

iation Centers do not have to abide by national law, only the Constitution and international treaties on human rights.³⁰³

The new legislation also allows private citizens to bring private criminal actions in certain cases,³⁰⁴ such as damages to honor, intellectual property, corporate secrets or check fraud.³⁰⁵ In these cases, the individual interest and damage is deemed to be more important than the social damage: private interest in prosecution outweighs public interest.³⁰⁶ Another class of crimes, including incest and rape, require the victim to present a complaint before prosecutors will bring charges.³⁰⁷

IV. THE PRESENT AND FUTURE.

A. Continued Practice of the Old Code.

According to one account, over 500 judicial sentences under the new criminal procedure code had legal deficiencies either in applying law to facts or in evaluating evidence.³⁰⁸ Consequently, while the law may have changes, there remains a long way to go to make that change a reality in practice.

B. The Challenge of Access to Legal Services and the Role of Public Defenders.

In the French Inquisitorial system, there is normally a right to a defense attorney. Since 1857, French law has required that an attorney represent the accused even during the process of the instruction. French law also requires that the accused be informed of a right to

303. See Art. 8, Decreto 79-97.

304. See Martín Juárez and Abner Guoz, *En qué consisten las reformas penales*, EL PERIÓDICO, Sept. 12, 1997, at 5.

305. See CÓD. PROC. PEN., art. 4, Decreto No. 79-97 (Sept. 10, 1997) printed in DIARIO DE CENTRO AMÉRICA 1 (Oct. 15, 1997)(modifying CÓD. PROC. PEN., art. 24, Decree No. 51-92).

306. See Montes Calderón, Interpretación, *supra* note 198, at 2.

307. See CÓD. PROC. PEN., art. 4, Decreto No. 79-97 (Sept. 10, 1997) printed in DIARIO DE CENTRO AMÉRICA 1 (Oct. 15, 1997)(modifying CÓD. PROC. PEN., art. 24, Decree No. 51-92). This provision, actually a carry-over from prior law, has created controversy, with women's groups suggesting that it is anti-women. Prior law stated that a prosecutor could only bring a rape charge when there was no complaint if the victim was under age 16. The new law actually increases the age cut-off to 18, providing women with increased protection. Still, advocacy groups are angry. Already there is a proposal to revise this section of the Code. See Julieta Sandoval, *Diputada propone dar más protección legal a la mujer*, PRENSA LIBRE, Nov. 7, 1997, at 16.

308. See Julia Corado, *Descubren anomalías en 500 resoluciones judiciales*, SIGLO VEINTI-UNO, Oct. 8, 1997, at 6 (citing MINUGUA, Análisis de sentencias judiciales con miras a determinar necesidades formativas en Guatemala, (1997)(unpublished report, on file with author)). Article 389 of the Criminal Procedure Code outlines what a judgment should contain.

remain silent during the instruction. Nevertheless, the French process of instruction nearly always looks for a confession in cases which do not end with a discharge.³⁰⁹ In Cuba, the guarantee of a right to counsel at public expense has been built into the Cuban code for some time.³¹⁰

Until recently in Guatemala, the only access to criminal defense for the accused was through private attorneys or a volunteer from the Bar Association discharging ethical duties to represent the indigent.³¹¹ In April 1954, San Carlos University created the first *bufete popular* in operation in the country. Now, the universities of San Carlos, Rafael Landívar, Mariano Gálvez and Francisco Marroquín have all created *bufetes populares*.³¹² Under new legislation, the *bufetes populares* may no longer represent the indigent, unless under supervision and collaboration of a practicing attorney.³¹³

The use of students as defenders, or obligating private attorneys to defend the indigent, was not perceived as effective. Defendants were not properly represented. Further, the Constitution forbids forcing anyone to work without compensation.³¹⁴ The *Convención Americana sobre Derechos Humanos* requires that the accused have a defender, paid for by the state in cases where the defendant cannot afford one.³¹⁵

Based on these observations, a Public Service for Criminal Defense (*Servicio Público de Defensa Penal*) was created under the Presidency of the Court.³¹⁶ However, despite creation of the new Service, cases remain where accused individuals languish in jails far beyond the time they would receive even if convicted. The Public Defender Service is simply so overwhelmed that it cannot effectively respond to

309. See FAIRCHILD, *supra* note 163, at 127.

310. See Tigar, *supra* note 162, at 5.

311. See ILANUD, *supra* note 133, at 92; MINUGUA/PNUD & Instituto de Estudios Comparados en Ciencias Penales de Guatemala, *Diagnóstico del Servicio Público de Defensa Penal* 6 (1996).

312. See ILANUD, *supra* note 133, at 96.

313. See CÓD. PROC. PEN., art. 93, Decreto No. 51-92; CÉSAR R. BARRIENTOS PALLECER, DERECHO PROCESAL PENAL GUATEMALTECO 46 (2d ed. 1997); Compare CÓD. PROC. PEN., art. 154, Decreto No. 52-73 (repealed)(which previously allowed students to represent criminal defendants).

314. See BARRIENTOS PALLECER, *supra* note 144, at 44.

315. See *id.*

316. See MINUGUA/PNUD & Instituto de Estudios Comparados en Ciencias Penales de Guatemala, *Diagnóstico del Servicio Público de Defensa Penal*, 8 (1996); BARRIENTOS PALLECER, *supra* note 144, at 44-45; See Updated account in *Aprobada ley de la Defensa Pública*, EL PERIÓDICO, Dec. 6, 1997, at 4.

the demand.³¹⁷ According to former Bar Association President Alfonso Novales Aguirre, in such cases, the state may be responsible civilly for its negligence. Specifically, the Supervisión de Tribunales must guard against such abuse, Novales warned.³¹⁸ Still, according to the Commission for the Strengthening of Justice, about half of low income criminal detainees lack access to public defenders.³¹⁹

The Public Defender Service continues to undergo change.³²⁰ While new legislation comes on line,³²¹ there are new calls to provide a service for indigenous Maya,³²² and more specifically, defenders for Maya women.³²³ The new, autonomous, independent Service comes into effect in mid-1998.³²⁴

V. CONCLUSIONS ABOUT THE NEW CODE.

Whether a legal system is classified as inquisitorial or adversarial is becoming more and more a question of history and style rather than substance.³²⁵ Whether Guatemala has an inquisitorial or adversarial system will not decide whether justice will be served: political systems can be abused to reach intellectually dishonest results even when the weight of the law would go another way.³²⁶

At times, authors have alleged that the inquisitorial system was not "democratic."³²⁷ In fact, the old Guatemalan Code was criticized

317. See Carlos Caneo, *Olvidados en prisión*, SIGLO VEINTIUNO, June 23, 1997, at 3; Graeme Thompson, *Public Defenders: Overworked and Underpaid*, SIGLO NEWS, Jan. 7, 1998, at 16; Walter Martín Juárez, *Sólo 68 defensores para el país*, EL PERIÓDICO, June 1, 1998, at 6.

318. See Novales: *Pueden demandar al Estado*, SIGLO VEINTIUNO, June 23, 1997, at 3.

319. See Julia Corado, *El 50% de los detenidos de escasos recursos no se contacta con defensores públicos*, SIGLO VEINTIUNO, Sept. 16, 1997, at 8.

320. See *Aprobada ley de la Defensa Pública*, EL PERIÓDICO, Dec. 6, 1997, at 4.

321. See *id.*; see also Art. 64, Decree No. 129-97, "Ley del Servicio Público de Defensa," (Diario de Centro América, No. 16, Jan. 13, 1998) 393.

322. See *Piden Defensoría Indígena*, SIGLO VEINTIUNO, Dec. 7, 1997, at 5.

323. See *Crearán defensoría de la mujer indígena*, SIGLO VEINTIUNO, Dec. 10, 1997, at 6; *Defensoría para las mujeres mayas*, EL PERIÓDICO, Dec. 10, 1997, at 6.

324. See Art. 64, Decree No. 129-97, "Ley del Servicio Público de Defensa," (Diario de Centro América, No. 16, Jan. 13, 1998) 393, 397 (noting that the legislation will come into effect six months after its publication).

325. See FAIRCHILD, *supra* note 163, at 128.

326. See generally Tigar, *supra* note 162, at 7 (discussing how the Chilean Supreme Court refused extradition to the U.S. of three individuals known to have been accomplices in the murder of Orlando Letelier and Ronni Karpen Mofitt on September 21, 1976 in Washington, DC. The court decision was a parody of judicial reasoning and constituted on the whole an exercise designed to reach a result fore-ordained by the Pinochet regime).

327. See BARRIENTOS PALLEGER, *supra* note 144, at 19 (the inquisitive system is "propio de regimenes dictatoriales o autoritarios, parte de la presunción de culpabilidad y por lo tanto utiliza la prisión provisional como una condena anticipada, por lo que opera fuera del sistema de garantías constitucionales").

as criminal authoritarianism, allowing the state to act on the margins of legality, with judges structurally incapacitated from criminal investigation and an ineffective Public Ministry.³²⁸ While it is true the adversarial system is used in countries like Canada, the United States and Britain, it is also true that Nazi Germany used accusatorial procedures, vesting great power in the prosecutor.³²⁹ Meanwhile, many of the world's democracies today use basically an inquisitorial system.³³⁰

To its credit, Guatemala has risen above this debate over inquisitorial versus adversarial systems. Whether or not in theory one system is better than the other, it is clear the inquisitorial system utilized in Guatemala was bankrupt. The country made a bold choice opting for reform, and is now poised to reap the benefits. For the first time, defendants can hear publicly what they are accused of, present oral defenses, and have legal representation in their own language. In a country with a history of massive human rights abuse, this is a monumental step forward. The international community should recognize this advance toward a restoration of the rule of law.

VI. CONCLUSIONS: TOWARD IMPLEMENTATION OF THE PEACE ACCORDS.

The "Accord on Strengthening Civil Authority and the Role of the Armed Forces in a Democratic Society" recognized the obsolescence of current legal procedure, the slowness of process, the lack of modern court administration, the lack of supervision over justice sector employees and the presence of corruption and inefficiency.³³¹ That document called for an end to impunity and corruption.³³²

328. See *id.* at 26-27.

329. See NEIRA ALARCÓN, *supra* note 164, at 15.

330. See *id.*

331. See Acuerdo Fortalecimiento, *supra* note 269, ¶ III-8, at 106.

332. See *id.* One area of the law in particular that is under attack because of perceptions of impunity is parole. The public views any early release as another example of impunity at work in Guatemalan society. See, e.g., Maynor Amézquita and Carlos Castañaza, *Redención de penas: Más de 30 convictos tramitan libertad*, SIGLO VEINTIUNO, Jan. 6, 1998, at 3. As a reaction to this perceived impunity, there has been discussion about change to the parole system. See, e.g., Lucy Barrios, *Redención de penas: Piden plantear reformas*, SIGLO VEINTIUNO, Jan. 7, 1998, at 4; Fiscal justifica liberación de reo, SIGLO VEINTIUNO, Jan. 7, 1998, at 4; Julia Corado and Rodolfo Zelada, *Redención de penas: FRG presentará reformas a la ley*, SIGLO VEINTIUNO, Jan. 8, 1998, at 6; Presidente del OJ: *Urge revisar sistema de redención de penas*, SIGLO VEINTIUNO, June 20, 1998, at 10.

The goal of a transparent, efficient criminal justice system, as envisioned in the new Code, remains just that — a goal.³³³ The obvious problem now is the operationalization of the new Code. Although advances have been made, corruption, impunity and citizen security are cries still heard in the street. In the courts and with prosecutors, these problems are manifested in low salaries, official corruption and deficient training. While roles are defined in the Code, they need to be translated into new administrative and organizational structures within the field. Such an endeavor will also require increased cooperation and collaboration among the police, prosecutors and judges. Legal education at the University level must also track these changes and prepare new attorneys to face the new reality.

Steps are already underway to address these concerns and take Guatemala to the next level of administration of justice, the most important of which is the new political will to prosecute and convict former government officials deemed corrupt:

- Former President of the Supreme Court, Juan José Rodil Peralta, has been charged with misuse of Q201 million.³³⁴
- Former Attorney General Ramsés Cuestas is under investigation by prosecutors.³³⁵
- Another former Attorney General, Telésforo Guerra Cahn, has been indicted for attempted fraud of Q70 million.³³⁶
- A number of military officials and police officers, some high-ranking, have been charged as being "narcomilitares."³³⁷
- The Attorney General is even trying to extradite former president Jorge Serrano from Panama to stand trial for his 1992 coup.³³⁸

333. One example of the new transparency is that victims can now participate in and observe the trial process. See, e.g., *En juicio oral, víctima reconoce a sus plagiarios*, EL PERIÓDICO, Nov. 26, 1997, at 6.

334. See *MP espera notificación para enjuiciar a Rodil*, SIGLO VEINTIUNO, Nov. 5, 1997, at 6.

335. See Marco Tulio Trejo, *Ramsés Cuestas y dos de sus hijos serán llamados a declarar*, SIGLO VEINTIUNO, June 18, 1997, at 6.

336. See *Solicitan prisión preventiva*, SIGLO VEINTIUNO, Dec. 4, 1997, at 4.

337. See *Arrestan a focial de alta por sopechas de narcotráfico*, SIGLO VEINTIUNO, June 22, 1997, at 3; *Los narcomilitares*, SIGLO VEINTIUNO, June 22, 1997, at 3; *Militares y policías integran bandas de plagiarios, dice GV*, SIGLO VEINTIUNO, July 31, 1997, at 43; *Jefe policíaco y ejecutivo de una empresa detenidos por sindicación de narcotráfico*, SIGLO VEINTIUNO, Aug. 6, 1997, at 59; *Jefe de PN encubría a red de narcotraficantes*, PRENSA LIBRE, Aug. 6, 1997, at 2; *Ochoa Ruiz irá a juicio oral*, SIGLO VEINTIUNO, Nov. 21, 1997, at 6.

338. See *MP interpondrá hoy solicitud de extracción de Serrano Elías*, PRENSA LIBRE, June 23, 1997, at 3; Edín Hernández, *Extradición de Serrano cobra fuerza*, SIGLO VEINTIUNO, Nov. 25, 1997, at 8; Julia Corado, *Deniegan solicitud de captura*, SIGLO VEINTIUNO, Dec. 10, 1997, at 8; *Editorial Panamá mancha de nuevo el espíritu del asilo político*, PRENSA LIBRE, Feb. 23, 1998, at 10; *Panamá niega por tercera vez la extradición de Serrano Elías*, PRENSA LIBRE, Feb. 20, 1998, at 79.

- Former dictator General Ríos Montt was called by prosecutors to answer questions about his responsibility in the *Dos Erres* massacre.³³⁹
- Former Interior Minister Danilo Parinello, former Assistant Interior Minister Col. Mario Mérida, an former police chief Salvador Figueroa were recently sentenced for their involvement in the death of a university student in 1994,³⁴⁰ although this was later overturned on appeal.³⁴¹
- Former Vice President Gustavo Espina Salguero was convicted for his participation in the 1992 Serrano coup,³⁴² although the sentence was only a fine of Q7,300 (about US\$1,200).³⁴³
- In the *Sandoval* case, which involved a kidnapping, rape and murder, twenty-one suspects have been arrested, nineteen of which were former military, again evidencing the administration's political will to take on even the military.³⁴⁴
- Six kidnapers, bank robbers, and former military police officers were arrested after an intense criminal investigation.³⁴⁵

Similarly, the official human rights record greatly improved in 1997 over prior years, according to Human Rights Watch.³⁴⁶ Under the new

339. See *General Ríos Montt niega haber ordenado masacre en Dos Erres*, PRENSA LIBRE, June 25, 1997, at 6.

340. See *Former Guatemalan officials sentenced*, UPI, July 31, 1997, available in LEXIS, News Library; *Guatemala court sentences top officials for student's death*, DEUTSCHE PRESSE-AGENTUR, July 31, 1997, available in LEXIS, News Library; Rodolfo Zelada, *Condenan a prisión a ex funcionarios del Interior*, SIGLO VEINTIUNO, July 31, 1997, at 2. Interior Minister Rodolfo Mendoza characterized the judgement as a "barbarity." See *Después de la sentencia, la controversia*, SIGLO VEINTIUNO, Aug. 1, 1997, at 8. Congressional President Arabella Castro Quiñonez was also publicly against the sentence. See *Castro: Es una resolución que debilita la autoridad*, SIGLO VEINTIUNO, Aug. 1, 1997, at 8. Nevertheless, Attorney General Héctor Hugo Pérez Aguilera supported the decision. See *Otras reacciones*, SIGLO VEINTIUNO, Aug. 1, 1997, at 8.

341. See *Ex funcionarios absueltos enjuiciarán a sus acusadores*, SIGLO VEINTIUNO, Oct. 29, 1997, at 3.

342. See Oneida Najarro, *Espina condenado a 4 años de cárcel conmutables*, PRENSA LIBRE, July 23, 1997, at 67; Julia Corado, *Próximo martes vence el plazo para que Gustavo Espina apele sentencia*, SIGLO VEINTIUNO, Aug. 2, 1997, at 8.

343. See Julia Corado, *Espina pagará Q7 mil 300 por haber violado la Constitución*, SIGLO VEINTIUNO, July 23, 1997, at 6. The case is on appeal. *Espina apele sanción*, SIGLO VEINTIUNO, Feb. 12, 1998, at 6.

344. See Marco Tulio Trejo and Alba Trejo, *Pérez: El 90% de los secuestradores detenidos perteneció al Ejército*, SIGLO VEINTIUNO, Nov. 4, 1997, at 3; *Nationwide Sweep Nabs 21 Alleged Kidnappers*, SIGLO NEWS, Nov. 5, 1997, at 3; Elder Iteriano, *Fueron militares 19 de 21 detenidos por caso Beverly*, PRENSA LIBRE, Nov. 4, 1997, at 3.

345. See Edín Hernández, *Asaltantes capturados son ex PMA*, SIGLO VEINTIUNO, Nov. 27, 1997, at 2.

346. See *Human Rights: Guatemala ha mejorado*, SIGLO VEINTIUNO, Nov. 25, 1997, at 1; HUMAN RIGHTS WATCH, *WORLD REPORT: 1998* 116 (1997) (noting that political repression sharply declined in 1997, although Guatemala remains awash in violence with common crime). *But see GAM reporta mil 196 violaciones de los Derechos Humanos durante 1997*, PRENSA LIBRE, Nov. 1, 1997, at 8 (The Grupo de Apoyo Mutuo - GAM - reports 1,196 human rights

Code, the prosecution has established an approximately 70 per cent conviction rate.³⁴⁷

The major reforms in Latin America generally in recent years have been focusing on organizational and administrative issues.³⁴⁸ Code reform, if not combined with new organizational and administrative systems, does not necessarily yield the desired results.³⁴⁹ In court systems throughout the region, most notably in Costa Rica, Chile and Peru, new organizational and administrative structures have been designed and implemented with positive results in reducing delay, minimizing exposure to corruption, creating accountability, as well as establishing uniform practices, performance standards and systems to measure performance.³⁵⁰

With this in mind, another major advance in making justice work at the local level has been the creation of new justice centers. The Guatemalan Government designated Zacapa and Quetzaltenango as places to focus attention to make the new Code work. That model, developed with USAID assistance, consists of the following:³⁵¹

violations in 1997). *Compare GAM: continúan violaciones a los derechos humanos*, SIGLO VEINTIUNO, Jan. 14, 1998, at 43 (However, GAM uses a definition of human rights which includes lynchings, kidnappings, assassinations and extrajudicial killings which are not necessarily linked to the government, but rather reflect regular criminal conduct). In this sense, the GAM report and Human Rights Watch are not necessarily in conflict. *See GAM: 1,559 violaciones en 1997*, EL PERIÓDICO, Jan. 14, 1998, at 31 (noting that official human rights violations have declined substantially).

347. See Edwin Palacios, *Macro balance para la justicia en la ciudad*, EL PERIÓDICO, Dec. 21, 1997, at 1 (reporting there were 480 judgements, of which 331 were convictions and 77 were acquittals since the new Code has come into effect). Unfortunately, there have been some very serious set-backs in prosecution, including the dramatic losses of the Moreno case and the Conexión Alema case and the apparent ineptitude of the prosecution in the Girardi case. See Marco Tulio Trejo, *El MP pone en duda imparcialidad de sala*, SIGLO VEINTIUNO, Feb. 16, 1999 at 2; Donald Gonzales & Julia Corado, *Gándera inconforme con absolución*, SIGLO VEINTIUNO, Feb. 18, 1999, at 8; Julia Corado & Marco Tulio Trejo, *MP analiza solicitar la clausura provisional del caso Gerardi*, SIGLO VEINTIUNO, Feb. 10, 1999 at 4; Elder Interiavo, *Orantes: hoy, libre o a juicio*, PRENSA LIBRE, Feb. 18, 1999, at 3. These dramatic failures have drawn into question the ability of the Public Ministry to carry out an effective investigation and prosecution.

348. See U.S. Agency for International Development, *Judicial Sector Reform Advancing USAID's Peace Objective: Scope of Work*, Nov. 12, 1997, at 4 [hereinafter USAID/SOW].

349. See generally NATIONAL CENTER FOR STATE COURTS, *CHANGING TIMES IN TRIAL COURTS: CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS* (1988).

350. See USAID/SOW, *supra* note 348, at 4. In recognition of this fact, the Guatemalan government opened a Clerk of Court office, Centro Administrativo de Gestión Penal, in Guatemala City, a first for a capital city in Latin America. This clerk office is based on the Justice Center model. See *infra* note 351.

351. See *id.* at 3-4; See generally, Tim Cornish & Maggie Triviz, *Perspectivas: Sistemas de Gestión Administrativo de los Centros de Enfoque de Quetzaltenango y Zacapa*, Presentation to the Plenary of the Supreme Court (May 28, 1997) [hereinafter Cornish & Triviz]. New Justice Centers were opened in 1998 in Nebaj (El Quiche), San Benito (Petan), and Escuintla.

- (1) Direct, decentralized access by the public to police, prosecutors and court officials;
- (2) Use of standardized, user-friendly forms, uniform across all focus centers, as approved by the respective Guatemalan Government institutions, for the reporting and processing of crimes;
- (3) Case management and records systems to reduce opportunities for corruption and improve the quality of case supervision. The systems generate accurate statistics (case type, status, assignment, progress and other appropriate monitoring data, as approved by the Court) and eliminate a major opportunity for corruption (in "lost" files). To some extent, these systems are to be computerized with a user-friendly software package;
- (4) Inclusion of interpretation programs, where appropriate, to allow access to justice for non-native Spanish speakers;³⁵²
- (5) Introduction of alternative dispute resolution as a way to settle cases identified through improved case intake and diversion programs; and
- (6) A community outreach program (conducted in at the local level, and in local languages, as appropriate), informing members of the public of the services offered at the Center, and providing public awareness of how to access the justice system.

Among other advances, the two existing centers have installed modernized docket and case filing systems in the appellate level courts, and trial and other lower courts. The system allows the courts to provide more efficient service to the public. The new organizational structure promotes team approaches (police, investigator, prosecutor, judge) to dispute resolution and problem solving, while providing superior services to the public.³⁵³

While USAID has focused its technical assistance to the Government with a view toward making the justice system work in an efficient, transparent manner, MINUGUA has been collaborating with the same justice sector institutions to expand justice to areas of the country where no formal presence previously existed. The first new center was in Nebaj, located in the northern part of Guatemala in a heavily indigenous area previously unserved by the formal system.

352. Article 90 of the Criminal Procedure Code requires interpreters for non-native Spanish speakers. Under Article 142, it is possible to have the criminal procedure in an indigenous language, with simultaneous translation into Spanish.

353. See generally, Cornish & Triviz, *supra* note 351.

This new center, opened in February 1997, represents an extension of the existing formal system to a new location.³⁵⁴

USAID and MINUGUA continue to collaborate with the Guatemalan Government in expanding the justice center model and further promoting decentralized access to justice. In 1998, USAID joined forces with MINUGUA in Nebaj to integrate the administrative advances from the Justice Centers to the Nebaj location. Further, USAID supported Guatemalan government efforts to open new Centers in Escuintla and San Benito (Flores), again with the administrative advances from the Zacapa and Quetzaltenango experiences. In addition, as the Court's management and oversight are based in Guatemala City, the USAID efforts included extension of the administrative model to the ten criminal courts (juzgados penales) in the Capital through creation of a clerks office (Centro Administrativo de Gestion Penal), a first for a capital city in Latin Americas.³⁵⁵

New transparent systems of the justice centers in Zacapa and Quetzaltenango have served to deter corruption. Based in part on these experiences, the court looks to promote oral processes in other areas of law with a view toward increasing transparency and efficiency and reducing opportunities for official corruption.³⁵⁶

With regard to salaries, discussion has already begun on how to increase the budgets of the courts, prosecutors and police.³⁵⁷ It is

354. See generally, Alejandro Alvarez, *Centro de Administración de Justicia de Nebaj: Módulo Organizativo y Técnico*, Dec. 20, 1996 (Overview of the Nebaj center).

355. See USAID/SOW, *supra* note 348, at 3.

356. See Point 3 regarding *Combatir la corrupción* in COMISIÓN DE MODERNIZACIÓN DEL ORGANISMO JUDICIAL, PLAN DE MODERNIZACIÓN DEL ORGANISMO JUDICIAL: 1997 - 2002 (Oct. 7, 1997).

357. See, e.g., Helen Mack Chang, *Commission for the Strengthening of Justice*, Presentation in Antigua, Guatemala, Nov. 4, 1997 at 7; *Avizoran panorama oscuro para la justicia por bajo presupuesto del OJ*, PRENSA LIBRE, Nov. 28, 1997, at 4; Bar Association President Alfonso Novales, *Comments in La inseguridad, talón de Aquiles del Gobierno*, PRENSA LIBRE, Jan. 14, 1998, at 3; Karen Fischer (Alianza contra la Impunidad), Michelle de Leal (Madres Angustiadas) & Oscar Recinos (guardianes del Vecindario), *Comments in Carlos Ajanel Soberanis & Carlos Castañaza Rosales, Dos años de Gobierno: Seguridad, la tarea pendiente*, SIGLO VEINTIUNO, Jan. 13, 1998, at 3; Comisión de Modernización del Organismo Judicial, Plan de Modernización del Organismo Judicial 1997 - 2002 18 (Aug. 1997); Annex "MINISTERIO PÚBLICO: COSTO DE EJECUCION POR AREA ESTRATEGICA" in MINISTERIO PÚBLICO, METAS PROGRAMADAS POR AREA ESTRATEGICA, (Oct. 1997); MINISTERIO DE GOBERNACIÓN, RESUMEN DE LA PRESENTACIÓN EFECTUADA ANTE EL PRIMER TALLER DE INTERCAMBIO ENTRE LA INSTANCIA COORDINADORA DEL SECTOR DE JUSTICIA CON LA COMUNIDAD INTERNACIONAL 4 (Nov. 4, 1997); Oneida Najarro, *Jueces de Paz piden incremento salarial*, PRENSA LIBRE, Oct. 18, 1997, at 6 (noting that Congress has approved salary increases: Trial Court judges will receive Q2,500, magistrates Q1,500, court supervisors Q2,000 and secretaries Q1,000. A small increase to the Courts to Q325.5 MM is in sight, although far below what the Court will need to implement its Modernization Plan, budgeted at Q705 million). See also Carlos Ajanel and Edgar Arana, *La*

hoped that increased salaries will attract better qualified candidates, and provide an honorable salary, so that employees will not be as tempted by corruption. In all, the courts have fired about 40 judges, the police about 120 officers and the Public Ministry just under 40.³⁵⁸ Even so, it has been difficult for the government to rid itself of corrupt or incompetent officials given restrictions in the Labor Code.³⁵⁹

Training needs are now being addressed. The Training Unit (*Unidad de Capacitación* or UNICAP) of the Public Ministry is in the process of a needs detection analysis and reforming the education process for prosecutors based on USAID technical assistance. First, UNICAP established the ideal profile of a prosecutor. It then determined the performance level of current prosecutors. Then, it adjusted its curriculum to meet the exact needs of prosecutors. Finally, a system is

justicia con Q81 millones más, SIGLO VEINTIUNO, Nov. 29, 1997; *Editorial: Un presupuesto insuficiente para el Organismo Judicial*, EL PERIÓDICO, Jan. 10, 1998, at 10; Oneida Najarro, *Advierten insuficiencia en presupuesto asignado al OJ*, PRENSA LIBRE, Jan. 9, 1998, at 6; *Corte Suprema tramita Q50 millones más de presupuesto*, PRENSA LIBRE, Jan. 15, 1998, at 6. One pending issue for the Public Ministry budget has been the transfer of control of morgues from the Courts to the Public Ministry, which lacks resources for carrying out this new function. See *Inicia traslado de morgue a la Fiscalía*, EL PERIÓDICO, Jan. 7, 1998, at 6; Donald González, *Servicio Médico Forense: ¿Quién hará las necropsias?*, SIGLO VEINTIUNO, Jan. 7, 1998, at 39; *MP sin recursos para necropsias*, SIGLO VEINTIUNO, Jan. 12, 1998, at 6. Proposals are now on the table to increase the Constitutionally-required share of the national budget for the Courts from 2 percent today to a proposed 6 percent under Article 213 of the Constitution. *Elevarán a 6% aporte a la CSJ*, PRENSA LIBRE, Jan. 27, 1998, at 6. The Court had wanted a 10 percent guarantee. See *Presentan nómina de candidatos a magistrados*, SIGLO VEINTIUNO, Jan. 24, 1998, at 8. Finally, Public Defense is an area also hurt by under-investment. See *Defensoría pide más recursos*, SIGLO VEINTIUNO, Jan. 18, 1998, at 5.

358. See *Seguridad y Justicia: Un mal año para la justicia*, PRENSA LIBRE, Dec. 30, 1997, at 6 (*resumen noticioso* Supp.) (providing a summary for 1997); The Public Ministry continued to get rid of corrupt officials in 1998. See *MP: Destituyen a personal corrupto*, SIGLO VEINTIUNO, Jan. 15, 1998, at 6. Similar attempts continued in 1998 in the Court as well. See *CSJ: No a la corrupción*, SIGLO VEINTIUNO, Jan. 20, 1998, at 8; Edwin Palacios, *Rotaciones en la Corte para evitar corrupción*, EL PERIÓDICO, Jan. 20, 1998, at 6; Julia Corado, *Con lugar expediente contra magistrados*, SIGLO VEINTIUNO, Jan. 17, 1998, at 2; *Rotan a trabajadores en el OJ tras retornar de sus vacaciones*, PRENSA LIBRE, Jan. 21, 1998, at 6. In 1998, the Interior Ministry continue to fire officers for abuse of authority and drinking on the job. See *Policía Nacional: Detenciones ilegales*, SIGLO VEINTIUNO, Jan. 14, 1998, at 4. The Court also continues to address corruption in 1998. See *CSJ pide destitución de los magistrados de Sala Duodécima*, EL PERIÓDICO, Jan. 27, 1998, at 6.

359. See, e.g., *Multan a Fiscal General*, EL PERIÓDICO, Nov. 26, 1997, at 6; Oneida Najarro, *Reinstalan a fiscal del MP destituida por ineficiente*, PRENSA LIBRE, Dec. 3, 1997, at 6. Still, the Court has succeeded in getting rid of some corrupt officials. See, e.g., Oneida Najarro, *OJ anuncia despidos de corruptos y huelgueros*, PRENSA LIBRE, Dec. 29, 1997, at 6; *STOJ: despidos anunciados en el OJ obedecen a compromisos políticos*, PRENSA LIBRE, Jan. 4, 1998, at 8; *Organismo Judicial inicia plan de trabajo para combatir corrupción*, PRENSA LIBRE, Jan. 6, 1998, 47. Incompetence and unethical conduct is also present among public defenders. See, e.g., Edwin Palacios, *600 abogados abandonaron a sus clientes*, EL PERIÓDICO, Dec. 24, 1997, at 6.

now in place to measure the impact of the training exercises, so that corrections can be made to the curriculum on an as needed basis.³⁶⁰ Previously, UNICAP had been providing courses that were their "best guess" at needs, or simply because some foreign donor had offered them, whether or not they actually contributed to performance. No attempt at measuring impact was ever included, other than reporting the number of courses offered or number of course participants; both are fairly meaningless statistics.³⁶¹ Following the UNICAP lead, similar efforts are now underway at the Judicial School (*Escuela de Estudios Judiciales*) with USAID technical support.³⁶²

New organizational relationships, at the national and local levels, are being worked out, to advance cooperation and collaboration. At the local levels, as discussed above, police, prosecutors and court officials are now working together at the justice center level.

On a national level, new inter-institutional collaboration is emerging. Historically, this has been difficult. Between 1986 and 1988, USAID paid the initial costs of supporting a National Justice Commission which became defunct.³⁶³ The National Commission was created in 1987 by the President of the judicial branch who made himself the head of the Commission. The Commission included the Public Ministry, Congress, Interior Ministry, Bar Association and law schools.³⁶⁴ Likely reasons for the Commission's collapse include:

- (a) It was created in response to an external request (USAID) rather than in response to the desires of the Guatemalan Government;
- (b) Control by the Judicial branch probably reduced interest of others;
- (c) The Commission had no workplan; and
- (d) The natural tendencies of the institutions to avoid collaboration.³⁶⁵

A new Commission for the Strengthening of Justice was called for in March 1997 to promote modernization, access to justice, streamlin-

360. See, e.g., CREA/USAID, REPORTE TRIMESTRAL DE AVANCE: REPORTE NÚMERO DIEZ, 1 DE ABRIL AL 30 DE JUNIO DE 1997 11-13 (July 17, 1997) [hereinafter CREA/USAID REPORT].

361. See generally, Alicia Warde, *Informe y Recomendaciones: Análisis de los programas de capacitación del proyecto CREA/USAID* (Nov. 1996).

362. See, e.g., CREA/USAID REPORT, *supra* note 360, at 8.

363. See USAID/Guatemala, *Stocktaking*, *supra* note 135, at 3.

364. See *id.* at 16.

365. *Id.* at 16-17.

ing of process and professional excellence.³⁶⁶ Further, the Court, Public Ministry and Interior Ministry, the three principle entities responsible for justice in Guatemala, have signed an agreement to improve coordination and advance a common agenda, through the *Instancia Coordinadora*.³⁶⁷ It now appears that inter-institutional coordination is working.

On a parallel track, a special "Commission for the Modernization of the Judicial Branch," was established, made up of court functionaries and presided over by then Court President Ricardo Alfonso Umaña Aragón. From November 14, 1996 to April 28, 1997, the Commission held a series of conferences, with assistance funding from the World Bank and assistance from the United Nations Development Programme (UNDP). Based on those conferences, the Supreme Court drafted a modernization plan for the judicial branch to be carried out in 1997-2002. The participatory process that went into the drafting of the plan is unprecedented in Guatemala's judicial system. The plan, unveiled on October 7, 1997, outlines five major areas: (a) inadequacy in carrying out court functions, (b) limited access to administration of justice, (c) corruption, (d) deficient institutional management, and (e) lack of confidence in the court system by the public.³⁶⁸ The plan is refreshingly frank in recognizing these problems and proposes an ambitious framework for addressing them.³⁶⁹

Major reforms are now underway in legal education. At the request of the Law School Dean at the University of San Carlos, USAID is providing technical assistance to revamp the curriculum to

366. See *Acuerdo Gubernativo No. 221-97* (Mar. 7, 1997) printed in *DIARIO DE CENTRO AMERICA* 157 (Mar. 12, 1997); *Acuerdo Fortalecimiento*, *supra* note 269, Art. 15.

367. See Alba Trejo, *Organismos de seguridad firman carta para entenderse mejor*, SIGLO VEINTIUNO, Sept. 26, 1997, at 6; *Convenio Interinstitucional para la Creación de la Junta Técnica de Planificación y Coordinación Sectorial* (Antigua, Guat., Nov. 4, 1997). This group is now meeting regularly. See also *Instancia Coordinadora sostiene reunión*, SIGLO VEINTIUNO, Jan. 30, 1998, at 5. The Instancia Coordinadora ended its work with its presentation of its final report, *Comisión de Fortalecimiento de la Justicia, Una nueva justicia para la paz* (1998). The Instancia Coordinadora should not be confused with the so called Instancia Multipartidaria, a multiparty group of experts providing advice to the Congress on Constitutional reform, including the area of justice reform. See also *Instancia Multipartidaria analiza presupuesto del OJ*, PRENSA LIBRE, Jan. 24, 1998, at 3; Maynor Amézquita, *Instancia Multipartidaria: Discusiones sin consenso*, SIGLO VEINTIUNO, Feb. 21, 1998, at 6. The Multiparty Commission ended its work upon presentation of the recommendations for constitutional reform. See *Disuelve Multipartidaria*, PRENSA LIBRE, May 16, 1998, at 4.

368. See generally *Comisión de Modernización del Organismo Judicial, Plan de Modernización del Organismo Judicial: 1997-2002* (Guat., 1997).

369. See Oneida Najarro, *El OJ está enfermo: La corrupción e impunidad lo agobian*, PRENSA LIBRE, Oct. 8, 1997, at 4 (which summarizes the Plan).

make it relevant to the needs of today's attorneys.³⁷⁰ In addition, new course materials in trial practice and trial advocacy, adapted to the new Guatemalan Criminal Procedure Code, are being produced in collaboration with the Universidad Rafael Landívar.³⁷¹

Until 1995, USAID was the principal and lead donor assisting the Guatemalan government to reform its justice sector. Since then, in the context of the peace accords, other donors have expressed interest in becoming involved. In the human rights area, MINUGUA has taken the major leadership role with its human rights verification mission.³⁷² Under the peace accords, MINUGUA also has a role in institutionalization of legal reform, and has been active in support of programs for a pluri-cultural and pluri-linguistic access to justice (financed by the Dutch and U.S. Governments)³⁷³ and public defenders (financed by the U.S., with salaries of public defenders being paid via a Spanish Government contribution to UNDP).³⁷⁴

A number of other donors are also now active. As mentioned above, the Spanish are involved with the public defenders and the reform of the police. UNDP has also begun activities in the justice sector in terms of the public defenders program and the technical assistance portion of the World Bank effort with the Commission for the Modernization of the Judicial System. The Inter-American Development Bank (IDB) is expected to become involved in 1998³⁷⁵ along with the European Union³⁷⁶, Canadians³⁷⁷ and others.³⁷⁸ The involvement of additional donors should keep up the pressure for additional

370. See USAID/SOW, *supra* note 348, at 3-4.

371. See, e.g., CREA/USAID REPORT, *supra* note 360, at 6-7.

372. See *Acuerdo Global sobre Derechos Humanos*, Art. 9 (Mar. 29, 1994).

373. See generally, MINUGUA, *Project Document - Trust Fund: Justice and Multiculturalism Man and K'iche Linguistic Zones* (July 31, 1997).

374. See, e.g., Letter from Victor Marrero, Ambassador, to Jean-Pierre Halbwachs, Controller, U.N., (April 29, 1997).

375. See generally Inter-American Development Bank, *PERFIL II*, (Aug. 18, 1997); *Más apoyo al sector justicia*, PRENSA LIBRE, Jan. 17, 1999, at 22.

376. See *Unión Europea: Darán US\$31 millones para la PNC*, SIGLO VEINTIUNO, Mar. 25, 1998, at 6. The European Union will provide about \$30 million to the PNC to be used for training. However, the support to the Organismo Judicial is contingent upon passage of the Constitutional Reforms.

377. A Canadian diagnostic study, a step prior to investment, is now complete. See generally, Louis Perret and Jean-Denis Archambault, *La Administración de Justicia en Guatemala: Reporte de misión y recomendaciones para la Agencia Canadiense de Desarrollo Internacional* (Mar. 1997).

378. A number of governments sent representatives to a donor coordination meeting in Antigua, Guatemala, November 3-4, 1997. Among the invitees were Spain, France, Italy, Japan, Norway, the Netherlands, Canada, Chile, Denmark, Great Britain, Sweden, Switzerland, Argentina, Venezuela, Belgium and Austria.

reform. It should serve to lessen the burden on the United States for leading policy dialogue, a job that until recently, it did mainly on its own.

There is now an opportunity for real change in Guatemala for the first time in 40 years. However, the risk of failure is also extremely high. The Guatemalan people are seeking tangible results that the peace process is working. The inability of government to curb violence and insecurity may present the most serious threat to the peace process. As a result, the Government must produce results in the short term, and continue to produce results over the next several years.

Donor interest and collaboration is at an all-time high. Similarly, the Government of Guatemala itself seems committed to the process. However, the present malaise was not created in a day, and it will take a generational shift for Guatemala to mature into a more nuanced system of justice. In the mean time, both the government and donors must keep pushing to ensure the peace process and real reform, the prospects for which have never been higher.