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PANAMA DEMOCRACY AND GOVERNANCE ASSESSMENT

FINAL REPORT

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The views and recommendations expressed in this report are solely those of the
MSI Assessment Team and are not necessarily those of USAID or the U.S. Government.

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Our thanks go also to the U.S. Ambassador to Panama for her encouragement and personal interest in our work, and for facilitating the contributions of other members of the U.S. Country Team to the process.

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
AOJ	Administration Of Justice
APEDE	Asociación Panameña de Ejecutivos de Empresa
ARI	Inter-Oceanic Regional Authority
CAFTA	Central America Free Trade Agreement
CAM	Central America and Mexico
CICH	Comisión Interinstitucional de la Cuenca Hidrográfica
CoNEP	Consejo Nacional de la Empresa Privada
CSO	Civil Society Organization
CSS	Caja de Seguro Social
DG	Democracy and Governance
FARC	Fuerzas Armadas Revolucionarias de Colombia
FTA	Free Trade Agreement
GDA	Global Development Alliance
GDP	Gross Domestic Product
GOP	Government of Panama
ICFJ	International Center for Journalists
IDB	Inter-American Development Bank
IR	Intermediate Result
LAC	Latin America and the Caribbean
MSI	Management Systems International
NGO	Non Governmental Organization
OAS	Organization of American States
PCA	Panama Canal Authority
PCW	Panama Canal Watershed
PRD	Partido Revolucionario Democrático
PTJ	Policía Técnica Judicial
SO	Strategic Objective
UNDP	United National Development Programme
USAID	U.S. Agency for International Development
USG	U.S. government

EXECUTIVE SUMMARY

This Democracy and Governance Assessment of Panama took place during the months of July and August 2003. It was funded through the USAID Office of Democracy and Governance contract with Management Systems International (MSI), which provided the services of Senior Associate Joan Goodin as team leader and Panamanian attorney Carlos Berguido, a local expert. Two other team members represented USAID/W: Jerry O'Brien, Democracy Specialist from DCHA/DG and Maria Barron, Presidential Management Intern and LAC/RSD Democracy Officer. The main objective of the assessment was to recommend areas in which USAID/Panama should consider developing DG programs for the upcoming planning period (2004-2008). At the same time, the Office of Democracy and Governance plans to use assessment results as input when commenting on the Mission's new DG strategy. In accordance with the Central America and Mexico (CAM) Regional Strategy approved by USAID on August 1, 2003, the Mission is to submit its country plan by May 2004.

The contract called for conducting this assessment in accordance with the methodology created by USAID/W and applied in some 40 countries. This included four distinct steps: 1) Defining the DG Problem through the analysis and prioritization of five key DG components (Consensus, Inclusion, Rule of Law, Competition, and Good Governance); 2) Identifying Key Actors and Allies; 3) Identifying Key Institutions; and 4) Distilling the Strategy, including the application of existing "filters" or factors that need to be taken into account in the development of the Mission's new DG strategy. Based on the results of the process prescribed, the team formulated recommendations for consideration by USAID/Panama as it develops its future strategy.

Our analysis found that the major DG problem in Panama lies at the intersection of Competition and Good Governance. The extreme control exercised by the executive over all three branches of government, as well as its control over all sub-national government operations, constitutes the single most important DG challenge. Because the political parties control the executive, they tend to dominate all aspects of government. This structural flaw is a vestige of past military dictatorships, and has resulted in the subsidiary types of poor, inefficient and ineffective performance that characterizes almost all government functions. The picture is further complicated by the existence of rampant corruption at all levels of government, immunity for legislators and other high-ranking officials, and general impunity, aggravated by the absence of any serious attempt to correct these problems. While the weakness of the judicial system poses significant problems in the area of Rule of Law, and though there are challenges in the area of Inclusion, we view these as subsidiary to the larger, overarching challenge to democracy found in the areas of Competition and Good Governance.

While the process to change prevailing conditions is clear and achievable, none of the political parties have demonstrated any real interest in pursuing such reforms, as this would reduce their ability to control the system. The lack of political will is remarkable in that it is unapologetic and publicly acknowledged. Thus, it is highly unlikely that attempts to address this fundamental DG problem directly can succeed - particularly in light of the uncertainty surrounding the outcome of the May 2004 elections. Any real-world strategy must take into consideration this perverse commitment to authoritarian control and manipulation. Therefore, unless and until such time as the government demonstrates real commitment to change, we do not recommend

working directly with government actors on constitutional reform, the separation of powers, or legislative or judicial strengthening.

Recommendations: In light of the prevailing political atmosphere and the fact that a dramatic change of political will is unlikely, we recommend that USAID/Panama focus its efforts on building a constituency for reform. Specifically, as further outlined below, we recommend the following two strategic approaches:

- Improving the transparency and accountability of government, and thus reducing its ability to engage in corrupt practices with impunity; and
- Decentralization and the strengthening of local government to create competition among the levels of the governance structure.

Transparency, Accountability and the Fight Against Corruption: In order to generate constituencies for reform in the absence of political will, we recommend a “sandwich” approach:

- Build demand for transparency and accountability from the bottom up; while
- Building pressure for reform from external sources, including the entire U.S. Country Team, and collaboration with other international actors.

The bottom up approach calls for working mainly through civil society and the media, both of which have demonstrated willingness as well as capacity for collaboration. This effort should also include the few credible reformers within the public sector who demonstrate a real and reliable commitment to change. Such efforts should focus on the demand side for increased transparency and accountability on the part of the state. This will not only address the problem of corruption, but as demand for reform grows and becomes more sophisticated, pressure on political parties and the government to address the underlying DG problem will mount.

The top-down approach would involve public diplomacy on the part of the U.S. Embassy, as well as conditionalities on all U.S. assistance. This should be done in conjunction with other embassies, other bi- and multi-lateral donors and international financial institutions. Coalition building and donor coordination would figure prominently in this aspect of the strategy.

Of particular interest, the possible upcoming negotiations for a Free Trade Agreement (FTA) offer a number of ways in which U.S. government actors could encourage Panama to improve its democratic governance. Improvements in transparency, government procurement procedures, investment security, trade-related labor, freedom of the press, and environmental concerns, and the predictable and equitable application of the law are only some of requirements of an FTA. As was the case with the Panama Canal Treaties, the U.S. should capitalize on its ability to influence the Panamanian government positively relative to the discussion and implementation of these reforms.

Decentralization and Strengthening Local Government: We also recommend that USAID/Panama seek to leverage the IDB’s upcoming initiative in decentralization and local government strengthening. Given that this effort represents perhaps the only example of political will on the part of the state, it emerges as a potentially feasible strategy that directly addresses one aspect of the major DG problem. It would contribute to stronger, more representative local government that can function as a counterweight to the dominance of the national executive.

The Mission should begin immediately to explore potential avenues of collaboration with appropriate IDB officials.

Working in this area presents two distinct opportunities that could be pursued either jointly or separately. On one hand, the Mission could work to influence the policy-making process related to decentralization (which is about to be addressed through the IDB program), consistent with the CAM Strategy. On the other hand, at the program level, the Mission could collaborate with the IDB and other donors such as the Spanish aid agency on activities to strengthen local government. These might include, for instance, participative government practices, responsibility and accountability, community-based advocacy, etc.

AOJ Bridge Program & Future Work in that Area: In the coming year, the Mission's capacity to contribute successfully to the strengthening of the rule of law (IR 1) will be conditioned in large measure on the outcome of the election of the President of the Supreme Court at the end of 2003. For the period to October 2004, the recently concluded AOJ evaluation recommends the immediate initiation of a bridge program in order to ensure that the momentum achieved to date not be lost. AOJ programming during this period and beyond should focus on two of the milestones recommended in that evaluation: a) vigorous civil society support for reform; and b) active discussion of justice and transparency in public fora. Efforts at institutional strengthening within the AOJ sector should focus at the local level as part of other efforts to strengthen municipal government. This would target *corregidores* and *jueces nocturnos* as key justice sector operators at the sub-national level.

Though the design of specific programs is not included in the scope of this assessment, a number of notional approaches emerged during the process and are presented in section 4.6 of this report. These possible approaches are grouped into the following categories:

- Policy Level Approaches
- Civil Society Approaches
- Harnessing the Business Community
- Working with Government Reformers
- Local Government Capacity Building

1. INTRODUCTION

1.1 Objectives & Methods

The main objective of this Democracy and Governance Assessment is to recommend areas in which USAID/Panama should consider developing DG programs for the upcoming planning period (2004-2008). At the same time, the USAID Office of Democracy and Governance plans to use assessment results as input when commenting on the Mission's new DG strategy. In accordance with the Central America and Mexico (CAM) Regional Strategy approved by USAID on August 1, 2003, the Mission is to submit its country plan by May 2004.

To conduct this assessment, the USAID Office of Democracy and Governance contracted Management Systems International (MSI), which provided the services of Senior Associate Joan M. Goodin, who served as team leader, and of Carlos Berguido, a Panamanian attorney, whose knowledge of the local context greatly facilitated this effort. The other members of this four-person team included two USAID/W representatives: Jerry O'Brien of the DG Office, who is a Democracy Specialist with experience in the area of anti-corruption, and Maria Barron, Presidential Management Intern and Democracy Officer from LAC/RSD. Following preparations in Washington, the team convened in Panama on July 14 and over the next three weeks conducted nearly 75 interviews (see list in Annex A), completing field work on August 1. On July 31, a debriefing was convened by the U.S. Ambassador and included key USAID representatives as well as other members of the Country Team. This report was subsequently finalized in Washington and submitted to the DG Office and to USAID/Panama.

The contract called for conducting this assessment in accordance with the methodology created by the USAID Office of Democracy and Governance for such studies and applied in some 40 countries. This included four distinct steps: 1) Defining the DG Problem through the analysis and prioritization of five key DG components (Consensus, Inclusion, Rule Of Law, Competition and Governance); 2) Identifying Key Actors and Allies; 3) Identifying Key Institutions; and 4) Distilling the Strategy, including the application of existing "filters" or factors that need to be taken into account in the development of the Mission's new DG strategy. Based on the results of the process prescribed, the team formulated recommendations for consideration by USAID/Panama as it develops its future DG strategy.

1.2 Background & History

Geography & Population: The Republic of Panama covers a long, narrow area of 29,762 square miles, making it slightly smaller than South Carolina. It occupies a strategic location between Colombia and Costa Rica on the southeastern end of the isthmus that forms the land bridge between North and South America, and is bisected by the Panama Canal, which links the North Atlantic Ocean via the Caribbean Sea with the North Pacific Ocean. Rugged mountains, broken in places by upland plains, run through the country's interior, while coastal areas are largely rolling hills and plains. The population of some 2.9 million is comprised of Mestizos of mixed Indian and European ancestry (70%), Afro-descendents (14%), Caucasians (10%), and Indians (6%). Over half of the population lives in the Panama City-Colón metropolitan corridor. Compared with most of its Central American neighbors, both the health and education systems

of Panama are considered good, as reflected in a life expectancy of 71 years for men and 76 years for women, and an overall literacy rate of 91.7 percent. Other highlights that differentiate Panama from most of its neighbors in the region include the clear separation of church and state, and the fact that the last civil war on its soil was fought at the turn of the 20th Century, when the isthmus was still part of Colombia.

Economy: Panama's economy is based primarily on a well-developed services sector that accounts for over 70 percent of GDP. Services include the Panama Canal, banking, the Colón Free Trade Zone, insurance, container ports, flagship registry, and tourism. The global slowdown and the withdrawal of U.S. military forces retarded economic growth over the last two years. In 2001, real GDP growth slowed to 0.3%, compared with 2.5% in 2000, and 3.2% in 1999. However, the Finance Ministry recently announced that "the economy has turned a corner," growing 2.4% in the first quarter of 2003. Though Panama is among the countries in Central America with the highest GDP per capita, about 40 percent of the population lives in poverty. The labor force of well over one million reflects a shortage of skilled labor and an oversupply of unskilled workers. The unemployment rate is currently estimated to be approximately 20 percent.

Historical Background: The modern history of Panama has been shaped largely by its transisthmian canal, which had been a dream since the beginning of Spanish colonization in the 16th century. Its fortunes have fluctuated with the geopolitical importance of the isthmus, the ambitions of other, more powerful nations, and the evolution of the world economy. In 1821 Panama declared itself free from Spanish rule, and voluntarily became part of Colombia. In 1847, the Panama Railroad Company, organized by a group of New York financiers, secured an exclusive concession from Colombia allowing construction of a railroad as a land bridge across Panama for travel (during the gold rush) between California and the East Coast. The first through train from the Atlantic to the Pacific ran in January 1855. Gold rush traffic, even before the railroad was completed, restored Panama's prosperity, producing enormous profits from meals and lodging, and creating the port city of Colón.

With permission from Colombia, from 1880 to 1900, the French attempted to build a sea-level canal, but failed. Intrigued by the possibility, the U.S. took over the building of the canal from the French – who were eager to sell their concession. However, Colombia refused to sign a treaty giving the U.S. the right to assume control of the project. Meanwhile, as a result of increasing discontent with Colombian rule, on November 3, 1903, a revolutionary junta declared Panama independent of Colombia. (To mark the event, centennial celebrations are taking place this year, and will culminate in November.) Thus, U.S. and Panamanian interests coincided. The U.S. immediately recognized the new country, and the Hay/Bunau-Varilla Treaty between the two was signed. That treaty granted rights to the U.S. "as if it were sovereign" in a zone roughly 10 miles wide and 50 miles long. In that zone, the U.S. would build a canal, then administer, fortify, and defend it "in perpetuity." The canal was built by the U.S. Army Corps of Engineers between 1904 and 1914, and is still today considered one of the world's greatest engineering feats.

Between 1903 and 1968, Panama was a constitutional democracy dominated by a commercially oriented oligarchy. The country had inherited the traditional Liberal and Conservative Parties of

Colombia, but internal divisions split them into factions clustered around specific leaders who represented competing elite interests. The emergence of Arnulfo Arias and the Panameñista Party was a major challenge to the factionalized Liberals. While they did win the 1960 and 1964 presidential elections, the Liberals lost in 1968 to Arias, who was promptly ousted by the military, which had begun to challenge the oligarchy's political hegemony. The junta that took charge was led by the commander of the National Guard, Brig. Gen. Omar Torrijos, and political parties were declared illegal. The Torrijos regime was harsh and corrupt, but he was a charismatic leader whose populist domestic programs and nationalist foreign policy appealed to large portions of the population who felt ignored by the oligarchy. By the early 1960s, sustained pressure for the renegotiation of the Hay/Bunau-Varilla Treaty had reached its peak. Therefore, high among Torrijos' priorities was the renegotiation of the Canal treaty with the U.S.

After long and rancorous negotiations, in September 1977 an agreement was signed by presidents Carter and Torrijos for the complete transfer of the Canal from the U.S. to Panama by the end of 1999. These negotiations encompassed provisions designed to foster Panamanian democracy, including a constitutional amendment, adopted in 1978, that established a new electoral law and legalized political parties. After they were again legalized, there was a proliferation of parties as the system opened up. The first to register was the PRD (*Partido Revolucionario Democrático*), which had been created to unify the forces that supported Torrijos and from its inception was linked closely with and supported by the military. Espousing Torrijos' vaguely populist political philosophy, the PRD included a broad spectrum of ideologies ranging from extreme left to right of center. Because of its perceived link with the military and its inability to muster majority support, the PRD has sought electoral alliances with other parties. Most activity was divided into two main coalitions: pro-government, headed by the PRD, and the opposition led by the Arnulfista Party.

The new Panama Canal Treaties went into effect on October 1, 1979, and included a basic treaty governing the operation and defense of the Canal to December 31, 1999, and a Neutrality Treaty, which guaranteed the permanent neutrality of the Canal and the right of the U.S. to defend it. The U.S. Canal Zone and its government ceased to exist when the treaties entered into force and Panama assumed jurisdiction over the Canal Zone territories and functions - a process finalized at the end of 1999. Since then, a major challenge for the government of Panama has been turning to productive use the 70,000 acres of former U.S. military land and the more than 5,000 buildings that reverted to Panama. The Panamanian Inter-Oceanic Regional Authority (ARI) was created to manage this task, and is due to go out of existence once its work is completed in the next few years.

In July 1981, Torrijos was killed in an airplane crash in western Panama. His sudden death ended this 12-year "dictatorship with a heart," as Torrijos liked to call his rule. This altered the tone but not the direction of Panama's political evolution. Despite the 1983 constitutional reforms proscribing a political role for the military, the Panama Defense Forces (PDF), as the National Guard was then called, continued to dominate behind a façade of elected, civilian government. Between 1983 and 1989, Gen. Manuel Noriega was able to consolidate his firm control over both the PDF and the civilian government. By 1987, relations with the U.S., which had fluctuated greatly over time, had reached their worst level in over two decades. The U.S. was increasingly concerned because of the lack of democratization and serious allegations of

Noriega's involvement in drug trafficking and money laundering, and Noriega responded with accusations of interference in internal affairs. While the anti-Noriega forces within Panama remained fragmented, popular protests were orchestrated by the National Civic Crusade (*Cruzada Civilista Nacional*), a coalition of civic, business, and professional groups. The situation deteriorated rapidly, exacerbated by an attack on the U.S. Embassy and PDF harassment of U.S. citizens. It appeared that the deadlock between the two countries would continue until there was a change in the Panamanian leadership's position or composition.

In May 1989, Panamanians voted three-to-one for the anti-Noriega candidate, but the regime promptly annulled the election and embarked on a new round of repression. By the fall of that year, Noriega was barely clinging to power, and daily existence had become unsafe for U.S. forces and citizens. On December 20, President Bush ordered the U.S. invasion of Panama to protect U.S. lives and property, to fulfill U.S. treaty responsibilities to operate and defend the Canal, to assist the Panamanian people in restoring democracy, and to bring Noriega to justice. "Operation Just Cause" achieved its objectives quickly, and troop withdrawal began on December 27. Noriega finally surrendered voluntarily, and is now serving a 40-year sentence in the U.S. for drug trafficking.

The country moved quickly to rebuild the civilian constitutional government. On December 27, 1989, the Electoral Tribunal invalidated the annulment of the May elections and confirmed the victory of opposition candidates under the leadership of President Guillermo Endara, who took office as head of a four-party coalition government. In February 1990, the Endara administration abolished Panama's military and reformed the security apparatus by creating the Panamanian Public Forces, subordinate to civilian officials and composed of four independent units: the National Police, the National Maritime Service (Coast Guard), the National Air Service, and the Institutional Protective Service (VIP security). The Technical Judicial Police, a unit which is separate from the public force, is also directly subordinate to civilian authorities. A constitutional amendment, passed in 1994, permanently abolished the military.

Following the Endara administration (1989-1994), Ernesto Pérez Balladares was sworn in as President. He had run as the candidate for a three-party coalition dominated by the PRD, and worked diligently to rehabilitate the PRD's image, emphasizing the party's populist Torrijos roots, rather than its association with Noriega. His administration carried out economic reforms and worked closely with the U.S. on implementation of the Canal treaties.

In the 1999 elections, the Arnulfista Party's Mireya Moscoso, the widow of Arnulfo Arias, defeated PRD candidate Martín Torrijos, son of the late dictator. Moscoso won with 45% of the vote, against Torrijos' 38%. New elections will take place in May 2004. Torrijos retains his leadership of the PRD, and is the party's presidential candidate, while José Miguel Alemán is the Arnulfista candidate. Former president Endara has agreed to run as the candidate of a third party (*Solidaridad*), and is second to Torrijos in recent polls. At present, there are 11 registered political parties.

Political Legacy Of The Dictatorship: There are a number of important legacies from the period of military dictatorship that continue to shape the Panamanian political scene today. The current constitution, written in 1972, created a state structure that favors a strong executive branch. It

also has a number of other provisions designed to allow the government to exercise control over its citizens. These include the broadest possible immunity of legislators, judges and high-ranking executive branch officials, and laws designed to control the press, including criminal penalties for libel. The governmental processes envisioned under this constitution were not designed with clear and accessible points of entry for either citizens or civil society organizations. Nor was there any thought given to issues like transparency, public service or mechanisms of accountability. To this day, concepts such as conflict of interest, transparency, accountability and the importance of a stable civil service appear not to be widely understood. In essence, these concepts, which form the basis for responsive and effective democracy, are largely absent from political practice.

Once the dictatorship was overthrown in 1989, the constitution remained in force without major political reforms. Thus the entire structure and tenor of the governing apparatus of the state is more suitable for an authoritarian rather than a democratic regime. In fact, one informed interviewee commented that changing the current constitution would not suffice to bring it into line with modern democratic practices. Rather, a complete re-write is needed.

While perhaps not exclusively a remnant of the dictatorship, the paternalistic expectations of Panamanian citizens were certainly reinforced during that period. There seems to be a broad assumption across most sectors of Panamanian society that the government should provide for the needs of its citizens, and that the citizen's sole responsibility to democracy is to vote every five years. This expectation was also reinforced by the equally paternalistic role played by the U.S. government throughout the 20th century.

1.3 Contextual Factors

1.3.1 Geography & Land Use

◆ *Porous Borders:* The lack of a clear immigration policy and the inability of the Panamanian government to police its borders has allowed free entry into the country. Panama's proximity to major cocaine-producing countries and its role as a commercial and financial crossroads make it an ideal transshipment point and, until recent improvements in banking regulations, a major drug money-laundering center. The problems associated with illegal narcotics have become increasingly severe as the war in Colombia has escalated and traffickers and guerilla forces move across the border. The border Province of Darién, one of the poorest, least-developed areas in the country, has been heavily impacted by these developments, and corruption is also said to be a major problem. Reportedly, for many years Darién has been used by Colombian guerrillas (particularly by the FARC), who cross into Panama for rest and relaxation. Their presence has become more pronounced in the last few years, as the Colombian government intensifies the war against the guerilla forces. The severity of the situation has focused the attention of international donors, including the U.S., on efforts to resolve these growing challenges.

It is also reported that, as the national economy has worsened, minor disputes have occurred involving migrant Panamanian coffee workers crossing the border into Costa Rica.

In terms of land use, a key piece of the country's most economically important territory is occupied by the canal. Linked with other demarcations, which include indigenous territories (*comarcas*) and protected environmental areas, a good part of the country is under special regimes that limit the competence of state institutions. Rural inhabitants outside of those areas are increasingly concerned, as they see their options for re-location or growth shrinking. The decision to significantly expand the canal watershed has sharpened those sentiments.

◆ *The Province of Darién:* The Darién is a strategic region with a fifth of the country's land mass and only two percent of the total population. Its inhabitants are among the poorest in the country. The distance between the province's 600 communities makes it difficult for the government to deliver public services. Given the weak presence of the state, the region also has one of the highest rates of unregistered citizens. They are therefore not eligible to vote. However, in recent years the Electoral Tribunal has been making a concerted effort to register voters in the Darién.

Blacks, indigenous (Emberá and Wounaán), and peasant ranchers compose the three groups located in the Darién. Most ranchers come from the Azuero Peninsula, and are the newest migrants to the area. They have cut forests to graze cattle, grow agricultural products, and extract timber from the jungle. Blacks work in the areas of small business, fishing, animal husbandry and agriculture, while the indigenous are the most disenfranchised group, struggling to survive within the borders of two protected autonomous territories or *Comarcas* that cover some two-thirds of the land mass of the Darién.

In February 1999, the Ministry of Economy and Finance began a six-year *Darién Program* supported by \$70.4 million from the Inter-American Development Bank (IDB) and \$17.6 million from the government of Panama to improve transportation and basic services including roads, bridges, airports, ports, electricity, water supply, and land titling. In 2002, USAID/Panama initiated a three-year, \$6 million community development program in the Darién in partnership with two U.S. private voluntary organizations (ACDI/VOCA and Planning Assistance) and a local nongovernmental organization (Fundación Pro Niños de Darién).

Problems related to land titling and different cultural values have generated tensions among the three main population groups. To date, 250 of the 5,500 properties have been titled. There are large areas traditionally settled by the indigenous but, because land is being divided equally at 50 hectares per family, this could reduce the holdings of the indigenous population. A portion of the Emberá and Wounaán population live in the two existing *comarcas*, while others live outside of those areas and are pressing for additional protection through the creation of a third *comarca*. One of the legislators who represent the Darién has complicated the issue by favoring the influx of blacks and ranchers to build her constituent base and weaken the hold of the indigenous, who have vowed to vote her out of office. Meanwhile, blacks and ranchers argue against creation of another *comarca* that would bar non-indigenous from use of the land. This conflict has risen to the level of a national debate on the floor of the Legislative Assembly. On July 28, the Assembly voted in favor of blacks and ranchers.

1.3.2 Current socio-economic challenges

◆ *Possible collapse of the Social Security System (Caja de Seguro Social or CSS):* The Panamanian CSS, an autonomous agency, manages the largest flow of financial resources in the country – even larger than the Panama Canal Authority. It is responsible for the health and well being of workers and their dependents, as well as for pension and retirement payments. The actuarial deficit is now estimated at some \$2.5 billion, while the cash flow deficit of nearly \$18.5 million in 2002 grew to \$25.4 million in the first semester of 2003. Urgent measures are needed to save the system from fiscal collapse. In the words of one business executive, the government’s failure to act means that, “the moment will come when the government’s economy and that of all Panamanians will be dragged into a bottomless pit.” Though this could rock the very foundation of the Panamanian economy, to date no agreement has been reached by key actors as to how to remedy the situation. While some have mentioned privatization, this is not seen by most as an acceptable solution. On one side of the debate is the government-appointed administrator, seen as inefficient and who blames the crisis on the government and business and openly proposes abandoning the free market economic model. On the other side is the government, which would like to see the problem resolved, but is unwilling to accept the political cost of doing so, especially in the current electoral climate. And finally there is the private sector, which wants the government to take the lead on fixing the problem in order to avoid the huge negative impact that the system’s collapse could have on the whole economy, which would threaten democracy itself.

A major effort to craft a solution was initiated by UNDP, which sponsored a broad dialogue for that purpose. But, in the absence of political will and given the withdrawal of some key actors from the dialogue, that effort was abandoned. Meanwhile, after meeting with UNDP representatives, President Moscoso recently announced that she hopes to present a bill to resolve the crisis to the Legislative Assembly next May. Many anticipate that, during the four-month transition period between the May elections and the October swearing in of the new president, the ball will be passed to the lame-duck legislature for resolving the CSS crisis. This is thought to be the most important political challenge the country and its political leaders have faced since the current democratic process began some 13 years ago.

◆ *Expansion of the Panama Canal Watershed (PCW):* Law 44, passed in 1999, called for the substantial expansion of the PCW to the west of the canal, which entails the possible building of new dams and the inundation of communities located in that area. With this addition, the watershed covers a total of 520,000 hectares and a population of 190,000. The Panama Canal Authority (PCA), which is charged with planning for implementation of the law, has commissioned a series of technical studies to determine future strategy regarding use of the expanded watershed, the widening of the Canal, a possible third set of locks, and related issues. The PCA Board of Directors is to analyze all study results (due by Dec. ‘03) and, in June 2004, is to disseminate results and recommendations. In accordance with the law, the legislature will then have three months to conduct a national consultation/referendum, with the final determination due in 2005. Meanwhile, the PCA is supporting land titling in the western area of

* Subsequent to the conduct of this Assessment, the CSS administrator was removed from office by the president, and rumors related to the privatization of the system sparked several days of violent protests and street demonstrations.

the watershed, where only seven percent of the people hold land titles. This is viewed by some as a prelude to government expropriation of individual land holdings, and has split communities and key institutions, including those of the Catholic Church. One branch of the Church, led by liberation theologians, supports local resistance, while another, more conservative branch supports Law 44 and the PCA. It is alleged that the threat to the communities involved has led their leaders to contact the Colombian guerrilla forces (FARC) and those in Chiapas, Mexico, requesting training in resistance tactics, which could result eventually in an outbreak of violence.

◆ *Corruption:* Corruption is perceived as a very serious problem today in Panama. In recent years it has risen in prominence in public opinion polls, and now stands second only to unemployment. The widespread resignation that its existence is unavoidable and that nothing can be done to address it is beginning to diminish.

While petty corruption is fairly widespread in Panama, it is grand corruption in the form of large bribes, state capture and buying of legislators that causes the greatest concern in the country. Levels of petty corruption are perceived to be lower since there are administrative avenues to denounce it, and the relatively low levels of income of the average citizen makes this less lucrative. Thus the risks begin to outweigh the potential benefits. Corruption at sub-national levels is also seen as less pervasive and damaging because both the resources and political power at this level are extremely limited.

Random corruption exists in areas like contracting, but systemic corruption is also evidenced, particularly in political circles and among legislators and higher-level government officials. Bribery and the misuse of state funds and goods are common throughout the bureaucracy and regularly denounced in the press. In addition, corrupt patronage and abuse of power are also extremely widespread. The use of patronage by political parties as the currency of vote buying is extremely common.

Many vestiges of the military dictatorship contribute to this situation, including constitutional provisions for widespread immunity of government actors, laws criminalizing libel, and structures which reinforce a strong executive. The small population of the country also makes it difficult, if not impossible, to avoid conflicts of interest. Civil society is weak, and concepts such as accountability, transparency, and conflict of interest are not widely understood.

The government of Panama has recently engaged in several efforts to increase transparency. However, the obvious lack of political will to bring about sustainable change renders them little more than window dressing.

◆ *U.S.-Panama Free Trade Agreement:* Both Panama and the U.S. have expressed interest in the crafting of a Free Trade Agreement (FTA) between the two countries. Panama had earlier made clear that, because its economy is so different from that of the other countries of the region, it did not wish to participate in the Central America Free Trade Agreement (CAFTA) currently under discussion. Accordingly, following a visit by President Moscoso to the White House, during which the interest of both parties was confirmed, it has been left to Panama to indicate the type of agreement it wishes to pursue. Any FTA will require significant changes in the legal, regulatory and procedural frameworks of the many Panamanian institutions involved in trade

matters. Thus, as was the case with the Panama Canal Treaties, these negotiations present opportunities for U.S. influence concerning the necessary improvements. These would have a salutary effect on Panama's overall system of democratic governance.

2. ACTORS, INSTITUTIONS & ARENAS

2.1 Political Parties *

The constitutional reforms of 1978 and 1983 strengthened the political party system. The dominant view at the time was that, if democracy was to flourish, society needed to channel its participation through very strong institutions and, accordingly, the original 1972 constitution was amended to achieve this objective. Article 132 of the Constitution states that political parties are "fundamental instruments for political participation," and that the number of votes required for their subsistence must be at least five percent of the valid votes emitted in the last elections for President, Legislators or *Representantes de Corregimiento*. The bylaws of the political parties, which are approved by the Electoral Tribunal, stipulate the conditions under which they may remove their legislators from office. Therefore, members of the Legislative Assembly respond primarily to party positions, rather than to the interests of those who elected them. The three Magistrates of the Tribunal are charged with ensuring compliance with party bylaws with regard to the conditions under which legislators may be removed from office.

A law recently passed by the legislature makes party primaries "optional," rather than required, as stipulated in the original bill. Thus, party candidates for all elected offices may be chosen either through internal primaries or by delegates to party conventions. In the current electoral process, only the major opposition party (PRD) has chosen the primary route, while the party in power (Arnulfistas) chose its presidential candidate at a party convention - viewed by most as obedient to the party's president, who is also president of the country. In some quarters, it is believed parties are increasingly aware of the need to democratize internal procedures, and that primaries will eventually become the order of the day.

In general terms, Panamanian parties have evolved largely around individual leaders, rather than around any given political philosophy or vision for the country. It is therefore not unusual for members to switch party affiliation fairly often. For electoral purposes, parties generally form coalitions or alliances, agreeing to assign specific cabinet and other posts to participating parties should they win. Given that there are no specific campaign funding limits or disclosure requirements, businesses usually contribute to all parties or to candidates they believe have a real chance of winning in order to ensure positive relations with the new leadership.

The absence of internal democracy and of a strong ideological or institutional platform has resulted in a weak and obedient party membership base and a lack of modern organizational capacity. It is generally believed that "getting a job" is the main reason for supporting a given party. Thus, patronage is a major vote-getting technique. USAID/Panama representatives reported that the Mission has tried in the past to work with political parties, but to no avail.

* Given the run-up to the May 2004 elections, the U.S. Embassy asked that the assessment team not meet with political party candidates or high-level officials. It was therefore not possible to collect in-depth information with regard to official political party views, policies, membership and operations.

2.2 The Panamanian State

2.2.1 *The Executive*

The executive in Panama, as in many developing nations, is inappropriately strong. In the case of Panama, much of this dominance by the executive, and the constitutional and legal frameworks which support it, are a legacy of the dictatorship. For example, the absolute immunity for legislators, judges and key government officials has been part of the country's constitution since it was written in 1972. These artifacts of the dictatorship appear to be just as useful to democratically elected governments as they were to the generals who drafted them.

Numerous other government institutions and procedures also serve to support this concentration of power, which further undermines the system of checks and balances. The *Contralor* (Auditor General), a political appointee, is the only government official who can authorize an investigation or prosecution against a government official, and is generally perceived to be under the explicit direction of the president. The *Procurador General* (Attorney General), who is appointed for a term of 10 years by the president and approved by the legislature, is seen as a political operative who also responds to the executive. The various *Fiscales* (prosecutors) are named by the Attorney General and, thus, are also under the control of the executive.

The government has made some token efforts at accountability and transparency, such as the January 2002 Law of Transparency, which required the reporting of and free access to government financial and other information. However, there is little compliance and no oversight of the public institutions that are to abide by the law. Thus, ministries publish only the data they deem appropriate where and as they see fit. The law was further weakened in May 2002 through an Executive Decree that regulates the freedom of information section by requiring that the individual requesting information must demonstrate a "direct relationship to the information sought." This relationship is nowhere defined. Of the 76 cases of "Habeas Data" filed with the Supreme Court for refusal to provide information, only 10 were found in favor of the requestor. The same Executive Decree also blocked access to information required under a second law related to the personal enrichment of public officials by limiting that access only to the individual involved. Thus, the government's efforts at transparency are seen as window dressing, rather than a real commitment to transparency and accountability.

2.2.2 *The Legislature*

The Legislative Assembly is comprised of 72 members elected in either uni-nominal or pluri-nominal districts called "Electoral Circuits." Each legislator represents a maximum of 40,000 inhabitants within the Circuit. Only political parties may propose candidates for the legislature. For each legislator the voters also choose two alternates, who are elected in the same fashion and are empowered to act in the absence of the nominal member according to the order in which they were elected. Though attendance records are not published, it is said that without alternates it would often be impossible to form a quorum. Nor are voting records published; the electronic voting board provided by the IDB is not used since legislators do not want their votes to be registered or made public. Laws are passed only after three debates by the legislature. The

public, including civil society organizations, is allowed to attend open sessions, and some participation in the first and second debates is permitted at the discretion of the legislature.

Article 144 of the Constitution states that “Legislators act in the interest of the Nation,” and that they “represent their respective political parties and those who elected them.” However, because support for party positions and national concerns takes precedence over the needs of local constituents, there appears to be no viable channel for citizens to voice their concerns in the capital. Indeed, the legislators interviewed stated that their job is to represent national interests, not those of their respective constituencies. Because of this, plus evidence of flagrant corruption by members, the Legislative Assembly is thoroughly repudiated by other parts of the government, as well as by the general public. This results in a lack of willingness to serve on the part of the most highly qualified professionals who do not wish to be associated with the legislature, preferring instead more lucrative and prestigious positions in the private sector. One legislator reported that, given this situation, on three separate occasions he had presented a bill calling for the adoption of a code of ethics in the Assembly. However, the bill was rejected each time; he intended to re-introduce it when the legislature reconvened in September.

2.2.3 The Judiciary

While the current president of the Supreme Court is a committed reformer with a track record of significant achievement, the lack of independence of the judiciary and the appointment of judges seen to be tied to the executive have blocked many necessary improvements. The nine Magistrates are appointed for ten-year terms. They, in turn, elect the president of the Court, who serves for two years. It is highly unlikely that the current president, whose two-year term ends next year, will be re-elected, though his term on the Court runs to 2009. This could adversely affect the efficiency and effectiveness of the Court and derail the momentum for reform.

Generally, the judiciary is seen as capricious and arbitrary and, depending on the issue at hand, politically motivated and obedient to the Executive. In addition, it is slow and inefficient, contributing to an enormous case backlog and some 6,000 prisoners in pre-trial detention.

2.2.4 Public Security Forces

Since 1990 and the inception of the current democratic process, public security has been guaranteed by the state, and until recent years has not represented a major problem. Now, however, security is a growing challenge. Not surprisingly, the economic crisis, with an unemployment rate nearing 20 percent (up to 50 percent in some communities), and the influx of Colombians are two of the contributing factors cited. Increased threats to public security run the gamut from petty theft to violent crime. Moreover, the type of crimes committed has expanded. It is alleged, for example, that kidnappings (heretofore foreign to Panama) have been imported by Colombians involved in illicit activities, resulting in a “diversification of criminality.” The growing challenge to the state as the guarantor of public safety is exacerbated by corruption in the system and the lack of coordination among the National Police, the *Policía Técnica Judicial* (PTJ), which is the investigative arm of the security force, and the judiciary.

2.2.5 Autonomous State Agencies

While they are part of the government apparatus, the following key institutions function as autonomous agencies:

- ◆ *Contraloría General de la Nación* (Office of the Auditor General): One of the country's most powerful offices, the *Contralor* is appointed by the president and ratified by the Legislative Assembly for a period of five years which coincides with that of the president, with a difference of three months. Traditionally chosen from among the president's inner circle, the *Contralor* exercises pre-authorization of expenditures and audit oversight of all state institution, effectively becoming their co-administrator, which mitigates against accountability, as the national budget is often interpreted through a self-serving, politically-motivated lens. The *Contralor* must also authorize the investigation of charges of corruption against government officials, before the Attorney General can act.

- ◆ *Ministerio Público*, which includes two divisions:

- *Procuraduría General de la Nación* (Office of the Attorney General): This is another very powerful institution, which is responsible for deciding whether to pursue prosecutions, investigating, and prosecuting crimes. The Attorney General is also usually chosen from among the president's inner circle, and is ratified by the Legislative Assembly for a period of ten years, which, in theory, should give this office a greater degree of independence. However, Panama's history shows this is not generally the case.
- *Procuraduría de la Administración* (Office of the Solicitor General of the Administration): This Office plays an important role as a source of legal opinions that are the basis for jurisdictional decisions. The Solicitor General has a great deal of influence over the delivery of public services and the quality of decisions within the system of administrative justice at the level of government institutions and local justice officials (*Corregidores*). The performance of the Solicitor General appears to depend more on the quality of the appointee than on the strength of the Office itself.

- ◆ *Tribunal Electoral* (Electoral Tribunal): This office directs the entire electoral process, from managing the civil registry to the issuance of Identification Cards (*Cédulas*), holding and supervising elections, and declaring the official results. It also acts as a legal tribunal, with competence over all matters involving elections, political parties and related electoral matters. The Tribunal is directed by three magistrates, one appointed by each branch of government for a period of ten years. This institution enjoys widespread prestige and commands the respect of the general public.

- ◆ *Defensoría del Pueblo* (Ombudsman's Office): Created in February 1997, the Ombudsman's office acts as the nation's defender of citizens' rights, and enjoys a high degree of independence. The office is mandated to investigate, conciliate, and denounce human rights abuses by public servants, and by individuals, public, mixed or private enterprises that render a public service. While it is not an alternative to the judicial system and does not have jurisdiction over conflicts of an administrative or disciplinary nature, the office does offer mediation, alternative dispute resolution and advocacy for citizens' rights. It is a highly respected

institution with a growing demand for its services. These services also include assisting citizens with regard to access to information, in accordance with the “Habeas Data” provision of the Law of Transparency. This includes a page on its website, where information from all government agencies can be linked. The Ombudsman is nominated by the legislature and appointed by the president for a period of five years. The current Ombudsman took office in 2001. The office operated with an annual budget of \$2.8 million until last year when funding was cut by 20 percent. Despite that reduction, this year the office has begun to establish a presence at the local level in response to increased awareness of and the demand for its services. Three municipalities have offered office space in exchange for a local representative, and a fourth office in the Darién is being funded by other sources.

◆ *Panama Canal Authority (PCA)*: The PCA, which is tantamount to a state within the state, enjoys true autonomy. It is headed by a Board of Directors of 11 members, who serve nine-year terms and whose decisions concerning the Canal are final. It retains the same administrative procedures as under the former U.S. Canal Commission (i.e., U.S. civil service), and its budget, which is approved by the legislature, is kept separate from the national budget. All funds received by the government from the Canal go directly into the national treasury, without reference to use in any specific programmatic area. Therefore, now that the Canal is finally “theirs,” citizens (especially poor inhabitants of the watershed) fail to see how it is benefiting them. This, plus the lack of access to information by citizens has led to growing criticism. The *Comisión Interinstitucional de la Cuenca Hidrográfica (CICH)*, which was created by law in 1997 as a mechanism under the PCA to serve as liaison with the government and for input by civil society, is said to have met with resistance from the PCA.

It is interesting to note that one specific area of strong agreement peculiar to Panama is that the Panama Canal Authority and the Electoral Tribunal are “untouchable” institutions, and are not to be tainted by political manipulation or corruption.

2.2.6 Sub-National Institutions

The country is divided into nine provinces and several indigenous territories (*Comarcas*), which are subdivided into municipalities which, in turn, are divided into *corregimientos*. Provincial Governors are appointed by the president, while *Representantes de Corregimiento* and local Mayors are elected. Mayors appoint local law enforcement officers (*Corregidores*) and, together, Mayors and *Representantes de Corregimiento* form the Municipal Council. Because those Representatives seek to serve the interests of their own constituents, rather than those of the municipality as a whole, as members of the Council, they often vote against the Mayor. Moreover, those Representatives appoint the municipal Treasurer. This often results in rivalry between appointed and elected officials and the lack of incentives for cooperation. Therefore, sub-national government institutions are extremely weak and play only a minor role in the country’s democratic life. This is exacerbated by the low level of education and professional capacity of local officials, who deal only with such matters as the issuance of business permits and automobile license plates and simple legal issues of low monetary value. Municipal income is negligible, and national government transfers suffice only to pay a few salaries and basic utilities. There are no funds for the development of projects. This system is another artifact of

the dictatorship, which continues to serve the interests of the parties and does not serve to counterbalance central control.

All ministerial functions are controlled from the central government and operate regionally through branch offices. Decentralization has been a regular topic of discussion in some circles, including among civil society organizations (CSOs) and international donors. In April 1999, during the last election campaign, presidential candidates signed a “Decentralization & Local Development Pact,” expressing their commitment to passage of a decentralization law if elected. However, despite promises to do so, the government has not yet acted. It is anticipated that an agreement with the IDB will be signed in November for a long-term program aimed at decentralization and the strengthening of local government.

2.3 The Business Arena

Panama’s strategic location and the presence of the canal have long been regarded as the country’s most important natural resource. Since colonial times, the country has been an important venue for international trade, fostering a competitive, robust and dynamic business community, characterized by its openness and diversity. The service sector has benefited from its association with the Panama Canal, and all activities related to trade, banking, insurance, legal services, transportation and logistical services are highly sophisticated and competitive on an international level. Indeed, the service sector accounts for over 70 percent of GDP, with agriculture representing only six percent, though it employs some 20 percent of the workforce. In contrast to neighboring countries, where agricultural trade and labor-intensive industries dominate the economic landscape, the Panamanian economy is outward-looking, and is not based mainly on the exploitation of the poor by the rich, nor does the state control the economy, as is the case in Venezuela.

The business sector, which has been influenced by U.S. business practices, is well organized and periodically participates in the public debate, pursuing both sector-specific interests and those beyond its immediate concern. During the late 1980’s, important business organizations played a leading role in the *Cruzada Civilista*, a coalition of entities which was widely credited with triggering the final countdown for the 21-year military dictatorship that ended with the U.S. intervention of December 1989. Subsequently, the business community’s participation in the public debate declined, as most associations pursued the interests of their own sectors, be it industrial, construction, free zone, banking, insurance or maritime, to name a few. A strong foreign membership in some business associations explains why they are loath to engage publicly in politically charged national issues.

Recently, the business community’s sector-specific focus has begun to shift towards a broader interest in matters of national policy. This has been motivated by the crisis of the Social Security System, a series of corruption scandals involving public figures, the corrupt and servile behavior of the judiciary and the legislature, and an omnipotent executive, generally regarded as corrupt, inefficient and incapable. Generally speaking, businesses tend to contribute to all political parties they see as viable in order to ensure positive relations. In some sense, this could be considered a function of the supply side of bribery. In the absence of a well-developed

philanthropic tradition, very few businesses have contributed to non-profit organizations engaged in development activities, as opposed to strictly charitable causes.

A leading independent, non-sector-specific association, the Panamanian Association of Business Executives (APEDE), has begun to show an interest in public policy issues, and the Panamanian Chamber of Commerce, Industry and Agriculture has also demonstrated a willingness to engage in the public debate, pursuing positions beyond the commercial interests of its members.

2.4 Civil Society and Media Arenas

2.4.1 Civil Society

The many years of dictatorship left the Panamanian population passive, and thwarted the creation of organizations to voice popular concerns. The only politically involved segment of civil society was the labor movement, which supported Torrijos and his populist approach and was, in turn, used as an instrument of force against the oligarchy. The Panamanian labor code is still today one of the most protectionist in the region, and any attempts to change it are met with fierce resistance. In general, concepts concerning civil society and its legitimate functions in a healthy democracy, such as the facilitation of citizen input into the policy-making process through advocacy and watch-dogging, are still widely absent or badly misunderstood. This lack of awareness about the rights and responsibilities of citizens has been exacerbated by the still-prevailing paternalistic culture, in which problems are expected to be resolved by those in charge.

Since 1990 and the advent of the current democratic process, an awareness of the role of civil society has begun to build, and civil society organizations (CSOs) have formed for a variety of purposes. In areas such as the environment and women's issues – two of the strongest segments of the CSO community – the creation or strengthening of indigenous organizations has been supported through funding and technical assistance from U.S. and other international non-profits, as well as donor agencies. This has also been the case of organizations working to improve the administration of justice, specifically the Citizens Alliance for Justice, a coalition of some 15 CSOs advocating for improvement in the system, which is supported by USAID/Panama. Given the recent economic downturn, weaker organizations have disappeared, and most local groups continue struggling to build a resource base to ensure longer-term sustainability. Thus, in general, civil society does not yet represent a significant counterbalance to government.

There remains a broad sense of distrust of civil society among those who question what its agenda really is. Attitudes tend to be particularly skeptical among legislators, who maintain that CSOs do not have a right to interfere in the political or policy-making process because they were not elected and therefore “represent no one.” This, combined with stories of corruption attributed to bogus non-profits or CSOs created by legislators seeking a cover for illicit contributions have led many to discredit civil society altogether. Such negative stories have, of course, eclipsed positive coverage by the media of these organizations and their activities. Meanwhile, legitimate CSOs face major challenges in attempting to establish their rightful role in society and leverage the support needed for positive change. This is made more difficult by the fact that individual and corporate philanthropy, as well as social responsibility, are still very

weak concepts in Panama. Only a handful of organizations have succeeded in raising funds locally by virtue of personal and political contacts, while the great bulk of CSO resources comes from international donors, both public and private.

As in most Latin American countries, the Catholic Church is among the oldest and largest of the civil society organizations. During the last couple of decades, the Church's Commission of Peace and Justice advocated for free and fair elections and, although it had withdrawn from election monitoring, the political parties have invited it to observe the 2004 presidential elections. The Commission has also filled the role of public defender to address the needs of villagers and guide them through official procedures for accessing information or defending their rights. As a result, the Church has a strong "*poder de convocatoria*," and often confronts public officials on specific cases. As discussed earlier, the liberal and conservative wings of the Church are currently divided over implementation of Law 44 which extended the Canal watershed, with the former working on behalf of the communities opposing the law, and the latter supporting its implementation.

Given their clear agendas and constituencies, business and professional organizations enjoy a greater degree of acceptance than other more diverse CSOs. In recent years, some business groups have begun to focus on the need to modernize key public policies, such as those related to transparency, accountability and the judicial system, bringing them in line with the demands of investors and commercial interests in today's globalized economy. As one example of an active advocacy effort, the College of CPAs did a technical study of the proposed December 2002 tax reform package and, after having been labeled anti-government for findings counter to the proposed reforms, was able to educate key legislators and gain recognition as a legitimate expert in the field. The College is now called upon to advise the government through participation in a series of official dialogues, which are limited to select representatives of the public. During the current electoral season, other CSOs have launched efforts to identify, document and disseminate the official positions of the leading presidential candidates on the issues they represent. Such was the case recently, when FUNDAMUJER, a leading CSO dedicated to women's issues, sponsored a highly publicized event at which three of the four major presidential hopefuls announced their commitment to improving the socio-economic status of low-income women.

Finally, our analysis found that academia is not a significant player in public discourse as related to issues of democracy and governance.

2.4.2 Media

Since 1990, while there is freedom of speech, freedom of the press continues to be adversely affected by various laws inherited from previous dictatorial regimes. These relate to issues such as libel, calumny and defamation, and are known collectively as *leyes mordaza* (gag laws). They provide for both civil and criminal punishment, and place the burden of proof on the accused. While recent democratic administrations have promised to repeal these laws, they have not done so because they have been found to be useful in certain political circumstances. Charges are filed against individual journalists, rather than the companies that employ them, and punishment may include fines or imprisonment. Clearly, these laws have an adverse effect on responsible investigative reporting. It was recently reported that Panama holds the record in Latin America,

with 90 cases filed against journalists. A study by the International Center for Journalists (ICFJ) found Panamanian law to be “a powerful, intimidating weapon against freedom of expression,” noting that journalists “risk going to jail for merely exercising their profession.” President Moscoso has promised to repeal these laws before leaving office in 2004, but this is not seen as likely by informed observers. The ICFJ study also found that a major obstacle faced by Panamanian journalists is the lack of access to public documents and information from state agencies. In addition, journalists have reported difficulties arising from the need to convince their editors to publish certain articles because of political pressure.

The media sector faces its own internal challenges, including uneven quality, weak capacity in the area of investigative reporting, a lack of follow through, and the need for clear, ethical standards. Ownership issues were not perceived by interviewees to be a challenge to democracy.

2.5 Other Donors

The most significant effort identified which could help to create a check on the political dominance of the central government is the IDB’s nine-year, \$20 million Decentralization and Local Government Strengthening Program, to be signed on November 3 of this year by President Moscoso and IDB President Iglesias and begin in 2004. The Ministry of Economy and Finance is to be the lead agency, working with the Ministry of Government. Phase one (2004-2008) is designed to strengthen ten “showcase” municipalities, and also to prepare decentralization legislation, based on an analysis of the various bills already presented. In phase two (2009-2013), the law is to be passed, disseminated and implemented, and more municipalities are to be strengthened. Meanwhile, the IDB is launching a Central America & Caribbean regional study on the future of political parties. This is to involve a survey by a recognized expert, and is to include the relationship between civil society and governability. A report of the study is to be published in April 2004.

In terms of other multilateral actors, since the mid-1990s, UNDP has played an important role as the convener and facilitator of various “dialogue” processes involving the participation of broad cross-sections of interested parties. One such dialogue, begun in 1997, produced a document titled *Visión 2020*, a compendium of reforms aimed at strengthening democracy and governance, and presenting an ideal vision of Panama in the year 2020. Last year, that effort was revived, and is now called *Foro 2020*, which includes three working groups: Constitution, Ethics and Integrity, and *Visionómetro*. The plan is to publish results in time to seek responses from the major presidential candidates during the 2004 electoral process. One UNDP-sponsored dialogue process that has not borne fruit is that related to the Social Security crisis. While all participants recognized the depth of the problem, given the current political season, it was not possible to reach agreement and the effort was abandoned. UNDP has also provided support for municipal development training programs sponsored by the Solicitor General’s office, and for the Inter-institutional Network for Public Ethics that grew out of that effort.

In addition to declarations and high level commitments, the Organization of American States (OAS) offers technical assistance to requesting member countries. In Panama, the OAS just finished its first activity, CALIDEM (*Capacidad de Líderes Democráticos*). Through a six-month civic education workshop with IPEC (*Istituto Panameño de Estudios Comunitarios*), the

OAS targeted 31 individuals representing youth, politicians, NGOs, and political parties. Among the areas identified for future efforts are:

- Capacity building of young politicians in the Legislative Assembly;
- Continued electoral observation and strengthening of the Electoral Tribunal;
- A conference for the Electoral Tribunal and businesses that manufacture electronic voting equipment. (However, the conference has been postponed since the GOP is adverse to the computerization of equipment based on past experience with the lottery where people lost trust in the system);
- Technical expertise to the IDB for its study of political parties in Central America.

According to the World Bank, among the top ten bilateral donors of gross ODA for the period 2000-2001, Spain ranked first with a total of \$10.5 million, the U.S. second with \$10.0 million, and Japan third with \$9.4 million. The Spanish aid agency works at three levels: a) central level, with the Association of Municipalities (AMUPA – a fledgling association of mayors); b) local level, with projects in three municipalities; and c) regional level, providing training for Central American municipal experts. To strengthen democracy, the agency has two priorities: the *Carrera Administrativa* or civil service system, and tax reform – as taxes are inequitable and there is a high degree of evasion, with no monitoring or collection capacity.

The Japanese International Cooperation Agency (JICA) has been in Panama since 1985 working on the transfer of appropriate development technology through participatory processes involving Japanese volunteers working with local counterparts chosen from among the ranks of government. Four pillars guide their work: poverty reduction; sustainable economic growth; environmental conservation; and strengthening activities in the canal zone. Currently, JICA is conducting a study on the security of major and some minor ports to assist AMP (Panamanian Maritime Authority) in the development of its maritime strategy and master plan. The study will include internal migration to port areas and its relation to poverty. Three other studies currently underway are: solid waste management, integrated port development, and bio-diversity. In conjunction with JICA, the Japanese Bank with IDB will be working to clean the Panama Bay through the construction of wastewater treatment plants and improved sewage systems.

2.6 The U.S. Government

No rundown of key actors influencing the course of public events in Panama would be complete without mentioning the U.S. government. The U.S. has held strategic sway over the country for over a century, occupying a broad swath of territory surrounding the canal, and even going so far as to intervene militarily in 1989 to depose General Noriega and protect the neutrality of the canal. Not only was the canal an important source of government revenue, it made Panama a key crossroads in the hemisphere, contributing to its strategic importance as a commercial and banking center, based largely on American business practices.

Panamanians have long turned to the U.S. for higher education, and American culture and values appear to be held in high esteem. Although there were times of great tension, U.S. interests in the region and those of Panama appear to have coincided harmoniously for some time. Thus, Panamanians have come to regard the U.S. as a benign “big brother” who has their best interests at heart. Taxi drivers and government officials alike, while pleased that the canal is now

“theirs,” expressed mixed feelings about the official U.S. withdrawal from the country in 2000, and a desire to see the U.S. play a larger role in moving the government in the right direction.

This patrimonial relationship makes Panama a fairly compliant partner, strangely dependent on the U.S. for guidance. The down side is that the country has not yet learned to make the tough decisions it faces on its own.

2.7 Reformers and Opponents of Reform

This section is intended to provide USAID with references to the reform-minded individuals and organizations in both the public and private sector that were identified by the team during the assessment process. We recognize that the tenure of those in government depends on the specific terms of their appointments. However, even with that uncertainty, and while often facing considerable bureaucratic constraints and severe budget limitations, the individuals mentioned have made admirable efforts to improve the system, thus demonstrating their personal commitment to change. Meanwhile, reformers in the private sector are likely to enjoy a greater degree of continuity, and could make an important contribution to on-going DG programming goals.

2.7.1 Within Government

The pro-reform actors identified within state institutions include:

- ◆ Anti-corruption Prosecutor (*Fiscal Anti-corruption*) in the Attorney General’s office. Though stifled by a huge workload, which includes numerous issues beyond corruption, and the lack of necessary tools and equipment (including access to the Internet), the incumbent has put forward a number of proposals required by the implementing mechanisms of the OAS Inter-American Convention Against Corruption to strengthen anti-corruption procedures.
- ◆ The Solicitor General for the Administration (*Procuradora de la Administración*) in the Public Ministry. The mission of this office is to defend and promote compliance with the law and to encourage quality and efficiency within the administration, thus strengthening the rule of law. Here, the incumbent has publicly denounced a number of state institutions for their failure to provide access to information in keeping with the law. With support from UNDP and the Spanish aid agency, she has also provided training for officials at the national level and in some six municipalities, which led to the formation of the “Inter-institutional Network on Ethics in Public Service.” Now composed of some 25 public-sector entities, the network seeks to promote ethical values for public servants through training, dialogue and communications.
- ◆ The President of the Supreme Court. As already stated, the current President is a committed reformer, but is laboring against the tide in a Court populated by a majority of Magistrates who are under the control of the executive.
- ◆ The Human Rights Ombudsman (*Defensor del Pueblo*). The Ombudsman has demonstrated his commitment to the effective and efficient delivery of the services for

which he is responsible and to the monitoring of human rights problems. To facilitate citizen access, sub-offices have been established in some four regions of the country, including in the Darién, where nearly all other agencies of the central government are virtually absent.

- ◆ The Director of International Affairs within the *Contraloría*. With funding from UNDP and other sources, the incumbent has actively pursued various anti-corruption training initiatives in schools and in the private sector. As the Director of Special Investigations, he also conducted anti-corruption training in public institutions. Several years ago, he made arrangements for the installation of a hot line for anonymous calls from citizens wishing to report acts of corruption. The office follows up on all calls, and either investigates or refers claims to other appropriate authorities. Reportedly, these calls have resulted in a number of convictions.
- ◆ The Superintendent of Banks. The current Superintendent has succeeded in significantly raising the standards of supervision to prevent the illegal use of the banking sector.

As already discussed, the following institutions are seen to be the major opponents of real democratic reforms, since changing the system would mean a loss of power and influence:

- ◆ Political parties;
- ◆ The Executive Branch; and
- ◆ The Legislative Assembly.

2.7.2 The Business Sector

The business sector has traditionally been in favor of all reforms that foster competitiveness. Democracy, the quality of government institutions, the rule of law and administration of justice, transparency and freedom of information as well as the system of checks and balances so absent in government today, have all enjoyed widespread support among most business leaders. However, some organizations have not openly pursued these issues, concentrating more on sector-specific initiatives, and preferring that other associations, such as APEDE (*Asociación Panameña de Ejecutivos de Empresa*), the Banking Association, and the Chamber of Commerce, take the lead. The *Consejo Nacional de la Empresa Privada* (CoNEP), which served as an umbrella institution for the business sector is no longer considered representative, having been abandoned by its most important member associations because of its support for recently-enacted tax reform, allegedly for sector-specific interests.

2.7.3 Civil Society Organizations (CSOs)

While all CSOs contacted favored some type of democratic reform, several appeared to be positioned to play key roles in the further strengthening of the democratic process. These include:

- ◆ The Citizens Alliance for Justice (*Alianza Ciudadana pro Justicia*)
- ◆ The Panamanian chapter of Transparency International
- ◆ The Latin American Journalism Center (*Centro Latinoamericano de Periodismo, CELAP*)

- ◆ The Association of Municipalities of Panama (*Asociación de Municipios de Panamá, AMUPA*)
- ◆ FUNDAMUJER
- ◆ The Foundation for Ethics and Civics (*Fundación de Etica y Civismo*)

3. POLITICAL ANALYSIS

This section presents a discussion of the “Five Key Elements of Democracy” included in the DG Assessment Framework for Strategy Development: Consensus, Inclusion, Rule of Law, Competition and Good Governance. Each element is defined and discussed below, beginning with a brief paragraph taken from the Assessment Framework. As called for in the Framework, after assessing each of the five elements, the team analyzed how they fit together in order to identify the main DG challenge, which is described in the next section of this report. It should be noted that the Framework calls for identifying the key DG problem as an outgrowth of the overall synthesis of the key elements, not for articulating it in terms of each separate element.

In summary, and before examining each element in greater detail, our analysis found that the first of the components, Consensus, does not pose a significant problem for Panamanian democracy. While the weakness of the judicial system poses significant problems in the area of Rule of Law, and though there are challenges in the area of Inclusion, we view these as subsidiary to the larger, overarching challenges to democracy found in the areas of Competition and Good Governance. Indeed, the weaknesses associated with the rule of law relate both to a lack of independence and to the inefficiency and ineffectiveness of the judicial system, which can also clearly be traced to excessive executive control. The pervasive and damaging issue of rampant corruption and the state’s lack of will to address it can also be seen as a function of this phenomenon.

In essence, the extreme control by the executive of all three branches of government, as well as its control over all sub-national government operations, constitute the single most important DG challenge in Panama. Because the political parties control the executive, they tend to dominate all aspects of government. As noted earlier, this structural flaw is a vestige of past military dictatorships, and has resulted in the subsidiary types of poor, inefficient and ineffective performance that characterizes almost all government operations. In the end, our assessment found that, of the five components studied, the major DG problem lies at the intersection of Competition and Good Governance.

3.1 Consensus

There can be no political stability, let alone legitimacy, without consensus about certain fundamentals. If the basic rules of the game do not command consensus and legitimacy, then disagreements are likely to be resolved “extra-constitutionally,” that is, through civil war or other forms of assault on the basic order of society. There is a need for basic consensus about the rules within which the political game can be played and, though there may be strong disagreement about the content of proposed reforms, there is acceptance of a basic set of rules for their discussion and resolution.

In Panama, the issue of consensus does not appear to be a significant challenge to democracy or governance. There is broad agreement on matters such as national borders, citizenship, and the rules of the political game. Since 1990 and the fall of the dictatorship, the last three elections have been free, fair, and widely accepted by all. The electoral process is, in fact, seen as a model of democratic governance by the people of Panama and is a source of national pride. The constitution, though the subject of growing debate, is universally accepted as the bedrock of the country's legal framework, and there is consensus about the technical/legal process for amending it.

3.2 Inclusion

Democracies are inclusive. Neither formal rules nor informal practices exclude segments of the population. In addition to universal franchise, all citizens must be free to participate both in governmental and non-governmental arenas. Widespread governmental guarantees for political and individual rights are a *sine qua non* for effective participation. Where participation is low and apathy is high, this may be due to disaffection with the system, because of informal exclusion (i.e., from meaningful socio-economic activity), or because people are basically content.

Inclusion does not appear to pose important challenges to democratic governance in Panama. Virtually all citizens are registered voters, since registration takes place automatically when, at age 18, they apply for their Cédula, or identity card. Voter participation is extremely high, with a turnout of 76 percent in the last elections.

This is not to suggest that the country does not struggle with informal challenges to inclusion. For example, the indigenous populations and other rural citizens clearly do not receive the same level of services or share in the benefits of citizenship to the same degree as do urban residents. As reported by several knowledgeable interviewees, there also appears to be a degree of marginalization of and discrimination against the Afro-Antillean community in terms of access to services and business opportunities. But perhaps the most important exclusion exists in the form of poverty. Some 40.5 percent of the Panamanian population lives below the poverty level, and 26.5 percent live in extreme poverty.¹ Indeed, 10 percent of the population owns 37 percent of the wealth. In a country with per capita income among the highest in the region, this situation is stark evidence that an enormous percentage of Panamanians do not enjoy their fair share of what the country has to offer.

Because there are insufficient avenues for public participation, civil society is also largely excluded from meaningful input into the system. This is marked by a lack of access to the policy-making process and to information related to government operations.

Despite these problems, the lack of inclusion is not an imminent threat to democracy. The average Panamanian feels that significant progress has been achieved in the last decade since the overthrow of the dictatorship. Both the right to vote and freedom of speech contribute to that

¹ National Human Development Report: Panama 2002; United Nations Development Programme.

feeling and therefore diminish a sense of exclusion. Furthermore, the factors that underlie problems of inclusion can only be addressed by significant improvements in governance. We therefore see inclusion as a subsidiary DG problem.

3.3 Rule of Law

While consensus about the fundamental rules is the beginning of the political game, those rules must be enforced. The questions here are whether the regime as a whole abides by its own rules; whether the rules are public; whether similar cases are treated similarly; whether the entire system is inlaid in legal substance and procedure; and so forth.

A recently completed evaluation of the Administration of Justice program funded by USAID/Panama has provided ample analysis of the judicial system.² Therefore, our investigation of issues affecting that system focuses on those matters that have a direct bearing on democracy and governance. In this regard, the Panamanian justice system poses a real challenge for the strengthening of democracy. The most critical failure in the system is the fact that the government holds itself above the law. This is accomplished not only through the manipulation of the organs of justice and enforcement, but also through an extremely broad constitutional provision of immunity for legislators, key executive branch officials and judges.

The judiciary is tightly controlled by the executive branch. Magistrates (Justices of the Supreme Court) are appointed by the executive and approved by a compliant legislature. The court's budget is inadequate and, though approved by the legislature, the Contralor must give prior authorization for any and all expenditures (*control previo*). It was pointed out by officials of the Court that, in the event of overall budget cuts, it is the executive that determines which items or projects are to be eliminated, absent any consultation with the Court.

The justice system is widely perceived to be highly corrupt, with access and outcomes controlled either by political favoritism or by outright bribes. Thus, justice is both capricious and arbitrary. There is little transparency in judicial proceedings. Only the decisions of the Supreme Court are published in the Judicial Registry, which USAID/Panama helped to modernize.

Challenges related to trade disputes continue to be a source of friction between the U.S. and Panama, and a potential stumbling block for negotiation of a Free Trade Agreement.

While these problems are clearly very serious and pose real threats to the legitimacy of Panamanian democracy, we see them as a function of the overriding DG problem, which is executive dominance under party control.

3.4 Competition

Competition is the instrument by which power is checked and balanced. The most obvious arena for competition is the multi-party election for public office, but free and fair elections are not the

² "Establishing Momentum Toward Fairer and Faster Justice in Panama; Evaluation of USAID/Panama Special Objective;" J. Michel, N. Parker & C. Berguido; July 2003.

only form of competition in a democracy and public office is not the only prize. Democracy is about the competition of ideas and public policy, as well as about public offices. Democracies institutionalize competition within government itself through a balance of power among its different branches and levels (central, provincial, and local). Indeed, the idea of a balance of power is premised on intra-governmental competition. Pluralistic civil society is also an arena for the competition of ideas, and the free media are particularly indispensable to democracy as vehicles for information, analysis, and debate, and as checks on the power of government. Also critical as a check on government is some degree of economic competition. In short, fully competitive systems reflect a regularized, free, and fair electoral process, in which any aspiring group or party may contest for power under a liberal and generally agreed-upon rule of law, and a political arena that allows for a range of debate and disagreement between government and citizens, together with a structural balance among the various centers of power.

The team identified Competition as a major contributor to the main DG problem. It represents something of a paradox in Panama. On one hand, it is robust and open to all in non-governmental arenas. However, in analyzing the functioning of government, competition is almost non-existent in a number of ways. The executive exerts almost total control over both the legislative and the judicial branches of government. It also controls the provincial and municipal levels of government almost totally through its highly centralized structure, extremely small budget transfers and the limited authority of local officials.

The most visible aspect of competition is seen in the electoral system. Widely perceived as both free and fair, the average Panamanian views this as her/his main vehicle for civic participation. Parties change control peacefully and in accordance with the rules of the game.

Economic competition is also seen to be, by and large, open and fair. This is evidenced by large numbers of immigrant entrepreneurs, wide participation in the service sector and in the Colon Free Zone. There do not appear to be significant barriers to entry into the business community, except within the industrial sector where, due to its opposition to globalization and protectionist behavior, state capture favors vested interests.

Civil society, too, is a relatively accessible competitive arena. While the government does impose registration barriers for the establishment of NGOs, there is a growing number of such organizations which operate freely and competitively. The press and other media also appear to compete openly and fairly with each other, as do the large number of labor unions.

Even in arenas where corruption is widely practiced and accepted, it appears that bribery itself is competitively open to all comers who can afford it. Thus, many aspects of competition are not a challenge to Panamanian democracy. Rather, it appears that competition in the non-governmental spheres mentioned is robust.

3.5 Good Governance

Ultimately, citizens will judge their democracy on whether it works – whether it “delivers the goods.” If democratic government is not effective at providing essential public goods like public safety, law and order, reasonable justice, basic infrastructure, minimal social services, the

instruments and policies for economic growth, and so forth, if essential needs are not met, deep inequalities are not alleviated or profound grievances are not addressed, government will either be replaced through the competitive process or through some less benign process with a less benign outcome. Good governance includes: Transparency - public accessibility of government operations; Accountability - the extent to which government officials and agencies are regulated by and responsible to public approval and formal rules; Efficiency - the effectiveness of government at delivering public goods at the lowest cost; and the Rule of Law - the degree of adherence to legal principle and procedure. Good governance is evident in relatively low levels of corruption; consistent, minimum levels of service provision; and responsiveness to changing conditions and public needs.

There is a clear lack of good governance and of the capacity to achieve it in nearly all institutions of the state. This, then, constitutes an important challenge for Panamanian democracy. Government bureaucracies are seen to be inefficient, ineffective and poorly managed at all levels. One important aspect of this weakness is the severe lack of capacity in terms of technical and managerial skills. For instance, while taxes are collected from those who are employed through payroll deductions, a large proportion of other taxes go uncollected. Another challenge is the rampant corruption that undermines all government institutions. A third important factor is patronage or nepotism, which is also pervasive and which seriously undermines government capacity and erodes institutional memory.

The capacity of state institutions to govern in an effective and efficient manner has been severely weakened by the lack of a stable and professional civil service. During her term, the current president has fired some 30,000 functionaries, replacing them with party loyalists, many of whom are said to lack the qualifications needed for the positions to which they were named. This has led to a growing demand for implementation of the already-existing civil service laws regulating employment in the various branches of government (administration, foreign service, legislature, judiciary). It should be noted that none of these laws include salary scales. Currently, a bill is pending in the Assembly to regulate employment in the Electoral Tribunal. However, its passage is opposed by the *Contalor* on the grounds that it would be too expensive, and there is no evidence that the current legislature will act. Despite the president's vow to see that these laws are implemented, there has been no movement in that direction. The impact of such massive shifts in public employment on the government's capacity to function and on the overall economy has not been studied, though it is widely believed that this poses a serious problem.

3.6 The Main DG Challenge

In summary, the main DG challenge in Panama lies at the intersection of competition and good governance. The country's inability to manage government operations and resources effectively arises from the extreme degree of centralization of power in the executive under the control of the political parties. This results in a lack of competition within the public sector, both among the branches of government and between the sub-national levels and the national level, thus impeding their ability to govern well.

The following section is a rundown of the main DG problem in terms of the major contributing factors.

3.6.1 Executive control of the Judiciary

Appointments to the Supreme Court are controlled by the executive, which chooses candidates and ensures their ratification by the legislature. As pointed out by an official of USAID/Panama, the control exercised by the executive does not come from the law itself, but because of manipulation of the executive over the legislative branch. Judges are named based upon their loyalty to the party over objective qualifications or experience. The current President of the Supreme Court was named as a party loyalist, but he surprised the executive by being a strong reformer. It is therefore unlikely that he will be re-elected when his term in that position expires next year. In addition, the executive also approves the budget and all expenditures of the Judiciary, and has discretion to cut projects or expenditures in the case of budget reductions.

Without the authority of the Contralor, no prosecutor may open an investigation of any public official on charges of corruption, much less bring a case to trial. Generally, the prosecutorial function is also largely influenced by the executive, while administrative justice and police institutions are also under the sway of the executive.

3.6.2 Executive control of the Legislature

Panama's multi-party system is characterized by the formation of coalitions to ensure a majority in the Legislative Assembly, and such is the case under the current administration. Once this majority is established, it colludes compliantly with the wishes of the executive. After her election, the current president presented all incoming legislators with gold watches, a striking symbol of the relationship between the two branches. In addition, it was recently reported that the executive paid large bribes to various legislators to secure their votes for the two most recently appointed Supreme Court Magistrates, whose qualifications were questionable but whose party loyalty was not. Under protection of immunity, one of those legislators even flaunted the payment he had accepted on national television.

3.6.3 Executive control of regional and municipal government

By design, provincial and local governments are extremely weak in Panama. They lack any real authority and control extremely limited resources. All budgetary decisions are subject to control from above, and those local officials who are elected are also subject to party discipline. While efforts to strengthen local government have been made by USAID, the Spanish development agency and others, they have borne little fruit given the structural limitations imposed by the central government.

3.6.4 The role of political parties in competition

Political parties, perceived by many to be the main legitimate source of power, exercise that power as a monopoly that also fosters a climate of diminished competition.

Strong political parties thus exert enormous influence over the choice of candidates, as well as the way legislators act and vote. Party bylaws take precedence over even constitutional provisions in terms of the behavior of legislators. Failure to abide by the bylaws can result in expulsion from office and from the party.

Contributions to political parties are not subject to any limits. Nor are parties obligated to publish or account for the donations received or how they are spent. This lack of transparency makes it virtually impossible to assess accurately the financial structure of the parties.

Once in power, political parties control the executive branch, and through it, the two other branches of government, as well as the autonomous institutions. Once in office, parties reward political favors by offering their followers jobs and influential access, which reinforces the link between patronage and corruption. A recent poll showed that obtaining employment is the most important reason given for becoming a party member or activist.

The extremely high level of patronage³ ensures that politics takes precedence over technical expertise, resulting in a less efficient and effective bureaucracy, but one which is much more easily manipulated for political purposes.

Political parties are also affected by a clear absence of internal democracy. The dominant groups within the parties enjoy absolute power, which is exercised openly and unapologetically – yet another factor that hinders competition, an important ingredient of a healthy democracy. A good example of this was the law passed in December 2002, which makes internal primary elections optional. This law, supported by the two major parties represented in the Assembly, allowed the current president to hand pick her successor through a party convention and without input from party members.

4. FILTERS & RECOMMENDATIONS

Once the major DG problem was identified, key actors and institutions analyzed, and broad strategic approaches developed, the final step in the assessment process was to apply existing “filters” or factors that need to be considered in shaping USAID/Panama’s future DG strategy. These are outlined below, and are followed by the recommendations prepared by the team as a result of this process.

4.1 What is Possible in Panama

As described above, the main DG problem is the extreme centralized control exercised by the executive under political party domination. This is supported by constitutional provisions, structural factors and a variety of legal and regulatory procedures. Any serious attempt to change the status quo would necessarily require a process of constitutional reform. Various knowledgeable and highly respected specialists with whom we spoke noted that the constitution

³ During the current administration, it is estimated that 30,000 positions have been filled through patronage in a bureaucracy of some 180,000 employees. It should be noted for comparison’s sake that U. S. administrations typically name around 3,000 political appointees in an executive branch with upwards of 5,000,000 employees.

was framed by the military dictatorship to ensure central control of the state, and that, rather than amending it, the constitution needs to be completely re-written. In an ideal world, such constitutional reform would be followed by comprehensive programs to strengthen the capacity and independence of both the legislature and the judiciary, as well as the sub-national governments.

While the process to change any of these conditions is clear and achievable, none of the political parties have demonstrated any real interest in pursuing such reforms, as this would reduce their ability to control the system. The lack of political will in Panama is remarkable in that it is unapologetic and publicly acknowledged. Thus, it is highly unlikely that attempts to address this fundamental DG problem directly can succeed. Any real-world strategy must take into consideration this perverse commitment to authoritarian control and manipulation by actors whose vested interests would be affected. Therefore, unless and until such time as the government demonstrates real commitment to change, we do not recommend working directly with government actors on constitutional reform, the separation of powers, or legislative or judicial strengthening.

4.2 Other Donors

As described earlier, the nine-year, \$20 million Decentralization and Local Government Strengthening Program about to be launched by the IDB represents the most significant initiative found that directly addresses the main DG problem. While some support from other multilateral and bilateral donors focuses on various aspects of democracy and governance, most efforts are either theoretical, limited in scope or of a more specifically technical nature. Unfortunately, due to the limited time available, it was not possible to conduct in-depth research on the upcoming IDB program.

4.3 CAM Regional Strategy & Mission Strategic Objectives

Guidance for the recently approved Central America & Mexico (CAM) Regional Strategy focuses on “contributing to the achievement of national level impact within each participating country,” and places greater emphasis on “implementation of sound policies that address the key constraints to development.”

The first of the CAM Strategic Objectives (SOs) is: “Ruling Justly: More Responsive, Transparent Governance.” Two Intermediate Results (IRs) are included under SO 1: “Strengthened Rule of Law,” and “Greater Transparency and Accountability of Governments.” The Agency’s draft Anticorruption Strategy recommends that “anticorruption efforts should encompass work across all sectors,” and CAM guidance states that, “Missions should organize their programs to incorporate this.” Therefore, the Mission’s entire strategic approach is to embrace this vision.

USAID/Panama’s country plan under the CAM Strategy is to be submitted by May 2004. The recommendations presented below in section 4.5 are intended to assist the Mission in program design for the four-year period beginning in October 2004.

4.4 USAID's Comparative Advantage & Resources

One of USAID/Panama's greatest comparative advantages is its programming experience, and the fact that it is an agency of the U.S. government. The U.S. is still seen as a key ally and trading partner, and also as a mentor and "friendly persuader." Another advantage is that, unlike other important donors, the Mission is not limited to working only with government institutions, but rather is free to give priority to civil society organizations as legitimate program partners in achieving specific program objectives.

Over the four-year period beginning in October 2004, the Mission's current budget level of \$10.5 million is expected to decline by around 10 percent per year. It will therefore be more important than ever to explore all options for leveraging Mission resources through collaboration with other members of the U.S. Country Team, as well as by working with other donors.

4.5 Recommendations for Programming to Address the Major DG Problem

In light of the prevailing political atmosphere in Panama, and the fact that a dramatic change of political will is unlikely, we recommend that USAID/Panama focus its efforts on building a constituency for reform. Specifically, as described below, we recommend the following two strategic approaches:

- ◆ Improving the transparency and accountability of government, and thus reducing its ability to engage in corrupt practices with impunity; and
- ◆ Decentralization and the strengthening of local government to create competition among the levels of the governance structure.

4.5.1 Transparency, Accountability and the Fight Against Corruption

In order to generate constituencies for reform in the absence of political will, we recommend a "sandwich" approach:

- Build demand for transparency and accountability from the bottom up; while
- Building pressure for reform from external sources, including the entire U.S. country team, and collaboration with other international actors.

The bottom up approach calls for working mainly through civil society and the media, both of which have demonstrated willingness as well as capacity for collaboration. This effort should also include the few credible reformers within the public sector who demonstrate a real and reliable commitment to change. Such efforts should focus on the demand side for increased transparency and accountability on the part of the state. This will not only address the problem of corruption, but as demand for reform grows and becomes more sophisticated, pressure on political parties and the government to address the underlying DG problem will mount.

The top-down approach would involve public diplomacy on the part of the U.S. Embassy, as well as conditionalities on all U.S. assistance. This should be done in conjunction with other embassies, other bi- and multi-lateral donors and international financial institutions. Coalition building and donor coordination would figure prominently in this aspect of the strategy.

Of particular interest, the possible upcoming negotiations for a Free Trade Agreement (FTA) offer a number of ways in which U.S. government actors could encourage Panama to improve its democratic governance. Improvements in transparency, government procurement procedures, investment security, trade-related labor and environmental concerns, and the predictable and equitable application of the law are only some of the requirements of an FTA. As was the case with the Panama Canal Treaties, the U.S. should capitalize on its ability to influence the Panamanian government positively relative to the discussion and implementation of these reforms.

4.5.2 Decentralization and Strengthening Local Government

We also recommend that USAID/Panama actively seek to leverage the IDB's upcoming Decentralization and Local Government Strengthening Program. (See section 2.5 for a brief description.) Given that this initiative represents perhaps the only example of political will on the part of the state, it emerges as a potentially feasible strategy that directly addresses one aspect of the major DG problem. It would contribute to stronger, more representative local government that can function as a counterweight to the dominance of the national executive. The Mission should begin immediately to explore potential avenues of collaboration with appropriate IDB officials.

Working in this area presents two distinct opportunities that could be pursued either jointly or separately. On one hand, the Mission could work to influence the policy-making process related to decentralization (which is about to be addressed through the IDB program), which is consistent with the CAM Strategy. On the other hand, at the program level, the Mission could collaborate with the IDB and other donors such as the Spanish aid agency on activities to strengthen local government. These might include, for instance, participative government practices, responsibility and accountability, community-based advocacy, etc.

4.5.3 AOJ Bridge Program & Future Work in that Area

In the coming year, the Mission's capacity to contribute successfully to the strengthening of the rule of law (IR 1) will be conditioned in large measure on the outcome of the election of the President of the Supreme Court at the end of 2003. For the period to October 2004, the recently concluded AOJ evaluation recommends the immediate initiation of a bridge program in order to ensure that the momentum achieved to date not be lost. AOJ programming during this period and beyond should focus on two of the milestones recommended in that evaluation: a) vigorous civil society support for reform; and b) active discussion of justice and transparency in public fora. Efforts at institutional strengthening within the AOJ sector should focus at the local level as part of other efforts to strengthen municipal government. This would target *corregidores* and *jueces nocturnos* as key justice sector operators at the sub-national level.

4.6 Potential Program Approaches

While the scope of this Assessment does not include the design of specific programs, the following notional approaches emerged during our interviews and analysis, and are presented here for the Mission's consideration.

4.6.1 Policy Level Approaches

◆ *Senior Seminar:* The Embassy could convene a group of senior reformers from government, business and civil society to meet regularly over a set time period (e.g., 1-2 years), to participate in a series of highly interactive seminars on topics related to critical aspects of democracy and governance. This would serve as a central meeting ground for the in-depth discussion of key issues facing the nation, and provide examples of how they are dealt with in the U.S. and other countries. Unlike UNDP-sponsored dialogues, which aim to produce consensus on a given solution to a specific problem, the overall objective of the Senior Seminar would be to enable participants to consider and advocate for appropriate policy reforms within their respective arenas, and to support one another's efforts. Topics might include: constitutional approaches to the balance of powers; the legitimate role of civil society in democratic societies; approaches to conflict of interest as a basis of governmental integrity; civil service values and models; and the administration of justice, to name a few. Internationally known experts from the U.S. and other countries would be featured as presenters and facilitators for these discussions. Membership in this group would be highly competitive and thus prestigious, and regular attendance and active participation would be required.

◆ *Decentralization Policy:* The decentralization of the state would contribute directly and significantly to resolving the major DG problem identified through this assessment. Of necessity, the issue must be treated at the policy level, and would have national impact – two programming features prominent in the CAM Regional Strategy. As explained earlier, the upcoming program on decentralization, to be launched in 2004 by the Panamanian government with a loan from the IDB, is designed to formulate policy and seek the passage of legislation in this area. Therefore, this initiative appears to provide an excellent opportunity for the Mission to leverage its resources, while participating in and helping to shape the decentralization policy of Panama. The IDB loan is evidence of the existence of political will for decentralization, apparently due to growing pressure from the international financial institutions and from some segments of Panamanian society.

◆ *FTA-related Policy Dialogue for Civil Service Reform:* The FTA presents a wide range of important issues with potentially significant impact on democracy and governance in Panama. An example of one such policy dialogue, which could grow out of these negotiations, relates to the need for Panama to have a stable, reliable and technically competent professional civil service. U. S. Government actors could develop a concerted approach to promote policy reform at the highest levels around this important issue.

This policy dialogue could include the following elements:

- Creating a cap on the number of political appointees
- Implementing the various Civil Service statutes which already exist for the executive, legislative, diplomatic and judicial branches, and pass one for the Electoral Tribunal
- Develop salary scales for each of these laws

- Develop objective job requirements for each position
- Design steps to address rampant cronyism and patronage

◆ **Implementation of OAS Convention Against Bribery:** Another key policy opportunity relates to the fact that Panama is to participate in the Peer Review process for the implementation of this OAS Convention. This process requires that the country under review present a detailed paper discussing the steps it has taken to implement specific aspects of the Convention. A Committee of Experts from peer countries then reviews the paper and makes recommendations. As part of the review, civil society is given an opportunity to respond to the country's self-assessment. The U.S. Country Team and our representative to the OAS Committee of Experts could provide useful input to the GOP on implementation issues.

4.6.2 Civil Society Approaches:

◆ **Create new knowledge:** The average Panamanian (as well as most of the public officials we spoke with) can only denounce corruption in the broadest of terms. There is no clear agreement on the definition of corruption and what constitutes it, and little understanding of the multiple types and methods of corrupt behavior. More importantly, there does not seem to be a clear understanding of the actual costs of corruption and who pays those costs and how.

The Mission should consider supporting efforts to generate specific data and analyses of corruption in order to enable focused and factual public debate on the topic. The debate is currently characterized by inflammatory rhetoric and ad hominem attacks. Shifting it to a fact-based and substantiated dialogue is the necessary first step towards creating consensus about strategies to fight the problem. Thus the Mission might consider proposals to conduct analyses such as Transparency International's "National Integrity Study," the Selligson Corruption Victimization Survey⁴ or Government Entity Integrity Rankings based on the *Transparencia por Colombia* model. The World Bank Institute also conducts extensive corruption surveys and might be a partner for such efforts in Panama. The International Budget Project has developed a methodology to assess budget transparency and accountability, which it has implemented in various Latin American countries. Local universities are likely partners in such efforts, and local media outlets could play an important role in facilitating the dissemination of the results. The media companies, by contributing print space or air time, could qualify such an initiative for support from USAID's Global Development Alliance (GDA).

◆ **Support for civil society organizations (CSO's) working to fight corruption:** The Mission should consider providing small grants to local CSO's engaged in the fight against corruption. Supporting the work of these important organizations would not only allow them to continue their work, but it would also contribute to the strengthening of civil society, currently very weak and lacking legitimacy in the eyes of many government functionaries. Civic clubs, such as Rotary International, are also potential allies.

⁴ The LAC Bureau has expressed an interest in supporting the application of this methodology in CAM Strategy countries.

◆ Support CSO's to undertake a comprehensive review and critique of the GOP's report on its implementation of the OAS Convention Against Bribery for the 2004 meeting of the Committee of Experts. This would contribute to the legitimization of the role of civil society as overseer of government conduct. It would also create pressure on the GOP to move beyond window dressing in its implementation efforts or else be exposed as such.

◆ Look for opportunities to incorporate anti-corruption strategies in all USAID SO's as well as other USG programs. Corruption can no longer be seen as a problem to be addressed through DG programs. It must be confronted in a cross-sectoral and coordinated approach. Of particular interest is the Environmental SO, since our interviews highlighted this area as one particularly subject to corruption. The Mission's work in the watershed and the Darien project also offer significant corruption challenges which should not go unaddressed.

(See *Annex B* for additional information on the subject of corruption.)

4.6.3 *Harnessing the Business Community*

In some quarters of the business community, there is interest in contributing to improvements in both governmental integrity as well as the ethical conduct of the members and firms these organizations represent. Civic clubs, such as Rotary International, Kiwanis or Lions International, and local media companies are also potential collaborators. It should be noted that *El Diario la Prensa* already contributes significant space to the *Fundación para el Desarrollo de la Libertad Ciudadana*, which sponsors the national chapter of Transparency International. The focus of these efforts should not be on organizing the business community to demand reform on the part of the government, but rather on how the business community can cooperate with the government to create reforms in the interest of the country.

4.6.4 *Working with Government Reformers*

The team identified a number of government reformers who are worthy of support. The Mission should seek to back their efforts and, in as far as possible, to protect these reformers, facilitating collaboration and networking among them. Some specific suggestions follow.

◆ PCA University: This would involve working with mid-level managers from both the public and private sector who are committed to reform and to improving the accountability and transparency of government operations. The idea grew out of one of the most often repeated observations we heard.

The Panama Canal Authority (PCA) is regularly cited as the shining example of good management in Panama. It is lauded as an organization which operates according to the highest standards of professionalism in terms of human resource management, planning and efficiency. However, perhaps the most important aspect of the management of the PCA is the organizational culture based on clearly communicated shared values of integrity, public service, and probity. The PCA is clearly an enormous, but largely unexploited, resource for training other Panamanians. Many of our interviewees made the same observation about the PCA: "We need

to ensure that the PCA maintains its high level of performance and doesn't come down to the low level of other Panamanian public sector institutions. Rather, we should try to bring the other institutions up to the level of the PCA." While there was broad agreement on this, no one offered any concrete suggestions on how to achieve this lofty goal.

We suggest that the incomparable organizational resources of the PCA be made available to a select group of high-potential middle managers from throughout the Panamanian government on a highly competitive basis. The PCA could design and deliver a course on the management model, the organizational culture focusing on its values and ethics, and on other aspects of the Authority's operations. The didactic phase, perhaps lasting one month, would be followed by an internship in an appropriate location within the PCA for some months. An alumni association of graduates of such a program could be formed as a means to help graduates incorporate and sustain the lessons learned through the program.

In a conversation with the Director of Executive Administration of the PCA we discussed this idea. He was extremely receptive to it, saying that it was consistent with other senior management approaches for increased PCA transparency and the sharing of best practices with other state agencies.

- ◆ Support the *Red Interinstitucional de Etica Pública* (Interinstitutional Network for Ethics in Public Service), which was established in March 2003 under the auspices of the *Procurdora de la Administración* and at the request of its members. It seeks to strengthen positive values among public servants through the design and execution of programs to promote an attitude of respect for the clients served and a greater commitment to the tasks assigned. This is a potential partner within the government where there does appear to be the requisite political will. It should be noted that the term of the incumbent expires in December of 2004, and her replacement will be a critical consideration in terms of potential Mission support for the Network. Such support could be limited to providing content speakers and experts from the U.S. and other countries in organizational and government ethics and other topics of interest. It could also include support in the form of technical assistance to help manage the agenda. In addition, the *Red* might be an excellent pool from which to recruit participants for other programs such as the Senior Seminar or the PCA University.

- ◆ Work with the Office of the Human Rights Ombudsman to develop a transparency barometer that ranks each agency's compliance with related laws. Already that Office follows the freedom of the press cases brought to it. It also assists citizens with complaints arising from unmet freedom of information claims, and supplies a full report on the cases handled. However, given the cumbersome nature of the report and the thoroughness of the data tracked, it could easily be transformed into a more concise, user-friendly barometer format that compiles these data as transparency indicators and rank orders state agencies for easy interpretation. Aside from supporting development of the indicators, the Mission could facilitate the publication and dissemination of the barometer.

4.6.5 Local Government Capacity Building

◆ Work with local officials (i.e., Mayors, *Corregidores*, *Jueces Nocturnos*, *Representantes de Corregimiento*, etc.) to build their skills in areas such as alternative dispute resolution (ADR), the establishment of on-going technical capacity through the adoption of a system patterned on the *carrera administrativa*, and so forth. There are numerous possibilities to support local governments in Panama; strengthening the capacity of municipalities is critical to developing a legitimate check on the authority of the central government. A determination of how best to achieve this could be informed by and linked with the program to be implemented with IDB support in the municipalities selected. In that regard, one important area to consider is the local AOJ system. A program in this area could take two complementary directions. The first would be to work with *Corregidores*, establishing clear standards and requirements for that post, along with some career protections for them, and providing training and networking opportunities. The second approach might be to support the use of ADR in the municipalities as an important tool for expanding access to justice.

Appendix A: List of Persons Interviewed

Panamanian Government

Alma Montenegro de Fletcher
Procuradora de la Administración

Adán Arnulfo Arjona, Magistrado Presidente
Corte Suprema de Justicia

Juan Antonio Tejada Espino, Defensor del Pueblo; Guido Alejandro Rodríguez,
Secretario General de la Defensoría del Pueblo

Cecilia Raquel López, Fiscal Primera Anticorrupción
Procuraduría General de la Nación

Gustavo Barragán, Secretario General
Policía Técnica Judicial (PTJ)

Omar Lynch, Director de Asuntos Internacionales
Contraloría General de la República

Armando Avendaño, Jefe de Gestión Penitenciaria
Rosa E. Cárdenas, Asesora del Sistema Penitenciario
Ministerio de Gobierno y Justicia

Osmar A. Valdés, Director Nacional de Organización Electoral
Tribunal Electoral

Marissa Echevers, Directora de Contrataciones Públicas
Ministerio de Economía y Finanzas

Stanley Muschett Ibarra, Gerente de Administración Ejecutiva
Autoridad del Canal de Panamá

Oscar Vallarino, Director Ejecutivo
Comisión Interinstitucional de la Cuenca Hidrográfica

Alexis Guerra, Subdirector
Amira Ivette Barsallo V., Coordinadora Interinstitucional
Orlando O. Osorio, Subdirector Ejecutivo Técnico
Ministerio de Economía y Finanzas
Programa de Desarrollo Sostenible de Darién, Unidad Coordinadora del Programa

Tomás H. Herrera D., Member
Anti-Corruption Comisión

Teresita Yániz de Arias, Legisladora de la República

Elías A. Castillo G., Legislador de la República

Media

Octavio Amat, Director
El Panamá América

Winston Robles, Director
Betty Brannan Jaén, Washington Correspondent
Diario La Prensa

Atenogenes Rodríguez, Gerente de Servicios Informativos
Corporación MEDCOM Panama

Maribel Cuervo de Paredes, Directora Ejecutiva
Centro Latinoamericano de Periodismo

Lucy Molinar, radio program host

Dorita de Reyna, radio program host

Civil Society

Raúl Alemán Zubieta, Presidente
Asociación Bancaria de Panamá

Ramón Arias Calderón, Presidente
Comisión de Justicia y Paz

Leonidas Cajar, ICASE
Universidad de Panamá

Magali Janneth Castillo, Directora Ejecutiva
Alianza Ciudadana Pro Justicia

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

Fernando Berguido, President
Panama Chapter of Transparency International

José Agustín Espino, Presidente
SONDEAR

Dario González Pitty, Director Ejecutivo
Asociación de Municipios de Panamá (AMUPA)

Carlos Ernesto González Ramírez, spokesperson
Movimiento Nacional Anti-Corrupción

Luís Laguerre, Presidente
Colegio Nacional de Contadores

José Ponce; Jaime Martí, Miembros
Asociación de Moradores de San Felipe

Luís H. Moreno, Presidente
Fundación Panameña de Etica y Civismo

Esther Kwai Ben, Tesorera-Administradora
CARITAS Arquidiocesana

Francisco Barrios, Tesorero de la Junta Directiva
Colegio de Contadores Públicos Autorizados

Mariano E. Mena Q., Secretario General
Central General Autónoma de Trabajadores de Panamá

Líder Sucre, Director Ejecutivo
ANCON

Business Sector

Ivette Elisa Martínez, President
Pan-Amcham

John Bennett, Presidente
Asociación Panameña de Ejecutivos de Empresas (APEDE)

Arturo Branch, Miembro Directivo, Cámara de Comercio Afro-Panameña
Director of Planning and Development, Afro-America 21

Diego Eleta, Member of the Board of Directors
Cámara de Comercio, Industrias y Agricultura de Panamá

Yauda Kuzniecky, Attorney
Kuzniecky & Co.

Odalís Ceballos del Cid, Vocal

Asociación de Empresarios Turísticos de la Zona de Portobelo

Joseph Fidanque, Jr., Presidente
Fidanque Hermanos r hijos, S.A.

Other Donors

Iveta Ganev, Especialista en Desarrollo Social
Banco Interamericano de Desarrollo

Paloma Morazo, Oficial de Programas
Esther Ruíz Entrena, Experta Programa Portobelo
Soraya García, Asistente Programa Portobelo
Edgardo Solís, Educador Ambiental Programa Portobelo
Oficina Técnica de Cooperación
Embajada de España en Panamá

Isabel St.Malo de Alvarado, Representante Residente Auxiliar
Programa de las Naciones Unidas para el Desarrollo

Naoki Kai, Representante Residente
Carlos E. Zambrano, Asesor Económico y de Cooperación Técnica
Japan International Cooperation Agency (JICA)

Hernan Hurtado Prem, Director
Organización de los Estados Americanos

USAID/Panama Contractors

Alfredo Cuellar, President
Management Sciences for Development (MSD)
César Augusto Solanilla, Director
USAID/MSD Programa de Administración de Justicia

Dorita de Maduro
Fundación Pro Niños del Darién

U.S. Country Team

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Leo Garza, Director

Nila Chu, Program Officer

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Felipe Frederick, Project Development Specialist

Appendix B: CORRUPTION

Background

Corruption is perceived as a very serious problem today in Panama. In recent years it has risen in prominence on polls of the concerns of citizens and now stands second only to unemployment. Virtually all our interviewees brought the issue up and talked at length about it. Articles about high profile scandals appear routinely in the country's newspapers and other media.

According to the World Bank Institute's Governance Matters data, Panama's efforts to control corruption are consistent with the average of all Latin American countries. According to Transparency International's 2002 Corruption Perception Index, Panama ranked in 67th place out of 102 with a score of 3.0 out of a possible 10. This ranks Panama below average, between El Salvador and Argentina, and on a par with Uzbekistan and Turkey.

The Drivers of Corruption

Understanding corruption in Panama also requires looking at a number of other facts. Panama's century-long paternalistic relation with the US has led it to look to external and stronger forces to make hard decisions. The authoritarian abuses of 21 years of dictatorship have left Panamanians accustomed to a corrupt and overbearing government. Thus the current situation feels to them, in comparison, to represent a significant improvement.

Corruption has come to be seen by many Panamanians as a cultural phenomenon. During the years of the dictatorship, the individual who was successfully corrupt was much admired in as much as s/he was able to beat the dictatorship at its own game⁵. Several interviewees pointed out that it is culturally accepted practice to bring small gifts of empanadas or sweets to the secretary of an influential person in order to "get on her good side." So while most theorists argue that corruption itself is not rooted in culture, the tolerance of corruption seems to be culturally supported in Panama.

Size is also a consideration. Panama has the smallest population of any Latin American country except Belize (2.9 million residents.) The educated class is even smaller, thus making the overlap between government and business or other sectors inevitable. As a result, avoidance of conflicts of interest on a personal level virtually impossible.

As discussed in the body of this report, aspects of the structure of government, the Constitution, and many old laws, all designed by the dictatorship, provide the public sector with ample opportunities for corruption and the tools to protect its vested interests. The weak and manipulable rule of law, a complicit police force and a politicized *Procurador General* (Attorney General) together guarantee impunity.

The government engages extensively in window dressing exercises. However, there is virtually no political will to address corruption seriously. In fact, the recently passed Law of

⁵ The same phenomenon is widely observed in the countries of the former Soviet Union.

Transparency, which provided free access to information, was immediately rendered impotent by its implementing regulations. It also stipulates reporting requirements, which promised to be a mechanism for accountability. But they are vague, not enforced and yield only opaque information. The IDB recently funded the purchase of an electronic voting system for use in the Assembly. The system has been delivered but not installed, as the legislators do not wish to make their attendance or voting records public. (These issues are all discussed elsewhere in this report.)

Civil society is weak and poorly organized, thus unable to provide oversight of the government. It is also afforded very few real openings for meaningful participation since it is not seen as a legitimate participant in the political process by the political elites.

The Team also noted a widespread lack of understanding of a number of key concepts which underpin any serious discussion of corruption and government integrity. Ideas such as conflict of interest, the public good, what it means to be a civil servant and accountability seem to be absent from public discourse. There is also a striking lack of leadership in Panama concerning the need to address corruption and improve the integrity of the country's government.

Taken in the aggregate, corruption is a concept that is both complex and extremely hard to grasp. There also appears to be widespread resignation that its existence is unavoidable, that nothing can be done about it. One of the main reasons for this high degree of resignation to and tolerance of corruption is that there has been little real analysis of the phenomenon in Panama, either in terms of the forms of corruption, the ways in which it is carried out or the actors and relationships involved. There also appears to be a lack of a clear understanding of the real cost of corruption and its impact on Panama's development. This cost of corruption seems to be particularly unclear to the average citizen, who is, in fact, the one who bears it.

Typology of Corruption

Corruption was not the main focus of this report, thus it was not possible to gather sufficient data or to do a thorough analysis of such a complex and amorphous phenomenon. However, the following section is an attempt to begin to 'unpack' corruption into some of its components and to shed light on possible approaches to fight it.

1. The Patterns of Corruption

◆ **Localized vs. Endemic:** From our interviews, it is clear that corruption is not localized or limited to isolated examples. Rather, it is endemic in Panama.

◆ **Petty vs. Grand:** Another useful analysis relates to the distinction between petty and grand corruption. Both are very much in evidence in Panama. It is seen at the petty level in small bribes to speed up bureaucratic processes and in ten-dollar bills handed to traffic police to fend off a larger and more time consuming official fine. And corruption is discussed on the front page of the papers in the form of very large-scale bribes to senior government officials in exchange for lucrative contracts, and to legislators to ensure their support for either political purposes or for legislation which favors specific business interests. Thus grand corruption plays out both as

bribes and as state capture. The latter is restricted to certain sectors, while grand corruption in the form of bribery is reputedly widespread.

Petty corruption seems to affect businesses more so than individuals. Businesses can be subjected to the solicitation of bribes to avoid various sanctions or negative inspection outcomes for example. Individuals also find that certain procedures can be expedited, a fine avoided, or a favorable police report in the case of an auto accident can be drafted in exchange for a small "coima." While corruption affecting the individual does not appear to be rampant, it is said to be increasing. Thus, the average Panamanian sees corruption more as the province of the rich and powerful. Another possible explanation for the lower levels of petty corruption affecting individuals is that there is little money to be earned at that level, and there is some risk of being denounced and punished.

- ◆ **Systemic vs. Random:** Bribery can be very ad hoc in Panama, for example as a given business opportunity arises, or it can be systemic indeed. As an example of such systemic corruption, several legislators are currently under scrutiny for an alleged kickback scheme in which their official employees were videotaped cashing their paychecks and handing a percentage back to the driver of the legislator's car. Some interviewees suggested that the current administration lacks the discipline of former governments, resulting in more random patterns of corruption.

2. *The Methods of corruption*

Panamanians are very creative in terms of corruption schemes, ranging from the simple to the extraordinarily complicated.

- ◆ **Bribes:** Straightforward bribes are common. President Moscoso presented legislators with gold Cartier watches on the first day of the Legislative Assembly. While perhaps not a bribe, such a gift certainly exceeded the limit of an appropriate token of esteem. Bribes to numerous legislators were also used in a complex attempt at securing a state concession for a multi-modal commercial center. And the President herself has been accused of paying bribes to opposition party legislators in order to secure the approval of her Supreme Court nominees. One interviewee speculated that fully 50% of the individuals who enter the Colon Free Zone are not legally eligible to do so but gain access with a small donation for the guards.

- ◆ **Leakage:** School construction and renovation projects are thought to be subject to a high percentage of leakage. And until recently legislators were given *partidas circuitales*, or funds to spend on projects in their districts. There was little accountability for these funds, and it is alleged that significant leakage also occurred here. (In response to a budget shortfall, issuance of these funds was temporarily suspended by the president, and is to be reinstated when the executive so decides.)

- ◆ **Influence and Insider information:** Access to privileged information is an important commodity in Panama. Such information is used in numerous ways to gain a competitive advantage for oneself or one's colleagues. This is perhaps the most common form of corruption at the sub-national levels where budgets are extremely small and residents themselves are very

poor. (The exception to this is in the country's few larger cities, mostly around the Canal Zone.) This access to privileged information is one of the few currencies which exist in these communities.

◆ **Procurement:** Government procurement is also said to be very corrupt, despite a recent IDB program to modernize and improve the function. The lack of success of this effort is yet another example of window dressing on the part of a government committed to the manipulation of public resources for its own purposes.

◆ **State capture:** Certain business sectors, particularly the industrial and agricultural concerns, are widely seen to have engineered favorable legislation which protects their businesses from foreign competition, creates barriers to entry for domestic competitors, and provides generous government subsidies. Other sectors, such as the service sector, by far the largest in the country, are not reported to be involved in state capture as such. Panama boasts a highly diversified economy with no one sector dominating the economic landscape. Thus it can be difficult to maintain state capture advantages for long, since other interests quickly seem to intervene. Nonetheless, there are some protectionist measures which persist, for example, certain tariffs at the highest levels allowed by the WTO.

◆ **Contracts with the State:** At the intersection of procurement fraud and state capture lies a uniquely Panamanian approach to corruption. Panama offers many lucrative opportunities for such investment, largely involving concessions related to the Canal. But the rigid regulatory and legal environment in the country and burdensome labor and tax laws make the country unattractive to foreign investors. In order to overcome this, the Constitution provides for "contracts with the State" which create investment situations that are subject only to the terms and conditions of the contract, and exempt from all other laws and regulations. Such contracts are used for multi-million dollar investments such as port management services. This is an extremely attractive arrangement, but it must be approved by the Legislative Assembly. Frequent allegations of corruption in the press suggest that the amount of bribery involved in securing passage of these deals is extreme.

◆ **Patronage:** Patronage and cronyism, while not necessarily corrupt behaviors in themselves, are highly correlated with corruption, and they are considered by many to be its most visible manifestation in Panama today. During the current administration, over 30,000 public positions have been filled with party supporters (in a government of 180,000 employees), many without the objective qualifications for the posts to which they were assigned. One of the Supreme Court magistrates recently appointed is said not to be qualified for his position. Since the privatization of most state enterprises, the government has had fewer opportunities to appoint cronies, thus the concentration within the ranks of government has increased.

◆ **Abuse of Power:** As already noted, power is very concentrated and easily manipulated by both the political parties and their government colleagues. A recent case of abuse of power reported in the newspaper involved a well-known businessman who came out in favor of one presidential candidate. The next day, the national revenue collection agency contacted him, and all the members of the board of directors of his company, to begin an audit of their taxes for the last three years. (The government denied that the two incidents were related.)

Legislators also told of being pressured to vote a certain way under the threat that other family members who worked in the government would lose their jobs unless they complied. And in fact, such threats have been carried out. Such abuses of power are indicative of the fact that public power is often used not for the public good, but to achieve some personal or political end.

◆ **Immunity:** While immunity itself does not constitute corruption, the immunity enjoyed by the legislators and other government official in Panama, by provision of the constitution, is extraordinarily broad. There is ambiguity about just how broad it is intended to be, however, in practice, it is absolute. This is not consistent with OECD standards or best practices. Legislators are immune for any and all actions, whether civil or criminal, and exempt from any police action. Newspapers report that the police do not arrest legislators caught *in flagrante delicto*, because of this provision, and legislators who admit taking bribes on television are likewise not prosecuted. This situation is an extraordinary facilitator of corruption.

3. *The Location of Corruption*

Interviewees talked of corruption in almost all spheres of Panamanian life. Certainly the public sector, in the executive, judicial and legislative branches is rife with various kinds of corrupt behavior, with the greatest contempt being reserved for the Assembly.

The sub-national levels of government are also impacted by corruption. However, it appears to be less of a problem at the regional and municipal levels. This is due more to the lack of resources or power available at these levels than to any efforts to control it. Corruption at this level appears to be more favoritism or use of insider information. It revolves mostly around getting government jobs.

Traffic police, as mentioned above, are known to engage in petty corruption, however this is not widely reported as a significant problem. Police corruption at higher levels is a bigger concern. It involves allegations of political interference, selective investigation and extremely high levels of pre-trial detention, often for political purposes. It is claimed that agents of the PTJ act on tips of planned drug raids to seize the drugs and sell them themselves.

All ministries are alleged to be affected by corruption. The Ministry of the Environment is one which is alleged to be particularly challenged. The Social Security system is also one that is plagued by high costs and leakage of funds and equipment. However, doctors themselves are not widely reputed to expect additional payments for providing services through this system, as is the case in many developing countries. Another area in which there does not appear to be much corruption is in the education sector at the school level.

The business community in the country is quite sophisticated and well diversified. The country has the largest service sector in the region, and many multi-national companies are present. Leading business people readily and unapologetically admit giving bribes and seem fairly accepting of the status quo. Neither the domestic nor international chambers of commerce expressed any interest in addressing the issue.

The banking sector has made dramatic improvement in its operations as a result of pressure from international actors to fight money laundering and from the US in its efforts to combat terrorist financing. The current challenges facing the banking sector are more closely related to off-shore tax evasion than to money laundering. Panamanian banks are seen as quite clean and free of corruption.

In light of the upcoming elections, the Embassy requested that we not interview candidates or political party leaders. Thus, it was only possible to collect limited specific information on political party corruption. Nonetheless, it is clear that parties are at the core of corruption in Panama and show little restraint in their tactics to gain control of the presidency. As institutions, they are neither transparent nor democratic and are not subject to reporting or disclosure requirements. Patronage seems to be their major approach to building their constituency, and bribery is widely practiced with little attempt to conceal it. Global Corruption Barometer, recently released by Transparency International indicated that corruption in political parties is judged to be the type of corruption citizens around the world see as most important to eliminate. In Panama, 35% of the population held this opinion, second only to Argentina.