

EXECUTIVE SUMMARY

DOMINICAN REPUBLIC JUSTICE SECTOR ASSESSMENT

**CENTER FOR THE ADMINISTRATION OF JUSTICE
FLORIDA INTERNATIONAL UNIVERSITY**

**May, 1988
Santo Domingo, Dominican Republic**

I Background:

The United Nations Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD) is conducting a regional project designed to improve the administration of justice in six countries: Costa Rica, Panama, El Salvador, Honduras, the Dominican Republic, and Guatemala.

Because of the lack of reliable empirical information on the justice sector in Central America and the Caribbean, the project called for carrying out sector studies in the participating countries. Florida International University (FIU) was selected to perform these studies, and a cooperative agreement was signed with ILANUD.

ILANUD, prior to conducting the sector assessments in each country, worked for the creation of national commissions dedicated to improving the administration of justice; commissions which would bring together the different national institutions of the justice sector, to make it easier to carry out the sector assessments, to discuss same, and to take concrete steps for the improvement of the sector.

In the Dominican Republic, the Commission was formed in 1985 and was entitled "National Commission on Judicial Reform". This commission is made up of representatives from the Supreme Court, the Office of the Attorney General of the Republic, the Executive Branch, the Senate, the Chamber of Deputies, the Bar Association, the Autonomous University of Santo Domingo, the Madre y Maestra Catholic University, and the Pedro Henriquez Ureña National University.

II. Methodolgy

The objectives of the sector assessments are:

- 1) To provide sufficient preliminary data to make it possible to plan and evaluate the ILANUD project on improving the Administration of Justice.
- 2) To advise the participating countries on planning their justice sectors.
- 3) To supply the basic information needed for the development of bilateral assistance projects between the participating countries and international financial institutions.

Since sector studies on the administration of justice had never been conducted before, FIU had to come up with an appropriate methodology for same. For this reason, two people

were hired to develop just such a methodology: Professor Joseph Thome, a Costa Rican who teaches Law at the University of Wisconsin, and who has experience with projects related to Law in Latin America; and Professor Jose Maria Rico, an eminent criminologist from the University of Montreal. The proposed methodology was discussed later with noted jurists from the participating countries. Once necessary adjustments had been made in the methodology, a pilot study was launched in Panama. Later, sector assessments were completed in Costa Rica, Honduras, El Salvador, and Guatemala. The Dominican Republic study began in 1987.

Jose Alburquerque-Carbuccia, a distinguished professor and attorney, was selected to head the study. Mr. Alburquerque-Carbuccia coordinated the work of an interdisciplinary team consisting of five professionals (four attorneys, Victor Jose Catellanos-Estrella, Maximo Berge-Dreyfus, Adriano Lopez-Pereyra, and Cesar Ramon Pina-Toribio, and an historian, Fernando Perez-Memen). Also, the national team received support from a regional advisory team consisting of four attorneys and a statistician.

The following are the stages in the development of the study:

- 1) Formation and training of the research team.
- 2) Compilation of existing national bibliographic resources on the administration of justice.
- 3) Compilation of empirical data from different sources and the adaptation of same to the goals of the study.
- 4) Opinion surveys. To complement the empirical data, several surveys were conducted in an effort to determine the perception the Dominicans have of the justice system, and their experiences with same. The surveys conducted were: a) judges at all levels (143); b) attorneys (369); and c) representatives of the Prosecutorial Agency (80). The surveys were conducted by a private firm (OMSA), which was selected after competitive bidding. However, the results of the surveys were processed by FIU.
- 5) Writing of the final report on the Administration of Justice. At present, there is a first rough draft of the report written by the Dominican team, in collaboration with the FIU regional team.
- 6) Review and discussion of the study by national authorities. In order that the report may be reviewed for the correction of possible errors, it shall be distributed to the national authorities representing the justice sector. Later, there will be a workshop, scheduled for June 17 and 18 of this year, to be attended by these functionaries. This meeting,

sponsored jointly by the National Commission on Judicial Reform, the Supreme Court, and ILANUD, is the forum for the discussion of the final report and the presentation of recommendations for action. These recommendations may include changes in existing legislation or the creation of new rules and regulations; curricular or training innovation; administrative reorganization of existing offices; acquisition of equipment and other facilities; and new administrative and information systems.

III. Contents of the report

The report consists of five parts and an extensive bibliography on the subject.

The first part of the report explains the theoretical and conceptual framework of the study. In other words, the administration of justice is the object under study. In this section, the emphasis is on the systematic approach of the research; an approach which explains why the many components and parties of the system(those who produce the rules and regulations, the Prosecutorial Agency, the defense, and the courts) will later be looked at independently, but not as isolated entities.

The second part consists of placing the administration of justice within the history and politics of the Dominican Republic, to give greater context to the synchronic view, which allows us to see that the present is inextricably linked to the past. The collaboration of an experienced historian, Fernando Perez-Memem, on this section was invaluable.

The third part is a description of the parties of the system. First, an analysis is made of the Legislative and Executive Branches, in that both are responsible for producing rules and regulations. Next, an examination is made of the Prosecutorial Agency, the defense, and the courts, as well as other entities which make up the flowchart of the administration of justice. The Prosecutorial Agency is analyzed in its role as prosecutorial organ, in an attempt to define its true function. In the section on the defense, the existing system of public defenders is analyzed. The courts are looked at in terms of their organization, structure, personnel, resources, activities, etc., and this part turns out to be one of the key points of the study.

The fifth, and final, part summarizes the conclusions reached in the study, and goes into detail on existing problems in order that those persons who should, may make recommendations for solving the many problems encountered. These conclusions were structured according to five operational criteria of a system of justice: regulation, access, independence, efficiency and fairness. That same order will not necessarily be followed to develop the conclusions in this summary, even though the content will be the same.

Finally, included is a bibliography of works on the subject of administration of criminal justice in the Dominican Republic found in the different juridical libraries of the country, for reference by future researchers.

Below is a summary of some of the more important points of the study, especially those topics addressed in the third, fourth and fifth parts.

A. Those who produce rules and regulations

This section contains a brief description of the structure of the Legislative and Executive Branches and the role of each in the production of rules and regulations, and in regulating the justice sector. This section is primarily for reference.

B. The Prosecutorial Agency

In this section, the Prosecutorial Agency is described in terms of the regulatory provisions which govern its structure, powers, controls, and responsibilities, as well as the characteristics of its personnel, budget, services, equipment, and the activities it carries out.

The rules and regulations which govern the activities of the Prosecutorial Agency are not clear. It is attached to the Executive Branch, and is under the supervision of the Attorney General of the Republic.

The personnel of the Prosecutorial Agency can be categorized thusly: one Attorney General of the Republic, nine Prosecutors for the Courts of Appeal, thirty-one Prosecutors for the Courts of First Instance, and fifty-four Prosecutors for the Courts of Justice of the Peace, to which one must add the assistant attorneys. There are six assistant attorneys for the Prosecutors of the Courts of Appeal, and forty-four for the Prosecutors of the First Instance Courts.

A majority of the prosecutors is male (70%). Of the total, 23% work in the National District, 7.5% in the province of Santiago, and another 7.5% in that of Barahona.

In February, the salaries of these functionaries ranged from 300 to 800 Dominican pesos. However, it should be mentioned that on April 2, 1988, in Decree No. 257-88, those functionaries whose salaries were below 1,500 pesos recieved a 10% increase. In connection with this point, 46.3% of the representatives of the Prosecutorial Agency felt that their salaries were inadequate, 37.5% that they were barely adequate, and only 15% that they were adequate.

According to the results of the surveys, the process for

selecting the representatives of the Prosecutorial Agency is generally considered to be inadequate (60% of the representatives of the Prosecutorial Agency, 53.1% of the judges, and 63.3% of the attorneys). The major cause offered for this negative evaluation was political influence, which has a direct bearing on the independence with which it can carry out its duties.

With regard to professional training, the Attorney General of the Republic, the Prosecutors of the Courts of Appeal, and the Prosecutors of First Instance Courts are all Law graduates. Among the Prosecutors of the Courts of Justice of the Peace, 44.5% are not attorneys.

45% of the representatives of the Prosecutorial Agency interviewed and who are attorneys graduated from the Autonomous University of Santo Domingo, 24.6% from the Eastern Central University, and 14% from the Madre Y Maestra Catholic University. Sixty-five percent feel that their professional training was good, but with the exception of short courses and occasional lectures sponsored by ILANUD, there are no opportunities for advanced training.

Very few support personnel are assigned to the Prosecutorial Agency. The situation is such that trials are held up because work is not done quickly enough and also because the personnel do not even have the materials needed to carry out their duties. Fifty-eight percent of the representatives of the Prosecutorial Agency interviewed stated that there are not enough office personnel.

A sampling of cases admitted and resolved in 56 courts from September to November, 1987, revealed a huge volume of work at the offices of the prosecutors (3,307 cases), and an excessive number of cases pending.

The surveys revealed the existence of corruption in this institution. That there is a lot of corruption among the representatives of the Prosecutorial Agency is the opinion of 54.3% of the judges and 62.8% of the attorneys.

The results of the surveys also indicate that the majority of the representatives of the Prosecutorial Agency and the judges are satisfied with the work of the former (61.3% and 43.4% respectively). The attorneys have a different opinion, with 45% expressing little satisfaction, and 33.6% dissatisfaction.

C. The Defense

The Constitution of the Dominican Republic establishes that persons accused of an offense must have an attorney to defend them during the criminal process. If the accused does not retain the services of a private attorney, a defense attorney must be

appointed by the court hearing the case. Under this system, an accused person may be represented by a private attorney or a public defender appointed by the court.

In the Dominican Republic, public defenders do not work full time. Public defense is in the hands of private attorneys appointed by the court to serve those who do not or cannot appoint their own attorney. These public defenders, as they are called, once selected, are paid by the State, and are under the supervision of the president of the upper or lower court in which they practice law. In February of 1988, the monthly salary of a public defender was 300 Dominican pesos, regardless of where they practice law: a Court of Appeals or a First Instance Court. This salary was increased to 400 Dominican pesos in Decree No.257-88 of April 2, 1988.

At present, there are 52 public defenders distributed between the Courts of Appeals and the Courts of First Instance. In cases in which these courts are divided into chambers, as in the case of Santo Domingo and other important cities, there is one attorney in each chamber. Therefore, there are 9 public defenders in the Courts of Appeals, and 41 in the Courts of First Instance, and their respective chambers. According to the surveys, only 8.1% of the attorneys interviewed had worked as a public defender in the last three years.

Even though in principle it is the president of the court who assigns the public defenders, (all attorneys, in order to be able to practice law, must register with a Court of First Instance) they are actually assigned by the Executive Branch through administrative resolutions.

Regarding the selection and appointment of public defenders, the majority of attorneys feel the system is inadequate (55.8%), while the majority of the judges (58%) and of the representatives of the Prosecutorial Agency (60%) consider same to be adequate.

The average age of the public defenders is 32 and a majority is male (90.8%). Those who work as public defenders have been practicing attorneys for an average of four years.

The surveys revealed that the attorneys (48.8%), the judges (44.8%), and the representatives of the Prosecutorial Agency (51.3%) are dissatisfied with the work of the public defenders. Thirteen point three per cent of the representative of the Prosecutorial Agency and 20.9% of the attorneys went so far as to say they were totally dissatisfied.

The cases handled by the public defenders vary depending on the regions and courts in which they perform their duties. Nonetheless, there are an average of 4 to 6 cases per week in the courts of Santo Domingo. In the provinces, this number varies greatly. The cases handled by public defenders most frequently

are aggravated robbery, rape and homicide.

The defects inherent in the system and which were revealed by the surveys point to the need for the creation of a professional corps of full-time public defenders (the opinion of 81.3% of the attorneys interviewed), a corps which could be an autonomous institution (33.3%) or attached to the Supreme Court (29.7%) or a school of law (20.3%).

In the Dominican Republic there are other institutions which provide free legal service: for example, the universities, whose curricula include and regulate the "juridical practice" program in which students defend clients free of charge, when authorized to do so by a judge. This program is applied to the field of criminal law at the Pedro Henriquez Ureña National University, the Madre y Maestra Catholic University, and Eastern Central University. Other private institutions which provide free services are: The Center for Legal Advice and Research sponsored by the Episcopal Conference (CEDAIL); the Women's Legal Services Center (CENSEL); the Ecumenical Planning and Action Office (CEAPE); the Dominican Ecumenical Labor Commission (COTEDO); and CONANI, an institution dedicated to the defense of children.

In the section on the defense, general data on attorneys in the Dominican Republic have been provided because at any time any one of them can be called upon to defend someone, be it as a public or private defender.

The surveys conducted provided information on the personal characteristics and educational background of the attorneys. Worth mention are: in December of 1987, there were 4,196 attorneys registered with the Bar Association, most of whom were working in Santo Domingo (2,802, or 66.5%). The average age of the group is 37 and 72% are male.

According to the surveys, a majority of the attorneys indicated that they had done their studies at the Autonomous University of Santo Domingo (56.1%), followed by Eastern Central University (11.9%), Pedro Henriquez Ureña National University (9.2%), and the Madre y Maestra Catholic University (8.9%). The education received in these institutions was rated as good (59.6%), and even as excellent (32%).

According to the surveys, 26.1% worked in the field of criminal law, but the cases they handle most frequently deal with civil matters (34.2%). When they do deal with criminal matters, it is in courts of first instance 68.1% of the time.

Fifty-one point three per cent of the representatives of the Prosecutorial Agency and 45.5% of the judges stated that they were satisfied with the work of attorneys. However, a third of the representatives of the Prosecutorial Agency and fellow attorneys, and one judge in four expressed dissatisfaction with

the work of the attorneys.

Sixty-nine point four per cent of the attorneys have a positive opinion of their profession and 29.8% do not.

D. The Courts

This section begins with a description of the organization of the judiciary in the Dominican Republic. Next, there is an analysis of the Judicial Branch in terms of its structure, duties, responsibilities, and the regulatory provisions which govern same, as well as a description of its personnel, budget, equipment, and services.

In the Dominican Republic there are a total of 344 administrators of justice, divided thusly: The Supreme Court, 9 justices; the Courts of Appeal, 50 judges; the Superior Court for Land-Tenancy Matters, 8 judges; First Instance Courts, 62 judges; Instructional Courts, 36 judges; Original Jurisdiction Courts, 23; the Special Traffic Courts, 8 judges; the Court of Justice of the Peace for Labor Matters, 21; and, 146 in the Courts of the Justice of the Peace. Under these administrators of justice are 1,944 subordinate and support personnel.

According to the surveys, 54.5% of the judges considered that there are not enough subordinate and support personnel to handle all the work, especially auxiliary personnel and secretarial staff.

The Constitution grants the Senate the exclusive power to appoint all judges, a power which has been widely debated. A majority of the parties involved in and associated with the judicial system consider the method of selecting judges to be inadequate. This was the opinion of 91.9% of the attorneys, 67.5% of the representatives of the Prosecutorial Agency, and 62.9% of the judges themselves. The major reasons offered to justify this negative appraisal were: political influence (56.6% of the attorneys and 42.6% of the representatives of the Prosecutorial Agency), and arbitrariness (23% of the judges).

Subordinate and support personnel are appointed by the Executive Branch. This aspect was also highly criticized by the parties to the system, and the percentages were almost identical to those mentioned with regard to the selection and appointment of judges. The principal reason for the negative evaluation again was political influence, which is placed above the abilities, experience and honesty of applicants.

As of February, 1988, salaries for administrators of justice ranged from 800 to 3000 Dominican pesos, and those of subordinate and support personnel between 300 and 380. In Decree No. 257-88 of April 2, 1988, those functionaries earning less than 1,500 pesos were granted an increase of 10%. The surveys revealed that

88.2% of the judges consider their salaries to be barely adequate or inadequate.

Existing legislation does not permit judges to exercise any other profession except teaching. The surveys revealed that 72.7% of the judges have no other job for which they are paid, other than teaching as permitted by the law; 7.7% of them are cattle ranchers, 5.1% farmers, 5.1% businessmen, and 5.1% notaries.

Support personnel are forbidden from practicing law or any other profession which might distract them in the performance of their duties.

At present, of the 344 judges, a majority are male (66%) and the average age of this group is 37. Eighty-three per cent of the judges are attorneys and only 17% are not. Among the support personnel, 48% are male and 52% are female.

From the surveys it is possible to glean that 50.4% of the judges were educated at the AUSD, 17.7% at the ECU, and 13.3% at the MMCU. The education offered at these institutions is considered good (62.8% and even excellent 34.5%). Nevertheless, the majority (85.3%) recognize the need for further training, especially in civil matters (14.7%) and criminal matters (15.2%).

There is no formal education or training for the administrators of justice and the support and subordinate personnel.

Over the last few years, the only efforts at same have been sporadic training courses for judges, subordinate personnel and marshalls (akin to a process server), sponsored by ILANUD.

Even though the judicial career does not currently exist in the country, there is a bill before the legislature which calls for the creation of same. The majority of those interviewed considered this action to be one of the best the government could take to improve the administration of justice.

According to those interviewed, the three most serious deficiencies of the judges are the lack of training and experience (19.2% of the representatives of the Prosecutorial Agency, 17.3% of the judges, and 27.7% of the attorneys), negligence (11.7%, 5.6%, and 10.3% respectively), and corruption (61.3% of the representatives of the Prosecutorial Agency, 56.6% of the judges, and 91.1% of the attorneys). Likewise, a majority of the judges (59.3%), the attorneys (69.3%), and 42.9% of the representatives of the Prosecutorial Agency considered that there is substantial corruption among the subordinate and support personnel of the Judicial Personnel.

One of the yardsticks used to measure judicial independence is financial autonomy. In the Dominican Republic, this is

another controversial point. The Judicial Branch must submit its budget to the Executive, through the National Budget Office (ONAPRES), which, with no consideration for the needs or plans of the Judicial Branch, revises and generally reduces same at will. Next, the budget is submitted to the National Congress for approval. Once approved, the figure authorized is merely the greatest amount which may be assigned, since what it is actually allocated depends entirely on the availability of funds in the national budget.

Over the last few years, the resources allocated have not been enough to cover the basic needs of the Judicial Branch: for example, only 0.41 to 0.58% of the national budget has gone to the Judicial Branch. Furthermore, most of the resources go to the payment of salaries (87% in 1984 and 96% in 1982), which leaves very little for the purchase of material and equipment. Seventy per cent of said materials and equipment are in deplorable condition, and the chances of improvement are minimal because of the limited budgetary resources available for such purposes.

There are no statistical data on judicial activity. However, studies conducted on judicial activity indicate that the workload of the Supreme Court has tripled, and that 41% of the cases heard by same deal with violations of traffic laws. Likewise, in a sampling of 56 judicial offices, from September to November of 1987, it was observed that there is a high percentage of cases left pending each year.

Most of those who work with and in the system are quite satisfied with the work of the courts. The greatest degree of satisfaction is expressed with regard to the Supreme Court (80% of the prosecutors, 87.4% of the judges, and 55.8% of the attorneys), followed by the Courts of Appeals (66.3% of the prosecutors, 72% of the judges, and 39% of the attorneys), and the Courts of the Justice of the Peace (60% of the representatives of the Prosecutorial Agency, 49% of the judges, and 28.2% of the attorneys).

E. The Criminal Process

This section consists of a description of the criminal process in the Dominican Republic.

In the Dominican Republic, the criminal process is based on constitutional principles which exist to guarantee a fair prosecution and defense of the accused, as well as to protect the individual from arbitrary arrest and certain types of punishment. Even though these guarantees exist in the text of the Constitution, they are not always respected in practice.

In the Criminal Code, infractions are classified by the severity of each, keeping in mind the type of penalty called for

in the case of each. Three categories exist: criminal, correctional, and misdemeanors, and for each there is a separate process. The simplest process is that applied in the case of misdemeanors, and the most complex that applied to criminal offenses. All three share some common characteristics, such as the fact that all involve oral hearings, are open to the public and allow for rebuttal.

In regard to criminal matters, most serious crime, the process is the responsibility of the Prosecutorial Agency, and consists of two stages: the instructional stage, in which the court establishes that a crime has been committed, and that same was committed by the accused; and the trial stage, during which the guilt or innocence of the accused is established and the corresponding punishment is imposed. Upon conclusion of these two stages, there is the process of appeal. The first stage of the criminal process takes place before an Instructional Judge, is done in private, in writing, and without rebuttal, thus making it inquisitorial in nature. The second part, the trial stage, takes place before a First Instance Court, is oral, public, and allows for rebuttal, thus making it accusatorial in nature.

In simplified form, the following is the criminal process:

The representatives of the Prosecutorial Agency initiate the process by appearing before the Instructional Judge to present formal charges against the accused, documentation in which the details of the alleged criminal offense are outlined. The Instructional Judge, after receiving this request, decides whether or not to proceed to the summary stage.

The law does not permit that the accused have the benefit of counsel during the instructional stage, and the judge may even order that the accused be held incomunicado for short periods of time. Since existing legislation places no restrictions on the Instructional Judge in this regard, on occasion, the accused are held incomunicado for months, during which time the accused may not consult with counsel, private or public. This stage has been widely criticized in that same is considered an intrusion on the right to a proper defense.

During the instructional stage, the judge may order that the accused be held in preventive custody. Preventive custody is one of the most thorny issues of the criminal process because it may be ordered for any offense punishable by imprisonment. It may be ordered by the Prosecutor of the Court of First Instance in correctional matters and by the Instructional Judge in criminal matters. Said temporary custody can be brought to an end by a writ of Habeas Corpus, by the posting of bond authorized by the court, by decision of the Prosecutor (if it is within his/her competence to do so), by suspension of the order by the Instructional Judge himself/herself, or by the acquittal of the accused.

According to the surveys, the majority of those who work with and in the system (53.8% of the prosecutors and 49.7% of the judges) feel that the power the judges currently have to order the release of the accused is sufficient, and that they should not be given more. Nevertheless, a considerable number of same (41.3% and 46.9% respectively) feel that the judges should be granted additional powers. The majority of the judges interviewed (52.2%) stated that they have ordered that the accused be placed in temporary custody, and 13% that they have ordered that the accused be released in one of the ways authorized by the law. Surprising is the fact that 34.8% of the judges did not respond or did not know how to respond to this question. These data are cause for concern, since they are a direct reflection of one of the most serious problems faced by criminal justice in all of Latin America: the great number of people accused of an offense and awaiting trial (more than 83%), which implies a direct violation of the principle of the presumption of innocence.

Once the Instructional Judge has carried out all necessary procedures, he/she must send the case file to the Prosecutor, who, after reading same, may ask the judge for an order to initiate the trial or dismiss same for lack of grounds.

Once the Prosecutor returns the file, the Instructional Judge closes the instructional stage by declaring the case without cause, if the charges against the accused do not stand up, or orders that a trial be initiated, if there is sufficient reason to suspect that the accused is responsible for the offense. If the latter is true, the file shall be sent to the First Instance Judge, in order that he/she initiate the trial stage.

This summary stage is to last 60 days, but may be extended by the Prosecutor of the Court of Appeals, upon request of the Instructional Judge, for as long as is considered necessary to complete the investigation.

The trial stage begins with the issuance of the charges against the accused, which is the responsibility of the Prosecutor. In these charges, specific details are given as to the nature of the offense, the circumstances surrounding same, and the identity of the accused. Within the next three days, the Presiding Judge must interrogate the accused and decide who will defend same. A date is set for the hearing, and the file is sent to the Prosecutor in order that he/she summon the accused and witnesses.

During the trial, the accused must be informed of the charges against him/her. During this period, the witnesses are examined, and the allegations of the parties are heard. Upon the conclusion of the hearing, the judge retires to consider the

evidence. He/she then reopens the hearing, summons the accused, and pronounces the verdict.

This type of verdict is appealable.

If the sentence is appealed before the Court of Appeals, the exact same procedures are followed as in a first instance court.

For all criminal matters, the law establishes the remedy of Cassation, to be effected before the Supreme Court, and the purpose of which is to determine if the law was properly applied during the trial. This is a special measure which does not consider the facts of the trial again. Rather it is an analysis of the law itself and the application of same, for which reason it does not constitute a third jurisdiction.

The sampling of the judicial offices, from September to November of 1987, indicated, although incompletely, the following:

a) The Dominican system of justice is more in line with the system used in countries in which the legal system is based on common law rather than Roman law. For example, under the Dominican system, the power of the Prosecutorial Agency to decide which cases go to trial is not as broad as that exercised by the prosecutor in the Roman law system. Proof of this is that only 8% of all the cases accepted were dismissed.

b) A high percentage of the verdicts issued are guilty verdicts (90.4% in Courts of First Instance, 71% of the cases from the Instructional Courts go to trial, and in 48.6% of the cases, the Courts of Appeals upheld the penalties imposed by the lower courts). This may mean that the judicial investigation and instructional stage were conducted effectively, or that Dominican criminal justice is fundamentally repressive.

c) At the Prosecutors Section and the Courts of Justice of the Peace, most judicial decisions were reached within one to fifteen days (98.8% and 95% respectively). At the Instructional Courts, 63.2% of the decisions were reached within two months to a year, and only 36.8% were reached within the legal limit of two months. At the First Instance Courts, 52.7% of the decisions were reached in less than 15 days, 58% from one to two months, 44% between two and three months, 8% from two to three years, and another 8% three years or more. Nevertheless, most of those involved in and with the system feel that the time limits are generally respected (68.8% of the representatives of the Prosecutorial Agency, 65% of the judges, and 48.5% of the attorneys). More than one-fourth of the representatives and the judges, and almost half of the attorneys feel that such limits are not complied with, and gave as the principle reasons for non-fulfillment: negligence, corruption, and excessive workload. In

addition, most of those interviewed (82.5% of the representatives of the Prosecutorial Agency, 77.6% of the judges, and 95% of the attorneys) feel that justice is slow.

In addition to these empirical data, it is necessary to consider:

a) According to the criminal lawyers interviewed, in criminal matters, the legal period of 48 hours within which the Police must bring the person suspected of committing a crime before the competent judicial authority, is almost never complied with. This situation appears to be caused by, among other things, excessive bureaucratic redtape and the fact that occasionally the Police improperly assume the duties and powers of the Instructional Judge.

b) The instructional stage, in the vast majority of cases, goes well beyond the limit of two months established by the law. The principle reasons for this seem to be the excessive workload, an ever-smaller number of Instructional Judges, and less than effective police work.

c) One of the major, and most dramatic, consequences of the non-fulfillment of the time limits, especially those related to the instructional stage, is the number of people under temporary custody who are awaiting trial (more than 83% of the total prison population of the country), many of whom do not even know the charges against them.

F. Evaluation of the justice sector: conclusions.

The system of administration of justice in the Dominican Republic is evaluated in this section, but not necessarily in the order called for in the table of contents of this report. Rather, it is looked at in terms of the regulatory provisions which govern the actions of same, and whether or not they are in line with the current realities of the country; the accessibility of the system; judicial independence; and fairness and efficiency in the application of criminal justice.

1. Regulatory provisions:

In a society governed by law, the operation of the system of administration of justice must be governed by laws and codes. The Dominican Criminal Code and the Criminal Procedures Code are based on French codes from the time of the Restoration, and go back to 1884. It is for this reason, perhaps, that most of those involved in and with the system (61.3% of the representatives of the Prosecutorial Agency, 53.1% of the judges, and 63.7% of the attorneys) feel that the laws are not in line with the current realities of the country. In contrast, the majority of the prosecutors (60%) and judges (56%) stated that the Criminal Procedures Code is adequate. This may be due to the fact that to

say that the present codes are not adequate would imply their having to study and learn an entirely new one.

In the Dominican Republic, ignorance of the law is no excuse for not complying with same. This principle does not take into account the fact that 25% of the population is illiterate. Even for those involved in and with the system, the laws and procedures are not clear, according to the opinion of 62% of the representatives of the Prosecutorial Agency, 66.4% of the judges, and 79.7% of the attorneys.

2. Accessibility:

By accessibility it is meant that the system can be effectively used by the citizens to resolve conflicts among themselves or with the State.

One of the first conditions which must exist for the system to be truly accessible is that the citizenry be aware of the laws and of the institutions of the justice sector. In this regard, it is the opinion of about 85% of those involved with and in the system that the citizens do not know their rights. The majority, although not such a high percentage (65%), feel that the accused do not know their rights when brought before the criminal justice system, and as many as one-fourth of the judges and one-third of the attorneys feel that the accused do not even know the charges against them.

Access to the system is also limited by one's financial situation. Even though in the Dominican Republic criminal justice is supposed to be free of charge, and public defenders are provided for, this part of the system does not function properly. It may be for this reason that more than 80% of the attorneys consider that the creation of a permanent staff of public defenders is necessary.

Most of those involved with and in the system (57% of the representatives of the Prosecutorial Agency and the judges, and 44% of the attorneys) feel that the fees charged by attorneys are normal. If this perception were true, the cost of legal services would not be a factor in a person's decision to resort to the system of administration of justice.

Another indicator of the accessibility of the system is the extent to which the citizens understand same. However, the opinion of the majority of the representatives of the Prosecutorial Agency, judges and attorneys is that the justice system is so complicated that most citizens have no idea as to how it works.

The existence of corruption among judicial personnel also affects access to the system and the application of justice which is truly impartial. According to the surveys, most of those

interviewed feel that corruption does exist (61.3% of the representatives of the Prosecutorial Agency, 91.9% of the attorneys, and 56.6% of the judges).

3. Independence:

True justice must be independent, both externally (economic independence, independence for the Judicial Branch to hire and fire its personnel, and functional independence, which implies that judicial decisions are not motivated by external pressures), and internally (freedom for the lower judicial instances to act independently of those above, yet respecting the existing hierarchy).

In terms of external independence, the Judicial Branch in the Dominican Republic does not enjoy complete autonomy in that in many instances it is dependent upon the other branches of the Government. The Legislative Branch appoints the judges and approves the budget of the Judicial Branch. The Executive Branch appoints the subordinate personnel, and reduces the number of same at will, and executes the budget of the Judicial Branch. This budget is so inadequate that additional funds must be requested each September to finish out the year. Furthermore, this budget is much smaller than those of other countries in Central America (6% of the national budget in Costa Rica, and 2% in Guatemala, for example), and in real terms becomes less each year.

The degree to which judicial decisions are free of outside pressure is another aspect of this autonomy which is questionable. According to the surveys, 69% of the attorneys feel that judicial decisions are affected by outside pressures. However, most of the representatives of the Prosecutorial Agency (61.3%) and the judges (70.6%) feel that this is not the case.

As stated earlier, there is considerable dissatisfaction with the method of selecting, appointing, and dismissing judicial personnel. Those involved with and in the system feel that political influence and friendship are the factors given the most importance in these processes, rather than professional capabilities. The job instability of judicial personnel, and the fact that there is no judicial career, only serve to make justice less impartial and professional.

Judicial independence is a topic of concern to those interviewed, and they feel that one of the primary duties of the Government is to assure same.

4. Fairness:

The extent to which this principle is respected can be evaluated by considering certain parameters, among which the most important are: equality of access to the system, impartiality of

the judges, equity of judicial decisions, and respect for fundamental procedural guarantees.

With regard to equal access to the system, the surveys reveal that a difference of opinion exists between the prosecutors and judges on one side and the attorneys on the other. Most of the prosecutors and judges (51.3% and 52.4% respectively) feel that all citizens have equal access to the system, while 77.8% of the attorneys feel that inequalities exist.

According to the surveys, the general opinion is that justice favors the rich over the poor. This is the opinion of 63.8% of the representatives of the Prosecutorial Agency, 50.3% of the judges and 83.2% of the attorneys. However, most of those interviewed (78.8% of the representatives of the Prosecutorial Agency, 77.6% of the judges, and 58.5% of the attorneys), did not agree with the opinion that everything is decided beforehand in the courts.

Another general opinion was that the decisions of the courts are, in general, fair. On a scale from 1 to 10, one half of the judges and representatives of the Prosecutorial Agency gave a grade of from 8 to 10. The attorneys were more critical, with 53.4% giving a grade of from 5 to 7.

On the same topic, most of those interviewed feel that the judges apply the law correctly most of the time, especially the Magistrates of the Supreme Court and the Judges of the Courts of Appeals.

Finally, it is important to note that most of those interviewed (60% of the Representatives of the Prosecutorial Agency, 49% of the judges, and 66% of the attorneys) feel that a citizen who has been accused and tried under the criminal justice system, even though acquitted at the end, will be a marked person in the eyes of society.

5. Efficiency:

It is very difficult to evaluate the efficiency of the system of justice in terms of costs and benefits. This is so because the system is a very complex one with goals and objectives of public interest, and deals with concepts that are difficult to evaluate quantitatively, such as justice, equity, innocence, etc. In spite of this situation, certain parameters can be used to measure the efficiency of the system.

One of these parameters is the degree to which the system complies with the time limits imposed by the law, in order that justice be swift. Most of the representatives of the Prosecutorial Agency (82.5%), of the judges (77.6%) and of the attorneys (95.1%), expressed the opinion that justice in the

Dominican Republic is slow. Among the causes for this slowness are the numerous exceptions provided for in procedural laws, as well as the inadequate number of support personnel, and almost total lack of physical space, equipment and supplies needed for the work of the judges. Although there are no statistics on the workloads of the judges, the fact is that there is a considerable backlog of cases, especially in the bigger cities like Santo Domingo and Santiago.

Other indicators of the efficiency of the system are the methods for selection of judicial personnel and the professional preparation of same. The criticisms of the system of selecting personnel have already been mentioned. There is also a lack of training programs for judges and support and subordinate personnel of the Judicial Branch.

Finally, the efficiency of the system can be judged by the degree of satisfaction those who work with and in the system feel with regard to the performance of each participant. In general, there is satisfaction with the performance of the Judicial Branch personnel. Greatest satisfaction is expressed with regard to the performance of the Supreme Court, followed by the Courts of Appeals and the Courts of Justice of the Peace.

With regard to the rest of the personnel within the system, there is great dissatisfaction with the performance of the National Police when they act as Judicial Police. Mention must also be made of the high degree of dissatisfaction with the work of the Public Defenders.

The system cannot function properly if it does not even have available to it the equipment and services it needs. There are deficiencies in physical facilities, office equipment, libraries, and bibliographic materials.

In general terms, the inefficiency of the system of justice is caused, to a great extent, by the absence of planning and evaluation policies and mechanisms. To respond to this situation, and as a first step, a system must be implemented for the compilation of statistics, something which was not begun until less than a year ago.

As a general conclusion of this study, which brings to light numerous deficiencies and problems of the system of justice, it can be stated that the Dominican system operates at best "so-so" (68.8% of the representatives of the Prosecutorial Agency, 67.8% of the judges and 34.7% of the attorneys). The attorneys were the most critical group in that 28% of them consider that the system operates badly, and 35.8% that it operates very badly. It is the duty of those responsible for the administration of justice, others interested in the topic, and the citizenry of the Dominican Republic to find the methods and instruments needed for the system to operate properly.