatively weak, and each has a sense of familiarity and understanding about the roles of the other. Judicial reform, and the attendant growth in power of a less partisan and more autonomous judiciary, could serve as a constraint on the machinations of the other two branches. There are also risks associated with such a fundamental change. What assurances are there that an incumbent party might not use a stronger judiciary to harass and weaken its opponents? In the past, this kind of behavior was certainly evident in the efforts of the political parties to gain unfair advantage in the control of the TNE and the National Registry of Persons.

In summary, there are plenty of incentives for staying with the status quo, which means keeping the judicial terms short and untenured, thereby allowing each new

administration to reconstitute the courts to reflect its interests. At the same time, however, there are some signs that judicial reform is becoming a more salient agenda item within the Honduran executive branch. Thus, the State Modernization Committee, set up by the President in 1991, has recently submitted judicial reform proposals to the legislature, which are now under debate and negotiation. The prospects for their adoption still remain unclear. Thus, the question arises: Could one settle for less than success in achieving a career service and still have an effective judicial system? This issue will be addressed later.

## **The Judicial Budget**

The second thrust of the SDI-AOJ effort in Honduras focuses on increasing the judicial budget by making transparent and more accountable the internal processes of resource allocation within the judiciary. An increase in budget is absolutely necessary to support the improvements which A.I.D. is now promoting to expand the accessibility, effectiveness, and efficiency of judicial services.

In the past the court had undertaken little program and budget planning and therefore could not make a strong case to the Ministry of Finance for increased resources. In order to correct this problem, A.I.D. assisted the court in modernizing its entire administrative system with the goal of enabling it to articulate programs, priorities, and needs in a more systematic and convincing fashion.

As part of this reform effort, A.I.D. and the court have expended considerable resources and time in computerizing the court's entire budget, accounting, procurement, personnel, and auditing procedures. This has been done on the premise that the court's case could be made even stronger if it demonstrated to the Ministry of Finance that it had effective command over its resources and expenditures and therefore could be held accountable for properly utilizing any increase in its budget. It is hoped that computerization will enable those in and outside the judiciary to monitor the court's use of resources.

Based on the above improvements, for the first time the court recently submitted an annual budget requesting a several-fold increase in resources for FY 1993. Unfortunately, the Ministry of Finance rejected this proposal, providing instead a 9 percent budget increase over the previous year's allotment. The Ministry also gave verbal assurances that the Judiciary could begin to generate and retain revenue with the issuance of its own stamps as a user fee in official document transactions. While this is an important concession, it will not be adequate for meeting the court's financial needs.

The Finance Ministry's rebuff, although disquieting, may be somewhat understandable since the Government of Honduras is under a stringent IMF ceiling on budgetary expenditures as part of its economic recovery program. (That the Ministry of Finance was not forthcoming with respect to the judiciary's budget request may also reflect the fact that the Government is beginning to prepare for the forthcoming national election in late 1993. It is common knowledge in Honduras, as in many countries with

popularly elected leaders, that Government largesse will need to be available to promote the incumbent's slate of candidates.) Many Ministries have been forced to absorb budget and personnel reductions. However, this has not been the case with the Judiciary. In fact, since 1986, the proportion of the national budget allocated to the Judiciary has increased from 1.17 percent to 1.67 percent, although in 1992 it declined to 1.5 percent (Espinal Irias, Nd.). However, the Government's major currency devaluation of 1990, and the adoption of economic adjustment measures which are forcing Government agencies, for example, to pay for utilities (sometimes retroactively for several years) at less subsidized rates, continues to create major revenue shortfalls for the justice system. Thus, in real terms, the budget for the judiciary is probably at an all time low and barely sufficient for meeting its basic needs.

In summary, beyond the next several years, the judiciary's budget will have to increase significantly in order to accommodate and sustain the expansion of services currently envisaged as part of the AOJ effort. In early 1992, the A.I.D. Mission recognized that the government's prospective budget for the judiciary would not be adequate for meeting basic expenses in 1993. Thus, the Mission indicated that it was prepared to withhold the entire ESF Honduras allotment unless the Government increased its ESF counterpart funding for the court. The Government of Honduras acquiesced to this request, but because of the IMF ceiling, it could not simply add additional funding but had to reorder its priorities by reprogramming ESF counterpart funds from other accounts to the judiciary.

## **Judicial Services**

A key component of the AOJ effort has involved improving judicial services through the introduction of a new cadre of high quality young attorneys to be justices of the peace, public defenders, and public prosecutors. Many of these individuals have now served in these positions for 2 or more years, and the question arises as to what impact they are having in improving the performance of the justice system. This question is difficult to answer, because the project, as mentioned, has yet to generate continuous and well-analyzed impact data. In order to fill this information gap, the assessment team undertook extensive in-depth individual interviews, particularly with the justices of the peace, public defenders, and public prosecutors who came into the justice system as part of the A.I.D. assistance program. The findings and analysis of these interviews that follow focus first on the public defenders and prosecutors and then on justices of the peace.

### *Public Prosecutors and Public Defenders*

In general, the newly appointed public prosecutors stated that they believed they were improving justice in Honduras. They felt they had increased access to the courts for many poor people who cannot afford to hire a private prosecutor and had improved efficiency by helping to move cases along faster. They stated that they had also improved effectiveness by getting more and better evidence into the court. Finally, they felt their

presence made the process more fair because they were able to communicate with the judge, provide the judge with evidence, or explain that a case had no merit where no evidence was found. They felt that judges now make decisions based on more information and knowledge than before.

A positive sense of accomplishment was also found in interviews with public defenders. All believed they were having a great impact. They felt that through their efforts trials had become somewhat speedier, although in their view there was still much to be done in this area. They also believed that their presence made trials more fair, and that justice was better served by having a court officer present to bring evidence of innocence to the attention of the judge. They also felt that they had assisted many people in proving their innocence and had worked for fair sentencing for those who were guilty. In this context, however, it should be mentioned that the assessment team found that many prison inmates were not all that satisfied with the services they were receiving from the public defenders.

The assessment team interviewed 28 prisoners at the Tegucigalpa prison. Of these, 11 had received assistance from the public defenders, of whom 2 expressed moderate satisfaction and only 1 prisoner indicated extreme satisfaction. The remaining prisoners all had very similar complaints of bad communication and infrequent visits with the public defenders. Most of the 28 inmates interviewed did not know the stage of their case in the proceedings. Some did not know the charges against them; few prisoners knew the maximum sentence for the crime with which they were charged, and many had only seen their public defender once or twice since the defender was assigned to their case. When asked what they had done about the lack of attention and communication on the part of the attorney, each inmate replied "nothing." The prisoners did not seem to know or understand that they had a right to call their public defender rather than wait for him or her to call them.

While 8 of the 28 prisoners interviewed were using the services of private attorneys, only half were satisfied with this assistance. The other half all shared the same complaint: after having paid the attorney, they never saw the attorney again. Although private attorneys fared better in terms of client satisfaction, most of the inmates expressed the same frustration regardless of the source of their attorney: poor communication on the part of the attorney, leading to complete ignorance on the part of the prisoner as to the status of the defendant's case.

Aside from these deficiencies, a range of themes emerged from the interviews with the public defenders and prosecutors, which indicated that their effectiveness was significantly circumscribed by traditional definitions of judicial roles and proceedings. With respect to role performance, in the Honduran civil law tradition, the judge is still the dominant and controlling player in charge of investigations, as well as the indictment, trial, and sentencing proceedings.

While public prosecutors indicated they have fair-to-excellent relationships with the judges with whom they work, all those interviewed explained that their job depends almost entirely on what a given judge will permit since the judge, and not the prosecutor,

has control over the case. A judge may permit or prohibit a prosecutor from conducting an investigation, from questioning a witness, from playing a role in the pretrial investigation and hearing, even from entering the court. Indeed, some prosecutors believe that some judges view them as a threat since they are both charged with conducting investigations.

A similar condition is faced by the public defenders. Thus, whereas pretrial hearings (technically known as *sumario*) are in theory designed to be used to determine whether a crime has been committed, judges frequently use them to determine guilt or innocence. A judge may not allow a defender to be present at these proceedings which is where, in the public defender's view, abuse and mistakes are most likely to occur.

In brief, both the public defenders and prosecutors felt that all too often how a case was managed depended too much upon individual judges rather than any type of institutionalized case-handling procedure. They were in favor of giving high priority to laws that set forth their rights and obligations, and thereby legitimize their roles as important actors in investigatory and judicial proceedings. Until such laws are in place, they believe they have little recourse against judges who seek to exclude or curb their roles.

These interviews point out role conflicts encountered by public prosecutors and public defenders which are sources of some strain within the judicial system, and that in some instances will have to be addressed with structural reforms, such as the formulation of laws/regulations that define and strengthen the position of the public defenders and public prosecutors. In other instances, it appears the source of conflict is simply part of a new set of more assertive actors, assimilating into a complex system and overcoming the attendant turf issues that such changes generate.

The public prosecutors indicated that there were major differences between the NJRC and the public prosecutors with respect to the latter's relationship with the police. According to them, the NJRC believes that the police have more control over the public prosecutors than the public prosecutors have over the police. The public prosecutors believe that the NJRC simply does not understand the prosecutors' role and feel that their relationship with the police is quite good. According to the public prosecutors and public defenders, the police used to perceive the Public Defender's Office as the enemy, because the two agencies were at cross purposes, one agency trying to arrest people, the other attempting to free them. The public prosecutors and public defenders believe this perception is eroding, in part because of ICITAP training.

The interviews also revealed differences and uncertainties among the public prosecutors and public defenders about how they should define their role in relation to other actors in the system and how they should measure their performance against some standards of effectiveness. For example, while many public defenders felt that they should have a closer working relationship with public prosecutors, some public defenders felt that they should be kept at a distance from each other in order to assure the public that they were representing opposing sides. More importantly, many public defenders felt that they

did not have any role models by which to judge their performance. They wanted to learn how public defenders' offices operate in other countries, how investigations are conducted, and how to convert to an oral trial system.

Finally, all of the public prosecutors and public defenders complained that their caseloads were too heavy and interfered with their ability to address each case. Their effectiveness was further constrained by grossly inadequate logistical, office, and administrative support. The assessment team visited one office in which 11 prosecutors share one room. There is no privacy and they are frequently interrupted in their work by other people and noise. The 11 prosecutors usually share two secretaries, but are currently sharing only one, because the other is out on maternity leave. Typewriters and supplies are few. All the prosecutors and defenders identified transportation as the most critical need of their offices. They frequently need to travel to distant locations to gather evidence, but there is no office motor pool and no funds for taxis. Some indicated they pay for taxis from their own money. Finally, payment of their salaries is frequently weeks and occasionally months behind schedule.

Despite these constraints the public defenders and prosecutors were relatively upbeat about the progress they were making in gradually securing the acceptance and cooperation of the police, prison officials, and judges. Thus, defenders stated that they are now frequently brought in by judges at the *sumario* stage. Prosecutors also feel they will be able to convince judges that they are not a threat, thereby allowing them to relieve the judge of burdensome investigative tasks; and that the police eventually will allow them to take complaints, which will serve to eliminate frivolous cases.

Aside from the limitations discussed above, the public prosecutors and defenders identified a range of other, more fundamental deficiencies in judicial proceedings that seriously limit their ability to move defendants through the judicial process in a speedy and fair manner.

Major problems begin to appear early in the pretrial or *sumario* stage of the judicial process, when the judge, after a hearing either releases the accused or issues an indictment. Most prisoners are in this pretrial stage, waiting months, if not years, to be tried. According to the prosecutors and defenders many of the accused need not be waiting for trial. For some, their cases are without merit, and the prosecutors and defenders have sought to have their charges dropped with mixed results. For others who have pleaded guilty, judges still insist, in accordance with the law, that they go to trial. In these instances, attempts by prosecutors to bypass the trial and go to sentencing have been unsuccessful. One public defender told of a case where two young boys stole some chickens and when caught confessed their guilt. The boys are still waiting for their trial. The public defender in charge of the case shook his head ruefully and stated, "No matter what, there has to be a trial." All of the defenders felt that judges need to be allowed greater discretion in dismissing cases that have no merit.

Once the pretrial stage is completed, the case moves to the trial stage, or what is known as the *plenario*. All cases at this stage have both a prosecutor and defender present

to provide the court with evidence. Once all the evidence has been presented, the attorneys file *conclusiones* in which they make their final arguments to the court. The judge is then supposed to issue the sentence which is the judgment of the case.

Almost all of the attorneys interviewed complained that sentencing is the stage at which the greatest delay occurs. The public prosecutors, through diligence, can push the cases through the pretrial and trial stages, but thus far have had little success in making judges issue speedy sentences. The attorneys stated that the judges are so busy with new investigations that they have little time to issue decisions on prior cases. This means that the accused must often wait in prison until his or her guilt or innocence is determined. Most prosecutors interviewed stated that trials can last as long as 3 to 5 years (6 months to 2 years to get to sentencing, the rest waiting for the sentence to be issued).

The public prosecutors and defenders interviewed felt that until these more fundamental deficiencies in the judicial process were addressed, it would be difficult to make significant inroads in reducing case backlogs, expediting the investigatory and trial/sentencing process, reducing that large part of the prison population who should not be in prison, thus creating a more fair and efficient judicial system.

The interview respondents' most frequently mentioned areas for change coalesced around the following reform agenda:

***Limit the role of judges to judging.*** Judges should be limited to judging cases in order to expedite the trial process and should not be involved in receiving complaints or investigating charges.

***Hire more judges, public prosecutors and defenders, and support staff.*** More prosecutors, defenders, and judges, including support staff, are needed to expedite the timely processing of current case loads.

Public defenders and prosecutors agreed that paper work and long delays in obtaining documents from the clerks' office made cases last anywhere from 3 months to 1 year longer than would otherwise be necessary. Much of this clerical work is undertaken in long hand and with little systematic record keeping. In addition, there is frequently confusion and attendant delays over who is authorized to request records in the justice system.

***Let the public prosecutors handle complaints.*** Most of the public defenders and prosecutors felt that justice would be better served if all complaints were handled by prosecutors, rather than judges and police.

Currently, victims can file complaints with public prosecutors, judges, and the police. In the views of the public prosecutors and public defenders, judges have insufficient time and means to deal with complaints. Public defenders and prosecutors also are of the opinion that the police tend to make errors in recording charges and gathering evidence; police also add to the risk of human rights abuses. Furthermore, public

prosecutors do not go to court with meritless cases; if there is insufficient evidence to prove a crime has been committed, prosecutors do not pursue the case. According to the public prosecutors, the same is not true of the police, who tend to add to the backlog of cases that frequently lack merit.

The police still want to control receipt of complaints. This is one of the few remaining problems the public prosecutors are experiencing with the police. However, public prosecutors perceived this as a problem of the system and the lack of an organic law to govern the office of the police, rather than a relationship problem.

***Convert to an oral system.*** Many of the public prosecutors and defenders are convinced that the current practice of written trials is too time consuming and that Honduras should convert to oral trials to achieve more expeditious proceedings. The heads of the Honduran Bar and Law School, along with members of the NJRC, were also of the same opinion.

***Create conciliation mechanisms.*** All of the public prosecutors interviewed indicated that the establishment of conciliation mechanisms would relieve them of working on cases that are not appropriate for a traditional court setting.

The public prosecutors were not in agreement about who should provide conciliation services. Some felt that the police courts could continue to provide conciliation in an expanded manner, while the others felt that the police courts have been ineffectual and are no longer trusted by the population.

***Establish an emergency fund for prisoners.*** An emergency fund would release those stranded in prison because of their inability to pay the fine. The fund would also assist released prisoners with transportation and food to return home.

Many crimes are punishable by fines. However, if defendants are poor and are unable to pay the fines, they must go to prison where they can languish for long periods of time until the fine is paid. Currently, many public defenders claim they pay the fines for the prisoners from their own money when they can.

In listing these reforms, the assessment team is not suggesting that these issues form the project's agenda for reform. Rather, what is important is that these issues are identified by those involved with the justice system, thus constituting an important base for launching a reform process within the judicial system.

### *Justices of the Peace*

The 322 justices of the peace, of which 81 are law graduates recruited under the AOJ project, are at the bottom of the ladder in the hierarchy of judges in the Honduras justice system. Most of them are scattered throughout the country, in small remote villages where electricity is often not available, telephones are few, and roads are bad to

impassable. The role of the justices is to handle minor cases and offenses. For more serious cases, justices of the peace gather evidence, after which the case is transferred to the next higher court to be adjudicated by judges and by public or private attorneys who reside in urban centers.

In brief, the justices of the peace can be considered the "circuit riders" of the justice system, "flying solo" in addressing a wide range of concerns, some serious and others more mundane, which are apt to surface in the daily life of rural communities. Since the justices are nearly the most visible representatives of the Honduran Government in rural areas, the manner in which they conduct themselves, the fairness with which they render decisions and justice, and their responsiveness to individual and community needs will in large measure have an important influence in shaping public opinions about the credibility and efficacy of a regime whose legitimacy rests on democratic values. In brief, the justices constitute a very important component of the governance and democracy development effort and issues concerning their effectiveness needs to be highlighted in this report.

The assessment team was able to interview five justices of the peace, two of whom had law degrees and came to their positions under the AOJ project (meaning they were appointed on a competitive basis after having taken a standard examination) and three were without law degrees and assumed their position (through patronage) prior to the project. All of the justices interviewed served in rural areas, except one who served in a metropolitan area. The interviews explored the perceptions of the justices concerning the value of the training they received from ILANUD, the adequacy of the support they receive in conducting their work, and their views on the impact and effectiveness of the services they render.

For purposes of this discussion, the two justices who were appointed by examination and have law degrees will be referred to as "lawyer justices," the other three as "nonlawyer justices."

All of the 322 justices of the peace received training through the A.I.D.-supported ILANUD regional AOJ program; thus, part of the interviews focused on the adequacy of this effort. The three nonlawyers interviewed showed a very good grasp of what their duties were, of the time constraints for the performance of each of the phases of investigation, and of the necessity for proper record keeping. All three stated that the ILANUD courses were very helpful and practical, and all of them used the ILANUD manual, which outlines the daily responsibilities of the justices.

Both of the lawyer justices felt that the training they received from ILANUD was excellent. However, they disagreed on whether the courses were of any value for participants who were nonlawyer justices. One lawyer justice served as a coordinator for an ILANUD course given to nonlawyer justices. She believed that it was a waste of money to try to train the group she worked with. The trainees, when asked if they understood would nod agreeably, but when they were asked simple questions, it was apparent that they "hadn't understood anything." This comment was made by a woman who had worked with ILANUD on other training programs, and also had worked with the

Supreme Court as an evaluator, prior to becoming a justice. In contrast the other lawyer justice opined that the training had been valuable even for the illiterate justices, indicating that even though they could not read the material they asked questions and participated in discussions.

All of the justices interviewed work with very limited logistical and administrative support. Of the five justices interviewed only one had a typewriter, and it barely worked. Generally, they have had to buy paper themselves. There are no means of transportation furnished to the justices, even though they are required to travel to the scene of any major crime. One woman justice interviewed reported walking, on one occasion, for 6 hours through brush country to inspect a crime scene. Another time she rode on horseback for 4 hours for the same purpose. She had to pay for the rental of the horse herself.

Institutional support for justices of the peace from other government sources can also be quite problematic. The police in rural areas are thinly spread. One rural justice reported that in her area there are only three policemen for 10,000 people. Another said there are only five policemen in her area, and three of them are usually assigned to places distant from her office. Both report a complete lack of protection on the part of the police. The police consistently refuse to accompany the justices on visits to crime scenes, which on some occasions can be quite dangerous. Two other justices reported satisfactory relations with the police.

The relations with the local *alcalde*, the mayor of the municipio, may also cause problems. Three of the rural justices reported satisfactory relations, but one other, a lawyer justice appointed under the AOJ program, said that she got little respect or cooperation from the mayor and his cronies. She believes that this may be because under the new judicial career system the mayor cannot get the justice appointment for one of his friends or relatives, as he used to do.

Despite the various shortcomings they could encounter from other authority figures in their areas, all of the justices felt they were well respected by most members of the communities in which they work, and that as they become better known, people come to them for advice on all matters, some of which do not involve the law.

Finally, all of the justices interviewed indicated that they were keeping up with their caseloads. However, one justice located in the metropolitan area stated that he now handles 70 to 90 cases per month (up from the 30 to 40 volume when he started 7 years ago). He takes work home and often works weekends in order to keep up. Lack of support personnel is a severe problem for him.

These interviews constitute only a tantalizing peak into the ground level workings of the Honduran justice system, and they reveal snippets of insights which are only suggestive of the following issues pertaining to the performance of the judicial system.

First, the five justices interviewed were located in less remote areas; those located in the vast and more isolated reaches of Honduras probably experience logistical obstacles

of even greater magnitude. Given such adverse conditions, questions emerge as to whether young attorneys appointed as justices can be retained in the justice system. All of the lawyer justices interviewed were vocal that their pay was too low (U.S. \$218 per month), and all regard their current position as a stepping stone to a higher level judgeship. In brief, if the Judicial Career Law is not fully adopted, thereby negating the possibility of upward mobility, it can be anticipated that there will be a substantial attrition rate for lawyer justices.

Second, increased attrition is likely given situations in which there is a lack of cooperation from local authorities, particularly in which justices must operate without the consistent support and protection of the police. In major urban areas, the interviews with public prosecutors and defenders have indicated that their relationships with the police have improved. It would appear that in some rural areas there might be considerable need for building such relationships.

Finally, it is possible that many rural-based justices have their caseloads under control, and that the primary source of caseload congestion is in urban areas and at the higher levels of the court system. This obviously bears further research, but has implications for where the judiciary should be adding and allocating its personnel. (The court has been using case statistics for some time to decide personnel allocations, such as adjunct judges, but is limited by funding which barely covers the courts established by the Congress.)

## **Summary**

In summary, the impact of the three-pronged AOJ component strategy is still in a formative stage of evolution and development. Some gains have been made in moving forward with the application of the Judicial Career Law, primarily with the new public defenders, public prosecutors, and justices of the peace; some progress has been shown on the budget front; and modest impacts are being generated in judicial services.

This may be about as much as can be expected given the relatively short-time span which the project has been in place, and the difficult and uncharted political terrain which it is seeking to traverse. Aside from these considerations, let us now move on in attempting to draw some tentative lessons, questions and issues from the Honduran experience, which might be of relevance in designing legal development and democracy strategies in countries like Honduras.

As mentioned earlier, an emphasis will be placed on trying to identify important issues and in asking enlightened questions, recognizing our early position on the learning curve, and thereby resisting arriving at answers which seek the comfort of categorical conclusions at the expense of obscuring the ambiguities and complexities of the subject at hand.

## 4. LESSONS IN PROJECT MANAGEMENT

### Contracting Arrangements

For numerous reasons, the AOJ component of the SDI project got off to a very bad start. First, there was considerable loss of momentum and timing because of the 18-month delay from the time the Project Paper was approved to the time Georgetown University signed the contract and had its team ready to work. Once Georgetown University arrived in Honduras in February 1989, the political system was heating up for the scheduled national elections in November. In effect, the project had about 7 months to initiate and complete a major technical, logistical, and commodity assistance effort with the TNE in registering voters and administering the national election. This task was so overwhelming that the AOJ and congressional components were put on the back burner for almost an entire year.

The delays were only the beginning of a series of problems that dogged the project. Just as the AOJ effort was finally gearing up in mid-1990, the SDI project encountered some major personnel turnovers. The Georgetown University chief-of-party had to leave because of illness, and a few months later his replacement had to leave for similar reasons. Management turnover on the Georgetown University side was matched on the A.I.D. side, again caused by personal illness. The project had a succession of three different managers over a 22-month period. Only in the fall of 1990, when the current Georgetown University chief-of-party and A.I.D. manager arrived on the scene, did the project begin to benefit from continuity of leadership.

The final hitch, and one that endured throughout the entire project, concerned issues involving Georgetown University's contractual relationship with the Mission. The contract signed with Georgetown was an institutional contract, meaning that Georgetown was supposed to be vested with considerable responsibility and concomitant authority for managing the project, under general Mission direction. In practice, it turned out otherwise.

In the initial years of the contract, the A.I.D. Mission lost confidence in Georgetown and moved to assume day-to-day management control over the project. Georgetown saw this as micromanaging, as undermining their authority, and as inconsistent with the spirit and terms of the contract. The source of the Mission's disaffection arose out of incidents, which in their view, suggested a lax management style on the part of Georgetown, particularly with regard to the supervision of consultants, the timely delivery of services, the exercise of quality control over work products, and provision of information to keep the Mission informed of work in progress. On this basis,

and given the politically sensitive nature of the SDI project, the Mission decided to exercise a much tighter rein over it, with the Project Director and her assistants assuming a more direct and interactive role with the Honduran recipient institutions, in particular the court. (According to one source, at the time that the initial contracting arrangements for AOJ were under consideration, the El Salvador Mission advised the Honduras Mission against using an institutional contract largely because of the politically sensitive nature of the work.)

Although some of the problems with the contract were gradually sorted out, some were not. In particular, there were excessive cost overruns with respect to the installation of computers for the court, which had serious ramifications for the project. In particular, court docketing, one of the key elements of the project, was never implemented because of insufficient funds associated with the cost overruns.

In great measure, the friction between the contractor and the Mission stemmed from structural deficiencies. The kind of contracting mechanism employed with Georgetown University was inappropriate in light of the political sensitivities associated with an AOJ effort and the attendant need for the Mission to closely manage and monitor project activities in this area.

## **Technical Assistance**

By its very nature, the AOJ project in Honduras presently is very complex, and politically, a highly sensitive effort. In Phase I of the project, priority was devoted to the technical requirements of introducing the hardware and software to support new budgeting and administrative procedures and in designing the manuals and instruments to support the adoption of a judicial career service. Phase II of the project, which is just beginning, will focus on institutionalizing these features; that is, ensuring that they are adopted and sustained as an integral feature of the court organization. A second agenda item for Phase II will focus on docketing, serving to highlight those structural conditions within the court that need reforms in order to enhance the effectiveness and efficiency of the judicial process itself.

In brief, Phase II of the AOJ project will undergo a fundamental transformation, from the high-tech cum administrative reform emphases of Phase I to an emphasis on reforms in the core procedural elements of the judicial process itself along with attendant changes in role orientations in the way judges, prosecutors, public defenders, and other members of the judicial system, including the police, interact with each other and the public at large.

These substantive reforms will involve the inner workings of the judicial process and will require a new level and kind of technical assistance. In Phase I, the major effort required technical competence in the introduction of new computer/administrative systems. Phase II will require individuals with a background in the law/judicial process and with sufficient depth of experience, stature, and diplomatic skill to command the professional

respect and support of senior judges within the judiciary. Anything less will serve to endanger the prospect of securing the kinds of reforms required for achieving significant gains in judicial performance. Indeed, it seems that several of these individuals would need to be in residence full time in order to adequately engage the court in the reform agenda for Phase II.

At the moment it is not clear that the technical assistance proposed for Phase II will be providing these kinds of skills. The cost of securing specific personnel may be high, but the qualitative reforms they will assist in undertaking are at the core of what AOJ is about.

In brief, the preliminary lesson to be drawn from the Honduran case is that the character of the technical assistance package will change in the transition from capacity building, which in this case involved the installation of new administrative procedures, to one in which the emphasis is on reforming the core features of the judicial process, which involves redefining the roles of judges, attorneys, and the police. This process will also involve building a coalition in and outside the Honduran Government, which can lead and support a reform effort. This latter task leads to some comments on a third feature of project management.

## **Coalition Building and Strategic Planning**

Coalition building is a cardinal principle of any effort to change an institution, and it is even more critical for a politically charged endeavor such as judicial reform. Thus, a major task is to understand how to bring the various instruments of a development project to bear on creating a critical mass of elite support, who would then undertake or sponsor the process of strategic planning and management which undergirds a reform process.

What is distinctive and instructive with respect to the recent CDIE assessment of the A.I.D. Colombia AOJ project is that the project was able to facilitate the development of an important coalition of elite cadres who engaged in the strategic thinking and championing of a major judicial reform effort. The project was able to do this by supporting a neutral arena where elites could come together and discuss issues and problems relating to judicial restructuring. This process was supported by important project-sponsored studies and pilot efforts which flowed from and fueled these discussions.

In Honduras it is not clear if the current NJRC can serve as a major arena for the kind of cross-section coalition building required in supporting a reform effort. Its operation appears at times to be an extension of the court itself rather than a genuine interagency body, and its leadership role is limited because its membership is largely made up of middle level officials who cannot act without the backing of their higher superiors. Both of these levels would need to be targeted for a coalition-building effort.

In addition, it would be important to broaden the coalition membership to include the police, who are not now members of the NJRC.

The challenge in early developing countries like Honduras is to find a neutral arena where elites can meet to formulate and support a reform agenda. This task was relatively easy in Colombia because of the country's advanced development and the attendant plethora of available nongovernmental institutions which can function in a brokering role in bringing elites together. In a place like Honduras, where few if any such institutions exist, the problem is one of crafting training, studies, and pilot innovations to cultivate and support coalition building.

In Phase II of the Honduras AOJ project, NJRC will be provided resources to undertake studies in support of further judicial reform. The question remains how to secure the support and interest of those who occupy senior positions above the NJRC in these studies. Educational experiences abroad explicitly designed for coalition formation might be one means of addressing this issue. Such educational experiences would involve bringing together, for no longer than a week, members of the relevant elites to a place where they would interact as a group and discuss important reform issues. The overseas nature of such educational programs is important because it brings the elites to a neutral arena where they can interact without the distractions and turf barriers usually encountered in their home environment. However, for countries like Honduras, the challenge still remains of finding or designing institutional mechanisms that could mobilize their continued support as leaders of the reform process.

One high-level Honduran told the assessment team that in the one instance in which the AOJ project targeted a group of high-level officials for a short-term visit to several U.S. educational programs in court administration, several of the individuals who had reservations about the A.I.D. project did a turnabout and became advocates of the reform effort. This particular training effort appears to have been well planned, and the outcome seems to have produced some fundamental changes in the participants' conceptions about the relevance and need for the project.

## **Conditionality**

As mentioned, the project agreement with the Government of Honduras included a covenant and conditions primarily aimed at ensuring faithful adherence to the Judicial Career Law. The Mission has used these conditions as leverage in ensuring that the Government of Honduras conforms at least in spirit with the intentions of the Judicial Career Law.

In early 1991, when a newly elected administration took power and the court seemed less attentive to moving ahead with the Career Law, the Mission indicated that without a strong sign of government intent, it would discontinue the project. A letter was immediately forthcoming from the court indicating its endorsement of the Career Law. Similarly, as mentioned earlier, in 1992, when the Government of Honduras seemed

inclined to underfund the court, the A.I.D. Mission was prepared to withhold ESF funds, unless the Government of Honduras was more forthcoming. The Government of Honduras complied with this request.

In brief, conditionality has served the purpose of refocusing the goals of the players at crucial intervals in the life of the project. Conditionality has not been used to define benchmarks to measure progress in achieving project goals. Benchmarks were defined in the original project agreement, but A.I.D. management realized midway that these measures were overly ambitious and in some instances not well formulated. Thus, the focus shifted to an emphasis on ensuring that, in principle, both sides were in agreement on project objectives, even though there might be slowness and some ambiguity in the manner in which the Government of Honduras implemented its half of the bargain. In some areas where the government has fallen short of expectations, judgments about its good faith have become a matter of interpretation, tempered by a sense of what is politically possible in Honduras.

Lurking behind the issue of conditionality is the murky and elusive concept of political will. The Mission seems to have recognized that political will is not necessarily something that can be easily manufactured or measured and that conformance to covenants and conditions should be interpreted liberally, with the evidence of conformance resting less on categorical fulfillment of specified benchmarks and more on the demonstration of progressive movement in approaching project objectives. This leaves the host government with considerable discretion in defining measures of progress, but can leave the donor with a sense that progress is more in the appearance than the substance of the endeavor. The lesson here may be that a Mission needs to exercise considerable leadership in negotiating benchmarks which serve to measure more than good intentions and lays out timetables and yardsticks of accomplishment.

## **Sustainability**

With only a 4-year track record, it is too early to make confident judgments about the prospects of sustaining project innovations introduced in Phase I or planned for Phase II. The prospects for the Judicial Career Law are still problematic as is the case with the judicial budget. Without an increase in budget the judicial reform effort will likely come, in time, to a stall.

Increasing the budget of the justice system, particularly the police, will depend on securing a larger shift in the basic constellation of political forces in Honduras. Here is where U.S. foreign policy and the foreign policies of other donors will have to come into play in urging the Government of Honduras, and particularly the Honduran military, to shift their priorities and transfer more authority and resources to the justice system. Currently, the U.S. Embassy has been pressing the Honduran military to begin downscaling their force requirements, redefining and narrowing their role to reflect a changing world order. If such were to occur this would free resources for other

investments, one of which could be the judiciary. The prospects for this happening are beyond speculative reach of this report.

## **Reassessment**

The question arises as to whether the Government of Honduras and the judiciary will move forward with a reform agenda without A.I.D. having to take a continuing proactive role with respect to conditionality. Some signs on the political horizon indicate that it might continue to do so in some areas of the reform agenda. Thus, the Government of Honduras set up a State Modernization Committee in 1991, with one of the items on its agenda being judicial reform. Likewise, in 1992, the Government established a human rights commission which will report directly to the President. The UNDP is helping to fund both of these efforts and is contemplating further assistance in the provision of training in human rights for the police, judges, school teachers, and the public in general. In spite of these signs, it is still too early to discern whether the political context will accommodate and support genuine and fundamental changes of this nature.

As mentioned in its enunciation of strategic objectives for the next decade, the A.I.D. Mission recognizes that the elections of 1993 and 1996 are watersheds for SDI, including its AOJ component. A new administration will take power in 1993. Will it pay more than lip service to issues of judicial reform? If it is not forthcoming, is it time to reassess and change course, or wait for the 1997 election (USAID/Tegucigalpa 1991, 1)?

These questions are easy to pose but difficult to answer. Because Honduras is so typical of many early developing countries, perhaps it should be identified as a bellwether case meriting close attention from A.I.D. over the next several years.

## 5. ASSESSMENT OF THE HONDURAS AOJ STRATEGY

### The Goals of the AOJ Strategy

A major issue of the AOJ strategy concerns whether it is necessary to place such a high priority on introducing a judicial career service. In brief, Is the establishment of a career system a necessary prerequisite for engaging in improvements in other parts of the system? Given the kind of opposition such civil service reforms encounter in early developing countries, would a secondary strategy of insisting on higher levels of professional requirements in patronage appointments be a more appropriate and feasible approach? Or would it be at least an acceptable fall-back position, particularly in the absence of pressures from within the political system or the public at large that might bring about more fundamental reforms, such as the adoption of a career system?

Indeed, there is ample historical evidence that the competence of a public bureaucracy need not be undermined by appointments based on patronage. Even in many U.S. courts, appointments are frequently highly politicized and many local judges are selected through popular elections. However, without some vigilance in monitoring judicial performance by the media and public interest organizations, there is always the prospect that overtime organizational performance will deteriorate in patronage systems.

In countries like Honduras, there is a general absence of such public pressures, and thus, by a certain circuitous logic, one could conclude that there is even more need for a Career Law in order to maintain professional standards of behavior within the judiciary. In effect, the Career Law becomes the surrogate for the absence of public and professional watchdogs. Yet, one still cannot escape the ultimate question of who monitors compliance with the Career Law. Must the donor agency assume this role and how can this function be assumed by others once donor funds are phased out? In this regard, one goal of Phase II of the AOJ project, which is just now beginning, is to strengthen the monitoring role of citizen groups, the Honduran Bar, and the Office of the Inspectorate General in the judiciary.

Moving from the Career Law to the second element of the Honduras strategy, that is, an emphasis on an increased budget, it is apparent that reforms in expanding and improving services can only be undertaken with more resources. In this regard, budgetary allocations are really a measure of political power, power that emanates from organized coalitions and constituencies that can exert or have the potential for leveraging pressure and influence in the political process. At the moment the judiciary does not have this kind

of power base operating in its favor, which explains why there has been a consistent shortfall in its budget requirements.

In a quick look at the judiciary in Honduras, and many countries like Honduras, or even in many developed countries, there are few if any constituencies, outside the judicial branch which have a vested interest in expanding their budgets. In many of these countries, the rendering of more efficient and effective justice is not an issue generating much political or financial support. It may be a felt need within the public at large, but until it emerges in some organized form and is effectively and powerfully conveyed within political forums, the judiciary will remain a low-priority budget item.

Finally, while the prospects for achieving a career service and increased budgets for the judicial branch are still indeterminate and will likely remain so for the near future, it is apparent in the near term that a major energy source for reform and change resides with the presence of the new public defenders, public prosecutors, and justices of the peace, the third major element of the AOJ strategy. This may be the most important asset created by the project.

The team was greatly impressed with the dedication and vitality of the public prosecutors and public defenders, and more importantly with their palpable interest in streamlining the entire system of justice. In this context, the question arises as to how one might use this energy source, which currently remains untapped, to fuel and generate interest, which has yet to fully manifest itself within the court leadership, in improving the efficiency and effectiveness of the justice system. An attempt to answer this question forces us to examine the Honduran AOJ effort in the larger context of what we know about induced organizational change in general.

## **Organizational Change Strategies**

The Honduras AOJ effort is seeking to achieve fundamental transformations in the formal structures of the judiciary. Basically, this entails initiating and supporting a process of *organizational change*. If we examine the Honduran case in the context of what is known from state-of-the-art research on organizational change strategies, what can we learn about how to facilitate change in the judiciary?

According to the literature on organizational change, without the awareness that the organization is falling short in the supply of outputs or service delivery, it is very difficult to build pressure or motivation for change.<sup>5</sup> A second theme which emerges from this literature is that while an initial recognition of failure may serve to instigate

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<sup>5</sup>See Jerald Hage and Kurt Finsterbusch, *Organizational Change as a Development Strategy: Models and Tactics for Improving Third World Organizations*. This review focuses on a comparison and synthesis of three schools of change strategies: organizational development, organizational theory, and organizational development. The review includes literature from developed country experiences as well as cases of successful organizational reform in the developing world.

organizational change, the interest in sustaining a process of change will wane unless output gaps are brought continually to the attention of those within or outside the organization that must be motivated to support reform.

The findings from the literature on organizational change run parallel with strategic planning approaches to organizational change. The strategic perspective recognizes that most organizations know a lot about their inputs, but "typically they can say little, if anything about outputs, let alone the effects those outputs have on clients, customers, or payers" (Bryson 1988, 55). For this reason, a strategic planning process starts with a primary focus on the interface between the organization and its clients, planning from the outside in to arrive at an appropriate service or product mix, and then working inward in creating supportive organizational structures.

How might these approaches be applied to a judicial reform effort of the kind we find in Honduras? The conventional definition of outputs for a judicial system is the rendering of justice in a fair, efficient, and effective manner. Thus, an organizational change strategy might focus sustained attention on monitoring case-load management and identifying the various factors which serve to constrain accessibility to the justice system and the timely and fair processing of cases. A range of change tactics would then be employed in addressing these constraints. In parallel with this process there would be a continuous monitoring of organizational outputs supplemented with studies which help identify problems and attendant solutions.

The one feature of the Honduras experience which seems to demonstrate the relevance of the organizational change/strategic planning approaches is the judicial services component and the hiring and insertion of new and more qualified cadres of public prosecutors, public defenders, and justices of the peace. Since they operate at that point of the judicial system which is most engaged with the consumer/client, as made evident in the previous interviews, they are identifying a range of candidate issues which seem, from their point of view, to serve as major impediments to the timely and effective rendering of justice.

The project is intending to introduce a management information system in the Phase II effort to be linked to measuring workload and the performance of judges, including case tracking to determine where bottlenecks are arising in judicial proceedings. Once in place, this system should provide information on the kinds of problems which the court leadership will need to address in improving performance, and test its commitment as well to making the necessary changes. In the meantime, however, the court has plenty of suggestions and ideas emanating from the public defenders and public prosecutors, which could constitute a basis for moving ahead now with a major reform effort.

## **The Problem of Demand**

The problematic scope for change within the court, particularly with respect to the Judicial Career Law and the acquisition of increased budgetary resources, gives rise to a

larger and more complex issue of whether one can count on the judiciary, and the Government of Honduras in general, to initiate and sustain reforms, without public pressure. As indicated earlier, the prospects that the Government of Honduras might engage in self-reform on its own, without help from outside pressures, is uncertain. Thus, we are forced to scan the horizon for interests or groups that might be able to generate political pressures in favor of a stronger and more autonomous judiciary.

At first glance the landscape seems relatively barren. There is not a high level of political and social mobilization in Honduras. National elections serve to mobilize high voter turnout, but as one scholar observed, they are generally "preludes to the reduction of participation" (Rosenberg 1989, 4). After the election, the party elites again turn inward to become immersed in factional intrigue.

The most prominent sociopolitical groupings in Honduras are the labor unions, but they continue to focus their energies on narrow, self-interested bread and butter issues. Unlike in Nicaragua and El Salvador, historically the Catholic Church has been very weak in Honduras. The business class does not speak with a strong or unified voice. Large and well-connected entrepreneurs are cutting big-time deals, frequently in league with military officers, with a weak small business sector left to find its own way. There is a small middle class, but it is politically inconsequential. Finally, few Hondurans are informed of their rights as citizens or how the judicial system is supposed to work in their defense.

In brief, at the present time, there may not be a lot to work with in building a coalition of external constituencies to generate the kind of political pressure necessary to sustain a judicial reform effort. However, incipient signs of promise are visible in the form of small grass-roots action groups who could constitute a base from which to build demand by increments. One example of such activism is AHSOSEL, a small private, nonprofit organization which, with funding from private companies and churches, is working in securing the release and rehabilitation of prisoners who suffer from mental illness and other special problems that the judicial system is currently unable to address. If efforts were undertaken to identify and nurture such groups, along with attendant measures to gradually link them around a larger coalition of interests, the prospects of building a base of sustainable support for an incremental reform agenda would seem more promising.

Creating a coalition of external constituencies in support of judicial change will be a labor-intensive, long-term process. However, is there any other recourse in seeking to address issues of initiating and sustaining a reform process? Without investments of this kind in strengthening civil society can anyone expect to produce a more responsive judicial system? It is the intent in Phase II of AOJ effort to strengthen citizen groups and the Honduran Bar Association to serve as sources of support and advocates of judicial reform (A.I.D. 1992, 3).

Finally, a corollary concern with respect to constituency demand and civil society consists of the need for investments in civic education activities which build public support for a more effective judicial system. Initially, there was a public awareness component to the AOJ effort, which was intended to inform citizens of their rights under

the law and the judicial services available in the protection of these rights. The NJRC persuaded A.I.D. to postpone implementing this component on grounds that such a campaign would increase public demand for services in excess of what the courts could supply. In their view, such a campaign could only be initiated once the capacity of the courts were substantially strengthened through the A.I.D. assistance effort.

Given the potential that the mass media has for mobilizing public support, it would seem that the decision to suspend the public education campaign was ill advised. Indeed, there is the potential that such a campaign could generate a level of demand which would exceed supply. However, if designed imaginatively, this need not be the case and the benefits of such an effort would far outweigh the risks. In particular, media reporting on the effort of the court to improve its performance, the contributions which new justices of the peace, public defenders, and public prosecutors are making in improving judicial performance, and how the courts could become even more effective in service delivery with additional funding, could do no harm and might begin to create a climate more supportive of the judiciary. In this context, it is planned in Phase II of project that a public information campaign will be initiated to increase citizens' awareness of their rights under the law (A.I.D. 1992, 3).

Interestingly, when asked how the Judicial Career Law could become an institutionalized feature of the judiciary, the justices of the peace, public defenders, and public prosecutors generally responded that mounting a public awareness program would be the only hope for their survival. They felt that if the people they serve know more about what their offices do and the services they provide, the people would use the services more and fight to protect their offices if threatened by the court with closure. As one of the interviewees indicated, "If the *pueblo* is not out fighting for what it wants, the government won't give it."

## **AOJ as a Replicable Strategy**

What can we learn from the Honduran AOJ experience in broadening our thinking about strategies in legal systems development? Until this point in the analysis, the Honduran AOJ strategy has been accepted on its own merits. Might there be some drawbacks inherent in the strategy itself which need to be considered when contemplating undertaking similar efforts in other countries?

The Honduran case leaves us with few, if any, answers concerning the budgetary costs involved in improving the justice system to the point where it might perform at a reasonable level of acceptability. We have no definitive data on whether the public prosecutors, public defenders, and justices of the peace are keeping pace with, or lagging behind in, meeting caseload demand, or whether their work in doing so is meeting certain qualitative standards. Nor do we have data concerning the level of latent demand; that is, cases which are not being brought forward because the court remains inaccessible to large numbers of people.

We do know that the investigation and prosecution of criminal as well as civil cases is a labor-intensive enterprise, involving police, attorneys, judges, and a legion of support staff. In brief, high cost/benefit ratios are the rule rather than the exception for the immediate beneficiaries of such investments, meaning plaintiffs and defendants, who constitute a small fraction of the population. The indirect beneficiaries, of course, will be the public at large, who will live in somewhat greater security in knowing that they have recourse in the protection of their rights, and that an effective law enforcement system may be a deterrent to crime.

In this context, the Honduran case may tell us that for very poor countries, strategies need to be considered which could spread the benefits of the law beyond the restricted number of immediate beneficiaries who are served by more conventional approaches to judicial reform. The features of a benefit-extensive strategy are visible in the legal development efforts of the Ford and Asia Foundations in Asia, where an emphasis is being placed on enabling communities, or large groups of marginal and disadvantaged peoples, to assert their rights in legal and political fora. One objective of the larger CDIE study is to examine other donor programs, where there has been an effort to devise nonconventional approaches, which make the law more accessible to larger numbers of people, particularly disadvantaged groups (Hall 1989, Dias N.d.).

Finally, for a donor agency the Honduras experience would suggest that it may be wise to consider developing a more diversified legal development portfolio as a risk-reduction strategy in countries with a history of authoritarianism and political instability. Investments in government structures would need to be complemented by having support directed at building the infrastructure of the nongovernmental sector, primarily in the area of legal services and legal advocacy (indeed, at any one point in time funding for the latter might exceed those in the former). Thus, if judicial reform was temporarily removed from the agenda of a newly elected or nonelected government, there might persist an enduring set of institutional actors outside of government who could continue to address issues of law and justice.

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