

## GUATEMALAN “JUSTICE CENTERS”: THE CENTERPIECE FOR ADVANCING TRANSPARENCY, EFFICIENCY, DUE PROCESS, AND ACCESS TO JUSTICE

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## EXECUTIVE SUMMARY

Guatemala is a country with a history of justice problems: human rights, corruption, impunity, and inefficiency. Women, the poor, and the indigenous are especially disenfranchised by the foregoing problems. After a genocidal civil conflict, the need is clear for establishing the rule of law.

To address these concerns, the U.S. Agency for International Development (“USAID”) has assisted Guatemala with the development of a new operational model—the Justice Center. This structure brings together police, prosecutors, judges, public defenders, local civil society, and private law practitioners to solve problems in a collaborative framework. The core ingredient of the Justice Centers is the people coming together in a voluntary effort to break with traditional structures. In a nutshell, the Centers are designed to make the justice system actually work in a given location.

Key elements of the Justice Centers are: (1) organizational and administrative structures that reduce delay, minimize exposure to corruption, and create accountability; (2) improved functioning of key actors in their assigned roles and management structures and techniques that promote team approaches; (3) use of standardized, user-friendly forms; (4) user-friendly case management and records systems that reduce opportunities for corruption, improve the quality of case supervision, and generate accurate statistics; (5) interpreters and culturally-appropriate outreach and education programs in local languages to make the system truly accessible to non-native Spanish speakers; and (6) promotion of alternative dispute resolution, plea bargaining (“*criterio de oportunidad*”), stay of prosecution (“*suspensión condicional*”), and other mechanisms to settle cases identified through improved case intake and diversion programs.

Results so far are impressive. The Justice Centers show improved

customer service, access to justice and quality of service, all with enhanced transparency. This, in turn, has advanced procedural due process and human rights. Today, Justice Centers in various stages of development are found in Zacapa, Escuintla, Quetzaltenango, San Benito (Petén), Santa Eulalia (Huehuetenango), Nebaj (El Quiché), and Santa Cruz.

After such a prolonged period in Guatemalan history of disrespect for the law, change does not come overnight. Guatemala will have to stay the course for several generations before true access to a rule of law is extended to all citizens. The Justice Center strategy, however, figures to be part of the solution.

## INTRODUCTION

Currently, Guatemala is experiencing a triple revolution involving changes from war to peace, authoritarianism to participatory democracy, and a state-centered economy to a global market. Since 1985, Guatemala's political structure has consisted of constitutional governments and democratically-elected presidents. One of the most formidable obstacles confronting the peace process, however, has been a national-level climate of violence. Consequently, the assassination of Monsignor Juan Girardi Conedera<sup>1</sup> has emerged as the focal point of discussions about impunity and the need for effective justice.<sup>2</sup>

In addition to the widespread violence, there is a pressing need to address human rights concerns. According to the Commission for Historical Clarification, the thirty-five year fratricidal war, from 1962 to 1996, killed about 200,000 people. Untold thousands of cases of human rights violations and acts of violence occurred during that period. At the same time, impunity permeated Guatemala to such

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1. Bishop Girardi was one of the most important human rights advocates in Guatemala until he was murdered on April 26, 1998. Girardi had led the Archbishop's Office on Human Rights. He was killed a week after publishing a four volume treatise on human rights abuses in Guatemala entitled, *GUATEMALA: NUNCA MÁS* [Guatemala: Never Again].

2. See INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, MISSION REPORT ON COMPLIANCE 6, *Democracia en Guatemala: La Misión de un Pueblo Entero* [*Democracy in Guatemala: the Mission of an Entire Community*] (1998) (listing various persistent examples of impediments to peace, security, and justice in Guatemala).

an extent that it consumed not only the justice sector but also the State itself. In particular, women and children were victims of this lawlessness. The Guatemalan Government regarded the Mayan population as the collective enemy of the State. The justice system, nonexistent in large areas of Guatemala before the war, was further weakened when the court system submitted to the demands of the dominant national security apparatus. The courts were incapable of investigating, trying, judging, or punishing even a small number of those responsible for the most serious abuses.<sup>3</sup>

The Peace Accords<sup>4</sup> note that the justice system in Guatemala is flawed. Corruption, inefficiency, slow and antiquated practices and procedures, a lack of modern office management techniques, corruption, and inefficiency plague the system of justice.<sup>5</sup> The peace process called for an end to impunity and corruption.<sup>6</sup> Today, ordinary crime is a significant problem in Guatemala.<sup>7</sup> Furthermore, domestic violence against women has reached critical levels, accounting for more than forty percent of murdered women in Guatemala.<sup>8</sup> Other crimes such as lynching and vigilantism have added to the increase

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3. See COMMISSION FOR HISTORICAL CLARIFICATION, *Guatemala: Memory of Silence - Conclusions and Recommendations* 36, para. 94 (1999) (attributing the lack of judicial safeguards for individuals being investigated in either military or ordinary tribunals as a lack of impartiality in the former and a general attitude of resignation in the latter).

4. See generally THE GUATEMALAN PEACE AGREEMENTS, U.N. Sales No. E.98 I.17 (1998) [hereinafter Peace Accords] (containing a series of accords reached by rival groups in Guatemala to establish peace).

5. See U.N., *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, para. 8, in THE GUATEMALAN PEACE AGREEMENTS 129, 133, U.N. Sales No. E.98 I.17 (1998) [hereinafter *Strengthening of Civilian Power*] (attributing the main weaknesses of the Guatemalan State to a flawed system of administration justice).

6. See *id.* para. 9 (advising that a reform of the system of administration of justice must maintain a goal of ensuring a basic right to justice through "impartiality, objectivity, universality [,] and equality before the law").

7. See Steven E. Hendrix, *Innovation in Criminal Procedure in Latin America: Guatemala's Conversion to the Adversarial System*, 5 SW. J.L. & TRADE AM. 365, 367-73 (1998) (listing thefts, robberies, kidnapping, and general corruption as some of the more serious crimes facing Guatemala today).

8. See *Increasing Women's Access to Justice*, VITAL VOICES (USAID, Washington, D.C.), 1999, at 5 (outlining USAID's initiatives toward increasing women's access to justice in Guatemala).

in violence.<sup>9</sup>

In large part, according to the Guatemalan Supreme Court, these problems are due to the justice system's weak response to demands for reform, lack of communication, and the disorganized justice structure.<sup>10</sup> An encompassing solution that strengthens and restructures the formal justice system, including court, municipal representatives, police, prosecution, and others is necessary.<sup>11</sup> In addressing these concerns, the obvious challenge is to make justice work effectively. According to one of the Peace Commissions, courts must be the epicenter for resolving conflicts, assisting victims, and healing the country.<sup>12</sup> Courts, prosecutors, police, and public defenders need to coordinate to improve public service and the justice system.<sup>13</sup> In addition international donors can play an instrumental role by supporting the dynamic process of reform in Guatemala.<sup>14</sup> The "Justice Center"<sup>15</sup> represents USAID's latest initiative to improve the justice

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9. See COMISIÓN DE FORTALECIMIENTO DE LA JUSTICIA, RESUMEN EJECUTIVO DEL INFORME FINAL: UNA NUEVA JUSTICIA PARA LA PAZ [COMMISSION ON THE STRENGTHENING OF JUSTICE, EXECUTIVE SUMMARY OF THE FINAL REPORT: A NEW JUSTICE FOR THE PEACE] 47 (1998) [hereinafter JUSTICE EXECUTIVE SUMMARY].

10. See *id.* at 15.

11. See Comments of Timothy Cornish, Director of Centro de Apoyo al Estado de Derecho [Center for the Advancement of the Rule of Law], USAID Tele-Conference in Chichicastenango, Guatemala (Sept. 23, 1999) (finding that problems involving communications and structure are weakening the justice system's ability to respond).

12. See JUSTICE EXECUTIVE SUMMARY, *supra* note 9, at 13 (enumerating the points to emphasize in re-conceptualizing the justice system in Guatemala).

13. See *id.* at 14 (arguing that these distinct groups need to be developed simultaneously and cohesively). This recommendation coheres with the approach the Guatemalan Bar Association advocates. See COLEGIO DE ABOGADOS Y NOTARIOS DE GUATEMALA, DIAGNÓSTICO DE LA ADMINISTRACIÓN DE LA JUSTICIA PENAL [GUATEMALAN BAR ASSOCIATION, DIAGNOSTIC OF THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM] 20 (1998) [hereinafter CRIMINAL JUSTICE SYSTEM DIAGNOSTIC] (recommending regional and multi-sector reform of the various administrations of justice).

14. See JUSTICE EXECUTIVE SUMMARY, *supra* note 9, at 15 (finding that international cooperation can play a critical role in reforming administrative justice systems); see also CRIMINAL JUSTICE SYSTEM DIAGNOSTIC, *supra* note 13, at 21 (calling for international cooperation and input in strengthening the judicial process).

15. See *infra* Part I (defining "Justice Centers").

sector in Guatemala.<sup>16</sup>

## I. CONDITIONS BEFORE THE JUSTICE CENTER ARRIVED

Prior to opening the Justice Centers, USAID found many factors contributing to the weakness of the Guatemalan justice system. These factors included: vertical organizational structures with investigative work delegated to untrained and unprepared officials; little cooperation between police and prosecution; no case intake system, no case tracking or filing systems, or even space for their existence; no definition of role or function for the Victim's Assistance Office; little use of plea-bargaining because its application and advantages were unknown, given that it was banned in Guatemala until 1994; and little use of any other dispute resolution mechanism other than a

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16. See *Los Estados Unidos apoya Programa de Justicia para Guatemala* [United States Supports Guatemalan Justice Program], DIARIO DE CENTRO AMÉRICA, Nov. 21, 1999, at 4 (reporting that the United States, through USAID, set aside twelve million dollars in support of Guatemalan judicial reform programs such as the Justice Program, which directs assistance to Guatemala's most vulnerable sectors). Harvard University Law School undertook the first USAID effort in 1986. See DPK CONSULTING, FINAL REPORT RELATED TO THE GUATEMALA ADMINISTRATION OF JUSTICE PROJECT 6 (Jan. 1998) [hereinafter DPK FINAL REPORT] (outlining chronologically the Justice Project's development, noting initial start-up problems and eventual success). The second project in the sector was the "Improved Administration of Justice Project," carried out by Checchi and Company Consulting, Inc., in 1988. See *id.* That project produced many diagnostics that focused attention on the problems in the system. See *id.* The supporters suspended these efforts in 1991, remarking that they would maintain the suspension "until the Government of Guatemala could demonstrate a more active interest in reforming the criminal justice system in Guatemala." *Id.* (quoting USAID statement made at the time). In 1994, with a new Criminal Procedure Code in place, USAID awarded a new technical assistance contract to DPK Consulting, after a competitive bidding process. See *id.* DPK created a local office in Guatemala City known as the "Centro de Apoyo al Estado de Derecho - CREA/USAID" [CREA/USAID Center for the Advancement of the Rule of Law]. See DPK FINAL REPORT, *supra* note 16, at 6. The original DPK contract ran through December 1997. See *id.* USAID provided DPK a new contract on a non-competitive basis from January 1998 through June 1999. See *id.* In May 1999, USAID awarded another justice sector contract to Checchi and Company Consulting, Inc., after a competitive bidding process. See *id.*

full trial.<sup>17</sup>

Despite many problems confronting the justice system, the Justice Center experience confirms that, if the Guatemalan government allows its people to participate in the solution, their ability to overcome problems should not be underestimated.<sup>18</sup> In this context, the notion of a Justice Center was born. The USAID's role was one of facilitation as local actors received credit for the new Justice Centers.<sup>19</sup> In addition, the new Criminal Procedure Code has been instrumental in the success of the Centers within the broader context of legal reform and innovation.<sup>20</sup>

## II. DEFINITION AND DESCRIPTION OF THE JUSTICE CENTERS

USAID originally referred to Justice Centers as "Focus Centers" because USAID was "focusing" resources in particular geographic locations.<sup>21</sup> Regardless of what USAID calls them, the key idea is to make justice more effective—more efficient and integrated—in a particular geographic location.<sup>22</sup> Originally, USAID thought an increase in resources included only training, however, it soon realized that the program required much more. The new initiatives called for functionally integrated institutions, streamlining procedures, coordinating within and among programs, and gaining the support of the local Bar associations, civil society, communities, and municipali-

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17. See Memorandum from Erhardt Rupprecht, USAID/Guatemala Acting Director, to Ambassador Donald Planty (May 15, 1998) [hereinafter 05/15/98 Rupprecht Mem.] (reporting on the status of USAID Justice Centers at various locations throughout Guatemala) (on file with the author).

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

19. See *id.*

20. See Hendrix, *supra* note 7, at 365 (discussing extensively the impact of the new Guatemalan Code of Criminal Procedure).

21. See Memorandum from Jeff Borns & Steven E. Hendrix, USAID Democracy Officers, to George Carner, USAID/Guatemala Mission Director (Sept. 18, 1998) (on file with the author) [hereinafter 09/18/98 Borns & Hendrix Mem.] (commenting on Justice Center program progress). While the term "Focus Center" remained in use for some time, and is still sometimes used today, this paper will refer to the more generic term of "Justice Center." However, it should be understood that the two terms refer to the same notion.

22. See *id.*

ties.<sup>23</sup> The Justice Centers emerged as laboratories of positive activities consisting of concepts that were introduced, tested, and demonstrated.<sup>24</sup> It ultimately meant computerizing some aspects of the effort, including case intake and case tracking,<sup>25</sup> and reorganizing offices to eliminate highly vertical structures.<sup>26</sup>

Each existing Justice Center is somewhat distinct. The impact of such initiatives differ among locations, depending in part on varying levels of local interest and needs. Consequently, while discussing a Justice Center as a “model,” it is imperative to bear in mind that the “model” varies among jurisdictions.<sup>27</sup> A Justice Center is not a physical location, but an entire concept<sup>28</sup> that involves bringing together civil society and local justice sector officials to address access concerns at the local level.<sup>29</sup> The purpose of the Justice Centers is to increase the quality of justice sector services, especially for historically marginalized people, such as the poor, women,<sup>30</sup> indigenous

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23. *See id.*

24. *See* DPK FINAL REPORT, *supra* note 16, at 9 (describing the general understanding at the time that progress was impossible in Guatemala City, due to the lack of coordination between existing justice center institutions, and that centers in the country would probably prove more successful).

25. *See Quarterly Progress Report No. 8*, DPK CONSULTING (CREA/USAID, Guatemala, C.A.), Dec. 1996, at 12 [hereinafter *QPR No. 8*] (outlining CREA/USAID’s plan to develop the Public Ministry’s information systems, which would subsequently allow it to do tasks previously impossible).

26. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21.

27. *See id.*

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

29. *See id.*

30. *See* Memorandum from George Carner, USAID Mission Director, to Ambassador Donald J. Planty, United States Ambassador to Guatemala (July 31, 1998) [hereinafter 07/31/98 Carner Mem.] (describing USAID’s justice program initiative to instruct on legal processes in domestic violence cases); *see also* Memorandum from George Carner, USAID Mission Director, to Ambassador Donald J. Planty, United States Ambassador to Guatemala (Sept. 18, 1998) [hereinafter 09/18/98 Carner Mem.] (reporting on scheduled training seminars on domestic violence for prosecutors, judges, public defenders, and members of the bar). These efforts have been combined with public information campaigns. For example, in September 1998, USAID sponsored both with the National Association for Women at the Quetzaltenango Fair to distribute literature on violence against women. *See* Memorandum from George Carner, USAID Mission Director, to Ambassador Donald J. Planty, United States Ambassador to Guatemala (Sept. 11,

people, and children.<sup>31</sup> The Justice Center methodology calls for local participants to discuss issues and arrive at a consensus to address local problems. Good communication at the local level has been the key thus far.<sup>32</sup>

Stated another way, the core ingredient of the Centers is the people. The Justice Centers advance a joining of ideas and a voluntary effort to break with traditional structures. The Justice Centers consider diverse views, for example, those of the indigenous population, police, litigants, judges, civil society, and women's groups, to detect problems and formulate solutions. This philosophy does not require an outside donor or outside financial support; rather it depends primarily on the people themselves.<sup>33</sup>

While underway, Justice Centers must contend with historic problems of poor communication and few linkages between the official justice sector and civil society. In the Justice Centers, local actors converge to discuss the situation and define courses of action. Such concerns include asking whether such problems are structural, human, or cultural. The actors discuss the local reality and begin a process of increasing access to better-quality justice.<sup>34</sup> Justice Centers serve to involve all principle actors within a specific geographic jurisdiction in an integrated and coordinated effort to provide local population groups with greater access to justice. These actors include judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, ambulance teams with firemen, and civil society. Justice Centers take advantage of new organizational and information management structures that promote teamwork to

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1999) [hereinafter 09/11/99 Carner Mem.] (noting planned attendance in an upcoming Quetzaltenango Fair to distribute information materials on women's legal rights). Similar efforts have been undertaken at the Esquintla Justice Center. *See* Memorandum of Mark Williams, USAID Justice Centers' Coordinator, to Brian Treacy, USAID Justice Chief of Party 3 (Aug. 19, 1999) [hereinafter 08/19/99 Williams Mem.] (commenting on the state of the Quetzaltenango effort). *See generally* *Increasing Women's Access to Justice*, *supra* note 8, at 5 (noting the accomplishments of Guatemala's Justice Centers in reducing violence against women).

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

32. *See id.*

33. *See id.*

34. *See id.* (articulating positive advances in Guatemala, including increased access to justice and increased civic participation).

provide better quality public services.<sup>35</sup>

The composition, physical layout, and functioning of Justice Centers vary according to local conditions, the special needs of the justice sector officials, availability of resources (monetary and others, *e.g.*, electricity), and particular issues related to the geographic area (*e.g.*, incidence and type of criminal activity).<sup>36</sup> Diversity notwithstanding, Justice Centers contain the following common characteristics. First, all Justice Centers have organizational and administrative structures that reduce delay, minimize exposure to corruption, create accountability, and establish uniform practices, performance standards, and systems to measure performance. This includes modernized docket and case-filing systems, streamlined case processing, case-filter systems, central-filing systems, unified clerk of court administration, and other related activities.

Second, all Justice Centers strive to improve the functions of key actors in their assigned roles and management structures and techniques that promote team approaches (including greater police-prosecutor cooperation). Third, all Justice Centers use standardized, user-friendly forms, uniform across all Justice Centers, as approved by the respective Government of Guatemala ("GOG") institutions, for the reporting and processing of crimes. Fourth, all Justice Centers have user-friendly case management and records systems that reduce opportunities for corruption, improve the quality of case supervision, and generate accurate statistics (case type, status, assignment, progress, and other appropriate monitoring data, as approved by the Court). Where possible, the courts computerize these systems with a user-friendly software package acceptable to the GOG. Fifth, Justice Centers seek to incorporate interpreters and culturally-appropriate outreach and education programs in local languages to make the system truly accessible to non-native Spanish speakers. This includes a public information campaign on how to access the system. The last component promotes alternative dispute resolution, plea-bargaining

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35. See USAID/Guatemala, Section "C," Request for Proposal No. 520-98P-020 (Sept. 30, 1998) (on file with the author) [hereinafter Section C Request] (stating that, among other advances, the Centers have installed modernized case-filing and docket systems).

36. See *id.* (noting that this team approach to dispute resolution and problem solving better serves the public).

(“*criterio de oportunidad*”), stay of prosecution (“*suspensión condicional*”), and other mechanisms to settle cases identified through improved case intake and diversion programs.<sup>37</sup>

Key justice sector counterparts have signaled their commitment to the Justice Center model and replicate the USAID model in other regions of Guatemala.<sup>38</sup> Nevertheless, given the evolving nature of the model and the diversity of locations, continuous communication and updating is required. USAID continues to coordinate and work with the Guatemalan Government to institutionalize the Justice Center model through dialogue, regular briefings, and information exchanges with members of the main justice sector institutions via the Coordination Unit for the Modernization of the Justice Sector (“*Instancia Coordinadora para la Modernización del Sector de Justicia*” or “ICMSJ”).<sup>39</sup>

USAID started the first Justice Center, with backing from the Guatemalan Supreme Court and Attorney General, in October 1995 in Quetzaltenango.<sup>40</sup> The second Justice Center opened in Zacapa in

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37. See César Barrientos Pellecer, *Centros de Enfoque o Centros de Justicia y CAJs 4-5* [Focus Centers or Justice Centers and CAJs] (Dec. 1998) (unpublished manuscript on file with the *Instancia Coordinadora para la Modernización del Sector Justicia* [Coordinated Organization for the Modernization of the Justice Sector]) (translation by author) (listing the model criteria used by the different Justice Centers). See generally Section C Request, *supra* note 35 (discussing general Justice Centers in different regions of Guatemala).

38. See Section C Request, *supra* note 35 (listing other organizations committed to assisting the Justice Sector, including the Narcotics Affair Section (“NAS”) of the United States Embassy and the United States Department of Justice); see also Annette Pearson de González, *Formulación de una Propuesta para la Creación de Ocho Centros de Administración de Justicia en Guatemala Durante el Período 2000-04* [Formulation of A Proposal to Create Eight Justice Administration Centers in Guatemala For the Period 2000-2004] 63 (May 1998).

39. See González, *supra* note 38, at 63 (noting the importance of coordinating meetings every fifteen days to discuss problems affecting the efficiency of the penal system). The *Instancia Coordinadora* is comprised of the Attorney General, President of the Court, Director of the Public Defense Service, and the Interior Minister. See generally Gabriela Judith Vásquez Smerilli & Héctor Hugo Pérez Aguilera, *Consultoría para la Secretaría Ejecutiva de la ICMSJ* [Consultory for the Executive Secretary of the ICMSJ] (June 1999) (unpublished materials on file with the author) (emphasizing the key role of the *Instancia Coordinadora* in the development of the Justice Centers).

40. See Comments of Timothy Cornish, *supra* note 11 (discussing the history of the regional Justice Centers, including where they are located, and when they

June 1996,<sup>41</sup> while in February 1997, the United Nations Human Rights Verification Mission in Guatemala (“*Misión de Naciones Unidas para la Verificación de los Derechos Humanos en Guatemala*” or “MINUGUA”) inaugurated the Nebaj Center.<sup>42</sup> USAID joined the Nebaj effort in March 1998.<sup>43</sup> Escuintla’s Center became operational on March 9, 1998, as a result of a meeting of judges, public defenders, and prosecutors.<sup>44</sup> San Benito’s Center (Petén Department) began with a participatory meeting of similar local actors on March 12, 1998.<sup>45</sup> MINUGUA inaugurated the Santa Eulalia (Huehuetenango) Center on April 30, 1999, with funds from Canada and technical assistance from USAID.<sup>46</sup> The justice system applied

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were established); *see also* *QPR No. 8, supra* note 25, at 13 (noting that USAID advised and consulted MINUGUA about the Quetzaltenango Center). MINUGUA even participated in providing some training in the criminal defense area. *See id.*

41. *See QPR No. 8, supra* note 25, at 12.

42. *See* Comments of Timothy Cornish, *supra* note 11 (noting that the Nebaj-Quiché Justice Center markets the implementation of reconstruction within the formal justice system).

43. *See* 05/15/98 Rupperecht Mem., *supra* note 17 (offering a brief history of the Justice Center starting in Escuintla, Nebaj, and Paten in March 1998). The Instancia foresaw that future CAJs would receive support based on the USAID Justice Center model. *See* Pellecer, *supra* note 37, at 5 (noting the central role of the USAID model).

44. *See* Minutes of Meeting in Escuintla, Guatemala (Mar. 9, 1998) (on file with the author) (explaining the concepts discussed at the meeting). Escuintla is a particularly difficult place for a Justice Center. The Public Ministry receives 12,000 cases per year and, in March 1998, had about 30,000 backlogged cases. Memorandum of USAID Timothy Cornish, USAID Justice Chief of Party, to Steven Hendrix, USAID Justice Coordinator (Mar. 10, 1998) [hereinafter 03/10/98 Cornish Mem.].

45. *See* Memorandum from Marisela Velasco de Paniagua, USAID Consultant, to Alicia Warde, USAID Consultant (Mar. 16, 1998) [hereinafter 03/16/98 Velasco de Paniagua Mem.] (listing the participants of the meeting to create a center in San Benito). The Instancia Coordinadora approved the Petén and Escuintla Justice Centers and requested USAID assistance in both locations on February 26, 1998. *See* Letter from William Stacy Rhodes, USAID Director, to Attorney General Héctor Hugo Pérez Aguilera, Court President Alfredo Figueroa, and Interior Minister Rodolfo Mendoza (Mar. 16, 1998) [hereinafter 03/16/98 Rhodes Letter] (emphasizing the need for collaboration and cooperation in the developing new Justice Centers).

46. *See* Memorandum from George Carner, USAID/Guatemala Mission Director, to U.S. Ambassador Donald Planty (April 20, 1999) [hereinafter 04/20/99 Carner Mem.] (inviting the Ambassador to attend the opening of the newest CAJ).

the administrative advances from the Justice Centers to Guatemala's criminal courts in October 1998.<sup>47</sup> At the close of 1999, the Instancia Coordinadora requested that USAID establish another Center in Santa Cruz del Quiché.<sup>48</sup> In total, Justice Centers, in various stages of development, exist in Nebaj (Quiché), Escuintla, Nebaj, Quetzaltenango, San Benito (Petén), Santa Cruz del Quiché, Santa Eulalia (Huehuetenango), and Zacapa.<sup>49</sup>

In terms of process, the Justice Centers have several standard characteristics. There are periodic coordination meetings with the main Justice Center actors, including judges, prosecutors, investigators, police, law school faculty, private lawyers, community representatives, and others. Furthermore, there are periodic training programs at Justice Center location to assure that efforts are integrated and on track.<sup>50</sup>

### III. ORGANIZATIONAL AND ADMINISTRATIVE STRUCTURES; CASE MANAGEMENT AND RECORDS SYSTEMS

USAID provided technical assistance to both the Court and the Public Ministry to modernize their organizational and administrative structures, striving toward enhancing case management and records handling. For both the Court and the Public Ministry, the proposals involved reorganization of case intake, centralization of information, and rearrangement of physical space with computerization.<sup>51</sup> The

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47. See Section C Request, *supra* note 35 (stating that the principle objective of USAID during the years of 1994-97 was to implement a new criminal procedure code).

48. See Letter from Astrid Lemus, USAID Executive Secretary, to Brian Treacy, USAID Justice Chief of Party (Nov. 25, 1999) [hereinafter 11/25/99 Lemus Letter] (soliciting the collaboration of the Instancia to construct a new center).

49. See Section C Request, *supra* note 35 (emphasizing the cooperation between USAID and MINUGUA in integrating administrative advances from existing centers into new ones).

50. See González, *supra* note 38, at 63 (discussing the coordination of efforts by different actors to encourage cohesion and efficiency). To date, the Center coordinators have been local Guatemalans paid by USAID. *See id.* There is a movement, however, to have these individuals moved to the government's payroll over time to make the efforts more sustainable. *See id.*

51. *See id.* at 63-64 (observing the efforts by the Public Ministry and the Court

two institutions took very different paths, with the Court having great success. The Public Ministry, after some initial promise, retreated from organizational streamlining, but retained other elements of the Justice Center model, including case management practices and integrated training.

#### A. WITHIN THE COURT SYSTEM

Starting in April 1996, the Quetzaltenango Justice Center inaugurated a new court organization structure, providing transparency and efficiency to the court.<sup>52</sup> The new structure boasted a single register (“*registro único*”) implemented by a communal secretary (“*secretaría común*”).<sup>53</sup> Under the previous system, the courts tracked individual cases in seventeen different books or ledgers. The *registro único* simplified this process by replacing them with a single book.<sup>54</sup> Pooling the secretarial staff under the *secretaría-común* system reduced the number of people handling each case from twenty-five to six.<sup>55</sup> Now, the time spent locating a file has dropped from one week to nearly instantaneously.<sup>56</sup>

Based on the successes of the Quetzaltenango experience, planning began in May 1998 for a Clerk of Courts Office for Guatemala City.<sup>57</sup> The Clerk of Courts Office, which administers the ten Gua-

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to reorganize the current systems to that of the USAID model).

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

53. See Briefing by Timothy Cornish, USAID Justice Chief of Party, for members of the Guatemalan Supreme Court (May 22, 1998) [hereinafter Cornish Briefing] (presenting statistical analysis of the effects of the new structures).

54. See *id.* (emphasizing the efficiency of the new system). With the single *registro único* in place, it is now possible to computerize that book. See *id.* This has been done via the Centro de Recepción, Registro e Información (“CRRI”) [Center of Reception, Registration, and Information]. See *id.*

55. See *id.*

56. See *id.*

57. See Comments of Timothy Cornish, *supra* note 11; see also Steven E. Hendrix, Clerks Office-Guatemala City (Oct. 1, 1999) (unpublished manuscript on file with the author) (stating that the request for assistance from the Court for the Clerk’s Office came to USAID in September 1996); Minutes of the Supreme Court Plenary Session, Acta 10-98, para. 4 (Mar. 11, 1998) (formalizing request by Court for assistance). The approval of the final design came on July 29, 1998. See Memorandum from George Carner, USAID Mission Director, to Donald J. Planty, United States Ambassador to Guatemala (July 31, 1998). The Clerk’s office was

temala City criminal courts, does not represent a new “Justice Center,” but rather is a very positive outgrowth of the Justice Center experience.<sup>58</sup> The planning process took on several dimensions.<sup>59</sup> First, the formation of a “*secretarios*” committee to participate in the implementation process and assure that the public viewed the office as a Guatemalan—not USAID—model, was key.<sup>60</sup> A second integral step in the planning process was advanced work on the automated docket book and case control program. The Zacapa Justice Center piloted this process before opening at the Clerk’s Office in October of 1998.<sup>61</sup> This was the first Clerk of Courts Office beyond a pilot effort in a Latin American capital city.<sup>62</sup>

The approach to the Clerk’s Office was simple; the most important design element was the employees, and the number-one objective was to provide transparent and efficient service to the public. USAID

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inaugurated on October 5, 1998. Memorandum from George Carner, USAID Mission Director, to Donald J. Planty, U.S. Ambassador to Guatemala (Oct. 9, 1998).

58. See Email from Timothy Cornish, Justice Sector Advisor, to Steven E. Hendrix, Justice Program Coordinator (Nov. 15, 1999) [hereinafter 11/15/99 Cornish Email] (arguing that the ten capital area courts are positive outgrowths of the focus centers).

59. See 05/15/98 Rupperecht Mem., *supra* note 17 (listing the findings of the current system and addressing the problems).

60. See *id.* (noting the formation of committees at each center location to include police, prosecutors, public defenders, and judges).

61. See Minutes of the Supreme Court Plenary Session, Acta 10-98, para. 4 (Mar. 11, 1998); see also 05/15/98 Rupperecht Mem., *supra* note 17 (emphasizing the advances of the automated docket systems and its eventual country-wide implementation).

62. See Cable from Donald J. Planty, United States Ambassador to Guatemala, Guatemala Comes Closer to Justice for All (Feb. 22, 1999) (on file with the author) [hereinafter Ambassador Planty Cable] (stating that USAID helped Guatemala establish clerk of courts offices in various justice centers, which have demonstrated improved services). Peru has a small pilot effort in Lambayeque, and Costa Rica has a similar pilot in Guadalupe, Costa Rica. See *id.* However, the Guatemalan Clerk of Courts Office is a first for a Latin American capital city. See *id.* It underscores the Court’s commitment to the Justice Center model, since the Clerk’s Office is modeled on efforts in Zacapa and Quetzaltenango. In this sense, USAID’s Justice Center model has been institutionalized. See Note from Steven Hendrix, USAID Justice Program Coordinator, to Elizabeth Hogan, USAID Democracy Program Chief (Nov. 20, 1997) (discussing the Court’s decision on November 17, 1997, to expand the Justice Center model to the capital in the form of a Clerk of Courts).

paid no salaries to public officials, and purchased none of the equipment. Instead, USAID concentrated its resources in technical assistance to accompany and guide a Guatemalan-led participatory design effort, and its subsequent implementation. In doing so, the effort has assured complete institutional buy-in from the Guatemalan Supreme Court down to the file clerks. Moreover, system users, including litigants, the public and victims, can now demand a higher standard of quality, transparency, and efficiency.<sup>63</sup>

In just one year, the impact of efforts to reduce opportunities for corruption and to increase transparency is clear. First, the court system now has an inventory of its caseloads. Previously, parties paid corrupt officials to “lose” case files.<sup>64</sup> From October 1, 1996 to September 31, 1997, the court system “lost” 1,061 cases in Guatemala City alone.<sup>65</sup> This represents 1,061 accused individuals, many of whom remained in jail without having enjoyed their day in court, in violation of their human rights. Under the new system, from October 1, 1998 to September 31, 1999, only one has been “lost,”<sup>66</sup> representing an important advance in human rights as well as a more than ninety-nine percent decrease in opportunities for impunity, and an increased efficiency of office administration. Second, for the first time ever, there is an equitable and transparent distribution of cases under the new system. Consequently, the system is decongested, and the court hears cases, rather than let them sit stagnant and devoid of scrutiny.<sup>67</sup> Third, the system now automatically respects legal time

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63. See Hendrix, *supra* note 57 (noting the drastic reduction in corruption within a short time of implementation).

64. See *id.* (listing the positive impacts of the newly-implemented program on reducing corruption). The 1,061 “lost case” figure actually represents data from six of the ten Guatemala City Courts. In four courts, case management was so poor that reliable statistics were impossible. Actual loss may have been twice the 1,061 figure.

65. See *id.* (stating that from October 1, 1996, to August 31, 1999, only five cases have been lost in Guatemala City). Since then, four have been recovered.

66. See *id.* (indicating that between October 1998 and September 1999 five files were “lost” under the Court’s new system). On a site visit on November 4, the Director of the Center was able to confirm that four of the previously lost files had been found.

67. See *id.* (outlining the benefits of the new Court system); see also 11/15/99 Cornish Email, *supra* note 58 (noting that prior to the October 1998 modernization, the system assigned courts to one or more of the several zones of the city, often

limits. Previously, there was no control over how long processes would extend. Fourth, under the new system, courts have cut in half the number of cases where the defendant was unascertainable. Fifth, for the first time ever, there is a reliable system for generating statistics and reports on court actions.

The Guatemalan Supreme Court praised the new Clerk's office structure and operation. After six months of operation, the Court requested that USAID support extend the new methodologies in a computerized format—the “*Centro de Recepción, Registro e Información*” or “CRRI”—back to all the Justice Centers, a task that was complete by June 15, 1999.<sup>68</sup>

#### B. WITHIN THE PUBLIC MINISTRY

In late 1996, USAID sponsored a study visit for Guatemalan justice sector actors to Chihuahua, Mexico, where the Public Ministry assembled a case-intake and investigation unit to provide a model for accusatorial prosecutions throughout Latin America.<sup>69</sup> This study visit included the participation of Guatemala's Attorney General, top prosecutors, and police officials. After the trip, the participants defined a plan of action for implementation in the Guatemalan Justice Centers. One key component of the plan was a case tracking and control system for the Public Ministry, promising a profound impact on the Public Ministry's method of doing business. In addition, the

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resulting in an unequal division of caseload). Meanwhile, the staff size was the same for each court. *See id.* Within each court, private law firms could place a picked “official” who would handle the case, for an appropriate compensation price. *See id.* The Clerk's Office has reallocated “oficiales” to a central location, removing illegal delegation of work from judges to “oficiales,” and taking control of cases out of the hands of the unsupervised non-judge oficiales, who were the primary source of corruption in the system. *See id.* Previously, if one did not pay the official, the case did not move. *See id.* Conversely, you could pay an *oficial* to assure that the case never moved. *See* 11/15/99 Cornish Email, *supra* note 58.

68. *See* Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, United States Ambassador to Guatemala (May 28, 1999) (on file with the author) [hereinafter 05/28/99 Butler Mem.] (detailing plans to continue the modernization program instituted in pilot Justice Centers throughout the country).

69. *See* QPR No. 8, *supra* note 25, at 8 (noting that the visit exposed participants to the benefits of mediation in the criminal process, which has helped to dispose of criminal complaints without involving police and prosecutorial resources).

plan promised more accurate statistics and performance monitoring. In February 1997, Guatemala's Attorney General formally approved the plan and design elements.<sup>70</sup>

As the first Justice Center in Quetzaltenango adopted the new system, results were immediately visible. The implementation of a case index system dramatically decreased the time necessary to search for cases from two hours to ten minutes.<sup>71</sup> Furthermore, the total number of cases were reduced due to the implementation of a case-screening unit, which discovered, after a review of submitted cases, that many are dropped for lack of criminal content or because they are undesirable for prosecution.<sup>72</sup> Specialized units were created to professionalize criminal prosecutions such as homicide, property crimes, and high impact crimes (drugs, kidnapping, auto theft). The new system eliminated the double assignment of cases to different prosecutors, which had been a problem before implementation. Specialized personnel increased the efficiency of investigations and trial presentations,<sup>73</sup> making investigations more complete. Moreover, prosecutors were able to spend more time on important cases, resulting in fewer "remands" from the trial courts. By June 1997, Quetzaltenango's Public Ministry boasted two important additional systems: the centralized filing system ("*archivo único*") and the communal secretary ("*secretaría común.*")<sup>74</sup>

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70. See *Quarterly Progress Report No. 9*, DPK CONSULTING (CREA/USAID, Guatemala, C.A.), Jan. 1, 1997 to Mar. 31, 1997, at 8 [hereinafter *QPR No. 9*] (explaining that the plan would be implemented gradually, to accommodate the institution's technical capabilities, and that the basic case-tracking abilities would greatly increase efficiency).

71. See *id.* at 11 (listing the accomplishments of the Public Ministry in Quetzaltenango).

72. See *id.*

73. See *id.*

74. See *Quarterly Progress Report No. 10*, DPK CONSULTING (CREA/USAID, Guatemala, C.A.), Apr. 1, 1997 to June 31, 1997, at 15 (explaining that "*archivo único*" is a single location for filing of cases disposing of the previous system in which attorneys maintained their own files). The *archivo único* went a long way toward reducing chances of "lost" files, due either to negligence or corruption. It also provided a major management capability to the District Attorney. The "*secretaría común*" was a concentration of support staff into a single pool. See *id.* Previously, individual attorneys had complete staff, which required supervision. See *id.* Prosecutors were in fact managers, with little time to focus on prosecuting. See

In May 1997, USAID held a coordination meeting with MINUGUA to discuss recommendations for organizing the Public Ministry.<sup>75</sup> MINUGUA clearly disagreed with USAID's approach to the Public Ministry. MINUGUA espoused that prosecutors, like judges, should be protected with "independence" ("*autonomía*").<sup>76</sup> USAID noted that such a structure is contrary to the standards that control modern prosecutors' offices in that it eliminates teamwork in complex cases, diminishes chances for the sharing of risk in dangerous cases, heightens the risk of corruption because one person controls a case rather than several, and hampers the ability to replace prosecutor's in complex cases.<sup>77</sup>

USAID Justice Chief of Party, Tim Cornish, noted that the traditional Guatemalan Public Ministry organizational concept is a vertical structure.<sup>78</sup> It is "very much like a court in which, in the case of the capital, an 'agent fiscal' has his own rigidly structured staff that he administers thereby duplicating the inefficiencies of the courts and magnifying the opportunities for corruption."<sup>79</sup> Under this structure, prosecutors cannot be specialized. In contrast, Colombia, Mexico, Northern Europe or the United States have assistant prosecutors. These assistant prosecutors are typically specialized (except in small towns), assigned to teams when involved in important cases, and do not play a supervisory role with respect to personnel, except perhaps with respect to a secretary.<sup>80</sup> Without personnel oversight responsi-

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*generally* Memorandum from Maggie Triviz, USAID Justice Consultant, to Timothy Cornish, USAID Justice Chief of Party (Nov. 17, 1997) (on file with the author) (noting that, since the *secretaría común* implements the *archivo único*, they should really be considered a single, integrated system).

75. Memorandum from USAID to MINUGUA (May 15, 1997) (on file with the author) (discussing the possible connection between CREA/USAID and MINUGUA on decentralization programs).

76. *See* Memorandum from Timothy Cornish, USAID Justice Chief of Party, to Steven Hendrix, USAID Justice Coordinator (May, 16, 1997) (on file with the author) [hereinafter 05/16/97 Cornish Mem.].

77. *See id.*

78. *See id.*

79. *Id.*

80. *See id.* (contrasting MINUGUA's opinion on the role of the assistant prosecutors with that of United States-based models).

bility, they dedicate nearly all of their time to prosecuting.<sup>81</sup>

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.<sup>82</sup> While conducting the review, the MINUGUA advisors criticized the new streamlined systems directly to Public Ministry officials, without involving USAID.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup>

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

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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.<sup>86</sup> In mid-1998, the Public Ministry released the “Reorganization Plan.”<sup>87</sup> Contrary to the trend in adversarial/accusatory systems, the Guatemalan Attorney General formalized a highly vertical model of organizational structure.<sup>88</sup> The new structure is based on small, self-contained operational units called “*agencias*.”<sup>89</sup> 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*”).<sup>90</sup>

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

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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.<sup>91</sup>

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,<sup>92</sup> 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.<sup>93</sup> 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."<sup>94</sup> This local model is proving weak, fragmented, and entirely incapable of investigating and prosecuting anything more than the easiest of cases.<sup>95</sup>

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.<sup>96</sup>

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

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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.<sup>97</sup> 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.<sup>98</sup>

In this context, restructuring of the prosecution office for greater efficiency and transparency was undercut in Quetzaltenango,<sup>99</sup> and, consequently, nationwide. Until November 1998, the Quetzaltenango effort had progressed under District Prosecutor Estuardo Barrios.<sup>100</sup> USAID had advanced a “*secretaría común*” administrative model within the Public Ministry.<sup>101</sup> Under Barrios, there was a functioning Common Clerk’s and Filing Office, broad use of standardized forms, and a functioning case-tracking system.<sup>102</sup> 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.<sup>103</sup> Prosecutors simply were unwilling to relinquish control they exercised over the *oficiales* and the convenience of delegating much of the work to these individuals.<sup>104</sup>

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

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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.<sup>105</sup> At the time, a newly assigned Quetzaltenango District Attorney, Armando Martinez,<sup>106</sup> was anxious to restart the program and redevelop appropriate filing and tracking systems.<sup>107</sup> 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.<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup> 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.<sup>111</sup>

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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 is 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 Regard-*

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*ing 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 (EST.)	YEAR	NUMBER PER MONTH (EST.)	NUMBER PER (EST.)	DAY
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.<sup>112</sup>

The University of San Carlos (“USAC”) is supportive of the Justice Center model.<sup>113</sup> 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.<sup>114</sup> 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.<sup>115</sup> The Guatemalan Bar Association also created a decentralized, institutionalized unit for continuing legal education in 1998.<sup>116</sup> This unit began offering courses not only in Guatemala City, but also in the various Justice Centers.<sup>117</sup>

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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,<sup>118</sup> and a number of Administrative Procedure Manuals.<sup>119</sup> 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").<sup>120</sup> 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.<sup>121</sup> No comparable guides were ever previously available.<sup>122</sup>

In May 1999, together with the Universidad Rafael Landivar, 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.<sup>123</sup> Given the USAID training for prosecutors in Quetzaltenango from 1996 to 1998, along with

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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).

specialization and organizational streamlining, prosecution conviction rates reached ninety percent in 1997 and one hundred percent in 1998.<sup>124</sup> This compares with a national rate of about fifty percent.<sup>125</sup> 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.<sup>126</sup> This led to reduced caseloads of prosecutors, allowing them more time for investigation and prosecution of cases that merit an attorney's attention.<sup>127</sup>

One of the team approach failures so far has been in the area of criminal investigation, which requires cooperation between police and prosecutors.<sup>128</sup> 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.<sup>129</sup> By December 1996, USAID and prosecutors and police officials had worked out draft text agreement (or "protocolo") between the institutional heads of the Public Ministry and the Police for improved criminal investigation.<sup>130</sup> In October 1998, USAID provided the Public Ministry

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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, Quezaltenanago 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).

with a diagnostic on how to improve the handling of evidence, along with proposed rules and standard forms for assuring chain of custody and concrete steps for action.<sup>131</sup> On January 12, 1999, Guatemala's Attorney General promised immediate action to approve evidence-handling rules and the protocol for police-prosecutor collaboration.<sup>132</sup> 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.<sup>133</sup> 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.<sup>134</sup>

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

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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.<sup>137</sup> By December 1998, a performance evaluation in San Benito (Petén) and Escuintla found that the forms were in full implementation in both locations.<sup>138</sup> 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.<sup>139</sup>

## 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.<sup>140</sup> Human rights can only be guaranteed if the accused, witnesses, and victims are afforded procedural due process.<sup>141</sup> In a country where half of the population does not speak Spanish as its native language,<sup>142</sup> the constitutional guarantee of due process

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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 multicultural 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

means 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.<sup>143</sup>

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

The legal translator services formed a natural complement to the Justice Centers'<sup>147</sup> goal of providing increased access to the justice system.<sup>148</sup> With the signing of the Peace Accords in late 1996, USAID<sup>149</sup> and MINUGUA (with USAID and Dutch funding)<sup>150</sup> took immediate, emergency short-term measures to obtain translators out in the field. In 1996, MINUGUA and USAID trained forty-five

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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.<sup>151</sup> In 1998, USAID graduated twenty-five additional legal translators in the Po-comám language, near Escuintla and Jalapa.<sup>152</sup> In addition, in 1997 and 1998, MINUGUA trained interpreters in Huehuetenango and Cobán in the Mam and K'iché languages.<sup>153</sup>

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.<sup>154</sup>

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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 ob-

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.”<sup>155</sup> This individual serves as a bridge between local groups and the official government actors from the formal sector.<sup>156</sup>

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.<sup>157</sup> 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.<sup>158</sup>

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

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jectives 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.<sup>159</sup>

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”).<sup>160</sup> Since 1997, URL has produced legal dictionaries or glossaries in various languages.<sup>161</sup>

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.<sup>162</sup>

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

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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,<sup>163</sup> is, in part, designed to institutionalize the judicial interpreters program.<sup>164</sup> 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.<sup>165</sup>

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

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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; Quanjolal, 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.<sup>168</sup> USAID aided the Judicial School in creating and designing appropriate curriculum for the candidates.<sup>169</sup> Throughout 1998, USAID trained 120 candidates and filled sixty positions, mainly in rural, indigenous areas.<sup>170</sup> Furthermore, USAID assisted the Court in its selection of appropriate candidates.<sup>171</sup> During 1999, the remaining locations received Justices of the Peace,<sup>172</sup> also trained by USAID at the Judicial School.<sup>173</sup> While the United Nations Development Programme (“UNDP”) collaborated in the effort by paying a per diem to the candidates in classes, Spain paid them an hono-

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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).

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## 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.<sup>175</sup> 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.<sup>176</sup> This program emphasizes institutional mechanisms that citizens can use to resolve conflicts.<sup>177</sup> Officials can utilize these practices to incorporate aspects of local customary law into the local administration of justice and the resolution of disputes.<sup>178</sup>

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.<sup>179</sup> 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.<sup>180</sup> USAID programs fa-

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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).

facilitate more understanding and recognition for the state legal system and customary law by establishing better communication and fostering greater cooperation.<sup>181</sup> 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.<sup>182</sup>

Moreover, USAID is concerned with the recommendations of the Justice Strengthening Commission.<sup>183</sup> 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.<sup>184</sup>

The mediation program advances access to justice and decongests the courts.<sup>185</sup> It provides decentralized justice at the community level, providing more power to individuals and civic organizations in resolving their own disputes.<sup>186</sup> In addition, it alleviates congestion on a larger scale at the community level for these officials, who handle such disputes.<sup>187</sup> 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

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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).

and language.<sup>188</sup>

In 1998 and 1999, USAID assisted in opening nine new mediation centers.<sup>189</sup> While USAID assisted in opening two in Sololá and two mediation centers in Zacapa, it also assisted in the implementation of five in the Quetzaltenango Department.<sup>190</sup> The mediation model consists of two fundamental components: first, a set of conflict resolution techniques that take into account cultural and institutional considerations, and, second, an emphasis on cooperation between justice-sector officials and local leaders in the utilization of these techniques.<sup>191</sup>

The physical location or cultural setting does not seem to be determinative—the model is adaptable.<sup>192</sup> USAID supported new Mediation Centers in 1998 and 1999 in many cases such as a municipality building, a university, a moderately assimilated rural indigenous area, a rural indigenous area using indigenous law practices, and a rural mestizo area.<sup>193</sup> USAID incorporated each of the nine Centers into a pre-existing governmental institution or a local organization to guarantee sustainability.<sup>194</sup> In the program, USAID trained 480 Guatemalan mediators, 153 of whom became active mediators in the nine Mediation Centers.<sup>195</sup> During the first year, May 1998 to May 1999,

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188. *See id.* (indicating that mediation centers increase the community's willingness to participate in the justice system by submitting disputes to local mediators).

189. *See* Strengthening Channels, *supra* note 184, at 2 (relating the number of mediators involved in the various mediation centers implemented by USAID).

190. *See* Ambassador Planty Cable, *supra* note 62 (noting the number and location of new centers established in 1998).

191. *See* Strengthening Channels, *supra* note 184, at 2 (detailing characteristics of conflict resolution programs and discussing the importance of cooperation between judicial officials and community leaders to ensure successful implementation of these techniques).

192. *See id.* (noting that, due to the adaptability and flexibility of these conflict resolution groups, it is possible to utilize these programs in other parts of the country).

193. *See id.* at 13 (providing several examples that illustrate the high adaptability of these mediation programs).

194. *See id.* at 2 (explaining how officials have attempted to make conflict resolution programs comport with the communal as well as governmental structure).

195. *See id.* (discussing North American, Nicaraguan, and Guatemalan efforts to

733 cases were mediated at the various Mediation Centers.<sup>196</sup> While the Mediation Centers resolved seventy-four percent of all cases, the parties dropped or abandoned another eight percent and left only fourteen percent unresolved.<sup>197</sup> These mediated cases included criminal, civil, family, and labor issues.<sup>198</sup> If participants choose, they may have the local court validate the mediation to provide it with legal backing.<sup>199</sup>

In each case, local leaders established and now maintain the centers.<sup>200</sup> In Quetzaltenango, the Mediation Centers served as an important mechanism for access to justice, in a manner that complements customary law and values. Every Center provides free access to justice for the underprivileged, including, women, children, and indigenous people.<sup>201</sup> Local partners have made excellent strides in teaching communities how to resolve conflicts peacefully through mediation.<sup>202</sup> Partners educated citizens in the basics of the law so

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train and work with several hundred mediators so that some could be used in the new Mediation Centers).

196. See Strengthening Channels, *supra* note 184, at 2, 11.

197. See *id.* at 11 (putting forth numbers on the success of the Mediation Centers noting that some of the cases were dropped due to one of the parties not appearing to participate in the mediation process). There were no abandoned cases in Quetzaltenango—all came from Zacapa, indicating cultural differences in approach to dispute settlement and, of course, skewing the data. See *id.* The Zacapa Center actually had much more difficulty settling the cases, with only forty-eight percent resolved, which brought down the total average of the program. See *id.*

198. See *id.* at 11-12 (stating that, while some Mediation Centers dealt with mostly penal cases, other had cases involving civil, family, or labor issues).

199. See Strengthening Channels, *supra* note 184, at app. (using statistics to indicate that individuals are able to register their agreements with the local court). The Ladino communities are much more interested in having their settlements “validated” or registered (“homologación”) by courts. See *id.* (presenting data on the tendency of non-indigenous communities to seek court-approved backing of their agreements). In cases of non-compliance, such registration is important to get court enforcement of the mediation settlement. For indigenous groups, this seems to be less important, as one’s word or agreement is considered sacrosanct.

200. See Ambassador Planty Cable, *supra* note 62 (elaborating on the important role that leaders in the community played in organizing the mediation programs).

201. See *id.* (emphasizing the way that the Mediation Centers improved upon the previous legal institutions by enabling all citizens to have access to their criminal justice systems).

202. See Conflict Resolution Cable, *supra* note 176 (discussing the positive impact that local partners had on instructing citizens to utilize the criminal justice

that they know how to resolve some of the more pressing cases through the judicial system.<sup>203</sup> While local partners have already established two Mediation Centers in Zacapa, communities in Quetzaltenango are choosing first to pursue increased education through workshops and other programs.<sup>204</sup> The partners plan to allow the communities to decide if they want to establish a Mediation Center or simply train community leaders and local officials in mediation techniques.<sup>205</sup> This geographic focus results in the development of two potentially different methods of teaching dispute resolution techniques.<sup>206</sup> For example, while regions of Eastern Guatemala are primarily non-indigenous and have minimal experience in mediation, the population in Northwestern Guatemala is mostly indigenous and possesses some experience in conflict resolution due to its practice in local, customary law.<sup>207</sup>

Communities are using several tools essential to developing their ability to utilize the mediation techniques.<sup>208</sup> While these efforts resulted in the establishment of two Mediation Centers in Zacapa, officials developed several others in Quetzaltenango in July 1998.<sup>209</sup> Local leaders, judges, and prosecutors have attempted to increase cooperation through joint training, discussion sessions, information sharing, and other activities.<sup>210</sup> Interestingly, while men tend to util-

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system).

203. *See id.* (detailing efforts to teach locals how to better resolve some of their disputes).

204. *See id.* (highlighting different regional approaches to establishing local Mediation Centers).

205. *See id.* (elaborating on Quetzaltenango's approach of leaving it to the community to decide how best to implement mediation programs).

206. *See id.* (stating that differences in approaches to conflict resolution lead to overall geographic disparities based on the existing legal practices of these areas).

207. *See* Conflict Resolution Cable, *supra* note 176 (providing an example that illustrates how two regions of the country differ in their mediation experience and the composition of their populations).

208. *See id.* (asserting that local groups are attempting to apply their knowledge and training in establishing better methods of conflict resolution).

209. *See id.* (noting the progress of the Mediation Centers as communities attempt to implement these programs).

210. *See id.* (emphasizing the steps taken by officials to work together to ensure successful programs).

ize the service more often, women seem to benefit particularly.<sup>211</sup> Although women requested fifty-nine percent of mediations, men were called to mediation in fifty-five percent of the cases.<sup>212</sup> Further, while the largest portion of cases, forty-two percent, involves a conflict between men, another twenty-eight percent were conflicts brought by women against men.<sup>213</sup> Whether mediation works as a longer-term solution may depend upon whether the parties honor the settlements. In Zacapa, seventy-three percent of mediated settlements were fully honored within just one month of the agreement, while another twenty-two percent were at least partially honored.<sup>214</sup> In only five percent of the cases the parties did not completely fulfill their agreement.<sup>215</sup>

The World Bank, Inter-American Development Bank (“IDB”), MINUGUA, Organization of American States (“OAS”), and UNDP have collaborated with USAID to ensure that the new Guatemalan vision for justice-sector reform survives.<sup>216</sup> These institutions have developed numerous studies and related activities, particularly on ADR issues.<sup>217</sup> In addition, USAID is collaborating with the Guatemalan Supreme Court to implement its experience with community ADR in certain regions of Guatemala.<sup>218</sup> The Guatemalan Supreme Court initiated a parallel program in August 1998 to create court-annexed mediation and conciliation centers in urban areas throughout Guatemala.<sup>219</sup>

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211. See *Strengthening Channels*, *supra* note 184, at 12 (reporting that women would usually request mediation, even though, as a whole, more men were involved in these disputes).

212. See *id.*

213. See *id.*

214. See *id.* (noting the success of these mediations in terms of whether the agreements were fulfilled).

215. See *id.* (discussing the success of mediation based on follow-up surveys inquiring as to the completion of mediation agreements).

216. See *Conflict Resolution Cable*, *supra* note 176 (relating how other international institutions have assisted the USAID in reforming Guatemala’s criminal justice system).

217. See *id.*

218. See *id.* (discussing efforts by USAID and the Court to bring better conflict resolution to Quezaltenango and Zacapa).

219. See *Ambassador Planty Cable*, *supra* note 62 (recalling the President of the

Interestingly, Ladino<sup>220</sup> use of mediation appears to differ from similar use by indigenous populations. The Ladino communities prefer to have their resolutions registered (“*homologados*”) so that the decisions will have judicial backing in case of non-compliance.<sup>221</sup> In indigenous communities, where one’s word is sacrosanct, the practice of registering a settlement with a court is much less common.<sup>222</sup>

Plea-bargaining procedures are drastically under-used even when appropriate. Certainly, the justice system needs to resolve criminal cases short of trial when appropriate. Receptivity to USAID training in this area has been high when the counterparts have an opportunity to examine and understand what is being proposed.<sup>223</sup> The Judicial School, with USAID support, organized seminars to update judges on developments involving plea-bargaining issues.<sup>224</sup>

## VIII. ISSUES OF MULTIPLE MODELS AND DONOR COORDINATION

From the outset of the Justice Centers, USAID sought to assure that the donors worked together, and not at counter-purposes. For example, in 1995, USAID sought MINUGUA and UNDP to coordinate activities jointly and maximize project impact.<sup>225</sup> On August 27,

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Guatemalan Supreme Court’s desire to extend the mediation program throughout Guatemala after his visit to the Justice Center in Quezaltenango).

220. Ladino in this context refers to persons of non-indigenous origin.

221. See Strengthening Channels, *supra* note 184, at app. (providing data indicating that non-indigenous communities prefer to register their mediation agreements with the local court).

222. See *id.* (reporting that all of the Ladino population requests “*homologación*” or registration in the majority of the cases). In the Mam areas, individuals file for registration in less than half the cases. See Memorandum by Steven E. Hendrix on Mediation—Differences in Practices Between the Ladino and Indigenous (Dec. 2, 1999) (on file with the author). In the *K’iché* areas, there are no cases of request for registration. See *id.*

223. See QPR No. 3, *supra* note 117, at 7, 12-13 (noting that, to increase the use of plea-bargaining, USAID brought an American lawyer to Guatemala to assist in developing procedures and activities).

224. See *id.* (discussing that the seminars occurred at the Judicial School in 1998 and featured presentations by many distinguished representatives of the Guatemalan Supreme Court and Public Ministry, USAC, and USAID).

225. See Memorandum from William Stacy Rhodes, USAID Director, to Marilyn McAfee, United States Ambassador to Guatemala (Nov. 7, 1995) (on file

1997, Ambassador Planty led a meeting with Guatemala's Interior Minister Rodolfo Mendoza, Guatemala's Attorney General Héctor Hugo Pérez Aguilera, and Guatemalan Supreme Court Magistrates Humberto Grazioso and Julio Ernesto Morales in Quetzaltenango.<sup>226</sup> During the meeting, the leaders of these three institutions—police, prosecution, and court—promised their support for the Justice Center model.<sup>227</sup> Adding to these events, in 1996 President Alvaro Arzú visited the Quetzaltenango Center.<sup>228</sup>

At the same time, the Interior Ministry pledged its support of the Justice Center Model with the request that the *Instancia Coordinadora* accomplish designation of all future centers, an offer United States Ambassador Planty accepted immediately. Planty thereby agreed that USAID would support Escuintla, Minister Mendoza's choice location. Since that time, the *Instancia* requested USAID to enlarge and copy the Justice Center model in Escuintla, Nebaj, San Benito (Petén), and the criminal courts in Guatemala City.<sup>229</sup>

USAID has received support for the Justice Center model from other areas of the government. In 1997, the Guatemalan Supreme Court and Public Ministry approved the USAID "Work Plan," which applied the Justice Center model. On June 1, 1998, Guatemala's Court President Figueroa and Attorney General González Rodas organized an official signing ceremony for approval of the 1998 Work Plan. On June 12, 1998, the *Instancia* approved all of the working formats from the Justice Centers for national use. On July 17, 1998, the Public Ministry requested that USAID provide training to all district attorneys ("*fiscales distritales*") on the Justice Center model. The Guatemalan Supreme Court granted final approval to reorganiz-

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with the author) (emphasizing the need to find new methods to combine forces and collaborate).

226. See 09/18/98 Borns & Hendrix Mem., *supra* note 21.

227. See Ambassador Planty Cable, *supra* note 62 (summarizing the progress in advancing justice-sector reform and solidifying cooperation within the community).

228. See DPK FINAL REPORT, *supra* note 16, at 9 (commenting that the work accomplished by the Justice Centers attracted the attention of justice-sector officials throughout the country); see also QPR No. 7, *supra* note 169, at 17 (revealing that other visits by policymakers demonstrate their interest in the progress of the activities in the Justice Centers).

229. See 09/18/98 Borns & Hendrix Mem., *supra* note 21.

ing the criminal courts in Guatemala City on July 29, 1998.<sup>230</sup>

USAID organized a series of meetings to support the Justice Center model and other activities. The first set of meetings involved mixed groups of justice-sector actors and principal counterparts.<sup>231</sup> USAID met privately with the Guatemalan Public Ministry,<sup>232</sup> the Supreme Court,<sup>233</sup> and Planning Secretariat ("SEGEPLAN"), again to solidify plans for future activities and the application of the Justice Center model.<sup>234</sup> At the same time, USAID established a series of meetings with the primary donors in the area, including MINUGUA,<sup>235</sup> the IDB,<sup>236</sup> the World Bank,<sup>237</sup> the UNDP,<sup>238</sup> the

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230. *See id.*

231. *See id.* (revealing that the meetings included one with *Instancia Coordinadora* representatives on Dec. 4, 1997, and the *Comité de Enlace* on Jan. 27, 1998). USAID also met with the Justice Strengthening Commission on Jan. 29, 1998. *See id.* In addition, USAID sought discussions with non-formal channels of access to justice, including María Eugenia Morales de Sierra (Judicial School Director), Nery Guzmán (*Planificación*, MP), Edgar Lemus (Area Penal, USAC), Cipriano Soto (*Bufete* Popular, USAC), Ernesto Burgos (Deputy Director, Public Ministry Training Unit—UNICAP), Alfonso Novales (President, *Colegio*), Xiomara Gómez (*Unidad Académica, Colegio*), Roberto Morales (*Planificación*, Court System), and others. *See id.*

232. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21 (remarking that USAID's outreach effort included meetings with Guatemala's Attorney General, Héctor Hugo Pérez Aguilera, on Oct. 2, 1997, Gustavol Mendizabal on Dec. 12, 1997, and Maritza Palencia on Jan. 12, 1998).

233. *See id.* (noting that USAID's meeting with the Guatemalan Supreme Court included talks with Astrid Lemus, Julio César Toledo, and Otto de León of the Judicial Modernization Commission, and with Magistrate Julio Ernesto Morales Pérez of the Guatemalan Supreme Court).

234. *See id.*

235. *See id.* (describing that meetings included discussions with Juan Farropa, Luis Pasara, Victor Ferrigno, John Wiater, Raquel Irigoyen, Leila Lima, Carmen Rosa Villa, Antonio Maldonado, John Wiater, Jesus Rodes, and Carmen Rosa Villa).

236. *See id.* (citing a meeting with Sabrina Cojulún from ASIES, employed to represent the IDB, to discuss the relationship between the IDB portfolio and USAID). USAID also met with Roger Plant and briefed the entire IDB justice-sector and dispute resolution teams, which were led by Fernando Carrillo. *See id.*

237. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21 (noting a meeting on Jan. 9, 1998 with William Mayville).

238. *See id.* (remarking that USAID met with UNDP and MINUGUA to identify the roles of donors, and that UNDP, Canadians, and others participated with

European Union,<sup>239</sup> the Economic Commission on Latin America and the Caribbean (“CEPAL”),<sup>240</sup> the Japan International Cooperation Agency (“JICA”),<sup>241</sup> the Central American Bank for Economic Integration (“BCIE”),<sup>242</sup> *Deutsche Gesellschaft für Technische Zusammenarbeit* (the “German Technical Assistance Agency,” often referred to simply as “GTZ”),<sup>243</sup> the *Cooperación Española*,<sup>244</sup> and others.<sup>245</sup> In addition, USAID had talks with NAS, the International Criminal Investigative Training and Assistance Program (“ICITAP”) of the United States Department of Justice,<sup>246</sup> and the United States Embassy representative for human rights activities.<sup>247</sup>

After the conclusion of this series of meetings, USAID organized roundtable discussions to solidify proposed future activities and the Justice Center model.<sup>248</sup> On April 15, 1998, USAID traveled to UPAVIM,<sup>249</sup> an all-female cooperative, to present the USAID strat-

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USAID to help define programs in the area of intra-familial violence).

239. *See id.* (noting that USAID met with Maria Fernandez on Sept. 30, 1997).

240. *See id.* (stating that USAID met with Margarita Flores on Sept. 8, 1997).

241. *See id.* (noting that USAID met with Amy Gray on Feb. 23, 1998).

242. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21 (reporting that this meeting was with Marsha Field, Amina Tirana and William (Terry) Fisher of Harvard University, and Luis Salas of Florida International University).

243. *See id.* (relaying that Norbert Lösing, Legal Advisor, and Lic. José Antonio Monzón from ASIES participated in this meeting with USAID).

244. *See id.* (stating that USAID met with Doloris Sanco Silvestre and Marta Higuera of the *Consejo General del Poder Judicial* [General Counsel Office of the Judiciary], Government of Spain, on Mar. 13, 1998).

245. *See id.* (referring to the donor coordination meeting on Oct. 17, 1997, hosted by UNDP; that of Oct. 3, 1997, hosted by the World Bank; and the participation of all relevant donors in the Antigua meetings of Nov. 3-4, 1997).

246. *See id.* (observing that USAID met with the Embassy Law Enforcement Committee, with participation by the DCM, Consular Section; Drug Enforcement Agency; Economics Section; ICITAP; MILGRP; NAS; Political Section; Regional Security Officer; USIS; and the Justice Department Immigration and Naturalization Service). USAID also prepared a briefing for General Charles E. Wilhelm, Commander in Chief, Southern Command, which included human rights activities of MINUGUA and the Commission for Historical Clarification. *See id.*

247. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21 (noting that USAID met with Shirley Stanton on Mar. 20, 1998).

248. *See id.*

249. *See id.* (providing that UPAVIM stands for “*Unidas para Vivir Mejor*”

egy of reform. The following day, USAID met with representatives of the Guatemalan Public Ministry, Supreme Court, Judicial School, SEGEPLAN, Bar Association, Law School at USAC, and Interior Ministry.<sup>250</sup> Within that month, USAID also met with indigenous groups and leaders in Quetzaltenango. Finally, USAID organized a meeting with all the major justice-sector donors to discuss Justice Centers and future USAID activities.<sup>251</sup> Among those attending were the UNDP, Spain, MINUGUA, Holland, the World Bank, Sweden, and the GTZ. The European Union and IDB were invited and confirmed, but did not attend. To obtain popular input on the Justice Center model, USAID held additional meetings in 1998 in Zacapa and Guatemala City.<sup>252</sup>

USAID's Peace Strategic Objective Agreement with the Guatemalan Government in 1997 committed USAID to support the Nebaj Justice Center together with MINUGUA. Despite this, MINUGUA proceeded with a new model without USAID. It opened a Justice Administration Center ("*Centro de Administración de Justicia*" or "CAJ") in Nebaj in April 1997, with the purpose of extending justice to a place that previously lacked a formal legal system.<sup>253</sup> The MINUGUA CAJ model is distinct from the Justice Center model in that it extends the present justice system in its current faulty state to a new location, while the Justice Center model seeks to improve the justice system.<sup>254</sup> The CAJ model attempts to enhance access to justice by focusing on indigenous people and their unique access problems, including linguistic barriers. The goal is to decentralize and integrate justice sector services in an efficient, low-cost way. Alternative dispute resolution is also key to the success of the CAJ

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[United for Better Living], a non-profit organization located in Mezquital, just outside of Guatemala City).

250. *See id.*

251. *See id.* (commenting that donor-coordination meetings were held throughout 1996-98 on the various activities of each donor). The United Nations normally chaired the meetings, with USAID providing a representative to ensure that all the donors were abreast of the USAID programs at all times. *See id.*

252. *See* 09/18/98 Borns & Hendrix Mem., *supra* note 21 (revealing that these meetings were held on Apr. 27 and May 28, 1998).

253. *See id.*

254. *See* Pellecer, *supra* note 37, at 5 (discussing in further detail that the Justice Center model plans to service areas such Esquintla, Quetzaltenango, and Zacapa).

model.<sup>255</sup>

Unfortunately, from the start, MINUGUA limited USAID's role in implementing the Justice Center model in Nebaj.<sup>256</sup> First, it did not invite USAID to participate.<sup>257</sup> MINUGUA then attempted to limit USAID to purely administrative issues,<sup>258</sup> without input on determinative technical or legal issues.<sup>259</sup> Even after MINUGUA management agreed to allow USAID involvement, it failed to inform its field staff of this agreement and, consequently, the field staff refused to collaborate with USAID.<sup>260</sup> As such, MINUGUA effectively ignored the innovative administrative advances that USAID was able to de-

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255. *See id.* at 14-17 (delineating the goals of CAJ as increased access to judicial services, implementation of an alternative dispute resolution, and increased access to legal information through the establishment of archives).

256. *See* Memorandum from Tim Cornish, USAID Director, to Beth Hogan and Sharon Van Pelt, USAID Democracy Officers (Jan. 3, 1997) (on file with the author) [hereinafter 01/03/97 Cornish Mem.] (referring to USAID's proposal for involvement as unacceptable by USAID members); *see also* Fax from Alejandro Alvarez, MINUGUA Consultant, to Timothy Cornish, USAID Director 3 (Dec. 20, 1996) (on file with the author) [hereinafter 12/20/96 Alvarez Fax] (emphasizing that USAID should have a limited role, though recognizing that it has implemented a series of quality administrative modifications).

257. *See* 05/15/98 Rupperecht Mem., *supra* note 17 (discussing the frustrated efforts of USAID in an attempt to implement an administrative system at the Justice Centers).

258. *See* 12/20/96 Alvarez Fax, *supra* note 256, at 3 (referring to CREA's administrative support); *see also* 01/03/97 Cornish Mem., *supra* note 256. *See generally* 08/19/99 Williams Mem., *supra* note 30, at 7-8 (indicating that MINUGUA relegated USAID to support merely "procedural" areas in the Guatemalan court system and Public Ministry, i.e., case-tracking, and administrative organization and training). As a consequence, there has never been an executive committee to coordinate activities. *See id.*

259. *See* 12/20/96 Álvarez Fax, *supra* note 256 (providing copy of draft agreement between MINUGUA and USAID); *see also* Letter from Timothy Cornish, USAID Director, to Alejandro Alvarez, MINUGUA Consultant (Jan. 3, 1997) (on file with the author) (discussing the objectives and developmental steps to the Justice Center in which USAID was not involved); 01/03/97 Cornish Mem., *supra* note 256 (discussing USAID's thwarted efforts dealing with technical and legal issues).

260. *See* Letter from Walter Hernández, USAID Consultant, to Steven E. Hendrix, USAID Justice Coordinator (Sept. 2, 1998) (on file with the author) (contending that lack of communication existed between MINUGUA personnel and that of USAID).

sign.<sup>261</sup> MINUGUA provided no inter-institutional coordination,<sup>262</sup> other than the construction of two buildings. In addition, MINUGUA excluded civil society from the development of the Nebaj Center. Consequently, MINUGUA's planning efforts continued throughout 1999 excluding USAID involvement.<sup>263</sup>

In an effort to eliminate the multiple Justice Centers models and to rescue the Nebaj Center, in February 1998, the *Instancia Coordinadora* requested USAID's assistance to introduce the USAID Justice Center advances.<sup>264</sup> USAID Mission Director, William Stacy Rhodes and Jesús Rodes, the head of the Institutional Strengthening Office for MINUGUA, signed a letter signaling USAID's intention to support the Nebaj CAJ. Since April 1998, USAID has carried out a number of programs in Nebaj and began to introduce the many innovations from the other "Justice Centers."<sup>265</sup> In July 1998, USAID reiterated its desire to join all efforts and assure that any new Centers take full advantage of the experiences gained in the USAID Justice Centers.<sup>266</sup> Consequently, the distinctions that might have existed at one time between MINUGUA's work in Nebaj and USAID's efforts elsewhere have dissipated.<sup>267</sup>

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261. See 05/15/98 Rupperecht Mem., *supra* note 17 (discussing the problems in the development of the Justice Centers).

262. See 08/19/99 Williams Mem., *supra* note 30, at 2, 8 (discussing the hampered USAID administrative efforts, e.g., the implementation of a modernized case-tracking system).

263. See *id.* at 8-10 (noting that CREA has not sponsored any training events since Aug. 1998, apart from the training on the case-processing system, which is currently not operational).

264. See 09/18/98 Borns & Hendrix Mem., *supra* note 21 (contending that USAID/CREA supported the Justice Centers with administrative and technical assistance); see also Pellecer, *supra* note 37, at 5-6 (remarking that MINUGUA and CREA are working in conjunction to modernize the Justice Centers).

265. See 09/18/98 Borns & Hendrix Mem., *supra* note 21 (noting that in 1998, at the request of the Guatemalan Public Ministry, USAID held training sessions on the Justice Center model). See generally Pellecer, *supra* note 37, at 5-6 (discussing the administrative advances in Zacapa and Quezaltenango).

266. See 05/15/98 Rupperecht Mem., *supra* note 17, at 2 (reporting that the successful results of USAID seminars conducted on the criminal procedure code and judicial training).

267. See 09/18/98 Borns & Hendrix Mem., *supra* note 21, at 3 (noting that this result is because USAID introduced innovations at the Nebaj Center that differed

The *Instancia Coordinadora* expected USAID to be present in future “Centers” at the close of 1998.<sup>268</sup> In late March 1999, MINUGUA informed USAID that it planned to open a new CAJ the next month in Santa Eulalia, Huehuetenango. In April 1999, then Executive Secretary of the *Instancia Coordinadora*, Magistrate Astrid Lemus, asked USAID to participate in the Santa Eulalia CAJ, providing technical assistance and operational planning in the new Center.<sup>269</sup> Later that month, MINUGUA provided USAID with its plan.<sup>270</sup> This assessment recognized that the Nebaj experience had “difficulties.”<sup>271</sup> USAID attempted to come to an agreement with MINUGUA so that there would be only one model for a Justice Center and to avoid the mistakes of Nebaj.<sup>272</sup> Nevertheless, the MINUGUA Santa Eulalia plan ignored the technical and administrative advancements of USAID’s Justice Centers and made MINUGUA the key decision-maker.<sup>273</sup>

In October 1999, USAID provided the IDB with extensive input

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from many other Justice Centers).

268. See Pellecer, *supra* note 37, at 6 (remarking that the project will continue for approximately three years so as to develop centers in all areas of the country).

269. See Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, United States Ambassador to Guatemala (Apr. 16, 1999) (on file with the author) (remarking that USAID will work in conjunction with other European donors); see also Letter from Jeff Borns, USAID Democracy Chief, to John Wiater, MINUGUA Technical Cooperation Advisor (Apr. 27, 1999) (on file with the author) [hereinafter 04/27/99 Borns Letter] (discussing the request of USAID’s support in the participation of ADR systems).

270. See 04/27/99 Borns Letter, *supra* note 269 (explaining that MINUGUA’s Santa Eulalia plan arrived at USAID on Apr. 16, 1999). The plan discussed the Nebaj experience, but failed to mention any USAID involvement. See *id.* (providing written comments to MINUGUA and repeating USAID’s desire to collaborate and participate).

271. See Email from Steven E. Hendrix, USAID Democracy Officer, to Jeff Borns, Chief of Democratic Initiatives (Apr. 21, 1999) (on file with the author) (identifying the Nebaj Center’s major problems as an inoperative legal system in a new location and the resistance to USAID support).

272. See Memorandum from George Carner, USAID Mission Director, to Donald J. Planty, United States Ambassador to Guatemala (May 7, 1999) (on file with the author) (remarking that USAID plans to offer technical assistance with caution, however, from the lessons learned from the development of the other Justice Centers).

273. See *id.*

for its design of a project for the justice sector, including information about the USAID Justice Centers.<sup>274</sup> USAID later hosted IDB officials on June 8, 1998 at the Zacapa Justice Center to provide the IDB design consultants with an up-close examination of USAID's efforts in the sector.<sup>275</sup> When the IDB loan documentation was released, it advanced a modified version of the CAJ.<sup>276</sup> Similarly, the World Bank program fails to mention Justice Centers, although other figures like "*Centros Regionales*" (regional centers) and "*Complejos Judiciales Departamentales*" (complex judicial departments) are proposed.<sup>277</sup>

Many other organizations appear to be behind the USAID Justice Center model. Nevertheless, there is still no uniform set of working vocabulary to reference the Justice Centers. Guatemalan Supreme Court President Angel Alfredo Figueroa, for example, used the term "*Centros de Enfoque*" (Focus Centers), when referring to the USAID efforts; "*Centros de Administración de Justicia*" (Justice Administration Centers), when referring to some sort of new buildings and possibly increased deployment of personnel; and "*Palacios de Justicia*" (Justice Headquarters), when referring to a new physical infrastructure for co-locating justice sector actors.<sup>278</sup>

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274. See Letter from William Stacy Rhodes, USAID Director, to Waleska Pastor, IDB Representative (Oct. 8, 1997) (on file with the author) (noting a few of the primary foci to be the resolution of civil, family, and commercial conflicts, as well as the coordination between police and community).

275. See Memorandum from Letitia Kelly Butler, USAID Acting Director, to Donald J. Planty, United States Ambassador to Guatemala (June 16, 1998) (discussing the various USAID efforts, i.e., uniformity of crime-reporting forms, search warrants, and crime inspection and autopsy reporting).

276. See Inter-American Development Bank, Guatemala: *Programa de Apoyo a la Reforma del Sector Justicia* 8-18 (Apr. 1999) (unpublished manuscript on file with the author) (discussing the IDB-approach to the justice sector, with a modified CAJ, plus institutional development programs, and noting the MINUGUA CAJ model and the USAID Justice Center approach).

277. See World Bank, Project Appraisal Document on a Proposed Loan in the Amount of US \$33 million to the Republic of Guatemala for a Judicial Reform Project 6 (Sept. 28, 1998) (noting that additional ideas for models were discussed, such as the "*Cajito*," a smallish version of the CAJ, and the "*Cajote*," which is an expanded version for larger cities).

278. See 09/18/98 Borns & Hendrix Mem., *supra* note 21 (arguing that a uniform set of vocabulary between the Justice Center models will dissipate any confusion among officials).

In extending the Justice Center model, USAID has followed the leadership of the *Instancia Coordinadora*, which has the final say in the selection of future sites. In the past, the *Instancia Coordinadora* has used as criteria locations for new deployments of the new National Civilian Police, sites where communities themselves have requested the service, areas of particular inefficiency in the justice sector, and other factors. USAID may attempt to optimize impact and resources by creating new Justice Centers in areas where other USAID efforts are on going. In this sense, USAID participates in the selection process. In all likelihood, USAID would take into account all the various factors—including budgetary, management, and absorptive capacity—when proposing the number, location, and timing of new Justice Centers. Similarly, USAID would note other donor activities, such as the IDB's offer to finance infrastructure for eight "Justice Administration Centers."<sup>279</sup>

In the year 2000, each Justice Center will receive fundamental courses in key areas, such as Criminal Theory, Criminal Investigation, Criminal Procedure—including constitutional guarantees, dispute resolution, and evidence—ADR, Legal Pluralism, Trial Advocacy, and Legal Writing. These courses will draw interest and participation from individuals from Guatemala's courts, Public Ministry, Public Defense, private practitioners, and the Human Rights Ombudsman's office. The official governmental training units attached to the courts, Public Ministry, and Public Defender Service will offer each of these courses.<sup>280</sup>

## CONCLUSION

After the terrible history of genocide and human rights abuse in Guatemala, it is clear the situation will not change overnight, as Guatemala is still far from a tolerant society that respects human rights. Regrettably, a sort of justice and rule of law existed for years in Gua-

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279. See Request for Proposal No. 520-98-P-020, USAID Justice Program (USAID/CREA, Guatemala, C.A.), Sept. 30, 1998, secs. C-D(III) (noting that USAID remained the only donor in the justice field until 1994; since then, the UNDP, IDB, EU, and other organizations have joined in the endeavor).

280. See Mark Williams, *Cursos de Capacitación* [Competency Courses] (USAID/CREA, Guatemala, C.A.), Nov. 1999 (referring to prospective course schedule).

temala under which suspects were rounded up and shot. The system was efficient and gave the illusion of security. There was no need to invest in the institutional development of courts, prosecutors, public defenders, or even civil society—the military could do it all. In a modern world, one of global markets and values, this is obviously an unwanted characteristic. Guatemala is now faced with building new justice institutions from the ground up. Even worse, given that Guatemalans never had a tradition of rule of law, they have no experience to draw from in creating positive institutions. Justice reform in Guatemala will take several generations and will involve a gradual learning process requiring a strategy of incremental progress. Justice Centers are an essential part of this process.

The inescapable conclusion of the Justice Center experience is that the Guatemalans themselves thought of an ingenious plan and implemented a reform system that responds to *their* needs and solves *their* problems. Notwithstanding, however, combined foreign technical assistance and Guatemalan leadership were instrumental to the process of bringing about fundamental changes in both the justice system and essential Justice Center locations.

The Justice Center model is catching on and demand grows. The *Instancia Coordinadora* now seeks to expand the model to each of the country's departmental capitals to provide national coverage.<sup>281</sup> As a result of this Guatemalan-led initiative in Justice Center locations, women, the poor, children, and indigenous people have greater access to an improved, more transparent, and more efficient justice system. There is a reduction in corruption opportunities and impunity. Service to the community has increased and faith in the system is growing. For these reasons, procedural due process has improved, with corresponding improvements for human rights issues. As the Justice Centers continue the trend toward decentralization, we can expect these positive changes to continue. The challenge will be to maintain this course of reform, with continuous adaptations and adjustments, to assure the rule of law becomes the norm for all Guatemalans.

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281. See Letter from Astrid Lemus, Executive Secretary, to Brian Treacy, USAID Justice Chief of Party (Nov. 25, 1999) (on file with the author) (discussing the continued development of the Justice Centers well into the next year).