

September 1992

FOREIGN
ASSISTANCE

Promising Approach to
Judicial Reform in
Colombia



147587

**National Security and
International Affairs Division**

B-249318

September 24, 1992

The Honorable Alan Cranston
The Honorable Richard Lugar
The Honorable Daniel Patrick Moynihan
The Honorable Brock Adams
The Honorable Thomas A. Daschle
United States Senate

This is the second report in response to your request that we review U.S. assistance to improve the administration of justice worldwide.¹ This report focuses on U.S. efforts to assist Colombia in improving its judicial system. We have also issued reports to congressional committees addressing U.S. efforts to improve the judicial systems in El Salvador and Panama.² Specifically, this report describes (1) the approach employed by the United States to manage its judicial reform assistance to Colombia and (2) the program activities undertaken and planned by the host government and the United States in this reform effort.

Background

By the early 1980s, Colombia had recognized that its judicial system was largely ineffective in dealing with the high crime rate, and in 1984, the government declared Colombia to be under a state of siege due to high levels of narcotics and guerrilla violence. Between 1984 and 1989, approximately 31,000 deaths were attributed to drug trafficking violence alone. It is estimated that 350 judicial personnel have been murdered since 1980, including 50 judges, and a Colombian government survey shows that 25 percent of the judges reported that they or their families have been threatened. Additionally, military and guerilla forces were allegedly murdering and torturing people without being brought to justice.

In 1986, the U.S. Agency for International Development (AID) began to provide small grants—\$290,000 at first—to help improve the Colombian judicial system. Grant assistance had reached about \$2.6 million by fiscal year 1990. The 1989 presidential campaign and 1990 election became the turning point for the Colombian government to begin to take actions against the pervasive lawlessness. Upon taking office in 1990, the new President announced that judicial reform was one of his highest priorities.

¹Our first report was Foreign Aid: Police Training and Assistance, (GAO/NSIAD-92-118, Mar. 5, 1992).

²Foreign Aid: Efforts to Improve the Judicial System in El Salvador, (GAO/NSIAD-90-81, May 29, 1990) and Aid to Panama: Improving the Criminal Justice System, (GAO/NSIAD-92-147, May 12, 1992).

As a result, the Colombian government established a goal to enhance the autonomy and power of the judiciary, decongest the courts by making the court system more efficient, and modernize the criminal investigation process.

In 1990, to support the commitment of the new Colombian presidential administration, AID began developing a 6-year, \$36-million program to improve the functioning and independence of the Colombian judicial system. This funding included \$6.9 million for the U.S. Department of Justice's International Criminal and Investigative Assistance Program (ICITAP) project designed to improve judicial protection and the investigation and prosecution of serious crimes.

Results in Brief

Although it is too early to determine if AID's judicial reform package will achieve its objectives, the U.S. approach to judicial reform in Colombia thus far appears to be working. AID has promoted its judicial reform efforts in Colombia as a model to be duplicated elsewhere. Three factors have set this project apart from similar projects in other countries: (1) small grants were given—in this case to a private foundation—to help build a reform consensus within the judiciary, the private sector, and the executive branch; (2) the United States required a concrete demonstration of Colombian government commitment before providing increased funding; and (3) the U.S. Embassy designated this effort as one of its top priorities and involved multiple government agencies.

Many of the Colombian government reforms and AID project activities are still being implemented, but they appear to be addressing the major systemic flaws in the Colombian judicial system. Thus far, Colombia has ratified a new constitution and is implementing new procedural codes. AID has developed a systemwide reform package to address each of the deficiencies in the judicial sector and to support Colombian reform measures. As of March 1992, AID had disbursed \$6.5 million of its \$36 million 6-year reform project.

Although reform activities are being implemented, AID had not established criteria nor set targets or benchmarks that would help it evaluate the Colombian government's progress in implementing judicial reforms and provide a basis for further disbursements. In commenting on this report, AID stated that it has now identified performance indicators and is further refining them. Once the indicators and outputs are finalized, AID will relate disbursements to tangible reform results.

The United States Used a Different Management Approach in Colombia

AID has used a different management approach than in other Latin American countries, such as El Salvador and Panama, to implement reforms in Colombia's judicial system. In contrast to other management approaches, AID used small projects managed by a private foundation, the Foundation for Higher Education (FES),³ to spur interest in judicial reform within the Colombian government. AID financed projects to study the problems in the judicial system and, in the process, a consensus was built among representatives of FES. FES representatives became experts in Colombian judicial reform and, based on their commitment to change, the new Colombian President appointed a number of these representatives to serve in his administration. Thus, a bridge had been built to transition into a larger scale reform program. Host government, private foundation, and U.S. Embassy officials are confident about the expected improvements.

Small Projects Used to Build Consensus

In the mid 1980s, the Colombian government did not know what actions to take to correct its ineffective judicial system. In addition, according to AID, the possibility of receiving AID funds contributed to a jurisdictional dispute between the Justice ministry and judicial branch as to who should manage the funds. Furthermore, AID was concerned that bureaucratic infighting and a cumbersome bureaucracy would delay project goals, and Colombian officials were skeptical of foreign involvement in their country's internal affairs. Further compounding the problem, AID did not have appropriate systems and procedures in place to administer the program and interact with the Colombian government.

Because of these concerns, AID determined it would be inadvisable to begin a large-scale judicial reform project with the government at that time. Nonetheless, both AID and the Colombian government recognized that something needed to be done to improve Colombia's judicial system. AID, along with the U.S. Embassy, decided that the best approach would be to provide small grants to a private organization to begin building consensus among the judiciary, the executive branch, and the private sector that judicial reform was of paramount importance. FES was selected to accomplish this task, and from 1986 through 1990, AID provided it with a series of small grants. Under the guidance of an advisory committee composed of members of the executive and judicial branches of the government and FES, the foundation began its work in noncontroversial

³FES was founded in Cali, Colombia, in 1964 as a nonprofit organization modeled after U.S. philanthropic organizations.

areas, such as providing codebooks to judges, developing baseline data on the operation of the judicial system, and developing judicial libraries.

As FES completed these projects and built support for its advisers, it was able to expand its focus to include pilot projects. For example, in 1990, FES developed a project in Itagui, Colombia—a small city in the heart of the narcotics-trafficking country—to streamline court procedures and reduce the backlog of cases. By automating case management work load, sharing administrative resources among 13 judges, and designing more efficient office space, Itagui brought its caseload up-to-date within a year. The Minister of Justice is considering expanding this project nationwide.

According to AID and FES officials, their most visible success was the design of the Courts of Public Order. Because judges were subject to both threats and bribes, Colombia had been unable to convict narcotics-traffickers and guerrilla terrorists. Using AID funds, FES sent a group to study the actions Italy has taken to deal with organized crime and then designed a court system to address Colombia's needs. This new system consists of 92 judges who remain anonymous throughout the proceedings and are provided additional protection, such as police escorts and protection at undisclosed quarters away from their families, while investigating and hearing such cases. Since the system's inception in January 1991, these courts have convicted 70 percent of the approximately 800 individuals tried for drug and terrorism-related crimes, according to a Colombian government official. The conviction rate is only 12 percent in ordinary courts. While human rights organizations have expressed concern that the Courts of Public Order may infringe upon a defendant's due process rights, the U.S. Embassy believes adequate safeguards against such infringements have been incorporated into the process.

According to AID, FES, and Colombian government officials, the most significant impact of AID and FES' work has been the resulting commitment from key officials on the need to reform. For example, FES sponsored a work group in April through August 1990 supported by the Colombian President. The group, lead by the Justice Minister, designed the constitutional reforms, which the Assembly ultimately ratified. In contrast, a FES adviser characterized reform efforts in El Salvador as meaningless because reforms were imposed from outside without internal commitment from the host government. A Colombian government official cautioned, however, that consensus building takes time; it took 2 years in Colombia. The Colombian Attorney General stated that if AID had stopped funding the initial FES studies, Colombia might not have had the political will to go

forward with the reform movement. Now he believes the impetus is too strong to stop or reverse the movement.

U.S. Assistance Predicated on Colombian Government Commitment

By August 1990, after the new administration took office in Colombia, the political atmosphere was ripe for reform of the Colombian judicial system. The new Colombian government had pledged itself to judicial reform and had proposed a major overhaul of the judicial system. The U.S. Embassy believed the Colombian government had a general consensus on what needed to be done, and it was at this time that AID began its long-term efforts. The U.S. and Colombian governments signed a 6-year, \$36 million grant agreement on August 9, 1991.

The new judicial reform project differs from earlier, smaller projects in several ways. Not only is it larger, but the initial funding will be based on the Colombian government's demonstrated commitment to reform. Unlike the earlier AID projects, the U.S. government signed the project agreement with the Colombian government rather than with FES. While FES will continue to administer funds, such as procuring commodities in Colombia and managing some pilot programs, the government, rather than the private institution, will be responsible for the project's implementation.

AID released the first \$1 million of project funds in October 1991. However, before releasing the next disbursement, the Department of State and AID wanted the government to have planned and begun implementing the project. To accomplish this, AID required the government to establish a multi-institutional executive committee to (1) manage the projects, (2) coordinate and plan all activities, (3) ensure that project objectives are met, and (4) provide the U.S. Embassy with an annual work plan. The executive committee was named on January 24, 1992; the first annual work plan was submitted to the Embassy on February 24, 1992; and AID disbursed \$5.5 million on March 24, 1992.

ICITAP officials advised us that conditioning the \$5.5 million disbursement on the establishment of an executive committee delayed the disbursement of \$2.3 million that had been earmarked for their projects. This delayed ICITAP's schedule by about 6 months because it could not transfer a project manager to Colombia to plan future work. However, we could find no negative impact from this delay. Given that the Colombian government did not adopt implementing legislation until November 1991, AID stated that the executive committee could not have approved any of the proposed ICITAP projects and ICITAP could not have begun training earlier. Further,

the focus of much of ICITAP's work will be in strengthening the office of the Prosecutor General, which has yet to begin operations. ICITAP could not identify any specific negative impact on its program, and it was able to use reprogrammed regional funds and bridge monies during this period to plan its activities.

Despite the minor delay in ICITAP activities, we believe that AID's decision was correct to seek concrete evidence of the Colombian government's commitment to judicial reform and to structure the project around reform efforts already initiated. This approach not only responds to the specific conditions in Colombia, but also avoids problems we found with judicial reform projects in other countries. For example, judicial reform projects in El Salvador, Honduras, and Panama have experienced implementation problems largely because the governments in these countries were unwilling or unable to provide a strong political or financial commitment. In each case, the United States gave funds before the host governments had demonstrated the willingness or capability to take the steps necessary to make the projects successful.

One shortcoming in AID's approach in Colombia, however, was that AID had not based further disbursements on actual progress resulting from the reforms. We believe that this is particularly important because, even though laws reforming the judicial system have been enacted, it is too soon to tell how effectively they will actually be implemented. The grant agreement between the U.S. government and the Colombian government requires Colombia to submit annual work plans to AID. These plans will form the primary basis on which project activities will be approved. Neither the grant agreement nor the project paper specify how the work plans will be evaluated nor what criteria will be used to approve future projects. The project paper does, however, require three external evaluations, but does not base further disbursements on the outcomes of these evaluations.

Priority and Multiagency Management Approach

According to U.S. Embassy officials, counternarcotics is the number one priority and driving force behind all U.S. policy decisions regarding assistance to Colombia. Both the U.S. Congress and the Embassy have recognized the importance of judicial reform in achieving counternarcotics goals and therefore rank judicial reform as a top U.S. objective.

Given the importance of this endeavor, Embassy officials determined that the AID project alone could not achieve the desired improvements and that it should look to other U.S. assistance programs for whatever related

training or commodity support they could supply. Further, officials believe that the State Department can provide the foreign policy perspective in its dealings with the host government. Other U.S. embassies, such as in Honduras and Costa Rica, have permitted AID's judicial reform activities to operate without the benefit of high-level embassy support and contributions from other U.S. agencies. In Colombia, however, reforming the judicial system is viewed as a U.S. multiagency effort.

U.S. efforts to design the Courts of Public Order is indicative of the success of this multiagency approach. Specifically, AID funded the design of the project; the State Department's Anti-Terrorism Assistance Program provided security training; the Department of Justice helped prepare court operation and case administration procedures; the Embassy's Narcotics Affairs Section purchased equipment out of counternarcotics funds; and ICITAP conducted security surveys and provided training for judges and protective details. These organizations, as well as the United States Information Agency, remain involved in promoting judicial reform in Colombia.

To coordinate these diverse activities, the Ambassador established an Administration of Justice Team within the Embassy that meets twice a month to review all recent activities and plans. Heads of any agency or State Department section that has an interest in, or an assistance program related to, judicial reform is included. For example, during our visit, the committee turned down one agency's request to initiate a training course because such training would have duplicated another program. Also, through this mechanism AID and ICITAP project managers have direct access to the Ambassador.

Embassy officials were generally pleased with how judicial reform activities were managed and credited the extensive coordination and control to the current Ambassador. They stated that one lesson they have learned from this experience is that unless judicial reform is a U.S. Embassy priority, it may not receive the management and political attention it needs to succeed. The experience in Colombia shows how a program can work when the ambassador brings together the different U.S. agencies and becomes personally involved in high-level policy dialogue with the host government. Officials we interviewed recognized that this type of coordination is dependent on the management style of the Ambassador and they expressed the hope that it can continue.

Approach in Colombia Differs From Other U.S. Efforts

AID's management approach—waiting to begin a large project until the host government was committed to reform—appears to be an effective strategy to prevent the inefficient use of U.S. funds. The philosophy of U.S. officials in Colombia is quite simple: the host government rather than the U.S. government should lead reform efforts and the United States should stimulate rather than impose changes. According to a State Department official, the most significant U.S. success was its ability to assist Colombia when Colombia was ready and willing to make necessary changes.

This approach contrasts with situations in other countries. In El Salvador, for example, the United States unilaterally identified the needs and then used a project to elicit host government support to make significant political improvements. We concluded in 1990, however, that after 6 years, and the commitment of \$13.7 million in U.S. financial support, the El Salvadoran government still had not demonstrated the commitment to make the necessary changes, and the goals of U.S. assistance remained largely unmet. In Panama, the government was having difficulty making the financial commitment necessary for U.S. reform assistance to succeed, and AID officials in Honduras cited the lack of host government support as the major factor impeding reforms.

Colombian and U.S. Reform Activities Address Major Problems

FES work showed that the Colombian judicial system was flawed in all aspects—systemic and institutional—and needed a major overhaul. To correct these flaws, the Colombian government determined it had to completely revise its constitution and procedural codes. AID's reform efforts were designed to support these changes.

Both the Colombian government and AID recognized the need to develop a comprehensive rather than piecemeal approach to judicial reform. Overall, Colombian and U.S. government officials determined that if all the participants in the justice system were not included in the reform efforts, improvements made in one area could create problems in another area.

Colombia Addresses Systemic Problems

The Colombian government identified the three systemic problems in its judicial system:

1. The judiciary was not independent from the executive branch, so it could not deliver impartial justice.

2. The courts were extremely congested, so about 75 percent of all criminal cases remained untried. By 1991, the Colombian government estimated that 2 million cases had not been resolved.

3. The system lacked effective investigation and prosecution of criminal activities.

The government then established goals to correct these problems.

In July 1991, the Colombian Assembly ratified a new constitution that helped establish an independent judiciary, provided measures to decongest the courts, and promoted more modern and independent means to investigate and prosecute criminal acts. In November, it adopted legislation to implement these constitutional changes. AID, State, private sector, and Colombian officials agree that if these changes are implemented properly, they should dramatically improve Colombia's judicial system.

To enhance the autonomy of the courts, the constitution provides that the judicial branch will submit its budget to the executive branch and manage its own finances. To relieve court backlog, the constitution grants certain parties temporary authority to act as conciliators or arbitrators. Implementing legislation, for example, authorized the establishment of conciliation centers. These approaches are targeted at resolving family, labor, and civil disputes so that the courts can deal with serious crime.

Also, because the authors of the new constitution wanted to include assurances that agencies would not abuse their new authorities, they established or reaffirmed oversight agencies to oversee the conduct and management of public sector employees and funds. Further, the constitution specifically provided for the protection of human rights of citizens. A recent publication from Americas Watch, a leading human rights organization, praised the Colombian government's efforts and said that these efforts signal a willingness to reform.

According to Colombian government officials, the most important change in updating Colombia's antiquated judicial system was the establishment of the prosecutor's office to investigate and prosecute cases. Under the old system, judges, usually untrained in investigative techniques, performed the investigations and then judged a suspect's guilt or innocence. Under the new system, a trained investigator obtains and develops evidence, a prosecutor prepares a case against the accused, and a judge then determines guilt or innocence based on the evidence developed during the

investigation and a presentation by the prosecution and the defense. The Courts of Public Order were the first to use this new approach.

AID Project Supports Each Institutional Change

AID's project is designed to complement the three goals of Colombia's judicial reform program. The first AID project component focuses on improving the organization and planning capabilities of the judicial sector. The second will focus on improving the investigation and prosecution of crimes as well as judicial protection and the investigation of corruption and human rights violations. The third will focus on improving the operation, administration, and independence of the courts. In this last area, AID will help the courts administer themselves, extend the pilot administrative improvement programs systemwide, and provide advisers and other assistance to the new conciliation and mediation centers.

According to AID and U.S. Embassy officials, the approach in Colombia, which supports all three goals of judicial reform, was based on the view that when diverse problems exist throughout a judicial system, targeting just one area could be counterproductive and wasteful. For example, improved investigations would result in more cases brought to trial. Unless there is a corresponding effort to deal with a court backlog, as occurred in Colombia, improving and reforming administration of justice in a country could be much less successful. AID, ICITAP, and Colombian officials stressed that the strength of the program to reform the Colombian judicial system was to address the entire judicial process.

By March 1992, AID had disbursed \$6.5 million for activities to be conducted in the first year of the project. About \$3.9 million was targeted for the new prosecutor's office; training and equipping investigators; the public ministry, which will oversee official conduct and human rights; judicial protection and related criminal investigation; and prosecution support. Of the \$3.9 million, ICITAP received \$2.6 million. An additional \$770,000 will support operations of the courts and the conciliation centers, and about \$1 million will fund AID and FES administrative costs, such as salaries and overhead expenses. Since funds were only recently disbursed, these activities are just beginning to be implemented.

Recommendation

We agree with AID's philosophy that the United States should support host government measures and that the disbursement of project funds should be based on the Colombian government's demonstrated commitment. Therefore, to ensure maximum effectiveness and efficiency of U.S. funds, we recommend that the AID Administrator, in conjunction with the U.S. Ambassador in Bogota, establish criteria and set targets or benchmarks for measuring Colombian government progress in implementing its reform plans and base additional disbursements on assessments of the government's progress in meeting these goals.

Agency Comments and Our Evaluation

The Departments of State and Justice and AID generally agreed with our report, and AID stated that it was in the process of implementing our recommendation. AID stated that specific outputs—and indicators to verify progress in achieving them—have been identified and are being refined, and that future disbursements and other aspects of project implementation will relate to tangible indications of progress resulting from reforms.

Although the Department of State generally agreed our report accurately described the judicial reform project in Colombia, it stated the report inaccurately suggested different philosophies motivated the Central American projects and the Colombian project. State said that the Colombian approach—to follow, not lead and to use a sectorwide approach managed by the Ambassador drawing on the full country team—reflects the general policy guidance for all administration of justice programs. State said it was much easier for U.S. assistance “to follow” in Colombia than in El Salvador or Honduras because the Colombians had already done extensive analysis of their justice system and had initiated action before the U.S. government became involved. State also said that, ironically, the Colombia project benefited from the relative unavailability of funds in the early years, whereas substantial funds were earmarked for Central American countries. It stated that earmarks often provided funds before host countries exhibited the political will to implement major judicial reforms.

Our report does not question whether the general policy guidance for the administration of justice programs was different for Colombia than for other countries. However, as State acknowledged, the implementation of the policy guidance in Colombia clearly differed from how the programs were implemented in Central America. This resulted in money being spent on judicial reform programs in countries such as El Salvador and Honduras before the governments had demonstrated a serious commitment to

reform. Our reviews have shown that unless recipient governments are seriously committed to reform, U.S. government spending on these programs has been ineffective. The State Department's comment regarding the unavailability of funds for Colombia seems to imply that had more money been available, it may have been spent prematurely in Colombia and the programs could have run into the same problems as in the Central American countries.

AID commented that the impact of U.S. judicial reform assistance in El Salvador is measurable and cited as examples El Salvador's investigative unit, judicial training, amendments to the constitution strengthening the independence of the judicial branch, and the enactment of a law establishing a public defenders program. Our earlier report also identified these areas of improvement in El Salvador's judicial system; however, the report pointed out that progress was made much more difficult because the El Salvadoran government was unwilling or unable to provide a strong political or financial commitment. While El Salvador has taken initial steps to improve its judicial system in response to the January 16, 1992, peace accords ending the civil war in that country, AID officials in El Salvador stated that they see the earlier judicial reform project as largely unsuccessful because political will and consensus were never achieved.

Scope and Methodology

To obtain information on judicial reform efforts in Colombia, we reviewed legislative authority for providing this assistance, interviewed officials and reviewed records from AID and the Departments of State and Justice in Washington, D.C., and reviewed reports from human rights and other organizations. We also visited Colombia where we met with U.S. Embassy, host government, and private sector officials. We also drew on our work performed in El Salvador, Costa Rica, Honduras, and Guatemala as part of our review of U.S. assistance to improve administration of justice worldwide. We conducted our review from January to August 1992 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary of State, the Administrator of AID, the Attorney General, and appropriate congressional committees. We will also make copies available to others upon request.

Please call me at (202) 275-5790 if you or your staff have any questions.



Harold J. Johnson
Director, Foreign Economic
Assistance Issues

Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530


AUG 17 1992

Frank C. Conahan
Assistant Comptroller General
National Security & International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

The Department appreciates the opportunity to provide comments on the General Accounting Office (GAO) draft report entitled, "Foreign Assistance: Promising Outlook for Judicial Reform in Colombia." The Department generally agrees with GAO's findings and recommendations as stated in its report, and has informally provided technical comments to GAO. We understand that GAO is incorporating our comments into the final report.

Sincerely,


Harry H. Flickinger
Assistant Attorney General
for Administration

Comments From the Department of State



United States Department of State

Deputy Chief Financial Officer

Washington, D.C. 20522-1506

AUG 25 1992

Dear Mr. Conahan:

Thank you for the opportunity to comment on your draft report, "FOREIGN ASSISTANCE: Promising Outlook for Judicial Reform in Colombia" (GAO Job Code 472295). Comments are enclosed.

If you have any questions on this issue, please call Fay Armstrong, ARA/PPC, on 647-5333.

Sincerely,

A handwritten signature in dark ink, appearing to read "Morrison".

Bruce Morrison
Acting

Enclosure:
As stated.

Mr. Frank C. Conahan,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office,
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Appendix II
Comments From the Department of State

GAO Draft Report: "FOREIGN ASSISTANCE:
Promising Outlook for Judicial Reform in Colombia"
(GAO Job Code 472295)

The Department of State appreciates the opportunity to comment on the above-referenced report and joins in the observations made by the Agency for International Development.

The Justice Sector Support Project in Colombia provides concrete evidence of the far-reaching changes that can be achieved when our assistance focuses on dynamic local elements and supports their initiatives in a flexible and consistent way over a period of time. As the report notes, knowledgeable Colombians credit the prior AID-FES project with creating the only effective forum on judicial reform in Colombia. The FES group interacted with the President-elect and his advisers during the summer of 1990 to produce agreement on the basic reform measures announced in the inaugural address. It is that plan that the new AID project supports.

While the GAO report generally highlights the AID project, the U.S. Government contribution throughout has been secondary to the efforts of the Colombians themselves. They have demonstrated the intellectual courage to envision a new system and the political will to put it into place. It will be a long, difficult transition. The six-year Justice Sector Reform Project is intended to provide critical support during the initial period.

The Department appreciates the positive tenor of the GAO report. In describing some of the features of the Colombian project, however, the report suggests that an entirely different philosophy motivated efforts in Colombia as opposed to Central American projects. In fact, the Colombia approach as described by the GAO -- in essence, to follow not lead, and use a sector-wide approach managed by the Ambassador drawing on the full country team -- reflects the general policy guidance for the administration of justice program from the outset. In Colombia, unique conditions converged to keep those elements in the forefront.

It was much easier "to follow" in Colombia than in El Salvador or Honduras, for example, because the Colombians had done extensive previous analysis of their justice system, and initiated pilot projects in automation of court functions before the U.S. Government even suggested the possibility of assistance. The AID-FES project originally enabled the expansion of these pilots, for which demand already existed.

All projects in Central America were designed to include "national commissions" -- justice sector-wide groups intended

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to establish priorities for international assistance. However, the bilateral structure of the assistance programs there and the ready availability of funds throughout the 1980's pushed those projects directly into large-scale activities with the Supreme Court and other public entities. It is harder to identify and integrate intellectual leaders from the private sector once a government-to-government assistance relationship has been established, but that is what we are doing in Central America. Much of this push comes from the recognized success of the Colombia project in developing a functioning "national commission" without ever using that terminology. In Colombia, there was no structure for working directly with the public sector entities, and the alternative which evolved proved very effective. Similar arrangements were later used in both Argentina and Chile.

Notwithstanding what the GAO found in its earlier review of projects in Central America, Washington has urged a country team approach to administration of justice programming from the outset. It came more naturally to Colombia than other countries because of personalities in the country team, the physical proximity of the AID Representative to other program offices in the Embassy, and ultimately the strong demand and clear focus of Colombian counterparts. As reflected in the comments from AID, country team administration of justice committees are now functioning in the majority of countries in the region.

Finally, and ironically, the Colombia project benefitted from the relative unavailability of funding in the early years. Throughout the 1980's, LAC regional ESF -- the source of funds for the Colombia project -- was scarce because of earmarks for Central America. Later, it was fortuitous that the political will to direct and technical capacity to implement a major judicial reform came together in Colombia at precisely the time that significant funding was available for AID's use. The express policy of the administration of justice program has always been to provide assistance only when a serious commitment to change exists. Earmarks have often provided funds in advance of that political will.

The history of the Colombia project is instructive for the administration of justice program as a whole because it not only offers a model of how a far-reaching judicial reform plan can be conceived and implemented but also reaffirms many of the strategic principles under which the program began. The Department looks forward to working with AID to continue to support the process in Colombia -- measuring its progress and impact as recommended -- and applying the lessons learned in Colombia to other countries as appropriate.

Comments From the Agency for International Development



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

AUG 18 1992

Mr. Frank C. Conahan
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

The Agency for International Development (A.I.D.) was pleased to receive the GAO draft report entitled "Foreign Assistance: Promising Outlook for Judicial Reform in Colombia." The GAO has presented a very positive overall analysis of the contributions of U.S. Government (USG) agencies to reform of the justice sector in Colombia. While acknowledging that A.I.D.'s Justice Sector Reform Project is still in the early stage of implementation and will have to be evaluated over time, the GAO assessment team has drawn particular attention to consensus-building and program development efforts that ultimately resulted in the largest U.S. funding commitment for administration of justice activities worldwide.

These efforts consisted of a series of small A.I.D. grants made in the late 1980s to the Fundacion de Educacion Superior (FES), a private Colombian foundation, that helped FES to move the debate in Colombia from a generalized dissatisfaction with the justice system to agreement within the government and the private sector on the need for definitive actions to achieve a thorough reform. The USG's support emphasized the importance of a genuine, demonstrable GOC commitment to reform before provision of large-scale project funding and was characterized by close collaboration among several USG agencies in the design and, later, the implementation of the project.

The GAO has recommended that the A.I.D. Administrator and U.S. Ambassador establish criteria and targets, or benchmarks, for measuring progress by the Colombian Government in implementing judicial reforms, and link this progress to future disbursements of project funding. For some time, A.I.D. has been working with the Government and USG collaborating agencies to define measurements of progress. With assistance provided under A.I.D.'s Andean Counterdrug Management Information System project, specific outputs - and indicators to verify progress in achieving each of them - have been identified and are being further refined. A presentation of the indicators is enclosed. Once the indicators and outputs are finalized and Colombian systems for collection of data are strengthened under the project, A.I.D. can begin to relate disbursements and other

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aspects of project implementation to tangible indications of progress resulting from reforms.

The sections of the GAO report entitled "United States Used a Different Management Approach in Colombia" and "Approach in Colombia Differs From Other U.S. Efforts" contrast A.I.D.'s use of small projects managed by a private foundation in Colombia, with other approaches used by A.I.D. in Latin America to stimulate interest in and create a solid host country political commitment to judicial reform. While A.I.D. would support application of the approach used in Colombia wherever it is possible to do so, we would like to point out that, in the countries mentioned in the report, a political imperative existed to rebuild justice systems that had been destroyed from years of neglect, mismanagement and abuse. In those countries, consensus-building had to take place within the context of - and not prior to - a major assistance effort. Consensus-building of the kind highlighted in the GAO report, however, is now underway.

The impact of U.S. justice sector reform assistance to El Salvador is measurable. El Salvador has developed a very capable investigative unit; judicial training has been strengthened; the constitution has been amended to improve judicial branch independence; and a law establishing a state-provided public defenders program has been promulgated, among other reforms. The Minister of Justice has also taken a strong leadership role in promoting further legal reforms to broaden protection of individual rights. While the Panama program is of more recent origin, we believe that significant progress is being made in that country as well.

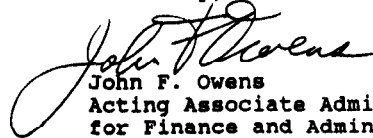
Regarding comments in the section of the report entitled "Priority and Multi-Agency Management Approach", A.I.D. strongly supports the Country Team approach to management of the many inputs made by U.S. agencies to justice sector reform. The Country Team approach has been fostered by the Interagency Working Group on Democratic Initiatives, chaired by A.I.D.'s Assistant Administrator for Latin America and the Caribbean. For example, based on a working group recommendation, all U.S. Ambassadors have been encouraged, through the Department of State, to assure inter-agency coordination, and we have found this approach to be functioning well in most U.S. Missions throughout the region.

In conclusion, the Colombian approach to justice sector reform is a model which can be adapted by other countries in several ways. However, it is also important to note that there are many differences between countries which must be taken into account. The progress of the Justice Sector Reform project, based on careful and professional evaluation, will be followed

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with great interest by other countries in the region. And, of course, A.I.D. and other concerned agencies will seek to apply in other assistance programs management approaches that are proving successful in Colombia.

Sincerely,



John F. Owens
Acting Associate Administrator
for Finance and Administration

Enclosure: Colombia - A Model Approach

SHORT VERSION

COLOMBIA - A MODEL APPROACH

The purpose of the AOJ Project is to strengthen the effectiveness of the justice system in Colombia. Indicators have selected for measuring performance of the project purpose. Because these measures of performance have not been used in the past to measure performance in the justice sector in Colombia, their selection must not be regarded as definitive. When data is actually available, these indicators will have to be analyzed in terms of their appropriateness.

In every instance data collection mechanisms in the executing institutions will have to be developed to collect the data for the indicators identified. In most instances the establishment of these collection mechanisms will have to be initiated as a result of activity funded by the project. A realistic expectation for indicator data being available to establish a baseline against which to measure performance is 24 months.

Indicators have been selected for verifying performance of the project purpose are:

- o Increase in the percent of narco-trafficking/terrorist and related crimes convictions of total of such crimes investigated. (Special Courts)
- o Increase in the percent of serious felony (Ordinary Courts) convictions of total of such crimes investigated.
- o Reduction in the average processing time of all criminal cases (investigation to sentence).
- o Reduction in the average processing time of other cases (investigation to sentence).
- o Improved public opinion regarding fairness and accessibility of justice system.

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