

EXECUTIVE SUMMARY

HONDURAS 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 Prevención 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 Honduran National Commission was established by executive decree in late 1985. Its membership consists of representatives of the Supreme Court, the Ministry of Justice, the Procuraduría, the Bar Association, CONSUPLANE, and the University of Honduras Law Faculty for a total of 6 members. Although there was a technical coordinator during the first year of the Commission's existence, that role is currently unfilled. The Commission has met infrequently and lower level officials have participated most often.

The FIU-Honduras study team, together with ILANUD representatives and the AID Regional Administration of Justice Advisor (RAJO), 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. Foremost of these is the director of the study, Eliseo Pérez Cadalso, a former Minister of Foreign Relations and Deputy in the National Congress.

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 José, 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 Honduras as the third. The Honduras study began in July 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 Hondurans 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.

Abogado Eliseo Pérez Cadalso, former Minister of Foreign Relations and well known attorney, was selected as the Honduran study coordinator and an interdisciplinary staff consisting of fourteen professionals (7 attorneys, 1 engineer (who acted as project statistician), 4 economists, 1 public administrator, and 1 specialist in library science) was organized. Additionally, twenty-five 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 Honduran juridical bibliography, consisting of 1,200 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 Honduran perceptions of and experiences with the justice system. The surveys were as follows: 1) national households (612); 2) judges at all levels (163); 3) prosecutors (101); 4) lawyers (254); 6) inmates at penal institutions (349). We were originally going to subcontract a local firm to conduct all surveys but the bids were so high that we used law students to conduct the inmate and lawyer surveys. An additional difficulty that we encountered was formulating the national sample since Honduras has not had a national census since 1972. We were also faced with the exclusion of certain areas of the country that were besieged by conflict and the high costs proposed by the bidders. These factors compelled us to reduce the scope of the population sample from 1200 to half and to restrict it to Tegucigalpa, San Pedro Sula and two smaller cities so that it is not a nationally representative sample.

6) Proposed Justice Sector Analyses Report. This report is being drafted in coordination with the regional FIU team, will be reviewed by the Regional Administrator of Justice Advisor, and presented for review to USAID/Honduras and ILANUD in April of 1987.

7) Review by USAID/Honduras, ILANUD and National Officials. All of the foregoing will review the draft of the Justice Sector Analysis. To facilitate review by Honduran officials, a prominent Honduran may be 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 is 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 will be completed.

8) Action Recommendation Workshop. A workshop, will be held following the first presentation to local officials, cosponsored by the Honduran National Commission for the Improvement of the Administration of Justice and ILANUD, as the vehicle for the analysis of the final report and the production of recommendations for action. Action recommendations may include 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 will indicate the government or international agency to respond. Care will be taken not to raise the expectation with any Honduran official that AID assistance would automatically flow from this process. ILANUD and Honduran officials will be informed that AID will study the recommendations of the workshop to determine whether any of them fit USAID/Honduras programing priorities.

III. Administration of Justice and Socio-Political Development.

Honduras covers an area of 43,271 square miles and has a population of approximately 3.83 million inhabitants. The population is predominantly white, descendants of Spanish or other European settlers. Ninety five per cent of the population is Roman Catholic. The economy of the country depends primarily on agriculture and livestock production. Its trading partners are principally the United States, the European Economic Community, Japan and other Central American states. The monetary unit is the lempira which has been officially traded at 2 to the dollar for several years.

The Constitution establishes the traditional division of powers between three branches of government: the legislative, the judicial and the executive, 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 (i.e. the University). Presidential and legislative elections take place every four years.

Ideal justice goals have been a precept contained in every Honduran Constitution since its independence in 1824. Unfortunately there have been more than fourteen national constitutions and three federal ones during that period which is been characterized by internal and external conflict (more than seventy of them since independence).

During its colonial period Honduras was part of the general Captaincy of Guatemala and derived many of its laws from the colonial system. Immediately after independence, Honduras joined

the new Central American Federal Republic and by 1827 found itself at war with the leadership of the Republic. During that war, Francisco Moraz n defeated the federal forces near Tegucigalpa and led an army of Nicaraguans, Salvadorans and Hondurans to Guatemala (1829) where he became President of the Republic and was shot in 1842 after being almost continually in a state of civil war.

These bloody beginnings set the pattern for Honduran politics and civil war became almost a national sport supported as a lucrative industry. This continuous state of war effectively prevented the development of a modern legal system through the prior and the current centuries.

The late nineteenth century brought with it the intervention of foreign firms in Honduran national life. Foreign development of the mining industry was followed by the banana plantations, especially by United Fruit Company, and multinational corporations became a central political and economic force in national life. The justice system was not unaffected. For example, in the banana areas it was common for public employees to receive a subsidy from the United Fruit Company and judicial functionaries were not exempt from this corrupt practice.

The most important period for the development of the justice sector came in 1906 during the administration of Manuel Bonilla when some of the major legislation of the nation was enacted. Even though many of these codes have been replaced, several (the Civil Code, the Code of Civil Procedure, the Law of Organization and Operation of the Courts and the Police Law) are still in force, almost unchanged. These framers also established the property and civil registries as well as the Public Ministry. These codes were especially influenced by foreign experiences with primary reliance on Spain for the penal code and Chile for the civil counterpart.

One of the most serious deficiencies of this massive undertaking was the absence of prior study of local conditions to determine the effectiveness of adoption of foreign legislation in a Honduran setting. This led to a confused and inappropriate body of laws unsuited to local needs and conditions. Only the civil codes have survived.

During the governments of General Carias Andino and Juan Manuel Galvez (1932-1954) a number of economic reforms took place which, in effect, produced a second independence as the National and Investment Banks were created, an income tax was adopted and a series of other important economic reforms took place (also adoption of a new commercial code). New legislation was also enacted in the labor and social welfare fields (occupational safety, child and women labor regulation and the establishment of the Labor Ministry).

The government of General Oswaldo López (1963-1971) established a series of social reforms such as enactment of the Labor Code and creation of the Honduran Institute of Social Security and the National Board of Social Welfare. Possibly one of the major achievements was enactment of sweeping land reform legislation.

One of most surprising features of Honduran political history is the role which the military has played in it, especially during the latter half of this century. The first major period of military intervention came in 1956 with a military coup followed by a period of military rule. During its short one year rule, they issued a number of progressive laws and surprisingly called elections in 1957. The Supreme Court, which the military rulers named, was characterized by the high quality of its members of a lack of executive interference in its actions.

The military assumed power once again in 1963 (General Oswaldo López Arellano). General López assumed power in 1973 as a result of another coup and he was himself the victim of a military coup in 1975 led by Colonel Juan A. Melgar Castro, replaced later by Colonel Policarpo Paz García who led the country until 1981. These military governments produced a series of major reforms in the administration of the Honduran state, for example, creation of the Civil Service in 1967. In the justice field, military administrations have been characterized by the quality of the Supreme Courts they have empanelled and the lack of serious interference in judicial operations. Paz García's government enacted the Judicial Career Law, meant to guarantee job stability to judges.

The administration of President Suazo Córdova was one of the most negative for the justice sector. Its lowest point came in 1985 when a conflict arose between the President and the Congress over the power of each to remove and name Supreme Court judges. Honduras faced the embarrassing situation of having two Supreme Courts for a short period of time, one named by the President and another named by the Congress with orders to jail its members. All of this conflict produced one of the most unproductive and mediocre periods of justice administration in Honduran history.

The national elections of 1986 produced some unexpected results. Several candidates from both parties ran in the national election for President and even though Callejas, one of the Nacional Party candidates, obtained the most popular votes but because of an agreement entered into prior to the elections which dictated that votes would be grouped by parties and the President would be the vote leader of the winning party, lost the election to the current President, Azcona. The closeness of the election and the popularity of the losing Nacional Party, forced both parties to enter into a series of postelectoral agreements to divide executive power. Thus the minority party was given

control of the Procuraduría General de la República and a majority of the members of the Supreme Court (five of the nine members were named by the Nacional Party) with an equal distribution of lower court judges among both parties.

One of the most surprising political developments in recent years was the struggle over the judicial budget which took place last year. The Honduran Constitution provides that the Supreme Court should receive an annual budget equivalent to three per cent of the national budget. It has never received anywhere close to this amount. During the Suazo government it entered into construction of a new Supreme Court building but never received the funds to complete it and the new court was faced with a half completed building in which employees were even without water. The financial situation was so critical that the Supreme Court used the judicial pension fund as collateral for construction of the building and had it seized due to its inability to meet its obligations.

The current Supreme Court for the first time refused to accept the budgetary allocation of the Ministry of the Treasury which gave it only a small increase over the prior year's budget and took its case directly to the Congress. Its staunchest ally was the bar association which took its case to the newspapers and threatened to sue to have the national budget declared unconstitutional if the 3% was not awarded to the Court. Through political negotiations an agreement was reached in which the Congress awarded a substantial increase to the Court and the matter was settled.

IV. Institutions and Agencies Participating in the Justice System

A. The National Congress

The single-chamber, 134 member Congress, is charged with law-making, with the appointment of Supreme Court judges, approval of all executive and judicial budgets and with creating new courts in the country.

The Congress is divided into an Executive Board (Junta Directiva) composed of a President, three Vice-Presidents and three Secretaries. The Executive Board names a Permanent Commission which acts while the Congress is not in session. The Congress is also divided into permanent and special committees which oversee matters within their jurisdiction.

The legislative process has several steps: a) the proposed legislation must first be presented to the appropriate committee, where it is studied and amended; b) once the bill is discharged from the committee it is presented to the full Congress for debate, which must take place on three consecutive days; c) if passed by the Congress 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 which has jurisdiction over the subject matter touched upon by the legislation.

The Congress operates in a slow and cumbersome manner without the assistance of modern means of research or tracking of legislation. There have been no major code reforms in recent years and these have historically been drafted by non-members appointed by the Executive for that purpose. The action of the Congress is mostly reactive with little legislation arising from its own initiative. Like many other Latin American countries, the Executive may be said to carry out a major share of the legislative action through the adoption of executive decrees.

Much of the current Honduran legislation is outdated and there is a need for major legislative revision in many areas. Our survey results indicated that the laws passed by the Congress, with regard to the administration of justice, are felt to be unrealistic 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 Congress, 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 and a Council of Government, made up of the twelve 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. b) The Procuraduría General de la República, the highest legal government office, to which is entrusted the defense of the State in all judicial proceedings; c) the Ministry of National Defense and Public Security which regulates the activities of the armed forces and the FUSEP (the national police force which is part of the armed forces). While other ministries, such as Immigration and Treasury also have supervision over smaller specialized police forces, these do not have the importance or size of the FUSEP. d) 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 Congress.

The Executive Branch also exercises legislative faculties

through decrees and regulations, which process is itself regulated by the "Ley General de la Administración Pública" (General Law for the Public Administration).

The output on matters relating to the administration of justice by those ministries most involved with this sector (Ministries of Justice, National Defense and Public Security) is significant.

V. The Justice System

A. Police

A military coup abolished the police as a civilian institution and the armed forces have incorporated many of these functions. There are five police agencies in Honduras:

1) The FUSEP (Fuerza de Seguridad Pública) which exercises normal police and national sovereignty functions. The FUSEP is considered an integral part of the armed forces.

The FUSEP also regulates the activities of the DNI (Dirección Nacional de Investigación) which is charged with investigations of serious common (the equivalent of felonies) and political crimes. This is also the equivalent of a secret police with its activities being classified as secrets of state.

The FUSEP also has within its jurisdiction the operation of "police courts" and "traffic courts". These courts resolve approximately 67% of all cases which are reported to the police without any recourse to the court system and without the appearance of lawyers in most cases. They have jurisdiction over all minor crimes.

2) There are municipal police forces in some of the major metropolitan areas which respond to the mayor of the municipality and do not have any structural or operational relationship to the FUSEP.

3) There is an immigration police which operates under the Immigration Department and is charged with regulating the entry and conduct of foreigners, especially refugees in the national territory. Its director is named by the armed forces.

4) There is another police force in the Treasury Ministry which is charged with investigating crimes which take place in the illegal importation of goods. Its personnel are members of the FUSEP but they operationally report to the Ministry.

5) Another police force within the Ministry of the Treasury is the DIA (Dirección General de Investigaciones Aduaneras) which also investigates contraband and fraud. Their officers are employees of the Ministry.

One of the major problems of the Honduran police is the lack of civilian control over the operations of the FUSEP. All of the surveys indicate a feeling that this police agency is too separated from the regulation of the judicial or executive branches. They are also characterized as corrupt and apathetic to popular interests.

The Judicial Branch has always expressed interest in creating a "judicial police" which would investigate all felony crimes but would report to the Supreme Court. It is unlikely that the armed forces would remove this responsibility from the DNI and allow such a powerful police body to operate outside its influence. Additionally, the Court does not have a budget to cover such an agency.

While the officer corps of the FUSEP receives advanced training, equivalent to a three year law studies program, and maintains close relations with the University for its training, the same is not carried through for its lower level personnel.

The relations between the different police forces are scattered or nonexistent and there is no national police policy or coordination.

Another problem which affects the Honduran police forces is that it is regulated by a law dating back to 1906 and which contains explicit references to a number of police forces which have either never existed or which have been abolished.

B. Public Ministry

The Public Ministry is the prosecutorial body, regardless of the name given in each country, and has within its jurisdiction the prosecution of all crimes which reach the courts. In the case of Honduras, these are felonies only.

The prosecutorial function is carried out by two institutions, the "fiscales" of the judiciary and the "procuradores" of the Procuraduría. The Procuraduría has as its responsibility, the investigation and prosecution of crimes which have arisen as a result of investigations of the Contraloría (the equivalent of the General Accounting Office in the United States). This only involves a very small percentage of crimes. The remainder of crimes fall within the jurisdiction of prosecutors employed by the Supreme Court and assigned to the different judicial levels.

There has been a strong movement in Honduras critical of the dispersion of prosecutorial functions between these two agencies. This does not appear to create any large problem. The main problem is the lack of specificity in the role of the prosecutor

which in Honduras is limited, with the judge taking the most active part in the investigation of criminal cases. In fact, when reviewing judicial statistics, we find that of the cases which enter each court, only a small percentage is ever referred to the prosecutor for prosecution and that the rest have been totally handled by the judge.

The fiscales operate under the worse conditions found in the judicial system. There are no support staff assigned to them, not even secretaries. They have no offices, desks, or even office supplies. They have to take their work to their own private offices to have it done. Many of them are not lawyers. Their salaries range from 866 Lempes (\$433) in the Appeals Court to 400 Lempes (\$200) in the trial courts. They are allowed to hold outside employment and most do, even as practicing attorneys, so long as they do not enter into conflict with their duties as prosecutor. Their workload are not very large and there is a great deal of difference depending on the caseload of the court in which they operate.

In order to deal with the main problem in this area, definition of the functions of prosecutors, new legislation and study is needed.

C. Public Defenders

Honduras provides in its Constitution that all accused persons shall have an attorney represent them during the trial and if the defendant is indigent, an attorney shall be appointed by the court. There is no right to appointed counsel prior to that. This effectively curbs the efficacy of the right to counsel since the major part of the case is decided during the investigative stage (instrucción) and steps leading to the release, pending trial, of the defendant are decided during these preliminary stages. The trial is usually a minor proceeding in which the record prepared during the investigation is read and the defendant is sentenced; to appoint a lawyer at this stage is usually useless to the effective protection of the defendant's rights or to move the case along.

There is no body of public defenders which labors full-time in this effort and private attorneys are appointed by courts to act as lawyers for indigents. Attorneys are not paid for these duties and attempt to spend the least time possible in the defense of their client. The law school has a clinic where its last year law students may represent indigent clients and they do a small amount of criminal defense.

D. Attorneys

Membership in the bar association is a requirement for legal practice. There is a requirement for a bar examination upon completion of legal studies at the University. This examination

is administered by the Supreme Court. A percentage of lawyers never take the examination and remain law graduates.

Regulation of the profession is exercised through the Association's Ethics Committee which reviews complaints against lawyers and recommends disciplinary action. A majority of lawyers felt that the disciplinary actions of the Association are either too weak or inefficient.

In reviewing the actions of the Bar Association, a majority of those lawyers surveyed expressed a negative opinion, characterizing the Bar association as a social club which does not protect the interests of its members.

There are nearly 1823 lawyers in Honduras with 86% of them being located in Tegucigalpa and San Pedro Sula. This breaks down to about 4.9 lawyers per 1000 population.

The bar association operates a number of continuing legal education programs but these have not been characterized by long term planning or responsiveness to the needs of the membership. It is currently involved in developing a "popular legal education program" in conjunction with the Ministry of Education. Its first activity is a one-hour long radio program broadcast to lawyers on national radio. It is too early to measure the success of this program. Election of the Dean of the Law School as the President of the Bar association has brought new awareness of the need for continuing legal education.

At the core of any legal system is the basic education which the legal profession receives prior to entry into the practice of law. The major Honduran law school is situated at the National University (UNAH) in Tegucigalpa. One other law school is operated in San Pedro Sula (USPS) but it is of recent origin and has a very small enrollment compared to the UNAH.

Legal education in Honduras 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 UNAH Law School has received a basic law library, prior to this time it had none of its own and will also receive a donation of office furniture, typewriters and copying equipment.

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 active in teaching courses and offering a program for officer corps candidates at the police academy.

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 nine members in three divisions (labor, criminal and civil), and elected by the Congress for four year terms ending at the commencement of the new political administration. In addition to its normal judicial duties as the nation's highest appeal tribunal, the Court is also charged with administration of the courts and appointment of all lower court judges.

b. The Appeals Courts (Cortes de Apelaciones), each made up of three judges appointed by the Supreme Court and hears all appeals from Juzgados de Letras. Of the eight Courts in the country, three are in Tegucigalpa, two in San Pedro Sula, 1 in La Ceiba, 1 in Comayagua and one in Sta. Bárbara.

c. There are 49 Juzgados de Letras in the country which operate either as specialized courts or are general in nature. These judges are appointed by the Supreme Court and act as the primary trial courts for serious crimes and important civil cases.

d. There are 317 Juzgados de Paz distributed among the 283 municipalities in the country. Depending on their location, they are either specialized (civil or criminal) or are general. They hear minor crimes, minor civil cases and act as investigating magistrates in serious crimes when so appointed by the Juzgados de Letras. They are appointed by the Supreme Court.

The location of the courts has been made haphazardly and without regard to caseloads. There is a large concentration of courts in the two major cities. In many instances, litigants or participants have to travel long distances to have their cases heard. It especially becomes a burden during the winter when road conditions make travel difficult. Additionally, Honduran law provides for the creation of a new lower tribunal for every new 4,000 citizens. Given projected demographic growth, this legislatively mandated expansion will create unbearable budgetary strains on the judiciary.

The last military government enacted a Judicial Career Law which sets forth mechanisms for the selection and tenure of judges with its main goal being the removal of political criteria

in judicial selection and tenure. The law has no effect without enacting administrative rules which must be adopted by the Court to place it into practice. The Court requested ILANUD to provide assistance in developing a set of administrative rules to make the Law effective. Experts were contracted and the report was presented several months ago. The Court has taken no action regarding this. It is surprising that almost a majority of judges interviewed were unaware of the existence of a Judicial Career Law.

The turnover in judicial personnel is one of the most serious problems affecting the system. Judges, but especially lawyers, were critical of the politization of the judicial selection mechanism. When asked about the most important action to be taken in improving the quality of Honduran justice, the judges rated the Judicial Career Law as number two while the lawyers rated it first.

There is a small administrative apparatus to oversee the administration of the courts. This is one of the most serious problem areas of the judicial sector. To cite but two examples, the Statistics Office of the courts has no statistics on which decisions may be made. For a long time its files were kept in boxes in the new building among debris and rodents. One employee was in charge of payroll for the judicial system but was fired when the new government came in. Since no one else knew how to get employees paid, he was rehired after employees missed a paycheck.

There is no planning which takes place and all administrative activities are concentrated in the capital without the other judges taking part in budgetary or allotment decisions. Caseloads are diverse and there is no attempt to measure them or to reallocate personnel or cases to evenly distribute them.

Another area of dire need is in the training of judges. There is no program to train incoming judges or to provide continuing legal education to sitting judges. Manuals for judges, especially judges of the peace are also a necessity. These manuals would give basic information about laws, procedures and forms to be used in cases. It must be remembered that different kinds of programs have to be developed for the justices of the peace than for the other judges. Justices of the peace have on the average a sixth grade education so that training must be different than those aimed at lawyers.

When the current court entered office it faced a period of financial crisis. Judicial budgets had not kept pace with the needs of the judicial system. While the Constitution provides a mandatory 3% of the national budget to be awarded to the courts, this has never been achieved. This year they have received approximately 1.9%, one third short of what they are entitled but 25% of that was specifically targeted for completion of the Supreme Court building. If this is reduced from next year's

budget they will return to the prior financial crisis. There has to be some plan agreed to by the Executive and Legislative Branches to progressively reach the constitutionally mandated 3%. Otherwise current achievements will go for naught.

Judges indicated a need for improved bibliographic resources and ILANUD has agreed to provide the Supreme Court with a basic library since it currently has none. This will however not solve the needs of courts outside of the capital. The need is as basic as having primary legal materials (codes, etc) in judges offices. In a recent ILANUD course, a major printing of the Penal Code was undertaken and distributed free of charge to all judges. Most of them did not have a copy. There should be a major effort to develop an inexpensive printing program of codes, both basic and annotated to supply to judges and lawyers. There is also a need to maintain legislation updated by incorporating jurisprudence, possibly through a legislative or juridical database.

F. Correctional System

One of the weakest links in the Honduran justice system is corrections. A major move has been the adoption of new legislation in 1985 which established a "progressive treatment program" for inmates. Due to budgetary and political factors, the law however is far from being implemented. Operation of the prisons is charged to the Ministry of Justice and Government.

There are a total of 766 employees to handle a prison population of 3635 inmates. There is a dire need for technical personnel with the majority of staff being guards. The Penitenciaría Central, for example, with 1120 inmates, only has one psychologist and one medical doctor. Administration is a concept alien to the prison system which operates on a minimal budget. Surprisingly, a review of their budget reveals that in many years they have spent less than in the prior year even though the prison population grew, for example, in 1986 they spent 10% less than the prior year and much less than budgeted.

One of the major problems of the justice system is the amount of inmates awaiting trial. Of the 3635 inmates, only 20.6% were convicted offenders while 77.4% were pretrial detainees and 1.4% were prisoners "on deposit". This last category indicates prisoners who have committed no crime but are being held because of the influence of a family member or enemy without any recourse to release. The average time spent awaiting trial, for inmates, is approximately 17.6 months with 24% of the prison population being jailed more than two years without trial.

The construction of the majority of prison building dates from this century but are generally overcrowded. For example, the Penitenciaría Central, built in 1876, has capacity for 300 inmates yet holds 1120. In general, the prison system holds 143.1% of its capacity.

The services offered to inmates fail to meet even the most basic needs. There is an allotment of \$0.42 for nutrition daily and they are not supplied with such basic items as toothbrushes, toothpaste, toilet paper, etc. Most cells are ill equipped to meet basic hygiene and are overcrowded. There are two few doctors and in some instances none. Many of the inmates work for other inmates and in some cases are rented out to private persons outside the center.

E. The Criminal Process

This section examines Honduras's criminal procedure, which continues to rely on the traditional civil law written process.

Criminal procedure in Honduras is not characterized by 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, although in many instances the judge does so, 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. Our figures show that the majority of cases which are reported to the police are never referred to the courts and are settled, in one way or another, within the police. The law states that once a person is arrested, he must be brought before judicial authorities within twenty-four hours. 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.

The first action which must be taken, once the defendant has been placed under the supervision of the court, is the taking of his statement by the judge within six days of arrest. Our study reveals that in 34% of the cases, the secretary or the escribiente were the persons who took the statement and that on the average these are taken within seven days with some taking as long as 730 days.

Honduran law allows only for 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.

This stage should not last longer than one month yet our own findings reveal that the average is eight months for those persons with a private attorney and 22.6 months for those persons without a lawyer.

Upon the completion of this stage, if the judge has ordered a trial, the defendant and prosecutor are ordered to appear for trial. The trial relies primarily on the written materials which were prepared during the investigatory stage and thus it is often a repetitive exercise.

The right to counsel, according to Honduran law, attaches at this stage. If a defendant is indigent a private attorney is named to represent him gratuitously. The importance of the preceding stages makes the appointment of counsel, only at the trial, an effective denial of this right.

The trial is concluded with an acquittal or a conviction with the requisite sentence being imposed therein.

II. EVALUATION OF THE HONDURAN 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.

Honduran legislation 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 Congress is charged with two important functions affecting the justice sector: legislating its norms and procedures, and determining its resources through the budget process. The Congress 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.

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.

Another problem common to all of the justice subsectors is the lack of adequate regulation, whether through legislation, rule or regulating agency. This is evident, for example, in the police sector which is characterized by legislation dating from 1906 and which regulates a number of agencies which no longer exist. New legislation defining the prosecutorial function is imperative. Implementing regulations for the implementation of the Judicial Career Law, 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. The Honduran Constitution has guaranteed to the judiciary real economic autonomy by awarding it 3% of the national budget to meet its operational needs. This figure has never been complied with and only recently has there been an increase which reaches 1.9%.

Several factors are related to judicial budgets. The primary determinant of Honduran judicial budgets is the salaries of its personnel. These salaries have been among the lowest in the public sector. There are some indications that as a result of the budgetary increase, a large portion of the increase will be devoted to salary increases. Secondly, the financial autonomy of the judiciary appears to be limited to preparation of the budget after a determination by the Congress or the Treasury. Another factor is the low percentage of the judicial budget which is dedicated to capital expenditures. An improved mechanism has to be developed, in cooperation with the Congress, both to develop better and longer-term budgets and to determine the way in which the monies are to be spent.

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 one of the primary problems.

There is a general perception of a rise in criminality among the population. This fear of crime has had a substantial effect on the quality of life of the Honduran population with the majority taking measures to prevent the possibility of victimization. The fear of crime not only affects the quality of life but also has an impact on popular 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, to protect them, the 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.

3. Of a Political Nature.

The Honduran 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 Honduran justice system has been historically characterized by reliance on the Executive and is unquestionably the weakest branch of government. The assignment of 3% of the national budget should award the Judiciary economic independence but it has never received its constitutional share. Subservience to the Ministry of the Treasury in this process restricts its independence. 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 although political considerations are at the center of most judicial appointments.

A major problem facing the Honduran 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 decision to incorporate the police forces into the military presents severe problems to the proper development of a democratic government and there should be some gradual transfer of these functions, possibly progressive, both in the case of the DNI (to the judiciary) and the FUSEP (to the municipal governments).

The Honduran correctional system is one of the worse in the region and 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 Honduran 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 Honduras 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 and even extends to the judges.

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 public and officials had about their justice institutions. Even though a majority felt that there was corruption in the judicial sector, the largest criticisms 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 Honduran police.

It is surprising that even though a substantial portion of those questioned identified negative factors of the justice sector as conditioning their vision of it, the majority of citizens 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. The availability of a free legal defense for those persons accused of a crime, regardless of financial resources, is a need unmet by the Honduran system.

C) Respect of Fundamental Guarantees.

Honduras presents an adequate human rights record. 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.

The worst case of human rights violations occur in the correctional system where, due to its draconic conditions, not even the most basic UN rules regarding the treatment of prisoners are met.

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 Honduran 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 our own (there are no judicial statistics to speak of) statistics which indicate that the prescribed procedural periods are frequently violated.

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

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, the majority of those persons surveyed indicated that they would notify police if they were witnesses of a crime.

Due to the specialized and important role which the DNI plays in the Honduran 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, a surprising number of judges (48.1% of magistrates, 16.1% of jueces de letras, 25.7% of jueces de paz and 31.3% of prosecutors) expressed no opinion which may be indicative of the separation between police and the courts.

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 a series of laws which allow superior judges to investigate the violations of inferior judges but there is no formal mechanism nor staff dedicated to this task. This is especially worrisome since the majority of the population and lawyers felt that there was corruption in the judicial system (74.3% of the population and 86.6% of lawyers). When asked to rate the amount of corruption, 72.4% of the population rated it as a great deal while 59.1% of the lawyers agreed with this perception. Generally, the resources assigned to this task are insufficient and the measures designed to curb misbehavior are oftentimes illogical.

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 Honduran justice sector is characterized by political interference in the judicial selection process.

Supreme Court judges are selected by the Congress and serve until the new government is inaugurated. There is generally no re-election although one of the members of the current court was on the previous one. 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, primarily political, dominate the process. The same concern was expressed over the selection of prosecutors which is also carried out by the Court. Adoption of the implementing regulations to the Judicial Career Law is critical in this area.

The police subsector possibly presents the best personnel selection problem due to the military nature of this service. If any transfer of their functions is made to the civilian sector, care should be taken to insure that a "civil service" type system is adopted for the selection of police.

2. Training.

Training has been discussed previously and will not be dealt with here.

Lawyers are initially trained in law schools and the deficiencies have been previously noted. A common denominator of the Honduran 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 absent. The Court has expressed interest in the development of a judicial school but 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 a judicial school since the number of judges and training needs may not justify the investment required to maintain a separate training facility.

3. Remuneration.

Salaries for judicial personnel appear to be inadequate, especially in the cases of lower court judges and prosecutors. The practice of allowing prosecutors to hold outside employment as lawyers should be ended since it presents serious appearances of conflicts of interest. Salaries of support staff are also woefully inadequate and may give rise to corruption

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 are presented by the correctional system which is characterized by overcrowding and unsanitary housing conditions. Continuation of current overcrowding will eventually lead to confrontations and prison violence.

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 courts are in need of even the most basic equipment. Care should be taken in awarding sophisticated equipment to the Court due to instability of personnel and the lack of financial resources to adequately compensate technical staff. For example, the forensic unit was given a \$500,000 piece of equipment by the Japanese government. A technician was sent to Japan to study its operation. After the next election he was fired and the equipment lies there unused.

One of the most serious equipment needs is in the area of information systems. This is one of the priorities expressed by all subsectors.

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 Honduran legal libraries leaves much to be desired. The law school had no library of its own until ILANUD awarded them a basic library and the same is true for the judicial system. Outside of the capital 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. 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 Honduran 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 Honduran 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 Honduran 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. The worst cases are those of the judiciary and the correctional system which have extremely primitive systems.

One of the primary areas of assistance should be in the administration area. These programs should be designed carefully and carried out progressively with a mix of technical assistance and training.