

EXECUTIVE SUMMARY

COSTA RICA JUSTICE SECTOR ASSESSMENT

CENTER FOR THE ADMINISTRATION OF JUSTICE  
FLORIDA INTERNATIONAL UNIVERSITY

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## I. Background

On March 22, 1986, the Agency for International Development (AID) awarded a grant to the Instituto Latinoamericano de Naciones Unidas para la Prevencion del Delito y el Tratamiento del Delincuente (ILANUD) to carry out a regional project designed to improve the administration of justice in five countries (Costa Rica, Panama, El Salvador, Honduras, Dominican Republic).

Due to a lack of empirically reliable data for the Central American justice sector, the project included a component of five "sector assessments" to be carried out in the participating countries. Florida International University (FIU) was chosen to carry out these assessments and a cooperative agreement was entered into between that institution and AID.

The ILANUD Regional Project includes funding for limited national activities in each country prior to the completion of a sector assessment, which then would provide the basis for more focused and integrated projects, including bilateral assistance programs between AID missions and national governments. Both to facilitate interim assistance by ILANUD and to develop support for the carrying out of sector assessments, ILANUD and RAJO have promoted and encouraged the formation of a national commission for the improvement of the administration of justice in each participating country.

The Costa Rican Commission was established by executive decree in late 1985. Its membership consists of representatives of the Supreme Court, the Ministry of Justice, the Procuraduria, the Bar Association, the National Assembly, and the University of Costa Rica Law Faculty for a total of 32 members. The Supreme Court has provided a technical coordinator in the person of a Superior Criminal Court judge on leave of absence. The Commission has met frequently and high level officials have consistently participated.

The FIU-Costa Rica study team together with ILANUD representatives and the AID Regional Administration of Justice Advisor (RAJA), met with the Commission, presented the study methodology and kept them advised of progress. Several former and current high government officials have been involved in the study process. Luis Paulino Mora, currently Minister of Justice and formerly a Supreme Court Magistrate, was on leave from the Court during a six month period immediately prior to his current appointment serving as ILANUD's Director of Technical Assistance. Eugenia Zamora, currently Vice Minister of Justice, was previously Deputy Director of FIU's Center for the Administration of Justice in Costa Rica. Carlos Jose Gutierrez, former Foreign Minister and ex-Dean of the UCR Law Faculty, served as principal technical advisor to ILANUD prior to his current appointment as Costa Rica's ambassador to the United Nations. He was also one of the principal consultants in the drafting of the Costa Rican

assessment. Hugo Munoz, immediate past Minister of Justice and current legal advisor to the National Assembly, also served a Consultant to the Project.

## II. Methodology

A) The objectives of the sector assessments are several: 1) to provide enough baseline data for appropriate planning and evaluation of the ILANUD project; 2) to assist the participating countries in planning of their justice sector; 3) to provide the basic information for the development of bilateral assistance agreements between the participating countries and the respective USAID missions.

Since sector assessments had never been carried out in the administration of justice sector, FIU, in consultation with AID LAC/AJDD, took several preliminary steps in developing an appropriate methodology for these studies. Professor Joseph Thome, a Costa Rican-American law professor at the University of Wisconsin with significant prior experience in AID law-related projects in Latin America, was employed to develop a proposed methodology. This methodology was discussed preliminarily with AID officials in Washington and at a July, 1985 meeting of Latin American and US experts convened under ILANUD auspices in San Jose, Costa Rica. The recommendations were considered and incorporated into the methodology.

Because it appeared to present optimum conditions at the time, Panama was selected for the initiation of a pilot sector assessment, which began in July of 1985. Costa Rica was selected as the next study site and in anticipation of the Costa Rica study, the proposed director was incorporated into the planning and development of the Panama study. The Costa Rican study began in January of 1986.

Due to the political sensitivity of the theme and our desire to promote the maximum commitment of national justice sector leaders and key academics in each country, the following staffing philosophy was adopted: 1) primary reliance would be placed on national experts and those from other Latin American countries; 2) to the extent possible, surveys and field work would be performed by local law students or recent law graduates to help build a base of informed individuals who could later work in the justice sector; 3) AID and ILANUD would have substantial involvement in the design, development and overall coordination of each study; 4) in addition to the central focus of the ILANUD project (i.e., the courts, prosecutors and defenders), the police and correctional systems would also be studied in order to depict their relationship to the judicial function. Nevertheless, the Costa Ricans were made aware from the outset that the police and correctional systems are not eligible for assistance under the AID Regional Administration of Justice Project.

Dr. Enrique Castillo, a criminal law expert and then director of postgraduate studies at the University of Costa Rica Law School (recently named ambassador to France), was selected as the Costa Rican study coordinator and an interdisciplinary staff consisting of fifteen professionals (8 attorneys, 3 statisticians, 1 economist, 1 sociologist, 1 political scientist, and 1 specialist in library science) was organized. Two foreign consultants (from Spain) were used to assist in the police study. Additionally, thirty-two law students were employed by the project during different stages.

The study consisted of the following stages:

1) Team development. Due to the empirical orientation of the research, a considerable amount of time was devoted to training the study team for survey and field work and discussing the appropriateness of the methodology to the national situation;

2) Literature search. Due to the manner of cataloging and the diverse locations of bibliographic materials, this task consumed a substantial amount of time, but resulted in the collection of the first complete Costa Rican juridical bibliography, consisting of 2,500 entries.

3) Data gathering. Students were utilized in gathering empirical data from diverse sources. In some cases it was discovered that existing data were unusable as kept, for purposes of the study. In such cases data sources were used to reorganize the information or to adapt it to the study's needs.

4) Legal framework. In order to fully understand the justice process, additional legal consultants were employed to produce an orderly description of the national procedural and substantive legal framework.

5) Opinion surveys. To complement the empirical data comprehensive set of surveys were conducted in order to determine Costa Rican perceptions of and experiences with the justice system. The surveys were as follows: 1) national households (950); 2) judges at all levels (133); 3) prosecutors (32); 4) public defenders (39); 5) lawyers (182); 6) inmates at penal institutions (325). At the request of local officials some of the surveys were expanded.

6) Proposed Justice Sector Analyses Report. This report was drafted in coordination with the regional FIU team, was reviewed by the Regional Administrator of Justice Advisor, and was presented for review to USAID/Costa Rica and ILANUD in September of 1986.

7) Review by USAID/Costa Rica, ILANUD and National Officials. All of the foregoing are reviewed the draft of the Justice Sector Analysis. To facilitate review by Costa Rican official Dr. Hugo Munoz, immediate past Minister of Justice, was retained to coordinate the presentation and discussion of relevant study portions to high government officials whose agencies cooperated with the study under the previous administration. The purpose was twofold: first, to obtain feedback, corrections and additional input; second, to engage the current officials in the sector assessment process. Upon receipt of the feedback from the reviewing entities the final draft of the Justice Sector Analysis was completed.

8) Action Recommendation Workshop. A workshop, held at the Cariari Hotel in San Jose, on January 9 and 10, 1987, cosponsored by the Costa Rican National Commission for the Improvement of the Administration of Justice and ILANUD, was the vehicle for the analysis of the final report and the production of recommendations for action. Action recommendations included new or revised legislation, new training or educational curricula, administrative reorganization of existing agencies, new equipment and facilities, and new information and management systems. Depending upon the action desired, the workshop indicated the government or international agency to respond. Care was taken not to raise the expectation with any Costa Rican official that AID assistance would automatically flow from this process. ILANUD and Costa Rican officials have been informed that AID would study the recommendations of the workshop to determine whether any of them fit USAID/Costa Rica programming priorities.

### III. Administration of Justice and Socio-Political Development.

Costa Rica covers an area of 51,900 square kilometers and has a population of 2.46 millions inhabitants. The official language is Spanish. The population is predominantly white, descendants of Spaniards and other European settlers. Ninety five percent of the population is Roman Catholic. The economy of the country depends principally on coffee, banana, meat and sugar. It's trading partners are principally the United State, the European Economic Community (especially West Germany) and Japan. The monetary unit is the colon.

The 1949 Constitution establishes the traditional division of powers between three branches of government: the Legislative, Executive and Judicial, as well as a fourth autonomous power to be exercised by the Supreme Electoral Tribunal, charged with responsibility for all electoral matters. In addition, there are a number of autonomous institutions of government subordinated to

the Executive Branch. Presidential and Legislative elections take place every four years.

The governmental and juridical organization of Costa Rica flows directly from the Spanish colonial system, in particular from the Constitution of Cadiz of 1812, a pivotal point in Spanish legal history, a central feature of which is the autonomy of the judicial branch.

The major concern of the liberal politicians and lawyers who guided the construction and consolidation of the Costa Rican state during the 19th century, as well as of the increasingly influential coffee growers (who drove the growth of the agricultural export economy between 1830-1930) was to guarantee a stable and durable public order based on a citizenry capable of taking part via the electoral process and open public debate in the legitimation and improvement of government institutions.

Promotion of internal security and the control of social conflicts so that the latter would not impede economic growth or escalate into civil war or open class confrontation was a constant concern of 19th century Costa Rican ruling classes. This effort was of particular concern to the jurists, politicians, teachers and writers called the "Generation of Olympus" and whose influence after 1888 contributed decisively to the development of modern Costa Rican society.

Their particular successes were: a) the consolidation of a legally based system of public powers with defined and strict divisions and jurisdictions; b) a juridical structure distinguished from previous ones by its more pronounced orderliness and integration (though still characterized in part by the custom of copying major foreign codes and legislating without significant prior study); c) an administration of justice with better possibilities for stabilizing and professionalizing its functioning based upon the consensus that produced the Constitution of 1871, a cornerstone of the renewed juridical structure; d) a democratic culture, progressively more pronounced and focusing on a respect for liberty, human life, property and individual security, the inhibition and control of the use of violence and the prohibition of the death penalty and torture. At the same time a high value was placed on the creation of a system of compulsory public education which would serve as the basis for a citizenry of free men; d) a juridical ideology which firmly defended the role of the judge as an impartial decision-maker in social conflicts and as supreme authority within a judicial branch which progressively became more autonomous in the exercise of its powers, more differentiated from other instruments of social control, and more capable of guaranteeing justice throughout the national territory.

The system, as developed during the late 19th century, remained largely unchanged until the middle of the 20th when the

society began to experience severe social conflicts in the thirties and early forties. After 1940, new sectors of society began to achieve greater power and influence. The worker-artisan class and an urban middle class provided the impulse for the introduction, through a series of legal reforms, of significantly increased social security measures. Many of these were incorporated in the Labor Code of 1943, considered very advanced for its time.

After the short civil war of 1948, primarily the result of electoral conflicts, Costa Rican justice became more attentive to the needs of the weaker sectors of society. Reform efforts came to fruition in the Constitution of 1949 which abolished the army, nationalized a number of private institutions, established the Supreme Electoral Tribunal as a fourth branch of government, and set forth the basis for the modern Costa Rican state.

The Constitution also had great impact on Costa Rican judicial development. The term of Supreme Court magistrates was extended from four to eight years, and their removal from office was made almost impossible by the requirement of a vote of two-thirds of the National Assembly for removal upon the expiration of the first eight year term (only two eight year terms are allowed). One of the most important achievements of the 1949 Constitution was the transfer of jurisdiction to the judiciary of numerous legal matters previously in the hands of administrative or police officials. The Supreme Court was explicitly charged with exclusive jurisdiction over constitutional challenges of legislative acts. The judicial review of executive actions was established as a means for review of the legality of administrative actions, and the traditional right of habeas corpus was expanded with the addition of the right of amparo. The Supreme Court also received the power to name the members of the Supreme Electoral Tribunal. In addition, the position of the judiciary was strengthened by the constitutional requirement that, when considering legislation referring to the organization or operation of the Judicial Branch, the Judiciary must be consulted and that a 2/3 vote of the National Assembly is required to override judicial objections.

In 1963, the financial independence of the Judicial branch was guaranteed through a constitutional amendment requiring that 6% of the national budget be assigned them.

Since 1949, a series of new Codes have been passed such as: the Sanitation (Health) Code (1949); the Electoral Code (1951); the Mining Code (1953); the Commercial Code (1964); the Penal Code (1971); the Tax Code (1971); the Family Code (1972) and the Code of Criminal Procedure (1978). At this time, there are before the Legislature for approval a new Code of Civil Procedure as well as changes to the Criminal Code. It is important to note that in 1976 the Civil Code underwent a series of important changes.

#### IV. Institution and Agencies Participating in the Justice System

##### A. The Legislative Assembly

The single-chamber, fifty seven member Legislative Assembly, is charged with lawmaking, with the appointment of judges in the Judicial Branch and with creating new courts in the country.

The Assembly is divided into six permanent committees of which three (the Budget Committee, the Committee for Social Affairs and the Committee for Judiciary Affairs) have a close relationship with the Administration of Justice System.

The legislative process has several steps: a) The proposed piece of legislation must first be presented to the appropriate Committee, where it is studied and amended; b) once the bill is discharged from Committee it is presented to the full Assembly for debate, which must take place on three consecutive days; c) if passed by the Assembly, the legislation is forwarded to the Executive so that it may be signed (or vetoed as the case may be) by the President and the Cabinet Minister who has jurisdiction over the subject matter touched upon by the legislation.

The overall output of the Legislative Branch has diminished considerable in the current decade, if compared to the previous one, although legislation pertinent to budgeting matters has increased significantly. In the last few years, the Legislature has been slow in dealing with matters concerning the passing of laws in the administration of justice sector.

By the same taken, the survey results indicate that the population feels that the laws passed by the Assembly with regard to the Administration of Justice are not realistic and that there is little knowledge or understanding of the laws in effect in this area, making adequate use of the system by the affected population difficult.

##### B. Executive Branch.

Among the functions of the Executive, those related directly to the justice system are: the power to pardon convicted criminals; organization of police forces to maintain public order and national sovereignty; and, approval or veto of laws emanating from the National Assembly, whether based on political disagreement or constitutionality. Nevertheless, the functioning of the Executive Branch is limited by the judicial oversight of the legality of its acts.

The Executive Branch consists of the President of the Republic, two Vice-Presidents, and a Council of Government, made up of the eighteen Cabinet ministers. The following ministries are related to the administration of justice: a) The Ministry of

Justice, charged with serving as the formal link between the Executive and Judicial branches, with additional responsibility for maintaining the correctional system. Also within the structure of this Ministry is the Procuraduria General de la Republica, the highest legal government office, to which is entrusted the defense of the State in all judicial proceedings; b) the Ministries of Public Security, Government and Police, and Public Works and Transportation, all of which carry out police functions; c) The Ministry of the Treasury (Hacienda) which plays a major role in the preparation of all government budgets (including that of the Judiciary) prior to submission to the National Assembly.

The Executive Branch also exercises legislative faculties through decrees and regulations, which process is itself regulated by the "Ley General de la Administracion Publica" (General Law for the Public Administration). The draft decree signed by a particular Minister is forwarded to the "Oficina de Leyes y Decretos de la Presidencia de la Republica" (Office of the President for Laws and Decrees), which reviews it and sends it to the President for his signature and subsequent publication.

The output on matters relating to the administration of justice by those ministries most involved with this sector (Ministries of Justice, Interior and Public Safety) is insignificant. In the period 1980 to June 1986, the three ministries only produced an average of 9.69 decrees per year on matters pertaining to the administration of justice.

## V. The Justice System.

### A. Police

The Constitution of 1949 abolished the army as an institution in Costa Rica allowing only for the establishment of police forces, under civil authority, necessary to maintain the public order and the national sovereignty.

In accordance with this mandate there are nine police agencies:

- 1) The Agency for Judicial Investigation (Organismo de Investigacion Judicial - OIJ), which has traditional police functions and which comes under the Judicial Branch;
- 2) The National Security and Intelligence Directorate (Direccion de Inteligencia y Seguridad Nacional - DIS), whose functions are to control subversive activities and which carries out its activities under the Office of the President.
- 3) Under the Ministry of Public Safety there are:

- a) The Civil Guard (the Guardia Civil), in charge of maintaining National sovereignty.
  - b) The Metropolitan Police (Policia Metropolitana), a motorized force which duties are to patrol the capital city.
  - c) Agency for the Prevention of Crime (Unidad de Prevencion del Delito), whose duties are self explanatory in its name.
  - d) General Direction for Drug Control (Direccion General de Control de Drogas), whose mandate is contained in its title.
- 4) Rural Assistance Guard (Guardia de Asistencia Rural), whose functions are to maintain the public order in rural areas.
  - 5) Migration Police (Policia de Migracion), in charge of issues pertaining to the status of foreigners and which carries out its duties under the Ministry of the Interior and Police.
  - 6) The Transit Police (Policia de Transito), in charge of vehicular traffic in the country, operating under the Ministry of Public Works and Transportation.

One of the mayor problems of the Costa Rican police is the proliferation of police agencies and a lack of coordination between them which leads to overapping duties, responsibilities and jurisdictions. The Constitution of 1949 eliminated the army but not those functions which are normally carried out by armies in other countries. This has led to a hybrid police force, as it performs functions incumbent both to a civilian police force and a paramilitary agency. Only the Agency for Judicial Investigations, (OIJ), created in 1974, has a legal structure more in keeping with the reality in which it must function. This lack of a clear legal framework for the police agencies has led to police appointments being used as sinecures, with the resulting lack of professional standards.

Although the budget for the police agencies accounts for a total of 8,420 police officers (3.48 officers per 1,000 inhabitants) the directors of the various agencies stated that the official figure is below the real number of agents. Despite the higher number of police officers than those recognized by the budget, the percentage of the budget allocated to the police agencies has decreased from from 5.60% in 1981 to 4.50% in 1986.

Except for the OIJ and the Transit Police, the different police agencies lack adequate facilities, motor vehicles (approximatly 50% are unable to be used), weapons (one weapon for

each 2-3 officers) and ammunition (weapons often are carried with little or no ammunition available).

Nevertheless, despite all of these shartcomings, the population groups surveyed agreed that the Costa Rican police was characterized by friendly and cooperative behavior.

B) Public Ministry (Ministerio Publico) (Prosecutors)

The Public Ministry is charged with the prosecution of essentially all persons accused of a crime in Costa Rica. Unlike other Central American countries, the Costa Rican Public Ministry is located within the Judicial Branch even though it acts autonomously in its prosecutorial function.

The survey conducted among prosecutors show that they carry large caseloads, with an average per year of 246.75 cases. Prosecutors tend to be young, with an average age of 30 years, and 49% are women, making this agency within the Judicial Branch the one with the largest number of women. Salaries for prosecutors range from 51,000 to 56,000 colones per month, slightly higher than those paid public defenders.

Except for occasional, short, continuing-education courses or conferences sponsored by ILANUD, there are no professional training courses offered the members of the prosecuting agency.

Budget support for the prosecuting agency has improved significantly since 1983 due to salary readjustments approved the Judicial Branch in that year. Physical plants facilities are also reasonable adequate as they are provided by the Judicial Branch. Unfortunately, there is a real dearth of books and modern technological developments available, as well as of motor vehicles, which means certain urgent matters are not attended promptly. Prosecutors also indicated a need for greater bibliographic resources. These needs are currently being addressed, in part, by the donation of a basic library to the Supreme Court through the ILANUD Project. The establishment of a juridical database encompassing all Costa Rican legislation, doctrine and jurisprudence, contemplated under the ILANUD Project, will also help address this need.

The Public Ministry, because of its assigned functions, maintains close ties with the courts and the Agency for Judicial Investigation (OIJ) as well as, by legal disposition, with the Judiciary, the General Accounting Office (Contraloria) and the Central Bank.

C) Public Defenders.

Costa Rica, unlike other Central American countries, fully complies with the constitutional guarantee of a free public defense for every person accused of a crime, irrespective of

financial need. There are 49 full time and 32 half time public defenders and, as needed, attorneys are retained and paid by the case. Like their prosecutorial counterparts, the Office of the Public Defender is also under the Judicial Branch with a budget almost equivalent to that of the Public Ministry. Caseloads are heavy, with a full time public defender attending an average of 375 cases per year and a part time around 200 in the same period of time. The median age is 31 and about 44% are women.

There are no regular training courses for public defenders except for infrequent in-house seminars sponsored by the department itself. Last year, ILANUD sponsored a special course.

The base salary for public defenders is 51,645 colones, slightly lower than that paid prosecutors.

#### D) Attorneys.

The Costa Rican Bar Association is one of the oldest such groups in the region, membership being a requirement for legal practice. There is no bar examination requirement for entry and the organization requires only that the applicant be admitted to practice by the Supreme Court, routinely done upon graduation from law school.

Regulation of the profession is exercised through the Association's Ethics Committee which reviews complaints against lawyers and recommends disciplinary action. The Association is also influential in regulating fees charged by lawyers. The Ministry of Justice regularly issues decrees which set the minimum fees which lawyers may charge. It is then the responsibility of the Ethics Committee to assure compliance through its disciplinary process.

Those are nearly 3,000 attorneys in Costa Rica of which about 86.8% have their law offices in San Jose. This breaks down to about 5.46% lawyer per 1,000 inhabitants. About 25% of the lawyers work in the public sector and of the 75% that work in the private sector the great majority litigate.

The Bar Association operates a number of continuing legal education programs but these have not been characterized by thorough planning or coordination with other sectors of the justice system.

At the core of any justice system is the basic education which the legal profession receives prior to entry into the practice of law. The major Costa Rican law school is situated at the University of Costa Rica. Due to severe restrictions on the number of law students accepted by the UCR, four other law schools have been established under the umbrella of the UACA (Universidad Autonoma Centroamericana), a private university. These are considered less rigorous and are less well regarded.

Legal education in Costa Rica is undergoing a critical period. It is characterized by: 1) a lack of adequate funding levels; 2) part-time faculty; 3) a lecture system of education; 4) poor library resources, with budget restrictions causing the collection to remain outdated.

Through the ILANUD Project, the UCR Law School receives AID scholarship assistance for its postgraduate legal programs (specializations in Agrarian, Public, Penal and International Law). This assistance however, is not aimed at strengthening the entire institution and the postgraduate programs are viewed by some as drains on the undergraduate legal program.

The Law School plays a minor role in continuing legal education. The law faculty has almost no involvement in training programs for justice personnel. They are notably absent, for example, from the police academies, even though legal courses are offered to recruits.

Research into problems affecting the justice sector is also notably absent from the law school environment. Curricula typically concentrates on traditional legal topics with little attention devoted to social sciences or administration issues affecting the justice system.

#### E) Courts.

The Judicial Branch exercises its judicial role through four court levels, which are, in descending order:

a. The Supreme Court composed of 17 magistrates in three divisions, and elected by the National Assembly to eight year terms, (renewable for a second like period) exercises administrative and judicial control over this Branch;

b. The Superior Tribunals, each made up of three judges appointed by the Supreme Court, hear all civil and certain criminal appeals and act as sole instance trial courts for crimes in which the penalty exceeds three years.

c. The Juzgados are one judge courts, these judge also being appointed by the Supreme Court. They are charged with investigation of crimes and the hearing of cases of a criminal nature carrying potential maximum sentences of less than three years.

d. Alcaldias are one judge courts and handle minor legal matters.

Both the Public Ministry and the Office of the Public Defender are also within the Judicial Branch.

While there is no judicial career law that guarantees judicial stability, the Court, by regulation, has established an internal mechanism with all the characteristics of a civil service system. This personnel system is applicable to all employees of the Judicial Branch, with the exception of the OIJ, and provides an adequate system regulating entry, promotions and stability of employees.

There is a large administrative apparatus which oversees operation of the Judicial Branch with all the characteristics of a formal court administration process. Its greatest deficiency lies in lack of planning and evaluation with no office or process guaranteeing this function.

The Judicial Statistics Office centralizes all statistics produced by the Judicial Branch, but there is little awareness among judges or OIJ personnel as to the purpose or benefits of a statistical system. It is sorely in need of automation to allow for more timely production and analysis.

One of the areas of greatest need, as expressed by all of the surveys conducted, is training for judges. While a Judicial School was created by the Court to provide training of its personnel, it has provided only rudimentary entry-level training to administrative functionaries, and has seldom offered similar programs to judges, prosecutors, public defenders or higher level administrators.

The independence of the Judicial System is guaranteed not only by the constitution and other legislation but also through the political support of constituent groups (ie. lawyers). The constitution guarantees the Judicial Branch approximately 6% of the national budget, making it one of the best financed court systems in Latin America. Recent legislative charges, however, placing certain entities within the Judicial Branch (OIJ, Public Ministry, Public Defenders) produce a considerable drain on financial resources of this Branch.

All proposed legislation affecting the Supreme Court must be submitted to it for consultation and should it submit objections, a 2/3 Assembly vote is needed to override their opposition.

This notion of judicial independence rests on a strict interpretation of the concept of separation of powers. While respect for this autonomy has guaranteed the development of this sector, the Court's sometimes exaggerated interpretation of its independence has served to isolate it from the other subsectors of the justice system and possibly from the population. Their interpretation of separation of powers has led the judiciary to avoid relations with the other sectors of the justice system even in coordinating basic operational needs. The Statistical Office,

for example, does not cooperate with similar offices in the Executive. This also occurs between the other police agencies and the OIJ.

One of the justice sector's severest problems is growing caseloads and their effect on the speed of the judicial process. While it has long been one of the countries in the region with the lowest number of inmates awaiting trial, this number is growing due to the strains of continually rising caseloads.

Judges indicated a need for greater bibliographic resources, a need which has been partially addressed by the donation of a basic legal library to the Court by the ILANUD Project.

#### F) Correctional System.

The Costa Rican correctional system is administered by the Direccion General de Adaptacion Social, under the Ministry of Justice.

It has emphasized development of a treatment model which rests on a progressive system of benefits and sanctions depending on the behavior of the inmate. The administrative component of the system has been sorely neglected.

Survey results show that lawyers, system functionaries and the general population believe that the system does not achieve its goals of rehabilitation of the criminal offender and his adaptation to society. At the same time, the above mentioned surveyed groups feel that the state should re-evaluate the objectives of the system and possibly redefine new objectives.

Although inmates are desatisfied with various aspects of prison life (poor toilet faculties, food that is not nutritious, few work opportunities etc,) they expressed satisfaction with the educational programs (at the elementary, secondary and university levels), recreation activities, and conyugal visits.

The current Minister of Justice has emphasized correctional reform as one of his priorities. He has suggested several areas in which assistance could be beneficially directed, including:

- a . An evaluation of the administrative system leading to its reorganization.
- b. A study of the system's capacity to generate resources. The correctional system has large areas of productive land and various factories. In the past they have often been left idle or used as makework facilities. Introduction of modern business techniques not only could make this system economically self-sufficient but also provide an excellent means for job training of inmates. For example, organization of

production cooperatives in which the inmates would have participation in the administration and marketing of goods, as well as share in their profits is feasible.

As of January 1986, Administrative and technical personnel fall within the Civil Service which gives these employees labor stability.

#### G. The Criminal Process.

This section examines Costa Rica's criminal procedure, which is increasingly reliant on oral hearings rather than on the traditional civil law written process.

Criminal Procedure in Costa Rica is characterized by its strong adherence to "due process" requirements such as the privilege against self-incrimination, the prohibition of defendants being held incommunicado, the right to counsel, the right to a public trial, and fixed periods for the completion of the different procedural stages.

The nature and severity of the offense determines the type of proceeding to be followed, including who may bring the prosecution. For the majority of serious crimes, the prosecution is brought by the Public Ministry and the process is divided into several distinct phases.

The purpose of the preliminary phase of the criminal proceeding is to determine if a crime was committed, and the person to be charged for that act. The agency which receives the criminal complaint must bring it before competent judicial authorities, including the prosecutor, within 24 hours of receipt. (Recent figures show a slight growth in the rate of criminality with 35,563 complaints for serious crimes being filed last year; by the same token, one out of every four complaints is dismissed by the Judge of Instruction). Once the complaint is received this investigatory stage is directed by the instructional judge (investigating magistrate) who may order a series of investigatory actions, including the arrest of a suspect.

Although Costa Rican law provides for the use of a variety of pretrial release measures, there is an overreliance on the use of monetary bail, giving rise to large number of persons in jail because they cannot raise the required amount. The investigatory stage concludes with the formal charge and request for trial which is issued by the instructional judge. (Even though this stage of the criminal process should not last longer than six months, a continuance is often granted by the investigating magistrate).

Upon the completion of this stage, if the judge has ordered a trial, the defendant and prosecutor are ordered to appear for trial within ten days of the order. The trial, which is public and oral, is held continuously.

The trial is concluded with an acquittal or a conviction with the requisite sentence being imposed therein. Although the American Convention of Human Rights requires that all sentences be appealable by the accused, the Costa Rican system does not allow for that in all cases. The Costa Rican National Commission for the Improvement of the Administration of Justice has requested assistance from ILANUD to identify experts that can review the Costa Rican legislation and provide solutions that will place it in compliance with this nation's international agreements.

## VI. EVALUATION OF THE COSTA RICA JUSTICE SECTOR

### A) General Problems

This section analyzes the problems identified throughout the preceding descriptive sections and attempts to set some preliminary priorities.

#### 1. Of a normative nature.

Even though Costa Rican legislation appears to be among the most modern of Latin America, it has been characterized by extensive copying of laws of other nations without adequate adaptation. While this is a feature common throughout the region, here it is compounded by the nature of the legislative process.

The National Assembly is charged with two important functions affecting the justice sector: legislating its norms and procedures, and determining its resources through the budget process. The Assembly has little technical staff to assist them in its legislative function and is often compelled to rely on interests groups to provide the expertise which they lack. There is no concept of "impact study" which can provide an economic and practical basis for determining the impact of legislation and few modern means for expediting the legislative process or facilitating information to legislators.

While the Assembly had a number of productive years in which the majority of significant justice legislation was issued, its work has been substantially delayed during recent years with more than 26 major law projects stalled. Our studies revealed dissatisfaction among all justice sectors with the updating of legislation and its relevance to current needs.

Any program designed to assist the administration of justice should take into account the legislative process. One of the

areas in greatest need is the development of a modern system of legislative tracking. This is a priority recognized by the Assembly but as yet not acted upon.

Another problem common to all of the justice subsectors is the lack of adequate regulation, whether through legislation, rule or regulating agency. This is most evident in the police sector which is characterized by the large number of police bodies with the consequent duplication and overlapping of functions. An organic law for the Public Ministry and another regulating the selection and stability of judicial personnel are also needed. Likewise adequate legislation guaranteeing the rights of prisoners, a correctional code, is also badly needed. Assistance in this normative function, perhaps through the use of Hispanic legal experts, is essential.

The legislative process also affects the justice sector through the budget process. Since 1957, the Costa Rican Constitution has guaranteed to the judiciary real economic autonomy by awarding it 6% of the national budget to meet its operational needs. This figure was arrived at and is followed without any rational basis of need or nature of projected expenditures, with the percentage representing an arbitrary figure.

Several factors affect this discussion. The primary determinant of Costa Rican judicial budgets is the salaries of its personnel. These salaries are among the highest in the public sector. Secondly, the financial autonomy of the judiciary appears to be limited to preparation of the budget and presentation to the National Assembly, since its subsequent control and disbursement is commended to the Contraloria. Another factor is the low percentage of the judicial budget which is dedicated to capital expenditures. Finally, if we add those resources assigned to police as part of the justice expenditure, we obtain a percentage of 9.6% of the national budget being devoted to justice. Addition of the correctional budget would place the percentage of the national budget dedicated to the justice sector above 10%, certainly the highest figures in the region.

## 2. Of a social nature.

One of the most significant discoveries in our study was the importance which the population attached to this sector. When the population was asked to rank national problems, criminality was named as the primary problem (23.2%) with the cost of living (16.8%), housing (16.4%), unemployment (13.5%), poverty (10.2%) and others being ranked lower. There was a difference when the same question was asked of justice professionals with criminality being ranked in fifth place by them.

There is a general perception of a rise in criminality among the population with 90% of them answering affirmatively to this question even though there has been only a slight a rise in the number of criminal cases being reported to police. This fear of crime has had a substantial effect on the quality of life of the Costa Rican population with the majority taking measures to prevent the possibility of victimization.

When asked whether they or a member of their family had been a victim of a crime in the past year, a surprisingly high number responded affirmatively, with street robberies and burglaries being the primary crimes. The fear of crime not only affects the daily activities of citizens but also has an impact on their confidence on the justice sector. Even though a large percentage of the citizenry expressed a lack of confidence on the ability of the justice sector, especially the police, to protect them, the large majority would still report a crime and go to the justice sector for assistance. It should be warned however, that continually growing public distrust in the efficacy of justice institutions could change this and bring serious consequences for the government.

Given the importance of this topic to the population, it is notable that the government has not developed a unified national plan for the analysis and regulation of this problem. The most recent government pronouncements place blame for this phenomenon on refugees and immigrants, a fact that is not demonstrated by any part of our study.

### 3. Of a Political Nature.

The Costa Rican justice system faces several issues which could be characterized as political and which are dealt with in this section. These include judicial independence, judicial career and national criminal policy.

Judicial independence has been judged as one of the benchmarks of a democratic judiciary. The Costa Rican model presents some instances of excessive independence while in other aspects it lacks it. The assignment of 6% of the national budget awards the Judiciary economic independence but regulation of its budget by the Contraloria restricts it. Its personnel are named under a non-legislated civil service system which awards to the Court the prerogative of naming all lower judges. In its functional aspects, the legislation awards almost exclusive jurisdiction to the courts in these matters.

A major problem facing the Costa Rican justice sector is the absence of a clearly defined national criminal policy arrived at through study, analysis, discussion and consensus. Too often the components of the justice sector act independently and without coordination of efforts.

The police subsector presents some of the most serious problems to adequate development of the justice sector due to its combination of military and police qualities. Police agencies have clearly overlapping jurisdictions and functions and little coordination between them.

This confusion over the proper role of a police force, combined with the political avoidance of this subject, has contributed to the perpetuation of non-professional police. High government officials state with assurance that the primary safeguard against creation of an army is the maintenance of rudimentary and politicized police forces.

The Costa Rican correctional system is one of the best in Latin America but is characterized by a lack of planning and affected by a growing reliance on prison confinement as the only means to deal with the criminal problem.

Criminal regulation is a complex area which should be faced squarely, as befits policy decisions with a substantial impact upon the delicate fabric of society. The Costa Rican discussion of this problem should be better directed utilizing modern resources and facing the necessity of national policies in which all sectors cooperate in development and implementation.

#### B) Justice Sector Access.

The worth of the justice sector can be measured by the knowledge which the population has of the laws, the institutions which administer them and their own ability to have access to the system in a positive sense.

There is no mechanism in Costa Rica which provides current information on the laws of the country. It is not surprising therefore that the majority of persons surveyed indicated a lack of knowledge about their basic legal rights. Clarity of the laws is another factor which impacts upon access. In this respect almost all sectors surveyed complained of the complexity of legislation.

This ignorance of laws and institutions is not only prevalent among the public but also exists among the primary users of the criminal justice system. For example, inmates were asked about the existence of certain functionaries whose duty is to protect their rights and a large number did not know of their existence.

The perception that the public has of the justice sector is another major factor in determining its accessibility. People will seek the system's assistance in relationship to the confidence they have that they will be treated equitably and that they will derive some satisfaction from having sought its service.

One of the most surprising research results was the confidence which the Costa Rican public and officials had about their justice institutions. Even though there was a majority who felt that judges applied laws correctly, an equally large number indicated that there was corruption in the judicial sector. The largest numbers appeared when persons were surveyed as to the police, with a majority of those questioned indicating corruption as one of the factors which best characterized the Costa Rican police.

It is surprising that even though a substantial portion of those questioned identified negative factors of the justice sectors as conditioning their vision of it, the overwhelming majority of citizens felt confidence in it and would utilize its services in case of need.

Another factor which determines the accessibility of a justice system is the cost it represents to the actual or potential user. One of the primary factors affecting this issue is the cost of legal services. Reliance on minimum fee schedules which have progressively raised legal fees will place strains on the lower strata of society. The availability of a free legal defense for those persons accused of a crime, regardless of financial resources, is a guarantee to defendants but there are proposed regulations which will substantially curb this availability.

#### C) Respect of Fundamental Guarantees.

Costa Rica presents one of the best human rights records in the region. This is true in all of the system's subsectors. This may be primarily due however, to the prevalent social culture rather than to effective guarantee by the institutions or legal structures that should control the actions of repressive institutions.

#### D) Efficiency of the Justice Sector.

To quantify and measure the services offered by the justice sector is a complex if not fruitless task. While traditional measures such as cost-benefit analysis may be employed in some parts of the system, the complexity of the services prevents widespread application of these measures. Taking this into account, we have used some accepted means to measure the efficiency of the Costa Rican justice sector: speed of proceedings, degree of public satisfaction with the service and its accessibility.

##### 1. Celerity.

Almost all of the justice professionals, as well as the general population, complain of the delay of the justice process. This perception is confirmed by judicial statistics

which indicate that the prescribed procedural periods are often violated.

One of the primary problems affecting the swiftness of the process is the growing caseloads confronting the system. This not only affects the judicial sector but also impacts on the police which are unable to investigate minor crimes and the correctional system which is continually facing an overcrowding crisis.

There has been a continually spiraling upward trend of increasing judicial caseloads which cannot be justified solely by population growth. Even though the subsectors have increased their personnel to meet the growing demand these have not been sufficient. In some subsectors the inverse may be happening due to budgetary cutbacks. The correctional system, for example, has seen its budget decreased during periods in which the penal population is growing. They are then placed in the untenable position of having to choose between personnel and those budget items, such as food, which should not be reduced.

## 2. Satisfaction.

The satisfaction which the public expresses about the services provided by the justice sector is another measure of its efficiency. This obviously varies with each different subsector of the justice system.

One of the most valid measures of satisfaction is the degree to which users would go to the system to meet their service demands. In the case of police 82% of those persons surveyed indicated that they would notify police if they were witnesses of a crime. The majority of these would choose the Guardia Rural if they had a problem while only 5% would notify the Guardia Civil. This may be due to the service orientation of the first and the military orientation of the latter. Even though the population pointed out a number of negative features as characteristics of the Costa Rican police sector, they still emphasized a number of others which point to a general satisfaction with them.

Due to the specialized and important role which the OIJ plays in the Costa Rican justice sector, we asked specific questions to measure the confidence which justice professionals expressed in their work. While the levels of satisfaction were generally high, 44% of the prosecutors disagreed. This is particularly disturbing due to the key interrelationship which these agencies play in criminal investigations.

Another key set of actors in the justice sector are lawyers. A high number of persons questioned indicated having been a client of a lawyer in the preceeding year (15%). This may however be due to the high participation of lawyers in routine roles. Use of a lawyer is required in such mundane activities as registering

a car. In the majority of instances, people were satisfied with their services, both in their private role or as prosecutors or public defenders.

The level of satisfaction with judicial work is fairly high and has been mentioned previously. In the case of the correctional system, while there are some specific criticisms by inmates of the correctional system, in the large part they express a positive vision of the services it provides. There is within the general population however, a growing feeling that the system is "soft". This may, if when combined with anxiety over crime, lead to a clamor for a more repressive justice and correctional system.

### 3. Controls.

In order to insure efficiency and to regulate the provision of services, the justice system relies on a set of normative and institutional controls. This is an area of great concern.

Judicial conduct is regulated by the "Tribunal de Inspeccion Judicial" which reviews any complaints against judicial personnel. The work of this agency appears to be satisfactory but affected by a lack of resources. Police misconduct is regulated by a variety of different mechanisms within their agencies. In all agencies the resources assigned to this task are insufficient and the measures designed to curb misbehavior are oftentimes illogical.

The OIJ is the most professional of Costa Rican police bodies and therefore might be expected to have the most sophisticated regulatory mechanism. However, the only supervision of the OIJ is exercised by a three magistrate committee of the Court which has no staff or resources of its own. The supervision is superficial and dictated by the information it receives from the agency itself. It should be noted that, for no logical reason, the investigatory agents of the OIJ are exempt from the normal review exercised for all other judicial sector personnel and review is exclusively internal.

### E) Personnel.

The level of efficiency of any institution is due, in no small measure, to the quality of its personnel. It is therefore important to develop adequate mechanisms for their selection, training, promotion and remuneration. Likewise, it is important to maintain a sufficient number of personnel with clearly defined functions and displaying the necessary characteristics to accomplish their assigned task.

## 1. Selection.

The Costa Rican justice sector presents a variety of selection mechanisms characterized by different degrees of political interference in the selection process.

Supreme Court Magistrates are selected through a political process in the National Assembly. Their re-election is virtually unaffected by political considerations, with no known case of denial of reappointment. Lower judges are selected by the Supreme Court, allegedly on the basis of qualifications and merit, but there is a growing perception among judges that other considerations dominate the process. The same concern was expressed over the selection of prosecutors and public defenders, which is also carried out by the Court. The instance of greatest satisfaction is displayed among administrative personnel, the selection of which is clearly based on a neutral civil service process which includes advertising, examination, applicant pools and interviews.

The police subsector presents the greatest personnel selection problem. The majority of Costa Rican police, with the exception of two minor agencies, are exempt from civil service norms applicable to the rest of the national public sector. These positions are classified as "de confianza" and allow, if not encourage, their usage as a means of political patronage. It is therefore, not surprising to find massive turnover of police personnel upon the conclusion of presidential elections. Thereafter, the outgoing administration issues a presidential decree which allows all functionaries to resign within a period of time and to enjoy the benefits equivalent to a fired official (prestaciones). This represents a significant economic burden to the incoming administration while draining them of trained professionals. A similar situation also prevails among guards in the correctional system.

## 2. Training.

There are widely varying situations in training among the justice sectors. Some of these have been discussed previously and will not be dealt with here.

Training of police is characterized by duplication of programs and efforts. Curricula are not adapted to the function they carry out and are oftentimes dated. Resources are often minimal with one police school being compelled to ask for private donations for food for its trainees since there is no budget allocation. Programs are often dominated by military subjects with limited training in normal or traditional police functions.

Lawyers are initially trained in law schools and the deficiencies have been previously noted. A common denominator of the Costa Rican legal education is the theoretical nature of the

curricula. Most disturbing is the lack of participation by the law schools in continuing legal education programs, whether for the bar or the private sector.

Judicial training is placed in the hands of the "Judicial School" which has been characterized by its emphasis on basic training of low level administrative personnel and devoted little resources to the rest of the judicial employees. It should be seriously studied whether entry-level and continuing education of judicial professionals should be best subcontracted to the law school or carried out by the "Judicial School" since the number of judges and training needs may not justify the investment required to maintain a separate training facility.

### 3. Promotion and Remuneration.

Promotional systems are varied in the Costa Rican justice sector and they have been previously discussed. The most serious needs appear to be in the police subsector in which their absence is notable.

Salaries for judicial personnel appear to be more than adequate since they are among the highest in the public sector. More than half of legal professionals employed in the judicial sector earned an average base salary which was almost three times the public sector average and 1.5 times higher than professionals in the public sector. In addition to these base salaries, legal professionals earn a large supplementary sum for not practicing law (exclusividad).

The situation of nonlegal personnel, especially those employed outside the judicial sector, is markedly different. The police subsector presents notable differences between the different agencies (7,750 colones per month in the Guardia Civil, for example, compared with 13,800 colones in the OIJ). This is often not affected by the employee's level of education or the similarity in function. The result of these disparities is widespread transfers between one institution and another which is especially harmful in the most technical areas.

### F) Material Resources.

The material resources assigned to the justice sector are often inadequate and in bad condition.

#### 1. Physical Facilities.

The most severe problems occur in the police subsector. The DIS, for example, rents houses for much of its activity in conditions inadequate for efficient work. The UPD occupies sites which in many cases are uninhabitable.

The correctional system also presents severe problems, with additional space needs accumulating over a number of years. Continuation of current overcrowding will eventually lead to confrontations and prison violence rarely seen in Costa Rica.

## 2. Equipment.

There are severe equipment problems in all sectors of the justice system.

The Law School is in severe need of basic teaching equipment and modern teaching aids. The police are also facing similar problems but this may be due more to the poor or inadequate system of purchasing and maintenance which predominates in most police agencies, rather than an actual lack of funds. Foreign donations have oftentimes complicated this problem. For example, one of the primary means of obtaining vehicles for this sector is through foreign donations. The wide variety of different types and brands of vehicles makes development of an adequate maintenance system impossible thereby generating a large percentage of unusable vehicles during any work shift.

One of the most serious equipment needs is in the area of information systems. This is one of the priorities expressed by all subsectors. Criminal histories are managed by a number of different agencies, for example, with different levels of sophistication but with little sharing of data. The equipment purchased to date has been obtained without consideration of development of integrated networks to be shared by different agencies.

Some coordination of information system development is taking place. The Executive has assigned this task to the Ministry of Planning which has a committee dealing with justice information, but this committee does not necessarily coordinate its activities with the other branches of government. Thus, since the ILANUD project contains a component for donation of a juridical database, ILANUD was faced with the awkward situation of having this Ministry engaged in discussions for creation of a system while unaware of the similar activities of the Judicial Branch.

Libraries are another area of need for the justice sector. Adequate bibliographic resources are a sine qua non of any effective justice sector and the state of many of the Costa Rican legal libraries leaves much to be desired. The law school library maintains the most complete collection in the country but due to budgetary restrictions has abandoned its periodical collection or purchase of new materials. The Supreme Court has received a donation of a basic library from ILANUD which appears to meet its most immediate needs. Outside of San Jose the situation is even more critical with a notable absence of these resources.

Another area in which assistance could be useful is in the development of adequate legal materials. While there are several legal publishers in the country, these are devoted to publications useful only to the legal profession. Public legal education is one area in which new materials developed with the cooperation of the Court, the Bar Association and others would be useful. An example, would be a review of texts utilized by the Ministry of Education to assure that the younger population is receiving an appropriate legal basis on which to exercise their rights as Costa Rican citizens.

#### G. Administration.

Justice administration is a new concept for this sector.

##### 1. Coordination.

While the justice sector is a system composed functionally of different parts (police, courts, corrections) regularly interacting, there is very little coordination between the different components of the justice system and even between agencies within the same subsector. The police are an example in which competition and lack of coordination predominate.

Any assistance program should attempt to encourage coordination between the different agencies and subsectors and not further aggravate the existing problem.

The creation of the Costa Rican National Commission for the Improvement of the Administration of Justice is one of the most positive aspects and it should be encouraged to develop not solely as a mechanism for the implementation of this project but as an ongoing agency which plays a central role in national justice development.

##### 2. Planning and Evaluation.

A common characteristic of Costa Rican justice agencies is the absence of planning and evaluation. Every effort designed to improve the administration of justice should set forth clearly identifiable and measurable goals and define the means by which they are to be reached.

Essential to the development of adequate planning mechanisms are adequate justice statistics. These are currently kept by a variety of different agencies with little coordination among them but commonly without identifiable purposes for these statistics. Even in the case of the judiciary in which the most professional office operates, there appears to be a lack of understanding among judicial officials of the need for or the utilization of the statistics it maintains.

While the Costa Rican justice sector displays one of the highest levels of development in the region, one area in which substantial assistance could usefully be assigned is in the administration area. These programs should be designed carefully and carried out progressively with a mix of technical assistance and training.

#### VII. Justice Sector Study Evaluation Conference

A two day conference to evaluate the Costa Rica Sector Analysis was held at the Hotel Cariari on January 9 and 10, 1987.

The objective of this meeting was to discuss the findings of the study, set priorities with respect to issues covered in it and make recommendations that might serve as the basis for the betterment of the administration of justice system in the country.

Conference participants included members of the Supreme Court, Cabinet Ministers, Legislators and other involved, at the highest levels, in the justice sector.

In order to be able to discuss the subjects covered in the sector analysis in depth, conference participants, after an initial plenary session, were divided into three commissions or workshops: Judicial Branch, Police Agencies and Criminal Procedure and Sentencing.

The commissions made recommendations which were distributed for review and discussion at the plenary session held on the morning of Saturday, January 10, 1987.

A) In the FIRST PLENARY SESSION, Enrique Castillo Barrantes, Costa Rica Project Director, outlined the scope of the Project Study, drawing parallels between the administration of justice and socio-economic development, elaborating on this premise with a description of the national political, economic and social setting which in turn, sets the state for legislative changes.

B) The JUDICIAL BRANCH WORKSHOP attempted to limit itself to discussing the greatest needs within the Branch.

##### 1. Investigation

Discussion centered on the Supreme Court's excessive zealotness in maintaining its independence from the rest of government. This has led to the development of duplicate services which is out of step with the political and economic reality. The pyramidal structure of the Supreme Court also concentrates all aspects of judicial branch business in the Court itself with exceedingly little delegation. A suggestion was made that a concerted effort,

including the possibility of Constitutional Reform, be made to determine how the Judicial Branch might acquire a more modern administration, which would, of necessity, include a relationship with the other institutions and agencies that have or should have a bearing on the justice sector.

## 2. Public Information

The conventional wisdom is that the justice system must operate divorced from public opinion. This position may have merit when it is applied to a particular court but that is not the case when it comes to the Judicial Branch as an institution. It behooves the Judicial Branch as a government institution to provide information to the public it serves on its workings. Survey results show that even personnel functioning within the Judicial Branch lack knowledge about the scope of its work and have doubts about its efficiency. A vigorous public information office would help resolve this problem.

## 3. Merit System vs Corruption

Administrative personnel in the judicial sector is covered under the merit system but judges, although technically also under a similar system, are more often than not appointed in accordance with who they know rather than by professional credentials. This has led to a consistent perception among those surveyed that the judiciary is corrupt.

## 4. Training

The Supreme Court should also consider the possibility of restructuring the Judicial School to afford more than entry level training as well as expanding its geographic scope which is limited to the capital metropolitan area.

C) The POLICE WORKSHOP discussion was initiated by Luis Salas, Justice Sector Study Director, when he pointed out that, although Costa Rica is the only country in the region that does not have a formally constituted army, it does have nine police agencies, one of which is a judicial police, the only country in the region to have one.

Mr. Salas also noted that Costa Rica is experiencing a surge in the crime rate which has increased concern in the general population as to the ability of the state to curtail this social situation.

### 1. Police Agencies Characteristics

The number of police offices in Costa Rica is 3.48 per 1,000 inhabitants, high when compared to other countries in the hemisphere, including the United States which has an average

of 2.5 officers per 1,000 inhabitants. The operational budget of the police agencies has increased 400% (real increase 250%) in the years 1981 to 1986, from 493 million colones to 1.637. Not all of the police agencies participated at the same rate in the increase, the bulk having gone to the Judicial Police and the Transit Police.

The fact that no army exists has created a confusion as well as a duality of functions among the existing police agencies with the following consequences: increasing classification of documents as "confidential", lack of discussion of police activities in the political arena, rejection of the concept of a professional police under the premise that this might lead to the creation of an army and the assigning of crime protection services to those areas that might be best classified as being of national defense.

The Costa Rica police forces have no women in their ranks except in administrative positions, a situation which has no explanation in modern police forces. Average entry level salary for a police officer in Costa Rica is 8,550 colones while for other public employees it is 11,805 colones.

Police training is one of the most important avenues calculated to raise the quality of the police force but, unfortunately, in Costa Rica there has been little emphasis placed on this. One of the principle failings of police training is its lack of consistency. It is more usual than not to find recruits on the job for several months before they are exposed to training. Police training should also be on-going, with programs being revised periodically to insure that legislative developments are incorporated.

For a police system to operate efficiently there must be a close relationship with the community it serves. Survey results show that the Rural Assistance Police and the Agency for Judicial Investigation, rather than the Civil Guard, are the two police agencies to which the greatest percentage of the population would turn in time of need.

In turns of community education, the Agency for Judicial Investigation makes no provision for any and the Civil Guard specifically keeps its distance from the population served.

Possibly of greatest concern on matters of police agency behavior is the fact that the agencies have no real and effective supervision. A case in point is the most professional of the agencies, the Agency for Judicial Investigation, which, in theory, is supervised by three Supreme Court magistrates but these three, in fact, have little time for this additional duty and no staff to aid in these tasks.

## 2. Police Agency Goals

The findings of the Police Workshop emphasize the need for the police to be a professional body with specific functions, adequate training, merit system hiring practices and professional ethics standards. A police agency such as this should also make an effort to create a positive image in the community it serves by espousing a vigorous community outreach and public information system.

D) The discussion in the third workshop, CRIMINAL PROCESS and PROCEDURES was led by Enrique Castillo, law school faculty member at the University of Costa Rica who presented the intricacies of pretrial release and whether this should be considered a benefit or a privilege. The jails are full of prisoners who cannot meet their monetary bond so this is evidently not an effective form of arriving at pre-trial release.

### 1. Time to Trial

Another great problem in the criminal process is the speed or, rather lack of it with which the whole process is conducted. It is no secret that the time periods set out in the pertinent legislation has no bearing on reality. The two questions surrounding this lack of speed are (1) is the slowness due to the volume of work or (2) is it due to a lack of human resources. The first problem might be remedied by increased application of prosecutorial discretion and the second by the increase of personnel within the judicial branch. It is important to create appeals courts. This would ease the load on the superior courts, which are tied up with interlocutory appeals, due to the fact that, as noted elsewhere in this summary, there is no significant appeals process from a trial court decision.

### 2. Alternatives

It is imperative to seek alternatives to the present court process in order to open up the court calendars. Some of these possibilities are:

- (1) The decriminalization of certain acts
- (2) Arbitration and other systems of private settlement of conflicts
- (3) The introduction of plea bargaining

### 3) Sentencing

Jose Maria Rico set the tone for the discussion by bringing up the need for a sentencing and corrections policy. Mr. Rico readily acknowledged that Costa Rica does in fact have a policy but, as he pointed out, there is a real need to

compare it with the policies set by those countries generally considered the leaders in these areas.

Modern sentencing and corrections tendencies respond, in great part, (1) to the fact that the penitentiaries are overcrowded, (2) that there is abuse of the discretionary power available to certain sectors in the system, (3) that there is disenchantment with the idea of rehabilitation of the prisoner and (4) to the development of the concept of human rights in the penal system.

In general, except in those cases where there might be an element of deterrence, the modern systems recommend the elementation of sentences under 2 months as well as exceedingly long (20,25 or 30 years) sentences except in truly exceptional cases.

Because of the poor results rehabilitation has had, there is a movements to attempt to rehabilitate while at liberty rather than in the artificial and coercive setting of a correctional institution. The segregation of groups (those waiting for trial, convicted men, women, etc.) is recommended as is a stay in the construction of prisons until a comprehensive policy on this matter is developed.

The general discussion following Dr. Rico's key note presentation arrived at the conclusions that it is important to develop a new legal framework on corrections issues which should set such matters as the rights of the prisoners and clarify the sentencing process as well as the conditions in which the sentence must be carried out. This new corrections policy should also analyze security confinement, physical punishment and preventive detection.

There was a consensus that four more admission faculties are needed and parole and other release programs also need more and better installations, the importance of these programs in achieving the reduction of prison populations being obvious.

A call was made to decriminalize certain acts entirely or to sanction their commission with fines or the like, in an attempt to lessen congestion in the prisons. A case in point would be decriminalizing immigration matters as a sizeable portion of the prison population is made up of foreigners.

Specific mention was made of the need to request both from the Ministry of Planning and the Ministry of Foreign Relations their support, so that some of these matters might be the subject of foreign assistance requests by the government of Costa Rica to appropriate international agencies.

E) The CLOSING SESSION saw various of the most important conference participants echoing the findings of the workshops on

the need to re-assess the functions and structures of the police agencies, dealing openly with the reality that Costa Rica needs a professional police force, capable of dealing with both normal police functions and national security matters. As stated by the Honorable Christian Tattenback, Costa Rica needs something that is "more than a police but less than an army".

#### VIII. Proposed Bilateral Agreement Recommendations

One of the stated objectives of the Court Administration Project is the development of bilateral agreements between the United States of America and each of the participating countries, based on the needs of each of these countries as identified by the Judicial Sector Assessment.

Although no assurances, direct or indirect have ever been made of AID funding, many of the recommendations for action made at the evaluation conference can be implemented best by the technical support generally provided by AID to a host country. Based on these recommendations the following suggestions are made for possible projects involving both countries.

A) The Supreme Court in Costa Rica is both the apex of the judiciary pyramid and the administrator of the entire court system. Their fierce independence has guaranteed the autonomy of the sector but it has also hampered attempts to modernize court administration as there is little day to day contact with other government agencies, precluding the flow of information and experience.

A bilateral agreement could foster a peer relationship with different court systems in the United States which would make it possible for the Magistrates involved to see, first-hand, how a modern Court system functions and how new ideas in both legal and technical developments are incorporated.

This peer relationship might extend to a so-called sister arrangement with the criminal Justice Planning Council of a state with characteristics (size, perhaps) similar to those of Costa Rica. A relationship of this kind would benefit both partners as it would allow the US partner, now that the U.S. is receiving an influx of immigrants, both legal and otherwise, from the Central American region, to exchange information on the legal and social mores of those who now must conform to U. S. laws.

Courts in the United States have often either championed or joined legal reforms movements and peer discussions between members of the Costa Rica Supreme Court and U. S. judges could well open the door to local reforms, as might be, for example, the creation of a criminal appeals court.

Although participants at the Sector Analysis Evaluation Conference were enthusiastic about sponsoring Constitutional and

other legislative reforms, even in the most expeditious of systems, the kind of fundamental changes which would be required in Costa Rica are going to take time and massive persuasion techniques.

B) Provide support services to the already existing National Commission for the Improvement of the Justice Sector so that this Commission can:

1. Design and promote community education programs, perhaps through both public interest and commercial radio, on citizen rights, privileges and duties in a democracy as well as discussion of certain laws which most widely affect the general population.

2. Develop and implement a pre-trial release program that would permit the meeting of bail requirements by means other than by payment of a fee, which precludes the release on bail of the poor. There are several Own Recognizance Release Projects in the U.S. which could serve as technical models.

3. Promote and sponsor outreach programs with the goal of improving the image of the judicial sector in the community at large.

4. Effect changes in the Judicial College to improve the training of judicial sector personnel.

5. Make recommendations as to the academic requirements of lower level judiciary personnel.

- 6) Promote graduate school level degree programs at the University of Costa Rica.

C) The Police Agency Workshops submitted a series of recommendations for the beleaguered police agencies in this country. Although financial support is not available under the Administration of Justice project for police agencies, monies might be made available to Costa Rica by other U.S. agencies. Among the most salient recommendations which would bear supporting under appropriate funding are:

1. The defining and ordering of responsibilities of each of the nine police agencies in the country.

2. Strengthening police academy training and continuing education.

3. Promoting stability through the development of a Police Merit System Law.

4. Development of a community relations program to insure that the general population becomes aware of the services provided by the police.

Job Description for Deputy Director for Court  
Administration Project

1. The candidate will live in San Jose, Costa Rica and serve as Deputy Director in a project directed by Florida International University in the Central America region. Position will include bath administrative responsibilities and substantial research and writing.

2. The candidate must be able to write well, in both Spanish and English, material of a legal and sociological nature. Working samples will be required in both languages.

3. The candidate must have proven ability to interact with professional and support staff in the various participating countries. Some travel.