

bility, they dedicate nearly all of their time to prosecuting.⁸¹

In September 1997, MINUGUA began a review on its own of the Public Ministry systems in the then two Justice Centers in Zacapa and Xela.⁸² While conducting the review, the MINUGUA advisors criticized the new streamlined systems directly to Public Ministry officials, without involving USAID.⁸³ MINUGUA then began drafting a new plan without USAID input, ignoring two years of intense institutional experience in the Justice Centers addressing the exact points the new plan pretended to solve.⁸⁴ If they had gone to Quetzaltenango or Zacapa while drafting the plan, the authors would have witnessed the coherent organizational models present there, functioning and addressing the objectives of the plan.⁸⁵

In February 1998, Guatemala's Attorney General, Héctor Hugo Pérez Aguilera, ceased further efforts in San Benito (Petén Depart-

81. See CRIMINAL JUSTICE SYSTEM DIAGNOSTIC, *supra* note 13, at 21 (asserting that the separation of administrative functions from legal functions will enhance the efficiency of justice sector access).

82. See Memorandum from Timothy Cornish, USAID Justice Chief of Party, to Steven Hendrix and Beth Hogan, USAID Democracy Officers (Sept. 25, 1997) (on file with the author) (describing events that occurred at the unplanned review of the Public Ministry systems by MINUGUA members).

83. See *id.* (noting that the conduct by MINUGUA members was not a new occurrence, but had manifested in other situations).

84. See Letter from Timothy Cornish, USAID Justice Chief of Party, to Steven Hendrix, USAID Justice Program Coordinator (Mar. 24, 1998) (on file with the author) (explaining that MINUGUA's plans provided solutions already implemented in both Justice Centers); see also *Programa de Reorganización y Regionalización de las Fiscalías del Interior del País*, MINISTERIO PÚBLICO [Program of Reorganization and Regionalization of District Attorneys, PUBLIC MINISTRY] (Ministerio Público, Guatemala, C.A.), 1998, at 1 (giving MINUGUA credit for the Reorganization Plan). The plan considered prosecution offices in Amatitlán, Baja Verapaz, Chimaltenango, Chiquimula, El Progreso, Escuintla, Huehuetenango, Izabal, Jalapa, Jutiapa, Mixco, Quiché, Sacatepéquez, San Marcos, Sololá, Totonicapán, and Petén. See *id.* The review did not take into account fully developed structures in the Justice Centers in either Quetzaltenango or Zacapa. See *id.* In fact, the plan sought to isolate the experiences in Quetzaltenango and Zacapa. See *id.* at 12.

85. See Timothy Cornish, *Comentarios al Programa de Reorganización y Regionalización de las Fiscalías* [Commentaries on the Reorganization and Regionalization of the District Attorneys Plan] (Mar. 24, 1998) (unpublished manuscript on file with the author) (noting that the Public Ministry's adopted plan was contrary to modern principles of organization for prosecutors' offices).

ment) and Escuintla to streamline organizational structures, pending a reorganization study with MINUGUA.⁸⁶ In mid-1998, the Public Ministry released the "Reorganization Plan."⁸⁷ Contrary to the trend in adversarial/accusatory systems, the Guatemalan Attorney General formalized a highly vertical model of organizational structure.⁸⁸ The new structure is based on small, self-contained operational units called "*agencias*."⁸⁹ Each *agencia* contains one assistant district attorney (or "*agente fiscal*"), a certain number of sub-assistant district attorneys ("*auxiliares*") and a certain number of support personnel ("*oficiales*").⁹⁰

Although the *agencias* function within each district attorney's office, they operate semi-independently. Communication within each district attorney's office (and at other levels) is only as good as each *agente fiscal* wants it to be. Conceptually, in many instances, each *agente fiscal* considers himself cloaked with a type of judicial independence, removing himself from supervision by the district attorney, or even the attorney general, as though he were in fact a judge rather than a prosecutor. Making matters worse, the Reorganization Plan effectively removes district attorneys as supervisors, and places attorney generals in charge of an *agencia*, thus exacerbating the fragmentation and compartmentalization of each *agencia fiscal*. Under these circumstances, not even the implementation of sophisticated information-sharing systems will entirely solve communication

86. See Letter from Héctor Hugo Pérez Aguilera, Guatemalan Attorney General, to Timothy Cornish, USAID Justice Chief of Party (Feb. 13, 1998) (on file with the author) (commenting on the reasons behind the suspension of CREA's organizational efforts). Curiously, Petén and Escuintla were two places to be visited by the MINUGUA team carrying out the review.

87. See generally MINISTERIO PÚBLICO—FISCALIA GENERAL DE LA REPÚBLICA, MANUAL DE ORGANIZACIÓN [PUBLIC MINISTRY—OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, ORGANIZATION MANUAL] (July 1998) (on file with the author) [hereinafter ORGANIZATION MANUAL] (outlining the responsibilities and functions of the new units created under the Reorganization Plan).

88. See ORGANIZATION MANUAL, *supra* note 87, at 13 (explaining the new organizational structure).

89. See *id.* at 4 (noting that the *agencias* would operate under each district attorney).

90. See Cornish, *supra* note 85 (explaining the composition of the *agencias*).

issues.⁹¹

In Justice Centers in Zacapa and Quetzaltenango, USAID assisted in establishing specialized prosecution units. The authors of the Reorganization Plan never visited the Justice Centers,⁹² as MINUGUA rejected specialization. The new local model of organization prohibits the establishment of *agencias* or units by type of crime, for example, property crime, homicide, domestic violence, etc.⁹³ Instead, the model organizes the office on a system of seventy-two-hour shifts, in which everything except drugs goes to the prosecutor "on call."⁹⁴ This local model is proving weak, fragmented, and entirely incapable of investigating and prosecuting anything more than the easiest of cases.⁹⁵

A big exception to the decentralization plan concerns organized crime. A national-level "*Agencia Fiscal Contra Crimen Organizado*" was structured in October 1998 to address kidnapping, extortion, car theft, and child abuse. Previously, only the national level "*Narcofiscalía*" dealt with cross-border issues. It is unclear if anyone was focusing upon the theme of money laundering. No matter the type of organized crime, national or international structures with local representation, independent of the local District Attorney, are essential. So far, however, little progress has been made to make the Organized Crime Unit operational.⁹⁶

Any such specialized unit will require sufficient linkages to assure appropriate communication with local prosecutorial organizations.

91. See Memorandum from Steven E. Hendrix, USAID Justice Coordinator, to William Brencick, Deputy Chief of Mission (Dec. 16, 1998) (on file with the author) [hereinafter 12/16/98 Hendrix Mem.] (describing the consequences of giving the *agencias* semi-independent roles).

92. See ORGANIZATION MANUAL, *supra* note 87, at 1 (listing the sites that MINUGUA visited, notably excluding the Justice Centers located in Xela and Zacapa).

93. See 12/16/98 Hendrix Mem., *supra* note 91 (noting that the Public Ministry rejected the plan to specialize the prosecutors, which USAID had implemented in the Justice Centers of Xela and Zacapa).

94. See ORGANIZATION MANUAL, *supra* note 87, at 15 (outlining the characteristics of the new system).

95. See 12/16/98 Hendrix Mem., *supra* note 91 (describing the effects of the new system).

96. See *id.* (outlining the reasons for the organized crime exception).

These linkages are necessary because under the present scheme, drug possession cases are still consigned to the local prosecutor, while the obvious linkages between possession and trafficking are not made in local investigations. Moreover, there are few guidelines instructing local-level prosecutors as to when they should refer cases to the national level.⁹⁷ The investigation and prosecution of any type of organized crime, from the professional thief to multinational networks of drug traffickers and money launderers, requires appropriate levels of communication and team work. The reorganization model does not respond to these very possible concerns.⁹⁸

In this context, restructuring of the prosecution office for greater efficiency and transparency was undercut in Quetzaltenango,⁹⁹ and, consequently, nationwide. Until November 1998, the Quetzaltenango effort had progressed under District Prosecutor Estuardo Barrios.¹⁰⁰ USAID had advanced a "*secretaría común*" administrative model within the Public Ministry.¹⁰¹ Under Barrios, there was a functioning Common Clerk's and Filing Office, broad use of standardized forms, and a functioning case-tracking system.¹⁰² In December of that year, in the face of the new Reorganization Plan, Barrios resigned and was replaced by Felipe Pérez Santos, who ended all the aforementioned programs.¹⁰³ Prosecutors simply were unwilling to relinquish control they exercised over the *oficiales* and the convenience of delegating much of the work to these individuals.¹⁰⁴

In less than one year, as of September 1999, Quetzaltenango was

97. See *id.* (asserting that the lack of communication in the new system will result in further difficulties for prosecutors).

98. See *id.* (assessing the defects of the new system).

99. See 05/15/98 Rupprecht Mem., *supra* note 17 (noting that the rejection of the "*secretaría común*" was one of the largest setbacks).

100. See 08/18/99 Williams Mem., *supra* note 30, at 11-12 (commenting on the state of the Quetzaltenango effort).

101. See 05/15/98 Rupprecht Mem., *supra* note 17 (discussing URL's assistance in restructuring the prosecution offices).

102. See 08/18/99 Williams Mem., *supra* note 30, at 12.

103. See *id.*

104. See 05/15/98 Rupprecht Mem., *supra* note 17 (noting prosecutor's role in the restructuring).

not processing a backlog of 20,000 active criminal complaint files.¹⁰⁵ At the time, a newly assigned Quetzaltenango District Attorney, Armando Martinez,¹⁰⁶ was anxious to restart the program and redevelop appropriate filing and tracking systems.¹⁰⁷ By August 1999, Zacapa was the only Center remaining using the original USAID model for streamlined organization with specialized prosecutorial staff in the Public Ministry.¹⁰⁸ The Zacapa prosecutors were quite proud of the system they had in place and were concerned about the MINUGUA Reorganization Plan, which would arrive in Zacapa later that same year and dismantle the progress.¹⁰⁹

Despite the setback for the USAID program in terms of the organization component for prosecutorial staff, the Public Ministry has retained and endorsed other elements of the Justice Center model. The Public Ministry decided to retain the case tracking and case management innovations. In addition, it continues to work collaboratively with integrated approaches to justice sector issues.¹¹⁰ Furthermore, even though the Public Ministry, for better or worse, adopted the MINUGUA Reorganization Plan, it would be of little surprise if it eventually reversed this decision and moved back in the direction of specialization, following the regional trend, as part of an effort to improve performance.¹¹¹

105. Memorandum from Brian Treacy, USAID Chief of Party, to Steven Hendrix, USAID Justice Program Coordinator (Oct. 18, 1999) (on file with the author) [hereinafter 10/18/99 Treacy Mem.] (describing the report of Justice Program/USAID activities for September 1999).

106. See 08/18/99 Williams Mem., *supra* note 30, at 12.

107. See generally 10/18/99 Treacy Mem., *supra* note 105 (describing MP files in Quetzaltenango).

108. See 08/18/99 Williams Mem., *supra* note 30, at 6 (discussing the case-tracking system at Zacapa).

109. See *id.* (noting the prosecutor's fear of a new system).

110. See *Resumen Ejecutivo [Executive Summary]*, USAID JUSTICE PROGRAM (CREA/USAID, Guatemala, C.A.), Nov. 1999, at 2 (on file with the author) (providing a summary of the various activities on-going at the various Justice Centers with involvement by the Public Ministry). The Public Ministry's participation in these efforts in placed within the broader context of team approaches in the following section. See discussion *infra* Part F.

111. See *Estado de Gestión sobre las Denuncias en la Oficina de Atención Permanente del Ministerio Público: Evaluación Preliminar sobre la Actividad Investigativa del Delito por parte del Ministerio Público [State of Management Re-*

garding Crime Reporting in the Investigation Office of the Public Ministry: Preliminary Evaluation of the Crime Investigating Activity by the Public Ministry], MIGUEL A. ESPINO G. (CREA/USAID, Guatemala, C.A.), Jan. 1999 (on file with the author) [hereinafter *Espino Evaluation*] (noting that new, reliable statistics are coming out of the new Clerk of Courts office, which indicate that there is very little activity in criminal cases in general in Guatemala City). In other words, court documents show that the productivity level of the Public Ministry is dismal. Since we know crime is ramped, the obvious question is "why?"

In approaching "Atención Permanente," the Public Ministry invited USAID to review one of the "best" of the 35 "Agencias Fiscales" that make up the Guatemala City office, which would presumably give USAID data toward a more positive image for the Public Ministry. In Guatemala City alone, Espino reports that there are roughly 450 cases per day presented to the Public Ministry. See *Espino Evaluation, supra* note 111. This translates into about 90,000 new criminal complaints per year. Of these, about 35,000 per year are immediately dismissed because the reception clerk does not believe they merit the attention of a prosecutor. See *id.* There are no established criteria for this decision and the cases never enter the system for even tracking purposes. See *id.* Of the remaining cases, just over half fail to identify clearly the "aggressor." *Id.* There is an unwritten policy that the clerks neither enter these cases into the system nor track them. See *id.* Together, these incidents represent an under-reporting of crime by about 60,000 or more criminal complaints per year just in Guatemala City. See *Espino Evaluation, supra* note 111.

The remaining 30,000 per year (about 2,800 per month) cases that pass an initial screening and do identify an aggressor are referred to the "Fiscalía de Turno" (attorney in rotation). See *id.* There are 35 "fiscalías" (prosecutor teams) for Guatemala City. Each fiscalía has a lead prosecutor, assistant prosecutors, deputy prosecutors, law clerks, and secretaries. Over a three and a half month period, there were only 328 court filings in these cases, or about 94 per month, or about 2.6 filings per Agencia Fiscal per month, which is less than one per month per prosecutor! See *id.* This level of productivity is disastrous for the Public Ministry. By way of reference, United States prosecutor offices are set up to churn out routine filings by the hundreds, on a daily basis if necessary.

Where the victim does identify an aggressor, the Public Ministry and the Police do appear to work together in teams. The average case results in two or three judicial actions, i.e., *citaciones a agredidos, citaciones a agresores, solicitudes de investigador*, etc. (assault victim citations, assault aggressor citations, investigator applications), meaning that the Case Intake Unit is in fact processing select cases. However, in a sample of cases, 100 percent of the victims and witnesses eventually recanted their testimony, refused to cooperate with investigators, or otherwise withdrew their complaint. See *id.* Investigators have told USAID that the victims fear reprisal. In these cases, the complaint is simply dropped and filed away. No action is taken against the aggressor. In other words, of the 90,000 criminal complaints filed in a year, actual success in prosecution in statistical terms for Guatemala City approaches zero. Even assuming a wide margin of error in the study, the results are still catastrophic.

SUMMARY OF THE RESULTS:

CRIMINAL COMPLAINTS	NUMBER PER YEAR (EST.)	NUMBER PER MONTH (EST.)	NUMBER PER DAY (EST.)
Presented to the Public Ministry	90,000	7,500	450
Not considered, registered or tracked	35,000	2,917	175
Referred to an <i>Agencia Fiscal</i>	34,000	2,800	168
Filings in Court related to cases*	1,125	94	3 to 4
Filings in Court related to cases per <i>Agencia Fiscal</i> *	32	2.6	N/A
Cases Tried by MP*	None in the sample (0%)	None in the sample	None in the sample

* Data Source: *Centro Administrativo de Gestión Penal* (Clerks Office)

Based on this, there is an alarming lack of confidence in the justice system. Anecdotal evidence suggests there is great fear of reprisal combined with real functional deficiencies in the sector. See *Espino Evaluation*, *supra* note 111. This translates into lack of citizen participation in legal investigation and prosecution, even after having presented a claim, which in turn means impunity on a massive scale for aggressors that the State never detained or prosecuted.

While zero percent of cases in the USAID investigation sample went forward to prosecution, obviously some cases did make it to court. However, this represents a statistical aberration. The norm is that people do not file complaints and that those who do, quickly drop them. Criminals are aware of this and take advantage of the situation.

Given that no tracking systems exist in *Atención Permanente*, the Espino Evaluation is the first empirical look at the office. A justice sector that does not track its success and failure will not be able to garner resources or establish the correct policies to effect needed change. The Espino Evaluation clearly exposes underlying inefficiencies in the Public Ministry, resulting in a shockingly low and tragic level of productivity by prosecutors. It clearly shows the collapse of the MINUGUA Reorganization Plan. This undoubtedly must be further documented and defined.

While changing social attitudes will take a long-term effort, there is a clear need to up-grade the case-intake unit immediately as a first step in the broader strategy of changing the image of the justice sector. Clearly the first stage of any such effort in *Atención Permanente* should be to concentrate on upgrading case-intake with simplified and automated processes to capture data, with a view toward influencing the institutional policy agenda. Institutional policies will have to change regarding customer service, protection of witnesses, and swift, effective prosecution of witness harassers and killers. Today, these policies do not exist. Further, the Public

IV. IMPROVED FUNCTIONING AND TEAM APPROACHES

Team approaches are instrumental to the Justice Centers. There is very good cooperation among actors, especially the older centers of Zacapa and Quetzaltenango. This cooperation is developing in the newer Centers. In addition, USAID and the justice sector counterparts have both moved to assure the institutionalization of training to improve conditions.¹¹²

The University of San Carlos ("USAC") is supportive of the Justice Center model.¹¹³ The Justice Centers demonstrated that Guatemalan lawyers in general had poor practical trial and lawyering skills. This forced USAID to adjust its program to address such concerns at an earlier point in attorneys' careers, such as law schools. As one result of the USAID effort, in 1998, there was more academic research done at USAC than in the prior twenty-three years combined.¹¹⁴ Furthermore, to address the practical needs of addressing indigenous law, USAC created a graduate degree program for indigenous law, with the assistance of the National Autonomous University of Mexico ("UNAM") and USAID—a first in Latin America.¹¹⁵ The Guatemalan Bar Association also created a decentralized, institutionalized unit for continuing legal education in 1998.¹¹⁶ This unit began offering courses not only in Guatemala City, but also in the various Justice Centers.¹¹⁷

Ministry will need to capture and process data to profile criminality and detect crime patterns (*modus operandi*).

112. See Comments of Timothy Cornish, *supra* note 11.

113. See Pellecer, *supra* note 37, at 6 (commenting on the support that Focus Centers have received from justice-sector institutions).

114. See Ambassador Planty Cable, *supra* note 62 (discussing work of USAID to improve trial skills).

115. See *id.* (describing effects of USAID to utilize unique educational courses in Latin America).

116. See *id.* (explaining advanced legal education programs by USAC and USAID).

117. See *id.*; see also Quarterly Progress Report No. 3, DPK Consulting (CREA/USAID, Guatemala, C.A.), June 1998 to Aug. 1998, at 7-8 [hereinafter QPR No. 3] (providing that the group Unidad Académica [Academics United] was planning to establish inter-institutional programs of continuing legal education of Guatemalan attorneys).

Other USAID products derived from the Justice Centers, which represented collaborative efforts between judges, prosecutors, police, public defenders, and several universities, were the Criminal Investigator's Manual, Evidence Notebook, the Trial Practice Manual,¹¹⁸ and a number of Administrative Procedure Manuals.¹¹⁹ Furthermore, the Public Ministry released a new Prosecutor's Manual based on MINUGUA technical assistance, with input from USAID and the United States Embassy Narcotics Affairs Office ("NAS").¹²⁰ The manuals, which took several years to make due to the participatory process involved, represented an important advance in the Guatemalan legal literature by advancing practical aspects of criminal law and procedure.¹²¹ No comparable guides were ever previously available.¹²²

In May 1999, together with the Universidad Rafael Landívar, USAC, the Bar Association, the Court, Public Ministry, and the Public Defender Service, USAID piloted a "distance learning" program through the various Justice Centers as a form of continuing legal education. The course focused on criminal trial advocacy and used the Trial Practice Manual as the core text.¹²³ Given the USAID training for prosecutors in Quetzaltenango from 1996 to 1998, along with specialization and organizational streamlining, prosecution con-

118. See DPK Final Report, *supra* note 16, at 12 (noting the use of support materials for justice sector materials).

119. See Pellecer, *supra* note 37, at 7 (detailing the materials produced in order to establish the Justice Centers).

120. See Ministerio Público—Fiscalía General de la República, Manual de Fiscal [Public Ministry—Office of the Attorney General of the Republic, District Attorney Manual] 9-10 (1996) (introducing the new penal code and commenting on its origin).

121. See Memorandum from George Carner, USAID Mission Director, to Donald J. Planty, U.S. Ambassador to Guatemala (Feb. 12, 1999) (on file with the author) (describing USAID Justice Activity publications).

122. See generally Quarterly Progress Report No. 1, DPK Consulting (CREA/USAID, Guatemala, C.A.), Feb. 28, 1998, at 6 (noting the departure from traditional techniques in the evidence course).

123. See Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, United States Ambassador to Guatemala (May 21, 1999) (on file with the author) (discussing innovations in justice-sector training). Another distance learning course focused on criminal law basics. See Escuela de Estudios Judiciales, Universidad de San Carlos, & Ministerio Público, Centro de Apoyo al Estado de Derecho CREA/USAID, *in* La Teoría del Delito (1999).

viction rates reached ninety percent in 1997 and one hundred percent in 1998.¹²⁴ This compares with a national rate of about fifty percent.¹²⁵ In Escuintla, performance monitoring of the Center's first month of operation documented a forty-two percent reduction in case assignments for prosecutors as a result of case filter and referral features.¹²⁶ This led to reduced caseloads of prosecutors, allowing them more time for investigation and prosecution of cases that merit an attorney's attention.¹²⁷

One of the team approach failures so far has been in the area of criminal investigation, which requires cooperation between police and prosecutors.¹²⁸ As a related matter, one of the clear necessities detected in the operation of the Justice Centers was the dismal to non-existent procedures for handling evidence.¹²⁹ By December 1996, USAID and prosecutors and police officials had worked out draft text agreement (or "protocol") between the institutional heads of the Public Ministry and the Police for improved criminal investigation.¹³⁰ In October 1998, USAID provided the Public Ministry with a diagnostic on how to improve the handling of evidence, along with pro-

124. See Memorandum from Erhardt Rupprecht, USAID Acting Director, to Donald J. Planty, U.S. Ambassador to Guatemala (Nov. 6, 1998) (on file with the author) (noting the increase in the conviction rates after the justice program training).

125. See *id.* (discussing the conviction rates in Guatemala).

126. See Ambassador Planty Cable, *supra* note 62 (discussing reduction in workload for prosecutors in Guatemala).

127. See *id.* (noting the efficiency of the new system).

128. See Criminal Justice System Diagnostic, *supra* note 13, at 13 (recommending that Guatemala strengthen the coordination among government offices that direct or conduct criminal investigations).

129. See Memorandum from Ernesto D. Velarde, USAID Justice Consultant, to Angel Estuardo Barrios, Quezaltenango District Prosecutor (Oct. 27, 1998) (on file with the author) [hereinafter 10/27/98 Velarde Mem.] (briefing the prosecution office on observations regarding the deficiencies in the evidence-handling and investigation of the office).

130. See generally Ministerio Público & Ministerio de Gobernación, Instructivo General Relativo al Cumplimiento de la Dirección Funcional del Ministerio Público en la Policía y Demás Cuerpos de Investigación Penal [Public Ministry & Ministry of the Interior, General Instruction Regarding the Coordination of the Functioning Direction of the Public Ministry with the Police and the other Departments of Criminal Investigation] (Sept. 17, 1997) (unpublished draft on file with the author).

posed rules and standard forms for assuring chain of custody and concrete steps for action.¹³¹ On January 12, 1999, Guatemala's Attorney General promised immediate action to approve evidence-handling rules and the protocol for police-prosecutor collaboration.¹³² So far, little else has developed and the tools remain unused.

V. USE OF STANDARDIZED FORMS

One result of the Justice Center process was the functional integration of administrative tasks, with corresponding increases in efficiency and therefore customer service. On June 12, 1998, the *Instancia Coordinadora* adopted uniform formats for sharing information among the courts, prosecution, and police, including crime reporting forms (*denuncias*), pretrial detentions (*prevención*), detention when caught in the act (*consignación por fragancia*), search warrants requested by prosecutors and ordered by judges, crime scene inspection, and autopsy reporting and inspection of cadavers.¹³³ Incredibly, before this date, justice sector actors never had standardized forms for even routine tasks. These new forms were all based on USAID designs and subsequent consultation and validation process.¹³⁴

Through the *Instancia Coordinadora*, USAID then provided training in each of the Justice Centers on use of the new formats.¹³⁵ After the justice center designed the initial fourteen forms,¹³⁶ twenty-four forms were developed, tested, approved, and implemented with

131. See 10/27/98 Velarde Mem., *supra* note 129.

132. See Ambassador Planty Cable, *supra* note 62.

133. See Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, U.S. Ambassador to Guatemala (June 16, 1998) (on file with the author) (describing use of standardized formats).

134. See *id.* (noting the role of USAID in implementing the reforms).

135. See Memorandum from George Carner, USAID Mission Director to Donald J. Planty, United States Ambassador to Guatemala (Sept. 3, 1998) (on file with the author) [hereinafter 09/03/98 Carner Mem.] (explaining that seminars have already been held in Escuintla, Guatemala City, Nebaj, Petén, and Zacapa, with attendance exceeding expectations).

136. See Ambassador Planty Cable, *supra* note 62 (stating that the *Instancia Coordinadora* initially approved fourteen forms developed by USAID for national use by the courts, police, public defense, and prosecution).

USAID assistance.¹³⁷ By December 1998, a performance evaluation in San Benito (Petén) and Escuintla found that the forms were in full implementation in both locations.¹³⁸ Over a hundred forms have been designed, developed, and introduced at the Justice-Center level. As they are further refined, they will be candidates for later national application.¹³⁹

VI. INTERPRETER, CULTURALLY-APPROPRIATE OUTREACH AND EDUCATION PROGRAMS

The Peace Accords and the Justice Strengthening Commission mandated the need for legal pluralism and access to justice in one's own language.¹⁴⁰ Human rights can only be guaranteed if the accused, witnesses, and victims are afforded procedural due process.¹⁴¹ In a country where half of the population does not speak Spanish as its native language,¹⁴² the constitutional guarantee of due process means

137. See Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, United States Ambassador to Guatemala (Oct. 29, 1998) (on file with the author) (explaining that these forms have been developed for the most common legal proceedings in the courts and allow for information to be exchanged among institutions in an efficient manner).

138. See Ambassador Planty Cable, *supra* note 62 (noting that the judges in these locations are preparing a formal request recommending that these forms be put in use on a national level).

139. See DPK Final Report, *supra* note 16, at 12 (stating that these forms have contributed to the increasing uniformity of practice throughout the country).

140. See Justice Executive Summary, *supra* note 9, at 39 (arguing that the administrators of justice in Guatemala need to recognize the multi-ethnic and multi-cultural characteristics of the population and respond accordingly).

141. See Justice Sector Interpreters, Steven E. Hendrix (CREA/USAID, Guatemala, C.A.), Dec. 18, 1997 (on file with the author).

142. See Raquel Z. Yrigoyen Fajardo, *Justicia y Multilingüe: Pautas para alcanzar una Justicia Multilingüe en Guatemala [Justice and Multilingualism: Guidelines to Realize a Multilingual Justice in Guatemala]* 4 (Sept. 1999) (unpublished manuscript on file with the author) (citing the 1994 national census, which revealed that forty-three percent of the population was indigenous). Non-official sources put the figure closer to sixty-one percent, making Guatemala the most indigenous country in the world. See *id.*; see also Roger Plant, *Los derechos indígenas y el multiculturalismo latinoamericano: lecciones del proceso de paz de Guatemala [Indigenous Rights and Latin American Multiculturalism: Lessons from the Peace Process in Guatemala]*, in *DIÁLOGO* 10 (No. 9, Oct. 1999) (stating that the United Nations figures estimate the number of indigenous between sixty and

providing translation services. This is especially important for women and children who are much more likely to be monolingual in a language other than Spanish. The Peace Accords are clear in the mandate to provide translation services.¹⁴³

Beyond Spanish, the country has at least twenty-three Mayan ethnic groups, speaking twenty-four languages derived from Maya, Garifuna, and Xinka.¹⁴⁴ However, K'iché, Kaqchikel, and Mam are the three predominant languages.¹⁴⁵ Consequently, language differences greatly complicate attempts to advance access to justice, especially for indigenous groups, the poor, women, and children.¹⁴⁶

The legal translator services formed a natural complement to the Justice Centers¹⁴⁷ goal of providing increased access to the justice system.¹⁴⁸ With the signing of the Peace Accords in late 1996, USAID¹⁴⁹ and MINUGUA (with USAID and Dutch funding)¹⁵⁰ took immediate, emergency short-term measures to obtain translators out in the field. In 1996, MINUGUA and USAID trained forty-five

sixty-five percent).

143. See Justice Sector Interpreters, *supra* note 141 (summarizing that the Peace Accords sought to ensure basic human rights and constitutional due process by providing translation services).

144. See Fajardo, *supra* note 142, at 6 (noting that the Academy of Mayan Languages estimates the official figure at 21 languages); see also Plant, *supra* note 142, at 11 (stating that one of the demographic characteristics of Guatemala is the diversity of its indigenous population).

145. See Fajardo, *supra* note 142, at 7 (providing that these three languages account for sixty-five percent of the total types of indigenous languages spoken in Guatemala).

146. See Justice Sector Interpreters, *supra* note 141 (noting that the poor, women, and children are much more likely to speak only one language other than Spanish).

147. See Comments of Timothy Cornish, *supra* note 11.

148. See Justice Sector Interpreters, *supra* note 141 (explaining that the USAID activity seeks to guarantee the right to use translation services in the administration of justice).

149. See Comments of Timothy Cornish, *supra* note 11.

150. See Memorandum from William Stacy Rhodes, USAID Mission Director, to Donald J. Planty, United States Ambassador to Guatemala (May 27, 1998) (on file with the author) (stating that USAID contributed \$374,820 to MINUGUA's multiculturalism and justice program, which provides training for legal interpreters for non-Spanish speakers).

translators for the Mam and K'iché languages. In 1997, USAID trained another thirty-four in Tecpán in Kaqchikel.¹⁵¹ In 1998, USAID graduated twenty-five additional legal translators in the Po-comám language, near Escuintla and Jalapa.¹⁵² In addition, in 1997 and 1998, MINUGUA trained interpreters in Huehuetenango and Cobán in the Mam and K'iché languages.¹⁵³

USAID maintained a bilateral translator program, which further contributed to MINUGUA's multi-linguistic effort. As part of USAID's bilateral program, USAID provided technical and logistic support to MINUGUA's administration of justice and multi-linguistic project in the justice departments of Quetzaltenango, Totonicapán, and San Marcos. Specifically, the USAID bilateral program collaborated in the design and implementation of the curricular training program, the selection of candidates for interpreters, technical assistance for the implementation and development of the training courses, and design of training materials and workshops on justice and multi-linguistic issues.¹⁵⁴

151. See Comments of Timothy Cornish, *supra* note 11.

152. See *id.*

153. See Memorandum from Steven E. Hendrix, USAID Justice Program Coordinator to Neil Levine, USAID Justice Consultant (Oct. 5, 1998) (on file with the author) [hereinafter 10/5/98 Hendrix Mem.] (noting that the interpreters were trained jointly between MINUGUA and the USAID justice program); see also Letter from William Stacey Rhodes, USAID Director, to Jean Arnault, MINUGUA Director (May 6, 1998) (on file with the author) (stating that the final installment of this funding was awarded on May 6, 1998); Erick Campos, Suspenden plan indígena [Indigenous Plan Suspended], Prensa Libre, Aug. 24, 1998, at 5 (informing USAID that MINUGUA unilaterally suspended the training in August 1998); Letter from Jean Arnault, MINUGUA Director, to Rigoberto Quemé Chay, Mayor of Quetzaltenango (Aug. 24, 1998) (on file with the author) (explaining that the suspension of activities was only temporary); 09/03/98 Carner Mem., *supra* note 135 (informing the Ambassador of the suspended activity and that an internal assessment was being conducted). *But see* Letter from Jean Arnault, MINUGUA Director, to George Carner, USAID Mission Director (Aug. 5, 1999) (on file with the author) (re-affirming USAID that it was moving ahead with the training); Letter from Steven E. Hendrix, USAID Justice Coordinator, to George Carner, USAID Mission Director (Oct. 5, 1998) (on file with the author) (relating that, as of October 5, 1998, MINUGUA was still telling USAID that it had not cancelled the activity); Letter from George Carner, USAID Mission Director, to Jean Arnault, MINUGUA Director (Mar. 16, 1999) (on file with the author) (terminating the donation from USAID to MINUGUA in a mutually-signed letter of agreement).

154. See Justice Sector Interpreters, *supra* note 141 (explaining the program

In terms of methodology, MINUGUA created three different levels or profiles of interpreters. The most arduous training was provided to "legal interpreters" (or "judicial interpreters") who accompany legal proceedings doing simultaneous translations. The Court and Public Ministry have created a few permanent jobs for this particular interpreter, assuring a degree of sustainability. The second tier is for "institutional interpreters." These interpreters have other jobs within the various justice sector institutions, but are called upon as needed. The third level of interpreter is the so-called "Community Interpreter."¹⁵⁵ This individual serves as a bridge between local groups and the official government actors from the formal sector.¹⁵⁶

Specifically, the USAID activity sought to guarantee the right to use Mayan languages and the right to use translation services in the administration of justice, as stated in the Criminal Procedure Code, trained judicial translators in Kaqchikel and designed a glossary of judicial terms in Kaqchikel.¹⁵⁷ In 1997, USAID visited the seven Kaqchikel-speaking departments to interview municipal authorities, Mayan organizations, administration of justice operators, non-governmental organizations ("NGOs"), and others to organize the oversight committee ("*comité directivo*"). The USAID generated an interpreter/translator profile, designed the curriculum for the formation and methodological training of the translators, and created a selection system for the candidates who participated in the training, after which there was a training of trainers. In addition, the USAID provided logistic support as well as materials for the training events and developed a companion-training program for long-distance and personalized education. USAID communicated these project activities in forums, radio programs, and conferences.¹⁵⁸

For the implementation of the training part of the program, USAID developed two types of strategies. The first strategy involved the translation and judicial interpreter career for the administration of

objectives and training strategy of the USAID Justice Sector Interpreters Program).

155. See Comments of Timothy Cornish, *supra* note 11.

156. See QPR No. 8, *supra* note 25, at 3 (reporting that these interpreters consist of persons within the indigenous community who can serve as liaisons between their constituents and the justice sector).

157. See Justice Sector Interpreters, *supra* note 141.

158. See *id.*

justice institutions while the second strategy sought a community translator to meet the demands of Mayan communities and institutions. Mayan organizations, public schools, and individuals recruited people to apply to this training program. Candidates for the court translator position had to have oral and written fluency in the language, knowledge of the Mayan culture, experience in translations from Spanish to the Kaqchikel language and vice versa, and university studies in law. Candidates for the position of community translator required only verbal knowledge of the language and notion of written communication, knowledge of the Mayan culture, and a third-grade education. For the post of institutional translator, candidates were required to have verbal language knowledge, some notion of written communication, knowledge of the Mayan culture, a third grade education, and employment in a justice sector institution.¹⁵⁹

In terms of process, thirty-five institutions participated in the *comité directivo* for the management of the USAID program. Justice system operators of seven departments (Baja Verapaz, Chimaltenango, Escuintla, Guatemala, Sacatepéquez, Sololá, and Suchitepéquez) were provided with basic training and sensitized on pluri-culturalism and multi-linguistic issues. Training curricula and programs were validated and implemented for interpreters. In addition, USAID compiled a glossary on judicial terms in Kaqchikel, taking into consideration prior work by the Universidad Rafael Landívar ("URL").¹⁶⁰ Since 1997, URL has produced legal dictionaries or glossaries in various languages.¹⁶¹

The impact of this effort was twofold. First, people were made aware of their right to a translator in the criminal process via information regarding citizen rights that was given to justice system operators, local authorities, municipalities, and Mayan organizations. Second, judicial operators in the Kaqchikel region have more information about this issue and recognize the state obligation to provide translation services.¹⁶²

In 1998, USAID provided a grant of \$10 million to URL. That

159. See *id.*

160. See *id.* (describing the results of the Justice Sector Interpreters Program).

161. See Comments of Timothy Cornish, *supra* note 11.

162. See Justice Sector Interpreters, *supra* note 141.

program, known locally as Edumaya,¹⁶³ is, in part, designed to institutionalize the judicial interpreters program.¹⁶⁴ Justice sector interpreters were essential in assuring that the courts afford due process to non-native Spanish speakers. Through USAID's justice sector efforts and the USAID investment in the MINUGUA pluri-culturalism and justice program, USAID has responded to the urgent need for due process in Guatemala under the Peace Accords and the Criminal Procedure Code. USAID designed the URL grant, in part, to ensure the long-term sustainability of that effort. In 1998, URL enrolled 123 students in formal legal translator programs.¹⁶⁵

Complementing the Justice Centers was a great undertaking in instilling a Justice of the Peace in every municipality across Guatemala.¹⁶⁶ In the beginning of 1988, 118 municipalities lacked a formal justice sector presence.¹⁶⁷ In April 1998, the Commission for

163. EDUMAYA is the United States Agency for International Development's project to advance the educational needs of Guatemala's Mayan population. To address the education gap that exists between Mayans and Ladinos, USAID has helped establish a university fellowship program for Mayan leaders. Currently, 1,070 people are enrolled in Guatemalan universities in critical careers such as legal translators, bilingual education, nursing, and business administration. In a separate program, 120 of 340 Mayan bilingual teacher candidates have completed their studies and have been certified based on USAID help. The USAID-funded Save the Children literacy program similarly provides support to local private organizations in remote regions of Guatemala. At present, 18,500 youth and adults are participating in the USAID-supported literacy program.

164. See Fajardo, *supra* note 142, at 57 (explaining that, in an effort to encourage people to become legal translators, the program offered incentives, including academic scholarships and money for room and board).

165. See 10/5/98 Hendrix Mem., *supra* note 153 (detailing the number of legal translators enrolled in the program). The legal translator program had the following composition: Central Campus (35 total students; Poqomam, 10; Kaqchikel, 22; Tzutujil, 3); Coban (35 total students; Keqchi, 22; Pocomchi, 8; Achi, 5); and Quetzaltenango (53 total students; K'iché, 28; Mam, 15; Quanjobal, 10). See *id.*

166. See Organismo Judicial—Comisión de Modernización, Secretaría de Planificación y Desarrollo, Plan de Instalación de Juzgados de Paz—Corto Plazo 1 [Judicial Body—Modernization Commission, Secretary of Planning and Development, Plan to Install Justices of the Peace—First Phase] (Mar. 1998) (unpublished manuscript on file with the author) (describing that the Plan has two phases). First, the Plan calls for the creation of 60 Justices of the Peace to be stationed in every municipality of the Republic. See *id.* The Second Phase consists of installing Justices of the Peace in the remaining 52 municipalities. See *id.*

167. See Ambassador Planty Cable, *supra* note 62 (detailing the overall condition of many municipalities that lacked a formal Justice of the Peace).

Strengthening of Justice Reports suggested placing Justices of the Peace in all locations.¹⁶⁸ USAID aided the Judicial School in creating and designing appropriate curriculum for the candidates.¹⁶⁹ Throughout 1998, USAID trained 120 candidates and filled sixty positions, mainly in rural, indigenous areas.¹⁷⁰ Furthermore, USAID assisted the Court in its selection of appropriate candidates.¹⁷¹ During 1999, the remaining locations received Justices of the Peace,¹⁷² also trained by USAID at the Judicial School.¹⁷³ While the United Nations Development Programme ("UNDP") collaborated in the effort by paying a

168. See 09/18/98 Carner Mem., *supra* note 30 (discussing negotiations that every municipality have a Justice of the Peace).

169. See *id.* (discussing USAID's attempt to train individuals for the many municipalities that lacked Justices of the Peace). The Centers include a component of outreach to non-governmental organizations, the private bar, and the local community. See Quarterly Progress Report No. 7, DPK Consulting (CREA/USAID, Guatemala, C.A.), July 1, 1996 to Sept. 30, 1996, at 15-16 [hereinafter QPR No. 7] (demonstrating CREA/USAID's attempt to reach the public and inform them about the criminal justice system). This has taken the form of local conference, radio programs, and publications. See *id.* (stating that USAID aided in the printing of pamphlets to help victims better utilize the criminal justice system). The Centers also initiated a series of "seminarios permanentes" (lecture series) on legal topics as a key part of bringing along the legal community in the changing notions of the law. See Quarterly Progress Report No. 5, DPK Consulting (CREA/USAID, Guatemala, C.A.), Jan. 1, 1996 to Mar. 30, 1996, at 6 [hereinafter QPR No. 5] (reporting on the importance of seminars in informing the public about their criminal justice system).

170. See *id.* (noting the progress USAID made in implementing its new programs); see also Ambassador Planty Cable, *supra* note 62 (emphasizing the efforts put forth by USAID in order to ensure that all communities receive a Justice of the Peace).

171. See 05/28/99 Butler Mem., *supra* note 68 (stating that USAID aided the Court in selecting individuals to be candidates for Justices of the Peace).

172. See Memorandum de Carolina de Argueta sobre los Archivos de la Reunión de la Comunidad Internacional del Sector Justicia en Guatemala con el Presidente de la Corte Suprema de Justicia [Memorandum from Carolina de Argueta on the Minutes of the Meeting Between the International Community of Justice and the President of the Supreme Court] (Mar. 9, 1999) (on file with the author) (discussing the new Justices of the Peace and outlining the possible functions that these Justices will have within their respective locations).

173. See 09/18/98 Carner Mem., *supra* note 30 (discussing that USAID is to train its last group of candidates to be Justice of the Peace); see also 05/28/99 Butler Mem., *supra* note 68 (elaborating on USAID's role in training that last prospective Justice of the Peace).

per diem to the candidates in classes, Spain paid them an honoraria.¹⁷⁴

VII. ALTERNATIVE DISPUTE RESOLUTION AND PLEA BARGAINING: THE MEDIATION SUB-COMPONENT OF THE JUSTICE CENTER MODEL

The Justice Strengthening Commission calls for an increase in the use of mediation as a means to advance access to justice.¹⁷⁵ USAID's mediation effort enables citizens to obtain more equitable and accessible justice, while maintaining a sense of respect for local leadership and customary law.¹⁷⁶ This program emphasizes institutional mechanisms that citizens can use to resolve conflicts.¹⁷⁷ Officials can utilize these practices to incorporate aspects of local customary law into the local administration of justice and the resolution of disputes.¹⁷⁸

The Peace Accord on indigenous rights obligates the government of Guatemala to cultivate legal mechanisms that recognize more applicable Mayan or customary law practiced within indigenous communities.¹⁷⁹ The Accord requires the recognition of traditional local authorities, so long as the policies of these authorities do not contradict national or international human rights.¹⁸⁰ USAID programs fa-

174. See 05/28/99 Butler Mem., *supra* note 68 (noting that USAID and Spain worked together in contributing to the success of the program).

175. See Ambassador Planty Cable, *supra* note 62 (asserting that the mediation program enables citizens to have increased access to justice while de-congesting the courts).

176. See Cable from Embassy of Guatemala to the United States Secretary of State on USAID/Guatemala Activity Advancing Conflict Resolution (July 7, 1998) (on file with the author) [hereinafter Conflict Resolution Cable] (discussing how USAID has provided citizens with more ways to access justice while, at the same time, recognizing the importance of local values).

177. See *id.* (relating how the new mediation program enhances the ability of citizens to resolve disputes independently).

178. See *id.* (elaborating on the extensive nature of the mediation program, as well as the success this program has had in allowing officials to bring justice to the localities of Guatemala).

179. See *id.* (relating how the government considered customary legal practices of the country in order to improve conditions for democratization).

180. See *id.* (noting that, in the wake of the Peace Accords, the law calls for increased cooperation between the justice system and the local rule of law, with deference to the practice of traditional local authorities).

ilitate more understanding and recognition for the state legal system and customary law by establishing better communication and fostering greater cooperation.¹⁸¹ In addition, USAID activity strengthens public institutions, such as the Guatemalan Supreme Court and Public Ministry, which participate in the programs attempting to reform the administration of justice on a local level.¹⁸²

Moreover, USAID is concerned with the recommendations of the Justice Strengthening Commission.¹⁸³ The Commission recommends that there must be greater access to services, the development and recognition of alternative dispute resolution ("ADR") methods, as well as the development of legal mechanisms for greater recognition of indigenous customary law.¹⁸⁴

The mediation program advances access to justice and decongests the courts.¹⁸⁵ It provides decentralized justice at the community level, providing more power to individuals and civic organizations in resolving their own disputes.¹⁸⁶ In addition, it alleviates congestion on a larger scale at the community level for these officials, who handle such disputes.¹⁸⁷ In addition, mediation augments traditional methods of conflict resolution; people are able to save time and money and are also able to access justice in their own community and lan-

181. See Conflict Resolution Cable, *supra* note 176 (asserting that USAID's efforts to strengthen administration of justice has improved relations with government officials and community leaders).

182. See *id.* (illustrating the role higher-level government officials played in implementing local programs nation-wide).

183. See *id.* (noting that some USAID efforts are a product of the Justice Strengthening Commission's concerns with having better access to services and recognition of local law).

184. See Strengthening Non-formal Channels of Administration of Justice, USAID Justice Program (CREA/USAID, Guatemala, C.A.), Aug. 30, 1999, at 1-2 (on file with the author) [hereinafter Strengthening Channels] (explaining attempts by USAID to improve the criminal justice system through mediation programs).

185. See *id.* at 13 (emphasizing the extent that mediation programs ensure better access to legal institutions).

186. See *id.* (noting that mediation programs diminish the centralized legal system and place more autonomy and responsibility at the local level).

187. See *id.* (discussing how mediation has improved the criminal justice system at the local level by decreasing the caseload of auxiliary mayors).