

# Lessons from Guatemala

## *Renewing US Foreign Policy on the Rule of Law*

**B**oth former US Presidents George Bush and Bill Clinton placed tremendous emphasis on promoting the rule of law and democratization in their foreign policy statements, and with good cause: neither ideal is regularly respected in many places around the world. Today, organized international crime syndicates are growing. The Italian Mafia, the Russian mobs, the Japanese yakuza, the Chinese

triads, and the Colombian cartels are now coordinating with similar outfits in Nigeria, Poland, Jamaica, and Panama. These new organizations are more violent and powerful than their predecessors, and even have aspirations of taking over entire countries. With economic globalization, the United States is more vulnerable to corruption abroad. On the other side, US investors overseas will need adequate legal infrastructure to guarantee their investments. Third World citizens will need a way to benefit from increased global trade if we are to avoid repeats of the uprising in the Mexican province of Chiapas. Rules-based trade-integration policies presuppose legal systems capable of enforcing rights, but these do not exist in much of Central America. Illegal immigrants show up at the US border, fleeing regimes that lack democratic principles or that do not respect basic human rights or the rule of law. At the extreme, a lack of respect for the rule of law can blur the lines between criminal activity, trade, and national

security, as nations like Libya, Iran, or North Korea seek to enter a nuclear black market.

Putting aside for the moment any sense of altruism that may impel the United States to help others improve their ability to enforce the rule of law or guarantee fundamental human rights, motivated self-interest compels Washington to help foreign governments improve their legal systems. One could argue that work on the rule of law, human rights, and the Third World crime explosion are now additional elements of the clean-up after the Cold War. The US State, Treasury, and Justice Departments and the US Agency for International Development (USAID) are advancing rule-of-law programs around the world as necessary elements of broader packages to achieve sustainable economic and social development. After World War II, Churchill proclaimed that an "Iron Curtain" had descended on Europe. Today, not even a Berlin Wall will be able to stop international crime and corruption from entering the United States un-

less there is concerted international action beginning with US foreign policy.

Guatemala is a case in point. The end of the Cold War motivated Guatemala to end its own internal conflict. In December 1996, Guatemala ended 36 years of civil war that had left more than 200,000 dead. For decades, Guatemala's justice system was simple. If someone was suspected of a crime, the military, or a paramilitary outfit, picked up the suspect and had him tortured or killed. This brand of justice was swift, immediate, and certain. It also routinely violated international human rights and constitutional due process, and the rule of law was nonexistent. Because it relied solely on the military, Guatemala needed no police, no prosecutors, no judges, and no public defenders.

Guatemala's tragic experience was paralleled by the past military governments of Honduras, Paraguay, Bolivia, Chile, Argentina and myriad other governments in the Americas, Africa, and Asia. In Guatemala, as in

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neighboring El Salvador, there was a peace process, leading to peace accords. However, exhaustion from fighting and a desire to stop is not the same as wanting peace and pledging to uphold the rule of law. It would be naive to believe that Guatemala could reverse 40 years of ignoring the rule of law with the signing of a peace accord. On the contrary, the biggest threat to democracy today in places like Guatemala, El Salvador, Colombia, Venezuela, or Bolivia is not communism or insurgency, but crime, especially organized crime involving narcotics. US foreign policy must recognize the need to stay the course with increased levels of legal assistance if the rule of law is to be advanced.

The historically oppressive approach of US allies, if acceptable during the Cold War, is no longer viable. Today, most modern societies demand rule of law and respect for human rights from their neighbors and trading partners. Countries that do not accept these values can expect to be less than full participants in the globalized marketplace. Similarly, market integration will not be

attractive for many countries if most citizens are excluded from the benefits of a globalized economy due to corruption and inefficiencies in the courts. US foreign policy should seek more effective legal systems in all countries as a way to address organized crime, drugs, and illegal immigration, all issues that also, in turn, affect the United States.

### *90,000 to None*

Businessmen rank crime as the top development issue confronting Guatemala. Similarly, confidence is low, as reflected in opinion polls and attitudinal surveys. According to a 1997 study, 88 percent of Guatemalans believe the administration of justice in Guatemala is "inadequate." In a 1999 survey, 93 percent of Guatemalans thought that violence against women was a serious problem.

While the very existence of such opinions is certainly a measure of progress, empirical data are also needed. USAID looked at criminal litigation in Guatemala using 1999 data to see whether the rule of law was the norm or the exception in the

cases that were brought forward. While the data in the study are from Guatemala, they could easily be from any of Guatemala's troubled neighbors.

USAID began by looking at prosecutors. In Guatemala, criminal prosecution falls under the Public Ministry, an organization that has no case-tracking or management system in place, and this in turn means that litigation management is impossible. To estimate prosecutor productivity, USAID consulted court filings, and the Public Ministry invited USAID to review the 35 prosecutor offices ("Agencias Fiscales") that make up the Guatemala City region. USAID focused on the case-intake unit to get a handle on whether cases that entered were ever actually solved or even addressed. In Guatemala City alone, it found that there are roughly 450 cases per day presented to the Public Ministry. 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.

**Building the foundation:  
A Guatemalan soldier  
painting in front of the  
National Palace in  
Guatemala City, where  
the government and the  
URNG (United National  
Guatemalan Revolution-  
ary) later signed a peace  
treaty.**





There are no established criteria for this decision, and these cases never even enter the system for tracking purposes. Of the remaining cases, just over one half fail to clearly identify the "aggressor," and an unwritten policy directs clerks to neither

tor office reputed to be one of the best in Guatemala City, according to the Public Ministry leadership. In the cases entering that office in a period of over three and one-half months, all of the victims and witnesses eventually recanted their tes-

USAID investigation sample went forward to prosecution, some cases do make it to court. Unfortunately, these represent a statistical aberration. The norm is that people do not file complaints and that those who do quickly drop them. Criminals are

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enter these cases into the system nor track them. Together, these practices result in an under-reporting of crime by about 60,000 or more criminal complaints per year in Guatemala City alone.

The remaining 30,000 yearly cases (about 2,800 per month) that pass an initial screening and do not identify an aggressor are referred to the "Fiscalía de Turno" (attorney on duty). Each "Agencia Fiscal" has a lead prosecutor, assistant prosecutors, deputy prosecutors, law clerks, and secretaries. Over a three-and-one-half-month period, there were only 328 court filings, or about 2.6 filings per "Agencia Fiscal" per month, which is less than one per month per prosecutor. This level of productivity is disastrous for the Public Ministry. By comparison, US prosecutor offices are set up to file hundreds of cases on a daily basis if necessary.

Where the victim does identify an aggressor, the Public Ministry and the police appear to work together. The average case that does move forward results in two or three judicial actions: a summons, a service of process, or a motion for production of evidence, meaning that the case-intake unit is in fact processing select cases with some action.

USAID looked at one prosecu-

tor office reputed to be one of the best in Guatemala City, according to the Public Ministry leadership. In the cases entering that office in a period of over three and one-half months, all of the victims and witnesses eventually recanted their testimony, refused to cooperate with investigators, or otherwise withdrew their complaints. In addition, Public Ministry investigators report that the victims often fear reprisal. In these cases, the complaint is simply dropped and filed away. Victims say they become tired of waiting for a system that is unresponsive. Often, victims are called to appear at the Public Ministry on multiple occasions because Public Ministry investigators rarely go to the field to interview witnesses. If a witness fails to appear, that is interpreted as abandonment of the case.

Whatever the reason, the result is the same: no action is taken against the aggressor. This translates into a lack of citizen participation in legal investigation and prosecution, even after having presented a claim, which in turn means impunity for aggressors on a massive scale. 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 and variation among prosecution offices, the results are still catastrophic. USAID estimates that, unless dramatic action is taken, the backlog of unprocessed criminal complaints at the national level will exceed 500,000 in 2002.

While none of the cases in the

aware of this and take advantage of the situation.

Given that no tracking system has been in place, this study is the first empirical look at the effectiveness of criminal prosecution in Guatemala. A justice sector that does not track its success and failure is not worthy of resources and cannot establish the correct policies to effect needed change. The study exposes underlying inefficiencies in the Public Ministry, resulting in a shocking, tragically low level of productivity by prosecutors.

If the Public Ministry were the only poor performer in the justice sector, we might chalk it up to poor administration or management, but, regrettably, similar problems exist in the courts. USAID looked at courts covering four separate areas: Petén, Zacapa, Escuintla, and Quetzaltenango. After learning from the review of the prosecutor offices that extremely few cases are brought to court, USAID found that no court was able to solve even 6 percent of its already limited caseload. Plea bargaining was able to solve about 4 percent of cases in Petén, about 3 percent in Zacapa, and even less in Escuintla and Quetzaltenango. About half of all cases either are filed away with no real action taken, or the prosecution stops without seeing the case through to conclusion. The clear



message is that courts are not being used to find guilt or innocence. Rather, they function more as filters in the criminal justice system.

Criminals know there is little chance that they will be found guilty in any court, and this knowledge encourages bold and outrageous conduct. It also means that the process of waiting for judgement may actually take longer than if the person were convicted. In 1999, 69 percent of all prisoners in Guatemalan jails were being held for pre-trial detention. Historically, rates have gone as high as 74 percent. These figures occur in spite of the fact that the Guatemalan constitution establishes the principle of "innocent until proven guilty," and the rule of law demands that the accused be given swift trials so that time in jail without a conviction is kept to the absolute minimum. To do otherwise is to detain people without due process.

The prosecution and courts are not the only institutions with productivity problems. At the Public Defense Institute between July 1998 and July 1999, 20,514 clients were served. Of those, 18,619 were male and 1,895 were female. As of June 1999,

there were 84 full-time public defenders on staff, with an additional 95 working as external contractors. Yet in all that time, only 128 objections or appeals of any sort were presented in court. Some US public defenders reach that figure on a solo basis in a single year.

### Silver Lining?

Not all the news is gloomy. Despite a dysfunctional legal system, business does go on, but it relies more on family connections, social sanctions, and market relationships to keep promises rather than on legal-enforcement mechanisms. Against overwhelming odds, the poor somehow survive through strong family ties, pooling their assets to support each other. Nowhere is this more true than among the indigenous population, which displays resilience and ingenuity that could some day bring national economic growth, universal education, and adequate healthcare. Their example gives all Guatemalans hope for the future progress and stability of the country, and this in turn gives the region hope for increased investment and prosperity through globalization and market integration.

In truth, Guatemala has been a willing partner in reforming its justice system. A new Criminal Procedure Code, enacted in 1994, now guarantees the presumption of innocence, the right to an attorney and, if needed, a translator, as well as the right of victims to attend a public trial. Before the peace accords, there were about 4,000 uniformed police; today, in part with US help, there are about 20,000. Prior to 1997, there was no Public Defender Service, but today, thanks again in part to the US government, an autonomous, professional service is providing national coverage.

New "Justice Centers" are helping local communities, churches, and governments to connect with police, prosecutors, judges, and public defenders to fight crime and guarantee human rights. New community-level mediation centers resolve 74 percent of all cases presented to them. Seven such centers are already operating, with about 18 more to come in 2001. A year ago, it took several hours to present a criminal complaint to the Public Ministry, while today it takes only 15 minutes. In 1998, the Guatemala City criminal courts "lost" about 1,070

## HOLDING COURT

CRIMINAL COMPLAINTS	NO. PER YEAR (EST.)	NO. PER MONTH (EST.)	NO. 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 the Public Ministry	None in sample (0 percent)	None in sample (0 percent)	None in sample (0 percent)



criminal cases due to corruption, but in 1999, with a new USAID-assisted Clerk of Court office in place, that figure dropped to two. A new Judicial Career Law has come into effect, giving new strength to the independence of the judiciary. Over the past four years, salaries for judges, prosecutors, and public defenders have increased substantially, while salaries for police have more than doubled. In order to improve the quality of legal education for future lawyers, the government recently increased its budget for the

officers in an unprecedented show of judicial and prosecutorial independence.

### *Challenges and Vision*

Countries like Guatemala spent the entire Cold War investing in their militaries, and so they did not perceive the need to invest in civil institutions for enforcing the rule of law. The first challenge now for these countries is to take an objective look at the facts and their dismal performance record. US foreign policy must also take part in this sobering

ernment is placing enormous weight on one country—Colombia—and on one subregion—the Andean area. If the balloon result is to be avoided, a concerted, integrated initiative will have to be initiated to curb crime across many frontiers and many countries.

With the demise of communism and the emergence of trade integration and globalization, an opportunity for real change exists for the first time in generations. However, the risk of failure is also very high. Criminals are integrating

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main law school by 20 percent—the first budget increase in that department in 20 years. And in March 2001, the Bush administration certified Guatemala for its willingness to fight narcotics.

While much remains to be done, a track record of steady progress is starting to emerge. Early in 2001, the Guatemalan Supreme Court found probable cause to strip members of congress of immunity, allowing criminal prosecution for illegally changing the text of laws after they had already been approved. This action demonstrated real courage and judicial independence, especially since one of those indicted was General Efraim Rios Montt, a former dictator who ruled at the height of the civil war. On June 8, 2001, Guatemala finally concluded its most important human-rights case, the Girardi assassination. After an open, public trial that respected due process, the Court handed down 30-year sentences to two military

task. Expanding the rule of law has never been more urgent because litigation and productivity surveys, like the one carried out in Guatemala, show that we are starting from close to zero. Dysfunctional, unproductive institutions need drastic reform, and it is time now to lead these governments to invest in the institutions of peace and justice.

Given the chronic institutional weakness of judicial institutions in Latin America and elsewhere, US policy interests mandate that any approach to the rule of law be an integrated, cross-border effort, and not a country-specific one. If progress is made in cleaning up money laundering in Guatemala, the wave of reform may move to Honduras. If El Salvador cleans up gang violence, that may inspire Guatemala to do the same. Unfortunately, like pushing on a balloon, progress or pressure on one side might displace crime and move it elsewhere. With the advent of Plan Colombia, for instance, the US gov-

ernment is placing enormous weight on one country—Colombia—and on one subregion—the Andean area. If the balloon result is to be avoided, a concerted, integrated initiative will have to be initiated to curb crime across many frontiers and many countries.

Sustainable institutional development to radically change entire legal cultures will not happen overnight, or within a presidential term. Instead, governments will have to stay the course for decades to come, just as perseverance ultimately saw the world through the Cold War. And, as in the Cold War, US foreign policy will have to lead the world on this steady path. **■**

*The opinions expressed in this article are those of the author and do not necessarily reflect the opinions of the US Agency for International Development.*