

PN-ABZ-342  
91958

**WASHINGTON OFFICE**  
**REGIONAL ADMINISTRATION OF JUSTICE**  
**CONTRACT**

**NICARAGUAN JUSTICE SECTOR**  
**STRATEGIES FOR REFORM**  
**Final Report**  
**February, 1993**

Submitted to:

**USAID/NICARAGUA and ODI/LAC/DI**  
**REGIONAL ADMINISTRATION OF JUSTICE**  
**CONTRACT FOR LATIN AMERICA AND THE CARIBBEAN**

Prepared by:

**William E. Davis**

Regional Administration of Justice Staff  
**Mark G. Visnic, Project Director**



National Center for State Courts  
1110 North Glebe Road, Suite 1090  
Arlington, Virginia 22201

## INDEX

1. Summary and Recommendation
2. Background and Country Situation
  - 2.1 Introduction
  - 2.2 Overview
  - 2.3 Strengths of Current System
    - 2.3.1 Supreme Court Leadership
    - 2.3.2 Improved Financial Support
    - 2.3.3 Recognition of Need to Change
    - 2.3.4 New Construction Underway
    - 2.3.5 Regional Administrative Staff
    - 2.3.6 Jury System
    - 2.3.7 Key Administrative Staff
  - 2.4 Weaknesses
    - 2.4.1 History of Neglect and Political Intervention
    - 2.4.2 Legal Codes Out of Date
    - 2.4.3 No Ethical Codes
    - 2.4.4 Need for Training and Education
    - 2.4.5 Poor Criminal Investigation
    - 2.4.6 Jury System is Duplicative and Time Consuming
    - 2.4.7 Defense Systems Do Not Exist
    - 2.4.8 Judicial Selection and Reformation Procedures
    - 2.4.9 Absence of Systematic Research in the Justice Area
    - 2.4.10 Extensive Conflict in the Society
3. Conceptual Framework of AOJ Strategy
  - 3.1 Project Description
  - 3.2 Project Organization and General Approach
  - 3.3 Project Elements
    - 3.3.1 Court Administration
    - 3.3.2 Statistics
    - 3.3.3 Records/Forms/Registro de Propiedades
    - 3.3.4 Trial Court Administration
    - 3.3.5 Automation - Development of a Plan
  - 3.4
    - 3.4.1 Training Education and Research
    - 3.4.2 ILANUD Proposal
    - 3.4.3 Special Courses - Commercial
    - 3.4.4 Special Courses - Alternative Dispute Resolution
    - 3.4.5 Management Training
    - 3.4.6 Research Agenda

- 3.4.6.A Judges
- 3.4.6.B Ethics Codes
- 3.5
  - 3.5.1 Prosecution and Defense Sources
    - 3.5.1.1 Training
    - 3.5.1.2 Organization of Ministry of Justice
  - 3.5.2 Study of Defense Services
  - 3.5.3 Forensic Laboratory
- 3.6 Law Reform
  - 3.6.1 Criminal Procedure Code
  - 3.6.2 Civil Procedure Code
  - 3.6.3 Court Organization and Structure
  - 3.6.4 Administrative Procedures
- 3.7 Civic Education and Training
  - 3.7.1 Schools - Mediation
  - 3.7.2 Municipalities - Human Rights Committee Mediation
- 3.8 Projects Timeline
- 3.9 Projects Cost<sup>1</sup>s
- 4. Appendices
  - 4.1 Approach to Analyzing the Administration of the Court System
  - 4.2 Under a Separate Cover Book on Legal Reform Strategies

## 1. Summary and Recommendations

The judicial system of Nicaragua has historically been one of the weakest in Latin America. The level of funding made available to the judiciary never reached one half of one percent of the total budget reflecting governmental priorities from the Somoza era through the Sandinista government. It is only in the last two years that the judiciary has begun to receive more support from the other branches of government. Nicaragua is a country without democratic traditions; therefore, the idea of a separate co-equal branch of government was anathema to the political leadership. This factor perhaps more than any other explains the current conditions facing the judicial system. The cumulative effect of being isolated and marginalized has created a condition in which the Nicaraguan justice system has so many significant needs, that a prudent development strategy requires an integrated evolutionary approach to strengthen the sector. The system does not have the capacity to simultaneously undertake all the needed reforms.

This paper recommends emphasis be placed primarily in three areas: court administration, education and law reform. A fourth area is recommended because of the high level of conflict through the society. This society is polarized and there does not appear to be sufficiently large numbers of people who are devoted to reconciling differences as is required in a democratic society. Conflict resolution programs in schools have repeatedly proven useful as a means of, not only resolving conflict, but of teaching the values of respecting the opinions of others.

The court administration component will focus on the following areas:

1) Infrastructure Development

Statistics, records management, automation, libraries, and planning

2) Access to Justice

Improve prosecution and defense function

3) Improving quality of justice through Education, Training and Research

Judicial and court personnel education, management training, and research into the new jury system and create ethics code for judges and lawyers

The law reform effort will focus on the following areas:

- 1) Criminal procedure code reform
- 2) Civil procedure code reform
- 3) Commercial codes reform
- 4) Organization of court structure law
- 5) Administrative procedures

The civil education and training component will focus on the creation of mediation programs in several school districts and the training in mediation for the members of the human rights committees located in 35 municipalities.

## 2. Background and country situation

### 2.1 Introduction

In the 1990 study of the Nicaraguan justice sector by Solis and Wilson, (footnote 1) there is a thorough discussion of the history of the justice sector and the factors that have shaped the current reality. The study called "Political Transition and the Administration of Justice in Nicaragua" documents the need for comprehensive reforms. The call for reform range from modifications of all major criminal and civil codes to the creation of public defender services. The authors cite the historical practice of politicizing the judicial system by the Sandinista government which created parallel judicial systems to control the results of certain kinds of cases. The intervention by the executive branch persisted with the election of President Chamorro when she was confronted with a Supreme Court stacked by the Sandinistas. Through negotiations, the new government in the selection of vacant positions including the Presidency of the Court.

to modify the legal system in order to build a stronger independent judiciary. The steps chosen are incremental and intended to enable the system to expand its capacities to manage itself in order to assume increasingly larger agendas.

## 2.2 Overview

In conducting the analysis for this assignment, the consultant utilized generally accepted requirements of the elements of a well managed administrative system and analyzed whether those elements were present in Nicaragua and how well they function. A general summary of the issues and concerns are described in Appendices 1.

## 2.3 Strengths of the Current System

### 2.3.1 Supreme Court Leadership

The President and Vice-President of the Supreme Court have forged an active alliance to effect change in the Nicaraguan judicial system. Their efforts to address the numerous deficiencies in the system are bringing results, in spite of the opposition of the remaining Sandinista elements in the court system. Their ability to overcome the intense hostility within the court and among its staff, coupled with their highly successful effort to remove the employees in the registry of deeds who were falsifying documents, illustrate their commitment to change. The President's efforts were recognized by his fellow Presidents of Supreme Courts throughout Central America when they elected to create a judicial education center for all of Central America in Managua.

### 2.3.2 Improved Financial Support

The Nicaraguan judiciary funding has increased to 1.58% under the current leadership of the Supreme Court. This increase in funds has enabled the court to give modest raises to judicial officials. The successful automation of the financial support system for the court's budget was completed with the donation of AID computers.

### **2.3.3 Recognition of Need to Change Legal Codes**

There is widespread recognition of the need to modify or completely overhaul the criminal procedure code, civil procedure code, labor and commercial codes.

### **2.3.4 New Buildings**

The Supreme Court is receiving assistance from UNPD in the construction of new courthouses. This program which was initiated a year ago is designed to put judges in judicially owned and controlled buildings, improve the image of the judiciary and provide suitable living quarters for the new young judges who are training for assignments in the rural areas.

### **2.3.5 Regional Administrative Staff**

The court has six regional administrative positions in place. These individuals are the intermediaries between the central office. They assist with the decentralization of administrative decisions and provide the central office with the staff assistance in providing services to the trial courts.

### **2.3.6 Jury System - Public Participation**

While the current jury system has several questionable aspects, it does provide for public participation in the system. The desirability of having public participation in the judicial system is accomplished with the jury system.

### **2.3.7 Key Administrative Staff**

The office of court administration has several competent individuals providing staff support services to the court system. Integral to the ability to not only design but implement reforms is the necessary staff capacity to carry out the reform.

## 2.4 Weaknesses in the Nicaraguan System

### 2.4.1 History of Neglect and Political Intervention

The most glaring weaknesses in the system is the long history of neglect and abuse by the executive branch of government. This neglect has crippled the infrastructure, provided nominal financial support so that the best candidates for judicial positions are not attracted to serve in the judiciary, processes used are antiquated, inefficient, and limit the effectiveness of the judicial system.

The continuous practice of the executive branch's intervention in judicial affairs has caused a negative image of the judicial system. The system suffers from the perception of the reality of not being impartial.

### 2.4.2 Legal Codes are Out of Date

The legal codes of Nicaragua date from the last century or were substantially modified during the Sandinista period. The codes suffer from ideology or being completely out of date with progressive legal developments. This condition adversely affects Nicaragua's ability to economically integrate with its Central American neighbors as well as prejudicing the way the citizens of Nicaragua are treated by the legal system.

### 2.4.3 No Ethical Codes Exist

The judiciary and the members of the bar are responsible for upholding justice. A code of ethics is a necessary ingredient in the construction of an independent judicial system which operates with integrity. A prerequisite to establishing such a system requires there be a code of ethics which reflects the moral and legal principles to govern the legal system.

#### **2.4.4 Need for Training and Education**

There is a profound need for education and training at all levels of the system. Judicial officers have not been exposed to judicial reform developments in the region; court employees have not had training. The staff is most receptive to taking training courses. The central office staff have not had their training requirements met.

#### **2.4.5 Criminal Investigations are Hampered by Laboratory Work**

The absence of laboratory services in criminal investigations impedes successful criminal convictions. The limited access of investigators to thorough laboratory examinations is having an adverse impact in jury related prosecution and sex crimes.

#### **2.4.6 Jury System is Duplicative and Time Consuming**

The new jury code requires the jurors to read aloud the findings of a judge and make their own findings of innocence or guilt. The system makes no distinction in types of crimes and is causing significant delays in processing criminal cases.

#### **2.4.7 Defense Services are not Available**

Individuals accused of crime do not have access to legal representation.

#### **2.4.8 Judicial Selection and Retention**

There is no judicial career system. The absence of a system creates uncertainty about tenure of all the judges. The creation of a judicial career is recognized by the Supreme Court as an area requiring attention.

#### 2.4.9 Lack of Systemic Research on the Operation of the System

The judicial system does not have the capacity to conduct research on the operation of the courts, which impairs the ability of the system to systematically make efforts to improve the justice sector.

##### 2.4.9.1 Lack of Integrated Records Management

###### Records Management System

The judicial system has inherited its record management system which has never been evaluated for effectiveness. The current system does not insure the availability of a record which can be used for study or reference. This system does not take into account the rustic conditions of most court facilities. The system has not been designed to maximize the use of forms to improve the quality of the record and improve effectiveness of secretaries' offices.

##### 2.4.10 Extensive Conflict Reasons Visible Within the Entire Society

The result of civil war and 10 years of military rule has left the entire society in a state of conflict. The commonly held notion to resolve conflict is too frequently either through violence or political pressure. New paradigms for resolving conflict need to be introduced into the society at every level.

#### 3.1 Conceptual Frame of Reference for Projects

In the USAID document titled Democracy and Governance, November, 1991, the areas identified for program activity are strengthening democratic representation, supporting respect for human rights, promoting lawful governance and encouraging democratic values. The proposed AOJ projects address all four program areas.

## I. Strengthening Democratic Representation

### B. Strengthening Accountability of Municipal/Local Government

- Training for local judges
- Mediation training for human rights committees in 35 municipalities

D. Free Flow of Information - support improvement of government decision-making.

- Statistical reporting of all judicial officers

## II. Supporting Respect for Human Rights

E. Basic Human Rights - support institutions that monitor and advocate respect for human rights.

- Judicial education in human rights
- Mediation training for municipal human rights committees
- Mediation training in schools

## III. Promoting Local Governance

### F. Legal and Judicial System - all categories

#### 1. Court Administration

- Records management
- Statistics
- Pilot court administration

#### 2. Education, Training, & Research

##### Education

- Judicial school/special seminar

- Management training
- Prosecutors training

### Research

- Juries
- Ethics code
- Study of Defense Services
- Study of Ministry of Justice

### 3. Law Reform

- Criminal procedure code
- Civil procedure code
- Court organization law
- Administrative procedural reform

## IV. Encouraging Democratic Values

### H. Civil Education & Leadership Training - incorporate civic education in schools

- School mediation program

#### 3.1.1 Project Description

The elements of the proposed projects relative to improving the administration of justice of the Nicaraguan justice system are summarized in the following.

The first component focuses on strengthening the administrative efficiency of the judicial system. The analysis reveals the Nicaraguan judicial system does not have the necessary capacity to assess its functioning nor can it assure that the basic functions of a system will be performed. There is need to build a statistical data base to develop a profile of the current status of the system, and to develop an integrated records management system to improve the management of the system and the preservation of records. A plan will be developed and implemented to apply automation to the management of the courts.

The development of the court administration projects will compliment the intensive education and training programs which will begin to create a forum for the exploration of ways to improve the judicial process. In addition to education, there will be the creation of research capacity within the court system. Research will focus on the jury system and the development of an ethics code.

The second project area will focus on law reform. The law reform priorities are to revise the criminal procedures code and commercial law. While the Supreme Court has discussed with the government of Spain a possibility to assist with the criminal procedures code, no response has been received. A commission of the Nicaraguan government has formally requested assistance from AID to assist with the commercial law project. The third law reform area is civil procedures code. There needs to be a study of the current law and development of a proposed civil procedures code. Finally, the law which defines the organization and structure of the judicial system is badly in need of a comprehensive review and modification. Since so much of the foregoing legislative changes, if adopted, would have an impact on court structure, this part of the project should be undertaken during the middle of the second year, as the concepts to be included in the revised laws are defined.

The third area of the project is the introduction of mediation training in the schools as a part of the strategy to teach democratic values. Mediation programs have proven to be an effective means of training children and their parents about how to resolve conflict.

### 3.2 Project Organization and General Approach

The project should be organized as a series of quasi- independent sub-elements. The sub-elements should be interrelated but designed so that each will have its own plan, financing and time line. To the extent that consultants are used in the development of the sub-elements, it is generally recommended to have different consultants as opposed to

having one major consultant working on all sub-elements. This approach spreads the inevitable risks involved in such projects more widely, reducing the potential impact of the failure of a consultant to perform fully.

Each sub-element of the project should be developed under the policy direction of a project advisory committee of approximately 7-10 members chaired by a magistrate appointed by the Chief Justice. The committee will consist of judges from each relevant court level and provide overall policy guidance. The sub-committees should create a sense of commitment to and ownership of the project by judges and non-judicial court personnel. A project team of professionals from the national administrative offices should be appointed to work in areas deemed appropriate for internal work. Consultants should be hired, as appropriate, to carry out intensive and specialized work on each sub-element. Evaluation points should be built into each sub-element so that progress can be measured.

The chairs of each of the committees appointed should be designated as the executive committee of the project. That committee should be chaired by the Chief Justice and meet periodically, at least every quarter, to report on progress and discuss any areas of project overlap.

There should be a contract to coordinate the delivery of technical assistance, follow up with Nicaraguan counterparts on all the deliverables identified in the project. The AID mission will require additional staff support for AOJ activities.

### 3.3 Project Elements

#### 3.3.1 Court Administration

##### 3.3.3.2 Statistics

ILANUD's proposal for statistics and education for judges are incorporated by reference in this document.

In the statistics project, several recommendations are made to modify the actual proposal. First, the project should include the incorporation of the experience of an individual who works in the collection and management of statistics in a court system. The statistics project should focus on reviewing the management information needs of the Supreme Court. In addition the analysis should focus on identifying alternative methods of capturing statistical information without overtaxing the current system's capacity to report and manage information. Following the preliminary analysis, the team should design a multifaceted approach which could be field tested for a number of months in several districts. Based on the results of the testing, a nationwide system could be developed.

#### 3.3.3 Strengthening the Records Management System

The interdependence of court records and court operations makes record management a priority concern of the trial courts. The basic functions of the disposition of cases by courts, as well as adjunct operations, financial and statistical reporting, among others, rely on court records for their accuracy. Records management is an active, continuing program for controlling the intake, maintenance, use and disposition of records used within a court to document and transact its business. The overall objective for this component is to develop a good record management system in the Nicaraguan courts which consists of at least the following:

Guidelines for the management of records at each stage of the records life cycle including disposition schedules and adherence to legal requirements for records.

Procedures for the successful completion of each required record such as case intake registers, registers of final decisions and others.

Standards and systems, preferably developed at the national level, on case storage and one the use of technology such as filing equipment and use of microfilm.

Guidelines for maintaining system security both from the threat of natural disaster (fire, water etc.), but also to control access to records.

Currently, a modern records management system does not exist. For example, courts continue to use the method of sewing case files together which, of course, requires additional sewing each time a new document is filed. The courts have not adopted disposition schedules and since the judicial archive is full, disposed case files are accumulating in the corridors of courthouses, at least in Managua.

Work on the sub-element will commence with contracting for a study from a consultant (firm or individuals) which will work with an in-house team of professionals from the court system and an advisory committee consisting of judges and some attorneys.

The first product will be an overview of the current status of records management practices. This descriptive analysis and some personal observation will be used to develop

recommendations for improvements.

Standards for the appropriate records management equipment for each level of court (Supreme Court, Court of Appeals, Sentencing, First Instance and Alcalde) will be developed. Costs will be estimated to obtain an approximate idea of the cost to fully outfit each court level. A survey of courts will be conducted to determine the deficiency in equipment in the courts. This survey will form the basis for the recommendation of the level of procurement that will be necessary in this sub-element. The survey will be in the form of an inventory and can be done on a sample basis.

The analytic team will survey the present system of records retention to determine if inactive records whose useful legal life has ended can be destroyed. Analysis will be conducted of how inactive records are stored to determine if these processes should be modified. Included in the consideration will be whether the location of the national archives is adequate or regional archives should be established.

The records management guidelines will be summarized into a manual which includes rules for numbering case files, a determination of the number and locale of registries on court actions, methods for handling exhibits, standards for records security, including access to records, and environmental controls for the protection of records against natural disaster. Where necessary, proposals for changes in the law or administrative rules will be developed to ensure the adherence to the guidelines.

A by-product of this sub-element will be the development of expertise in the administrative office of the courts in the area of records management. In the third year of the JSIP, the members of the in-house team should be able to give technical assistance to the trial courts in records management issues.

<u>Task</u>	<u>Completion Date</u>
Appointment of advisory committee by the Supreme Court and naming of project team	Month 3
Contracting records management specialist	Month 5
Development of detailed work plan	Month 6
Survey of selected courts for records management and equipment	Month 9
Develop standards for office equipment to be used in the courts	Month 10
Description of the current situation including estimate of deficit in equipment in the courts at present through a survey of courts	Month 12
Prepare budget for procurement of equipment	Month 14
Submission of procurement budget to court and USAID	Month 15
Approval of the procurement program	Month 16
Establish records retention schedule and long term records retention policies	Month 20
Implementation of procurement program	Month 20

Produce records management manual including numbering systems, guidelines for handling exhibits, etc.	Month 20
Approval of retention schedule and manual by the court	Month 22
Dissemination of the manual and retention schedule	Month 24
Technical assistance to local courts	Month 36

### **3.3.2.a Introduction of Standardized Forms**

The general objective of this sub-element is to use the technique of standardized forms to improve the efficiency in and increase the uniformity of practice in the courts. The repetitive nature of the work in the clerk's offices has been noted by all who have analyzed the Nicaraguan court system, as an area ripe for increased efficiencies.

As with the other sub-elements, the initial phase will be the appointment of an advisory committee and the naming of a project team from among judicial branch professionals. The committee will select a consultant to work on the analysis of design of standardized forms.

Working with the in-house team, the consultant will first review the forms which have been developed on an ad-hoc basis in the various courts, especially the courts using computers. The effort will be divided into criminal and civil forms and all others. The consultant will analyze a sample of at least 50 case files taken from courts in the capital to determine if there are repetitive entries which lend themselves to the development of forms. The consultant will then develop a list of titles for which forms should exist and determine whether forms currently are in use, proposed or do not exist. For those areas in

which forms do not exist, the consultant will design forms.

Prior to designing any new forms or redesigning old forms, the consultant will develop a forms design manual which will include standards for the format of forms and guidelines for standardized language to use. The forms manual will be approved by the advisory committee and then made available throughout the judicial system so that any new forms developed locally will be in the same format.

The advisory committee will review the proposed forms developed during the course of the project and in the future whenever new forms are proposed. Training programs in the use of standardized forms will be developed at times as the forms represent changes in procedures for judges, secretaries and clerks.

<u>Task</u>	<u>Completion Date</u>
Appoint Advisory Committee and project team	Month 3
Contract Forms Consultant	Month 5
Develop detailed work plan	Month 6
Obtain criminal and civil forms in current use	Month 8
Review of forms in current use and proposed for use	Month 10
Review of sample of case files to determine areas in which forms should be designed	Month 11
Development of a forms design manual and list of proposed forms	Month 12
Approval of forms manual and list of proposed forms	Month 14

Design new forms	Month 18
Approval of forms by forms committee	Month 20
Developing training programs	Month 22
Dissemination of criminal and civil forms	Month 22
Repeat process for other forms	Month 36

### Preparation of Necessary Manuals of Operation

At present there are no operational guidelines in the courts except as dictated by law and the rules of the Controlaria General. New employees learn about their job through informal training that results in systems that were established by predecessors being passed down.

### 3.3.3

#### 3.3.2.6 Registro de Propiedades

This office is under the supervision and direction of the Supreme Court. It is an office which provides a fundamental governmental service, the maintenance of records of ownership of property. It is a fact that the conflict over title to property is causing major societal conflict in Nicaragua.

During the Sandinista government, large numbers of properties were expropriated by the government without compensation in violation of the Compact on Human Rights to which Nicaragua is a signatory. With the elections in 1990, many Nicaraguans began to

return and assert their property rights. Among the problems facing them in making their claim is the land title office's inability to provide a thorough complete record regarding title to the property. Until just a year ago, the land title office was located in an antiquated three story building in old Managua. The property records were in a condition of total decay due to being housed in a place without controlled conditions of air, dust, etc. The Supreme Court efforts to relocate the office and the records resulted in their moving to a building which formerly housed a bank. In the course of this process, they discovered that a number of employees were falsifying or destroying records. These employees were dismissed.

The scope of the concern regarding property disputes is illustrated by the number cited by the Attorney General. According to him, his office has reviewed 1,400 cases of the 5,400 cases that had been presented to him. His review is limited because he has not received the funding for additional attorneys requested to expedite review. In interviews with lawyers, they cited their legal strategy is to file the legal complaints in cases of disputed title and await the clarification of the law by the congress.

The need to clarify the law, notwithstanding, there is an urgent need to assist in the establishment of a professional, secure land title office which will provide the investor with certainty of ownership. Absent of office to perform this basic function, investments in real property are put in jeopardy. According to some of those interviewed, this factor was impeding the investment of private capital in the country.

The Supreme Court has received funding from UNPD to microfilm the land title records, funds were also used to relocate the office into the new space. The funds available will not provide funding for the costs of the entire project. Consideration should be given to

provide additional support for this project.

Determine appropriate pilot programs and select sites	Month 9
Purchase necessary equipment	Month 10
Implement pilot programs	Month 13
Evaluate pilot programs	Month 24
Expand pilot programs	Month 36

### 3.3.4 Pilot Court Administration Project

The current organizational structures of the trial courts may not be the best structure for a modern court system. Many countries are examining the possibility of different structures. Columbia, for example, has adopted the concept of a central clerk's office serving a group of judges. They have found that there are economies and efficiencies in such an approach. In Nicaragua, many judges have suggested a centralized pool of process servers in the larger courts. During the course of the project, several pilot projects should be set up to explore the possibility of using different organizational structures at the trial court level.

<u>Task</u>	<u>Completion Date</u>
Appoint Advisory Committee and project team	Month 3
Contract Consultant	Month 4
Determine appropriate pilot programs and select sites	Month 5
Implement pilot programs	Month 6
Evaluate pilot programs	Month 18
Make report with recommendations	Month 24

### 3.3.5 Automation

Automation in the court system has been focused on financial management applications. The primary emphasis has been on developing a system to better manage appropriated funds. The system was developed over the past two years with the assistance of AID donated computers and in the opinion of the administrative secretary of the court, the system is the most effective within the government of Nicaragua. For example, they produced their annual expense report within the first 20 days of January. The system produces daily runs of expenses enhancing the ability of the system to respond to emerging needs.

However, it is at this point that they recognize the need to develop an integrated development plan for future automation efforts. Several offices have personal computers with individual applications, purchasing, statistics, and personnel. These applications were developed individually and they do not have the capacity to relate to one another.

A needs analysis and an integrated plan should be developed as Phase I of this project. In developing a plan, the analysis must anticipate the eventual application of

automation to trial courts of Managua and the regional offices.

The second phase should be the focus on acquiring existing systems which, with modest modifications, could be implemented in Nicaragua. Systems that should be evaluated are found in Costa Rica, Chile, Columbia, and Puerto Rico, to name a few. This approach should keep costs to a minimum and provide a shorter turnaround in the implementation of such a plan.

Part of this project should include the training of all those who are involved in or affected by the project.

#### 3.4.1 Training, Education and Research

#### 3.4.2 Special Courses - Commercial

The Nicaraguan judges assigned to the civil cases are at a significant disadvantage. During the Sandinista period, the state became a primary entity for commercial activity. The concepts of legal rights and privileges were influenced by the philosophical orientation of the Sandinistas. These concepts are not consistent with free market treaties, private banking, etc. The judges who entered into the system during the Sandinista period and those who graduated from law school were not trained in these issues. Not only do they lack adequate education, reportedly many have hostile attitudes towards the free market and privatization process.

This project will provide funds for the Supreme Court to organize a series of seminars for the legal community, including the judiciary, on emerging legal changes in Nicaraguan law and international commercial law. Other illustrations of the need for this kind of project include the legal treatment of property confiscated during the Sandinista

regime and not returned or not compensated for by the government. According to the Pact de San Jose, Derechos Humanos, that the government of Nicaragua signed, these acts are of a violation of that treaty. With several thousand law suits pending in the judicial system and the congress unable or unwilling to resolve these sensitive issues, it appears that the judiciary may become the only neutral forum to address this critical question. In meetings with civil and appellate judges, they expressed their concern regarding this very point.

In some senses, it appears that Nicaragua's legal system was in a time vacuum for 10 years. The judges are completely unaware of the developments in the law outside the borders of Nicaragua. A series of seminars to expose the judiciary to new developments will accelerate the pace of transition of the legal system. The foregoing applies to law students as well as those who received their legal training in schools that taught with a decidedly ideological bent.

#### 3.4.4 Alternative Dispute Resolution Training

The judges in labor cases have a role as conciliator to resolve the case. In civil cases, the judges have a role as "amiable componedor" to assist in the settlement of cases. In rural courts, there is another process which emphasized the resolution of agricultural conflicts outside the legal system.

These legal traditions have existed for many years. According to the judges no one ever trained them in these functions. Some judges seem to have an aptitude for the work and others are not that effective.

Since legal systems recognize the role of informal settlement of disputes to avoid the full court process, special efforts need to be made to train judges in these skills. The specialized training would utilize Nicaraguan judges who have demonstrable skills, with

judges from Argentina and Colombia where there are ADR programs in the courts. This strategy is recommended as an alternative to creating an independent ADR project because of all the other projected activities. Additionally, since the legal system encourages this role, this strategy could maximize the impact on the widest possible scale rather than in one single project. With the modification of the statistics of the system, it would be very feasible to include a special category to measure effectiveness of the training by garnering information on the results of the efforts.

#### 3.4.5 Management Training

The supervisory administrative staff of the Supreme Court, the regional administrative offices, and the management staff of the procurador's office are in need of special management training programs. These officials are responsible for the day to day management of the court system. They relate to judicial and prosecutorial officials throughout the country as well as to the executive branch officials. They must organize and deliver services, plan for the future, supervise offices of people, etc.

This project should improve the professional skills of the participants, enhance their ability to work together as a management team and improve the quality of services provided to the trial courts and the Supreme Court. The management must enhance the confidence of the Supreme Court in their performance capabilities, in order for a delegation of responsibilities to occur. As to this last point, it is essential to realize how important this matter is to the way justice operates.

In Nicaragua as in the rest of Latin America, the Supreme Courts devote as much as 75 - 80% of their time to administrative matters with the remainder of the time for deciding cases. The allocation of time is inverse to the systems in North America, where the

primary activity is deciding cases and the professional staff are held responsible for performing the management function. The management training program's ultimate aim should be to increase the Supreme Court's time for deciding cases by enabling them to be freed of administrative burdens.

This project should be contracted with INAP the only agency with extensive training experience with the public sector of Nicaragua. The project should begin with a needs analysis and design of an annual training schedule for a 4 year period. Because of the similarity of function, the management staff of the Procurador's office should be included in this project.

#### 3.4.6 Research Agenda

##### 3.4.6.1 Juries

Nicaragua adopted a jury system in 1992. This system reflects a substantially similar law that existed prior to the Sandinista era. The jury system works as follows: the district court summons selected individuals to the municipality where they are interviewed and a panel is selected to serve on criminal cases. Then those selected to serve are called into the criminal court where the members of the jury will read aloud the entire record in the criminal case. The jurors after reading the record, then cast a vote of innocence or guilt.

Despite the clear duplication of effort which requires juries to repeat the work of a judge, the idea of public participation in the criminal process is novel in Latin America. The creation of more public access to the judicial system and thereby more visibility is widely embraced as a desirable goal for democratic institutions.

In light of these observations it is important to conduct an independent analysis of the system. This analysis is needed because of the first year of its operation the system did not work as envisioned in the legislation. The courts were not given time to prepare for the new system. No advance training was done nor were any of the court buildings equipped to handle the juries. Nor does the system distinguish on the basis of the type of crime which results in juries in all types of cases.

The results of the first year's experience were not very positive. An extremely high percentage of accused individuals were exonerated. Even though conviction statistics are of questionable reliability the estimates of those freed run about 80%. It is unclear to the judges interviewed whether these numbers reflect the inadequacy of police work, judicial investigations or public attitudes about the system.

The newly established judicial school has as a part of its mission to engage in research into the functioning of the legal system. The topic of the jury system is a ripe one for a research analysis and report on the system.

#### 3.4.6.2. Ethics Code

No ethics code exists in Nicaragua for judges or lawyers. The absence of a code defining permissible behavior or limiting certain kinds of behavior creates a vacuum. The Supreme Court has the responsibility for disciplining judges and lawyers.

In discussions with members of the court there was general recognition of the advisability of having such a code. This topic is essential to the establishment of a strong independent judicial system. A judicial system which seeks to manage itself free from intervention from other branches of government must continuously be taking corrective or disciplinary action against those who would disrupt the system from their reforms. A code, itself, does not accomplish this goal but it is the institutional follow-up and implementation which makes the difference over a long period of time. It is through compulsory education for lawyers and judges that there is a systematic effort to create an organizational culture that does not tolerate behavior inconsistent with the norms included in the code. It often takes many years to see the full benefit of such an effort.

The approach to this project should include organizing an international seminar on ethics and the law. Presenters from other countries in Latin America should be invited to participate. Some of those to be considered should be retired President of the Supreme Court of Uruguay, Justice Thomasino, Jorge Omar Paolini, Secretary Supreme Court of the Province of Buenos Aires. Justice Thomasino is currently drafting an ethics code for Uruguay and is familiar with the desirability of such an action. Dr. Paolini is the executive responsible for conducting investigation into judicial conduct and presenting the evidence before the Supreme Court of the Province of Buenos Aires. He is also the author of a book on judicial discipline.

The project should contemplate the hiring of a consultant to draft a code. The consultant should work with a committee of judges and lawyers. The project should contemplate public participation, publication of results and perhaps travel to ascertain locations to investigate the experiences of other jurisdictions.

### 3.5.1. Prosecution and Defense Services

#### Procurador - Ministry of Justice

##### 1. Organization and Development of Ministry of Justice

One of the reforms being discussed is the evolution of the Procurador's office into a Ministry of Justice. This evolution would reflect the response to the need of the government to have increased capacity to influence the policies that shape the justice system. Currently, the GON relies on ADHOC Commissions to study and develop proposals regarding new statutes a ministry of justice becomes increasingly important to the whole sector. For the long term development of a strengthened justice sector.

The Procurador has mentioned the intent of the GON to take this initiative perhaps by the end of calendar 93. The President of the Supreme Court has also cited their development as a project in the works, however, it made no mention of dates for implementation.

Recent studies of Ministry's of Justice in El Salvador, Costa Rica, and Guatemala suggest the experience in these neighboring countries could be capitalized upon and offered as assistance to Nicaragua in the development of its Ministry. A short term project could consist of compiling the results of these studies into a single report for the Procurador to use as an outline of areas to consider in developing a Ministry for Nicaragua. The report could be followed up with the development of an implementation plan for Nicaragua.

### 3.5.2 Study of Defense Services

In the 1990 FIU diagnosis of problems facing the Nicaraguan justice sector the authors cite the deficiencies of the defense services offered to the poor. Among their observations is the total disorganization of the services being offered. This same concern was cited by a present attorney in his article on areas for improvement of the justice system.

The Attorney General acknowledges the current situation is deplorable and there is a need to address the problem but there are so many other problems facing the system that this is not the highest priority. The commission on Human Rights Executive Director, Dr. Lino Hernandez cited the absence of organization and structure to provide legal representation services. The absence of an organized system is not surprising since the justice sector has so many needs and funding for those accused of crime must be one of the lowest priorities of the government. The reader should be aware of the extraordinarily low rates of convictions which, of course, does not excuse the need to address the issue.

Nicaragua's geography and demography have an impact on the provision of legal representations. The Atlantic Coast and the north of the country are more isolated and very few lawyers reside in these areas, a fact illustrated by the fact that most of the judges in this area are not lawyers.

Other factors which influence the provision of adequate legal services are the legal requirements that the police have 3 days to conduct investigations into criminal conduct while an individual is detained. According to observers this practice often has the effect of producing a poor criminal investigation and adding the necessary proof to convict an individual. This practice then results in exoneration in the courts.

Since one of the highest priorities for the program is to reform the criminal code, it seems the prudent course of action would be to fund a study on what are the best alternatives to offer legal defense sources once the new code is drafted. Some of the preliminary discussions regarding the new code have centered on introducing the current jury system. Should these changes be included in a final legal reform, the requisite for legal assistance could conceivably be fundamentally different than those required by the current laws.

The Supreme Court is considering an agreement with the law schools to create a year or two service program for new graduates. This program is directed primarily at filling judicial posts in the rural areas where only a small percentage of the district judges have been lawyers. The Supreme Court is following this strategy to replace Sandinista judges with newly trained lawyers some of whom will be located in the 46 new courthouses being constructed.

In light of the emerging social service programs and the need to develop a system, the first step proposed is to conduct a study to decide what would be best system for Nicaragua. Such a study should evaluate workloads by district, kinds of cases, number of cases qualifying for assistance, and estimates of workload factors for each district. Utilizing these factors the study should develop a series of proposals on how to organize defense services. These proposals could range from the creation of defender offices, staff, etc. to contracting with a lawyer's office to providing funds to courts to refer cases to lawyers or variations on the above including the creation of special programs for recent graduates to service their social service. It should be observed that this process is exactly the same followed by court systems in the U.S. in the late 60's and early 70's when the requirements to provide defense services to the poor were initiated.

A phase II of this project could be the testing of several options in various settings. Based on the results of pilot projects. The project could submit formal recommendations regarding the most effective means of providing defense services.

Phase I of this project should be contracted with a group or individual with demonstrable experience in the area. The project should be guided by an advisory committee to supervise the work. Phase I would produce a report. Phase II would test proposals and conclude with formal recommendations to implement a national system.

### 3.5.3 Forensic Services

The prosecution of crime increasingly relies on scientific means of proving the various aspects of the crime. An effective criminal justice system must count on the ability to promptly evaluate test evidence and provide their information to those responsible for investigation. Drug related or sex crimes requires access to such a laboratory. In Nicaragua no such government institution exists. Repeated complaints were made by members of the Supreme Court and trial court judges about the absence of these services. In an interview with one doctor who performs the forensic function, he admitted to having training and cited the need for such a facility. The absence of a laboratory coupled with the need to train the doctors who perform forensic services is self evident. These are areas for ICITAP to investigate and more fully develop a proposal.

### 3.6 Law Reforms

Nicaragua's laws in the area of criminal and civil process date back to the 19th century. Although there have been modifications during the course of the past 90 years, the primary legal concepts have remained substantially the same. These factors coupled with the immense past legal charges have combined to create conditions requiring significant reforms. The jury statute, the criminal procedure law and the substantive

criminal law are ranked as the areas of highest priority by numbers of the Supreme Court, the judges, lawyers and the human rights organizations.

### 3.6.1 Criminal Procedure Reforms

Members of the Supreme Court have had preliminary discussions with the Spanish ministry of justice about assisting in the development of a criminal code reform. These discussions have occurred over a period of months but to date have not become concrete proposals. As an aside, the other criminal code reform efforts in El Salvador, Ecuador, Guatemala, and Peru have been influenced by the Instituto Derecho Procesal Penal de Univ. De Cordoba, Argentina. The Institute has promoted a significant departure from the Spanish legal tradition by transferring the criminal investigation from the judiciary to the prosecution and introducing oral processes (public participation) into the process. The AID funded projects have embraced their strategy for reform because it is designed to strengthen the role of prosecutors, remove the judge from the role of investigator, fact finder and final decision maker, thereby creating, at least the appearance of impartiality, if not in fact achieving it.

The project for this reform area would consist of employing for a period of two years consultants to draft a new code, conduct seminars on the proposed reform and assist with the implementation of the new law.

The Supreme Court has appointed a commission of its members to provide the policy direction and guidance necessary for the project to be developed and implemented.

### C. Civil Procedural Code Reform

The advent of oral proceedings in civil cases which began in Uruguay in 1990 is now being pursued in Chile, Ecuador, and Peru. The results of this reform have demonstrated

its benefits by dramatically reducing civil delay and increasing public confidence in the process. The judicial leadership of Nicaragua has reached this area as the third priority for reform.

While the GON is engaged in efforts to modernize its commercial codes by including up to date concepts which facilitate trade and commerce, these initiatives will be ultimately frustrated if the civil process is not altered to process civil cases in a timely and effective manner. Lawyers complain of delays and the court system does not have adequate statistics to document the breadth and scope of civil delay. Even with an adequate sample of civil delay, it will only measure the few civil cases which originated during the Sandinista period. Since the change in government the judges have experienced a significant increase in civil filings.

This project should be considered during the second year of the project. Phase I would consist of a diagnosis of current delay and identification of causes of delay.

Phase II would emphasize the drafting of a civil procedure code to address the findings of Phase I. During Phase II there would be a series of seminars and publications documenting the needs and suggesting the new procedures. Phase III would be the implementation of a new civil procedure code. During this phase there would be a comprehensive implementation plan developed which would contemplate costs, training, public education and legal education requirements.

This project would require the services of consultants to provide the work throughout the project. A commission of the Supreme Court would guide and direct the project.

### 3.6.3 Reform of the Organization and Administrative Structure of Judicial System

The laws which define the current organizational structure of the court system have not been revised in many years. There is a need to conduct a review of the current legal framework of the courts, the laws that prescribe the operations and identify the deficiencies in the law. This review should be conducted in close collaboration with the President of the Supreme Court. Court organization and structure can have a very significant impact on how the system operates. Frequently, these laws are full of enormous detail which restricts the court system's ability to manage itself.

This project will be done through a series of technical assistance contracts with recognized authorities in the field. The consultants will work directly with the commission appointed by the Chief Justice. This project is scheduled for the second and third year of the overall project.

### 3.6.4. Contentioso Administrativos

Neither the Nicaraguan Constitution nor the laws make provision for review of administrative decisions. The only available remedy is amparo (strike) which is used very frequently to the detriment of business, government and individuals. The Nicaraguan system does not provide for lesser remedies or alternative forms to resolve conflicts.

Administrative procedures are needed which enable parties adversely affected by governmental action to present their concerns prior to execution of a decision. In most Latin American countries administrative procedures legislation prescribes the process to be followed to redress the complaints against the government. In some countries the complaints go directly to the court system and in others complaints go to a tribunal with specific jurisdiction in these matters.

Every legal system must seek to provide channels for the resolution of conflicts short of the most dramatic remedy, a strike. The Nicaraguan justice leaders recognize the need for this addition to their system but indicate that because there is not any precedent for such a structure, preliminary efforts should focus educating the legal community regarding this practice in other countries.

This project area should be approached through funding of seminars and a visit to Costa Rica which has an efficient system.

### 3.7 Civic Education and Training

Conflict resolution is not the sole property of the judicial system. In fact, excessive reliance on the formal judicial structure in most instances is a cause for delay. The judicial system is available to resolve those conflict which cannot be solved in any other manner. Traditional societies resolve conflict through their elders, councils of wise people or other means other than formal institutions.

Nicaragua's emergence from a state of war has left a divided society where conflict dominates the daily press and the society. It's judicial system suffers from many ills which limits its ability to respond to the current political and social reality. A course of action has been proposed to strengthen the judiciary during the course of the next several years. This course of action does not go far enough in extending into the greater society new skills to confront and peacefully resolve conflict.

#### 3.7.1 Education - Mediation Project

Mediation is a process designed to assist individuals, families, groups, communities and nations resolve conflict. It works as follows: individuals who have a complaint agree to meet with a impartial third party. The impartial third party is trained in helping individuals

define the causes or reasons for the complaint and helping the parties to accept responsibility for each's actions, unlike a court process where one can always deny responsibility. Through recognition of the causes of the conflict, acceptance of the consequences of behavior, the mediator seeks to help the individuals to identify solutions to the conflict all the while avoiding making independent decisions.

This part of the project focuses on school age children and teachers. Experience has shown that when mediation programs have been introduced into highly charged school environments where drugs and gangs exist, they can be a powerful salutary addition by reducing tension and creating effective mechanisms to resolve conflict. These programs have also demonstrated that the new skills learned by the children in schools are taken home and taught to their parents.

In school programs students are selected to participate and they receive special training in mediation skills. While the original program focused exclusively on 10-12 year olds, during the past few years we have discovered that children in the first grades are perfectly capable of learning the skills and applying them with their classmates.

The programs not only teach skills, they teach values about participation, respecting differences of opinion, learning about other people's values but most of all, they demonstrate that conflict is natural and there are ways to reduce it without resorting to violence or other coercive methods.

This project proposes to establish pilot mediation programs in school districts. The project will consist of identifying schools, teachers, students where such a project could be implemented. Special training by experienced school mediation experts would be

arranged, materials produced. The focus would be to establish mediation programs in 3-5 districts under the Ministry of Education.

Included in the project development should be a visit to the Community Boards, Inc. in San Francisco, California the agency which initiated these programs over 12 years ago. In San Francisco the visitors can see numerous school programs in Spanish speaking schools. Based on this visit and additional technical assistance they could design the best method to implement similar projects in the Nicaraguan educational system.

### 3.7.2 Municipal Government - Human Rights Committees - Mediation

The AIDS project in the 35 municipal areas has focused on creating committees of individuals who are capable of addressing human rights concerns. This project which is working through committees has conducted seminars on these issues. According to the project director, training the committees in mediation would provide the committee member with real skills which will assist them in achieving their goals.

Similar organizations have proven to be extremely useful in addressing all kinds of conflicts. The strategy is to constantly train people to serve as mediators so that not only is the organizational structure better able to respond to conflict but increasing the numbers of individuals are increased who are in a position to apply the skills to everyday situations.

The project would focus on training committee members. There would be the development of materials and follow-up visits to the communities to assess performance and provide more direct assistance to those involved in the program.

A contract for services should be used to provide the technical assistance in this project.