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AGENCIA DE LOS ESTADOS UNIDOS PARA EL DESARROLLO INTERNACIONAL (USAID)



**PROGRAM PERFORMANCE REPORT
AGREEMENT BETWEEN FLORIDA INTERNATIONAL UNIVERSITY
AND AGENCY FOR INTERNATIONAL DEVELOPMENT/HONDURAS
FOR THE QUARTER ENDING SEPTEMBER 10, 2005**

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The Agreement between Florida International University and the Agency for the International Development was signed on September 10, 2004. The following is a brief summary of the activities that took place between June 11, 2005 and September 10, 2005.

I. Result 1. Legal framework for fair trials before independent and impartial courts implemented

A) Code of Civil Procedure (Código Procesal Civil)

1. The draft version of the Code of Civil Procedure was formally presented to the plenum of the Supreme Court on the 25th of July. Previous to this, the two Spanish consultants had worked closely with the Civil Chamber of the Court on the draft and obtained their agreement on this version. Additionally, two Honduran consultants reviewed all of the legislation and treaties that may be affected (either revoked or amended) by the legislation and prepared transitional language explicitly detailing the legislative impact of the reform (see Attachment 1).
2. Following the formal presentation to the Court, Project staff has met several times with representatives of FOPRIDEH (charged with the responsibility of shepherding the legislation through the Congreso and obtaining civil society support), and the Presidency of the Supreme Court.
3. Unfortunately, after much momentum in adoption of the legislation, the Project is stalled due to the impact that the political presidential campaigns have had on the work of the Congreso and the potential exacerbation of political divisions within the Court. Thus, the plenum of the Supreme Court has not yet agreed on the final version to be sent to the Congreso.
4. In support of FOPRIDEH initiatives, the Project assisted them by participating in several meetings held Tegucigalpa, M. D. C., Juticalpa, Choluteca and San Pedro Sula, between the 15th and 19th of August. Rigoberto Cuellar and a Spanish judge contracted by the Project, Javier Achaerandio, made the relevant presentations and answered questions from the audience..

We continue to coordinate with FOPRIDEH in support of further activities sponsored by them that may hopefully break the impasse.

B) Judicial Career Law and Law on Organization of the Courts
(Ley del Consejo de la Judicatura y de la Carrera Judicial)

1. During the week of July 25-29, the consultant in this area, Mario Houed, worked closely with the Supreme Court justices in charge of the Judicial Career. Their primary task consisted in a review of the draft legislation prepared with the support of the Spanish Cooperation Agency (“Ley del Consejo de la Judicatura y de la Carrera Judicial”).
2. As a result of these working sessions, key revisions were made to the legislation, an introduction was prepared and the final draft legislation was presented to the Commission and the President of the Court in August. Thereafter, the full Court will consider the draft and forward it to the Congress for enactment (See Attachment 2).
 - *Contractually, and in accordance with the Workplan, this component is completed since the Milestone called for FIU to present a draft of the Judicial Career Law to the drafting Commission by December ahead of the period proponed originally, with a Milestone, draft Judicial Career Law reviewed and presented to the drafting commission by December 2005.*
3. In the case of the Law on Organization of the Courts, the previous Supreme Court had appointed a commission to draft a law on organization of the courts which had as its basis the Judicial Career Law that was then in place. Upon review of their draft by the consultant (Mario Houed) and the Supreme Court justices, it was concluded that major revisions in the earlier draft were required and that the consultant should review the current draft in light of the changes on the Judicial Career Law.
 - *Contractually, and in accordance with the Workplan, this component is on schedule. It is expected that the revised legislation will be forwarded to the drafting commission for their review prior to December 2005.*

- *Contractually, and in accordance with the Workplan, this component is completed since the revised version of the legislation has been presented to the drafting commission, which has approved it, and to the Supreme Court. Project staff has exceeded contractual expectations since the original expectation was to generate support for a new audience-based (oralidad) modern code. It was never expected that the project could draft a Code acceptable to the majority of the members of the Court.*

C) Constitutional Justice

1. During July, a Spanish consultant, Miguel Angel Montañés (deputy director of the secretariat of the Constitucional Court) and a Honduran consultant recommended by the Constitutional Chamber, conducted interviews in San Pedro Sula and Tegucigalpa in furtherance of an assessment of the workings of constitutional justice in Honduras. The consultants prepared a draft report (See Attachment 3).
 2. We have scheduled meetings with the members of the Constitutional Chamber to review the draft report and to determine the follow up training technical assistance required to implement the recommendations. The judges are clear that further project assistance is limited.
- *Contractually, and in accordance with the Workplan, this component is on schedule with the requisite Milestone due in March 2007.*

D) Criminal Law and the Criminal Chamber of the Supreme Court

1. Contractually our work with this Chamber is limited to the elaboration of rules of evidence and improving orality in appellate processes. The project has identified two Puerto Rican consultants. One of them, a former appellate judge, will be traveling to Honduras the week of October 3rd and will meet with public defenders, judges, prosecutors, forensic experts and private attorneys to assess the way in which evidentiary requirements are being met, identify deficiencies and incorporate changes into the proposed rules of evidence.
2. Cesar Barrientos met with the project CTO, Sonia Zacapoa, and related the concerns of the Criminal Chamber of the Supreme Court that the Code of Criminal Procedure was not being adequately applied resulting in a

growing backlog of cases and processing delays. Although our contract does not address this explicitly, the CTO agreed to consider a propose assessment of the operation of the Code with the goal of identifying bottlenecks and problem areas and making recommendations to the Supreme Court to address these problems. During the week of September 23, project staff will meet with Rigoberto Cuellar, who was involved in an auto accident and will have returned to work by then and assume responsibility for this component. Once the draft assessment proposal is completed it will be consulted with USAID for their approval.

3. In regards to appellate proceedings, it is our understanding that the issue is not so much orality as the way that appellate review is conducted and the absence of clear cut appellate rules. We are intending to seek an amendment to our contract clarifying this.

Workplan Milestones. All of the contemplated milestones for this Result are on Schedule

(A) Milestone: - Assessment of the Constitutional Chamber ; June 2005
- Technical Assistance and training provided: Between July 2005 and March 2007

(B) Milestone: -Organic Law and Judicial Career Law are submitted to drafting commissions for review comment debate: December 2005.

(C) Milestone: - Recommendations for introduction of oral system on appeals: September 2006.

(D) Milestone: - Appropriate rules of evidence developed and tested: March 2007.

(E) Milestone: - Streamline procedures and introduction of oral proceedings in civil cases proposed. Recommendation submitted by commission: August 2006.

II. Result 2. Strengthened advocacy and participation in legal reform

Leonardo Escobar, the lead Chemonics consultant responsible for this component made a number of visits to Honduras during this period. During the month of June and July, Escobar presented a workshop on the role and responsibilities of boards of directors (June 28); a workshop on parliamentary rules (July 4) with the participation of 14 members of the different boards of the

LPAs; follow-up with each of the LPAs to address their strategic plans and management goals of each of the LPAs.

As originally conceived, this component would have the support of an FIU staff member who would provide follow-up to the visits of the prime Chemonics consultant, Leonardo Escobar. Chemonics expressed concerns over this arrangement and proposed that they employ full-time staff in Honduras to undertake the aforementioned responsibility. Additionally, Chemonics presented an amendment to their contract which substantially increased the role of their lead consultant and other Chemonics staff in support of this component while decreasing their responsibility for evaluations and indicators. USAID and FIU agree with the importance of this component and the fact that it is currently underfunded and will proceed to include these changes in their proposed project amendment.

In a meeting with USAID staff and Chemonics, FIU commented on the institutional weakness of the LPAs, for example none of the four LPAs have staff and only one has been incorporated. FIU suggested that, given their current status, the project would have to assume more of a directional and support role rather than relying strictly on an advisory role. For example, we suggested that the project fund a local lawyer to incorporate the LPAs and obtain tax exempt status instead of waiting for them to do so. Both USAID and Chemonics agreed to this proactive approach but cautioned on the need to avoid overdependency on the project. One of the outcomes was the employment of a local lawyer to proceed with the incorporation and registration of three LPAs. Additionally, USAID agreed to seek out one or two LPAs which have little if any formal structure but potential to become effective change agents. The assistance to these LPAs would focus less on institutional development, in organizational and management terms, and more on advocacy and service to members. Among the potential LPAs are the Instituto de Investigación Jurídica de la Facultad de Derecho of the UNAH, a group of alumni of the graduate program in Criminal Law of the UNAH and lawyers who received support from prior USAID projects..

In August, Leonardo Escobar (August 3-13) visited sites outside of Tegucigalpa with members of the nacional directorate of LPAs to meet with regional representatives and members of the relevant LPA and to incorporate them into the strategic planning process for each of the LPAs visited.

On August 16th, project staff met with representatives of Chemonics (Bill Hallock and Leonardo Escobar) to determine the current state of this component and to address the proposed Chemonics changes. Chief among them was the need to contract their own staff (a coordinator and a secretary) and the relationship that they would have to the FIU COP and technical staff. Their request to employ staff directly responsible to Chemonics was agreed to with the result that the FIU staff member that had been employed to liaison with Chemonics and to provide follow-up to their activities would no longer be needed.

Given the significance of this meeting, an aide memoire was prepared. FIU insisted that Chemonics draft a workplan detailing the activities to be undertaken in the next year with the dates for requisite visits by the consultant and LOE requirements as well as expected outputs and dates. Subsequently FIU agreed to increased LOEs for Escobar and Hallock to prepare a proposal for site study tours of LPA members to be submitted to USAID.

The FIU COP informed FIU staff and Chemonics that the President of the Supreme Court had raised concerns over the visit of members of the Judges Association to sites outside of Tegucigalpa. We arranged for a meeting that took place on August 22 between the leadership of the Judges Association and the leadership of the Court to iron out potential problem areas. As a result of the meeting, the proposed Judicial Career Law draft was amended to include a provision for the members of the Judges Association to propose three candidates, from which the Court would select one, to serve on the Judicial Council proposed in the legislation.

It was also agreed at the August 16th meeting that project staff would conduct the remaining site visits that were left after the August visit of Leonardo Escobar (Asociación de Mujeres Juristas - 4 meetings, Asociación de Estudios Penales y Sociales 1 meeting, Asociación de Jueces y Magistrados 1 meeting, Asociación de Defensores Públicos 1 meeting). Project staff has also reviewed the changes made in the articles of incorporation by the relevant LPAs prior to forwarding them to the lawyer employed by Chemonics (see Attachment 4)

Workplan Milestones. All of the contemplated milestones for this Result are on Schedule

(A) Milestone: Small grants programs design completed: June 2005

(B) Milestone: Small grants program launched: December 2005

(C) Existence of a grant monitoring system. Grant monitoring system in place: December 2005

(D) Milestone: At least 2 LPAs improved: August 2006

III. Result 3. Access to justice expanded for marginalized groups, especially women and the poor

A) Recommend an ADR model that can be used in civil and other types of disputes

During the week of July 4-8, project staff and Gerardo Villalobos, our lead consultant for this component, visited the municipalities of Villanueva, Choloma, Tela, Puerto Cortes, Las Vegas, Santa Bárbara, Santa Rita, Copán Ruinas and Santa Rosa de Copán, to present to the mayors our proposal to establish municipal conciliation and mediation centers, to assess their interest in participating as pilot sites and their ability to assume operational costs. All of the municipalities expressed some interest, with the exception of Choloma, in participating.

A report on the outcomes of the sites visits, 15 municipalities visited during June and July, including a rating on their ability to serve as pilot sites based on a scale of 1 to 10, was prepared. On the basis of this preliminary evaluation, a second round of visits was proposed to the six most promising sites (La Esperanza, Catacamas, Comayagua, Tela, Las Vegas, San Lorenzo) for the purpose of narrowing these to two individual municipalities or groupings of municipalities.

During the week of August 22-26, the consultant, jointly with project staff presented a project staff, met with USAID and staff from the USAID-funded Transparency and Gobernability Project (GTAG) and vetted the six municipalities (Comayagua, Catacamas, La Esperanza, Santa Rosa de Copán, Las Vegas, and Tela) to be included in this second round of discussions.

In terms of the judicial mediation centers, Project staff prepared a draft agreement with the Supreme Court that will enable us to proceed with establishment of two judicial mediation centers located in two Letras courts. We

still have no formal authorization from the Supreme Court to proceed (Attachment 5).

Workplan Milestones. All of the contemplated milestones for this Result are on Schedule

- (A) Milestone: ADR Recommendations: May 2005
- (B) Milestone: ADR Model Approved; May 2005
- (C) Milestone: Support to the services of the Conciliation and Arbitration Centers; December 2005

IV. Result 4. Increased fairness and efficiency of the administration of justice through more effective legal personnel and efficient processes

- A) Development of continuing education for Judges, Prosecutors, Public Defenders and Forensic Experts

The Training Needs Assessment was presented to USAID August (because of the length, this document is not attached but can be consulted separately). Carmen Rodriguez, an FIU consultant, jointly with Rigoberto Portillo and Maria Juri met for a week to draft an initial Training Plan for the project.

- B) Public Ministry Training Assistance

After a period of inactivity due to the internal politics of the Public Ministry, the project began to work with the new leadership of the Ministry once the Fiscal General resigned and a new one was appointed. The USAID/Honduras Mission Director and the ROL team met with the new Fiscal General and agreed to use funds allocated previously to the Ministry to support a strategic planning meeting with the participation of over 500 staff members from the Ministry to identify the most pressing problems facing the institution. CAJ staff worked closely with the international assistance unit of the Ministry (under the leadership of Nirma de Pons) to develop a methodology that would first identify group leaders to lead the discussion; break up the participants into small groups; assign to them topics to discuss; have groups report back to eight team leaders who would then formulate proposals for change. Thereafter, the eight team leaders would form a working group, with the support of CAJ staff, to develop a ten-year strategic plan for the institution. The initial meeting took place in Tela during August 27-29 and the report was forwarded to USAID.

Although this activity is not specifically mentioned in the CAJ/USAID contract, it has been authorized as preparatory to development of training plans for the Ministry, within the training needs assessment portion of the contract.

C) Train a Select Group of Prosecutors (10) in investigation of corruption, economic crime and organized crime.

In accordance with the terms of the CAJ-USAID contract, the Public Ministry has agreed to have CAJ consultants conduct assessments of the organized crime, anticorruption and environmental units of the Ministry. During August 22-26, a Spanish consultant (Dr. Antonio Vercher Noguera) who is an expert on environmental crimes enforcement arrived in the country and conducted an assessment of the environmental crimes unit. His report is attached hereto as Attachment 6.

During the period of August 29 to September 7, José María Tijerino, former head of the Public Ministry in Costa Rica and Luis Salas conducted an assessment of the anticorruption unit of the Public Ministry. Site visits were conducted in Tegucigalpa and San Pedro Sula. A report will be issued during the next reporting period.

The organized crime assessment will take place during the next reporting period.

D) Strengthening Forensic Capacity

A number of meetings have taken place with the forensic medicine unit of the Public Ministry. Ultimately, a meeting was held on August 31 with Robert Coronado, the INL in-country representative to urge him to assume the work targeted for the forensic unit, especially insofar as equipment and technical training needs. Negotiations have been ongoing and trips to Costa Rica and Puerto Rico are being planned for Mr. Coronado so he can evaluate the capacity of the corresponding units in those countries to provide assistance to their Honduran counterparts. As the first task, Mr. Coronado will fund training so that unit members can become qualified to use and maintain the DNA analysis equipment that had been supplied by USAID in a prior period.

E) Technical Assistance to the Public Legal Defense

During the period of June 20 to July 1, Bennett Brummer and Carlos Martínez conducted site visits to five DNDP offices: in Tegucigalpa, San Pedro Sula, Santa Barbara, El Progreso and Puerto Cortes. We also visited Forensic Medicine in Tegucigalpa and San Pedro Sula; Centro Integrado de Detención in San Pedro Sula, Inspectoria in San Pedro Sula, Fiscalía in San Pedro Sula, the preventive detention center and jail in Puerto Cortes and the Inter-American Development Bank (IDB) Justice Sector Modernization Project in Tegucigalpa.

The consultants prepared a report on the situation of the public defense in Honduras and made recommendations. The report is attached hereto as Attachment 7.

E) Purging Unit

During this period, Rigoberto Cuellar continued to work with staff from the unit to develop administrative regulations (Reglamento Interno) to govern the organization and procedure to be followed in closing backlogged cases that were filed under the old code of criminal procedure.

Based on a request of the UTR, the Project has proceeded to employ a half-time consultant to work with the Purging Unit for a period of five months to complete the technical assistance required (see Attachment 8).

F) Interinstitutional Commissions

As mentioned in the USAID RFOP for this project, the interinstitutional commissions play a central role in coordinating the work of the individual justice sector agencies in implementing the new accusatorial system. Training and technical assistance to the commissions was suspended pending review and approval by the USAID RLA to ensure that there were no violations of Section 660 of the Foreign Assistance Act since representatives from the Public Safety Ministry sit on the regional and national commissions.

Following the meeting with the RLA, she agreed that none of the work proposed involved assistance to a law enforcement function as contemplated in the federal legislation. In the short term, project staff provided support to the National Commission in drafting legislation that would make this commission

permanent since it is due to sunset in December 2006. In addition a Reglamento (administrative regulations) is being drafted.

Meetings were with the UTR for the purpose of holding a meeting of representatives from the regional and national commissions for the month of September

Workplan Milestones. All of the contemplated milestones for this Result are on Schedule

(A) Milestone: Evaluation of trainings needs and Design of training program: December 2005

(B) Milestone: Development of continuing education programs for judges, procecutors and public defenders: June 2006

VI. Result 5. Crisis-modifier

No crisis-modifier activities have occurred during this period.

VII. Procurement plan to support Results 3 and 4 (Result 6)

Only internal coordination activities have taken place during this period.

VIII. Serves as rapporteur with justice sector (Result 7)

With regards to this component, a number of meetings have taken place (see Attachment 9). The project staff agreed to meet regularly with USAID on the third Thursday of each month. The major activity in this area took place in the briefing to the US Embassy on the scope and progress of the project.

