

July 1991

DECLASSIFIED **RELEASED**

UNCLASSIFIED

Overview of Peruvian Justice System and Summary of  
AID Plan for Justice Sector Reform

JURISDICTION AND PROCEDURE

The Peruvian justice system is based on the Napoleonic Code; judges work from a legislated code that is supposed to be applicable to any legal situation. Judges have a variety of responsibilities, including investigation, trial, and sentencing. In criminal cases, a prosecutor from the Public Ministry argues the case for the State.

The Supreme Court hears appeals from the Superior Courts, which are the trial courts. The Superior Courts and their constituent courts are sub-divided into two levels. In the court of first instance, an investigative judge determines if there is probable cause for trial. If there is probable cause, the case is sent to the Prosecutor's Office which in turn presents the case before a panel of judges who conduct a trial and render a decision.

By law, the police are responsible for following the judge's instructions and carrying out the actual investigations. In cases where the investigative judge does not find sufficient evidence for prosecution, that decision must be confirmed by the Superior Criminal court before the suspect is released. Courts can remand cases for further investigation at any stage of the process.

Although the system appears straightforward, defendants spend an average of two years in jail awaiting trial, and there is no bail in Peru. Jails are overcrowded, and conditions abysmal; 80 percent of the prison population in Peru has never been found guilty of a crime. Legal costs and corruption are discouraging; many have no access to the legal system.

CLASSIFICATION DATE: \_\_\_\_\_ IS/FPC/CDR *CS* Date: *11/2/93*

*X Release* ( ) DECLASSIFY ( ) DECLASSIFY

EO Citations \_\_\_\_\_

( ) CLASSIFY as \_\_\_\_\_ ( ) S ( )

( ) DOWNGRADE TS to \_\_\_\_\_ ( ) S ( )

DECLASSIFIED

### MAJOR PROBLEMS

There are seven serious flaws in the Peruvian justice system:

-- Corruption/Inadequate budget - probably the single most important cause of the system's failure because it leads to corruption of judicial personnel, who depend on under-the-table payments from attorneys and clients for economic survival. The President of the Supreme Court earns just \$435 a month. Lack of funds for transportation often prevents prisoners from being brought to court, and frequent judicial employee strikes further delay cases. Fujimori has slowly begun to increase the judiciary's budget, from one per cent of the GOP budget to the constitutionally-required two per cent.

-- Lack of investigative coordination and experience - Police, judges, and prosecutors all have authority to conduct investigations. In addition, police can conduct extensive investigations without judicial authorization, thus giving police enormous power to decide who and to what extent someone will be investigated. Finally, prosecutors and judges often do not accept evidence from police, who have very poor investigative skills and thus produce little if any admissible evidence.

-- Institutionalized conflict - Police and Public Ministry prosecutors see themselves as adversaries. The Criminal Code also requires the public prosecutor to defend the legal and human rights of the accused. Thus the prosecutor finds himself in the impossible situation of both defending and prosecuting a suspect. In practice, the police treat the prosecutor like a public defender and distrust him.

-- Terrorist intimidation - In areas outside Lima, judges have little or no official support and protection, and have seen colleagues killed. In addition, insurgents rely on an elaborate network of defense lawyers to exploit legal loopholes, delay trials, and win releases for most terrorist suspects. This, in turn, has virtually destroyed the military's confidence in the legal system and led security forces to resort increasingly to extrajudicial killings.

DECLASSIFIED

DECLASSIFIED

-- Judicial turnover - Each year a new Chief Justice of the Supreme Court is selected, who generally replaces judges at the Superior Court level with his own favorites. Thus continuity suffers and priorities are reordered, causing a rush to obtain justice through personal connections.

-- Lack of uniform legal code - In the Napoleonic system, judges are bound to apply the facts to the code, but Peru has no uniform legal code. Thus, the applicable law is difficult to find and determine, and succeeding Congressional sessions often supersede or contradict laws passed by another. New penal and procedures codes were published in April.

-- Lack of communication - Courts outside of Lima are not informed of legal developments, and thus often administer the law in an inconsistent and arbitrary manner. The Lima courts are virtually powerless to check this activity.

#### AOJ PROJECT

Unlike in Colombia, neither the GOP nor the private sector has developed a coherent plan to address fundamental problems of the judicial system. A nine-person team of local experts has been contracted to survey the problems, and the new Chief Justice of the Supreme Court is to develop policy recommendations after the study is concluded.

In 1987, AID authorized a \$2.8 million, five-year AOJ project to strengthen the judicial system. A new \$6 million, five-year follow-on project is planned for FY 93-97. ICITAP is conducting training of police and law enforcement officials, focusing on judicial investigative techniques and prosecutorial case management.

#### o FY 87-92 Results

In the past five years, the project has managed to open 31 legal aid offices in poor areas, establish permanent training programs for prosecutors and judges, and organized a management information system for cases and judicial personnel.

DECLASSIFIED

- 4 -  
DECLASSIFIED

o New Project Description

The new project will continue to support the Judiciary, the Prosecutor's Office, and the Ministry of Justice in the areas of:

- investigation;
- alternative dispute settlement;
- court organization and administration.

Investigations often overlap among the police, judges, and the public prosecutor; the system has no central administrative structure per se; and the Lima-based Institute for Liberty and Democracy (ILD) has shown that the legal sector has failed to serve a large sector of society. Resources will be channeled through a public/private organization, the Judicial Reform Institute, that is being set up to build a national consensus on needed judicial changes. The composition and functions of the proposed Judicial Reform Institute also need to be defined.

CRIMINAL CODE REFORM

President Fujimori recently issued a new penal code that replaces the 1924 criminal code. Any act of terrorism can be punished by from 10-25 years in prison. Art. 323 establishes a minimum 15-year penalty for a public official convicted of disappearing a person. Other serious crimes (i.e. torture and unlawful detention) are included in other sections with no specific reference to police or other public employees.

DECLASSIFIED

DRAFTED: HA/BA: M Jacobsen  
VOL1 Michael 191, 7/1/91, x71424

RECEIVED