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UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
Washington, D. C. 20523

GUATEMALA

PROJECT PAPER

JUDICIAL SECTOR REFORM SUPPORT

AID/LAC/P-830

PROJECT NUMBER: 520-0407

UNCLASSIFIED

AGENCY FOR INTERNATIONAL DEVELOPMENT PROJECT DATA SHEET		1. TRANSACTION CODE <input type="checkbox"/> A = Add <input type="checkbox"/> C = Change <input type="checkbox"/> D = Delete	Amendment Number _____ DOCUMENT CODE 3
2. COUNTRY/ENTITY GUATEMALA		3. PROJECT NUMBER 520-0407	
4. BUREAU/OFFICE LATIN AMERICA & CARIBBEAN		5. PROJECT TITLE (maximum 40 characters) JUDICIAL SECTOR REFORM SUPPORT	
6. PROJECT ASSISTANCE COMPLETION DATE (FAGD) MM DD YY 1 2 3 1 9 7		7. ESTIMATED DATE OF OBLIGATION (Under 'B.' below, enter 1, 2, 3, or 4) A. Initial FY 9 3 B. Quarter 3 C. Final FY 9 7	

8. COSTS (\$000 OR EQUIVALENT \$1 =)

A. FUNDING SOURCE	FIRST FY			LIFE OF PROJECT		
	B. FX	C. L/C	D. Total	E. FX	F. L/C	G. Total
AID Appropriated Total	129			3,509	1,491	5,000
(Grant)	(129)	()	()	(3,509)	(1,491)	(5,000)
(Loan)	()	()	()	()	()	()
Other U.S.						
1.						
2.						
Host Country					1,796	1,796
Other Donor(s)						
TOTALS	129			3,509	3,287	6,796

9. SCHEDULE OF AID FUNDING (\$000)

A. APPRO. PRIORITATION	B. PRIMARY PURPOSE CODE	C. PRIMARY TECH CODE		D. OBLIGATIONS TO DATE		E. AMOUNT APPROVED THIS ACTION		F. LIFE OF PROJECT	
		1. Grant	2. Loan	1. Grant	2. Loan	1. Grant	2. Loan	1. Grant	2. Loan
(1) ESE				-	-	5,000		5,000	
(2)									
(3)									
(4)									
TOTALS						5,000		5,000	

10. SECONDARY TECHNICAL CODES (maximum 5 codes of 3 positions each)

11. SECONDARY PURPOSE CODE

12. SPECIAL CONCERNS CODES (maximum 7 codes of 4 positions each)

A. Code

B. Amount

13. PROJECT PURPOSE (maximum 480 characters)

TO SUPPORT THE REFORM OF THE GUATEMALAN CRIMINAL JUSTICE SYSTEM THROUGH THE IMPLEMENTATION OF THE NEW CRIMINAL PROCEDURES CODE AND COROLLARY LEGISLATION.

14. SCHEDULED EVALUATIONS

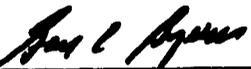
Interim	MM	YY	MM	YY	Final	MM	YY
	1	2	9	5		1	2
						9	7

15. SOURCE/ORIGIN OF GOODS AND SERVICES

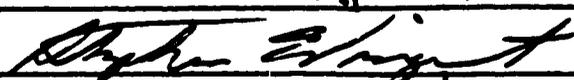
000 941 Local Other (Specify) _____

16. AMENDMENTS/NATURE OF CHANGE PROPOSED (This is page 1 of a _____ page PP Amendment)

I certify that the method of payment and audit plans are in compliance with the payment verification policy.


 Gary Byllesby
 Controller

17. APPROVED BY

Signature: 

Title: Director (Acting)
USAID/Guatemala

Date Signed: MM DD YY

18. DATE DOCUMENT RECEIVED IN AID/W, OR FOR AID/W DOCUMENTS, DATE OF DISTRIBUTION

MM DD YY

PROJECT AUTHORIZATION AMENDMENT NO. 1

Name of Country: Guatemala
Name of Project: Judicial Sector Reform Support
Number of Project: 520-0407

Pursuant to Section 531 of the Foreign Assistance Act of 1961, as amended, the Judicial Sector Reform Support Project was authorized on September 25, 1992 at a life-of-project funding level of \$450,000 with a planned life of project until September 30, 1993. That Authorization is hereby replaced in its entirety as follows:

1. Pursuant to Section 531 of the Foreign Assistance Act of 1961, as amended, I hereby authorize the Judicial Sector Reform Support Project for Guatemala, involving planned obligations not to exceed \$3,500,000 in grant funds over the life of project, subject to the availability of funds in accordance with A.I.D. OYB/allotment processes, to help in financing the foreign exchange and local currency costs of the Project. The planned life of project is until December 31, 1997.
2. The Project Purpose is to support the reform of the Guatemalan Criminal Justice System through the implementation of the new Criminal Procedures Code and corollary legislation, including the new Narcotics Law.
3. The Project Agreements, which may be negotiated and executed by the officer(s) to whom such authority is delegated in accordance with A.I.D. regulations and Delegations of Authority, shall be subject to the following essential terms and covenants and major conditions, together with such other terms and conditions as A.I.D. may deem appropriate.

3.1 Source and Origin of Commodities, Nationality of Services

Commodities financed by A.I.D. under the project shall have their source and origin in the United States (Country Code 000), except as A.I.D. may otherwise agree in writing or as provided in paragraph 3.2 below.

The suppliers of commodities or services shall have the United States as their place of nationality, except as A.I.D. may otherwise agree in writing or as provided in paragraph 3.2 below.

Ocean shipping financed by A.I.D. under the project shall, except as A.I.D. may otherwise agree in writing, be financed only on flag vessels of the United States.

Air transportation services financed under the Project shall be on U.S. flag carriers except to the extent such carriers are not "available" as such term is defined by the U.S. Fly America Act.

3.2 Local Cost Financing

Local cost financing, totaling \$1.5 million, is authorized only to the extent permitted by the Agency's Buy America Policy as outlined in 90 State 410442 and in HB 1B, Chapter 18. If necessary, individual waivers may be processed for procurement of goods or services which are outside the exemptions to the Buy America Policy but necessary to Project Implementation, under the criteria stated in HB 1B, Chapter 5. It has been determined that the cost of commodities of U.S. origin planned to be procured locally are reasonable, taking into account comparable delivery terms and prices from the U.S., and the implementation schedule of the Project.

3.3 Conditions Precedent and Special Covenants

- a) Prior to the disbursement of funds from any of the Project Agreements, the individual Grantee will present, in form and substance satisfactory to A.I.D.:
 - i) Evidence that it has sufficient on-line human and financial resources available to allow for the execution and institutionalization of systems and activities to be developed under this Project
 - ii) A plan of activities to be carried out in conjunction with the first year of project implementation
- b) Prior to the disbursement of funds from the San Carlos University Agreement, the Law Faculty of the University will present the design, in form and substance satisfactory to A.I.D., of a mechanism through which the benefits of the Project will be shared with the private law schools in Guatemala.
- c) The Grantees will covenant to:
 - i) Make every effort to ensure that all persons trained with project funds remain in their current positions for at least one year in the case of in-country training, and two years in the case of international training.
 - ii) Make every effort to coordinate actions to maximize the use of financial and human resources, and rationalize plans and programs among the three principal grantee institutions with regard to the role and functions of each in the reform process.

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4. Waivers

A separate waiver to allow the use of \$131,000 of project funds to pay the international travel costs associated with participant training of Judicial Sector personnel under the Project was approved and is attached to the authorization.

APPROVED *[Signature]* DATE 7/14/93

DISAPPROVED _____ DATE _____

DRAFTED:	TDelaney, PDSO	<u>TRD</u>	DATE	<u>7/9/93</u>
CLEARANCES:	BArellano, C/ODDT	<u>BA</u>	DATE	<u>5/10/93</u>
	CBrown, RLA	<u>Draft</u>	DATE	<u>04/30/93</u>
	GByllesby, Cont	<u>gy</u>	DATE	<u>5/17/93</u>
	LWarfield, C/PDSO	<u>LBW</u>	DATE	<u>5/24/93</u>
	SWingert, DDir	<u>SL</u>	DATE	<u>7/14</u>

P:\PDSO\PI\INDOC\NAOJAU

ACTION MEMORANDUM FOR THE ACTING MISSION DIRECTOR

FROM: Tom Delaney, PDSO 

SUBJECT: Waiver for International Travel Costs, Judicial Sector Reform Support Project (520-0407)

ACTION REQUESTED: That you approve a blanket waiver to allow the use of \$131,000 of project funds to cover international travel costs associated with training of Judicial Sector personnel under the Judicial Sector Reform Support Project.

DISCUSSION: The Judicial Sector Reform Support Project will facilitate the modernization of the Guatemalan Criminal Justice System by assisting the Guatemalan Supreme Court, the Public Ministry and the San Carlos University in the areas of human resource development and institutional change/strengthening. A significant element of support to each of these institutions will be specialized short-term training in other Latin American countries and the U.S. This training will facilitate the adaptation of sectoral personnel to oral trial proceedings, the improvement of investigative functions, and the implementation of a public defenders program.

JUSTIFICATION: The Project's budget includes approximately \$2.5 million to finance training of Judicial Sector personnel. While much of the training will take place in Guatemala, the same lack of adequate systems that has necessitated the new Criminal Procedures Code and this Project also requires that models and expertise to train Guatemalans in more equitable and transparent applications of the law be sought in other countries. The Government of Guatemala (GOG) will provide \$1.3 million (approximately 52% of the line item total) in counterpart to training activities under the Project. This represents a significant commitment of human and financial resources. Of the total \$165,485 budgeted for international travel under the Project, the GOG would pay \$34,485 as counterpart. The Supreme Court will cover the full cost of international travel associated with training its personnel under the Project, except for training provided during the first year of the Project (the Court's budget has already been submitted) and that portion associated with interchange programs related to the implementation of the new Narcotics Law. However, the Public Ministry and the San Carlos University have very little flexibility within their budgets (due both to limited resource availability and restrictions on the uses of resources). While neither entity is in a position to assume the full foreign exchange costs associated with international travel for training, the training of University and Ministry personnel is, nonetheless, considered critical to the success of the Project. Therefore, since the GOG is providing adequate counterpart contributions to the Project as a whole, this waiver is considered necessary and justifiable. (Note that although the Public Ministry Component of the Project will not be authorized at this time, this waiver will cover all international training activities cited in the PP.)

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AUTHORITY: According to Handbook 10 (16C.2), "the Mission Director may authorize a full or partial waiver of the host government's or other sponsor's responsibility (for funding of international travel) for a specific-funded project when no general country waiver has been issued. The appropriate regional assistant administrator and the Office of International Training must be so informed." ODDT will make this notification if this waiver is approved.

RECOMMENDATION: That you sign below approving a blanket waiver to allow the use of \$131,000 of project funds to cover the costs of international travel associated with training under the Judicial Sector Reform Support Project.

APPROVED: *[Signature]* DATE 7/14/93

DISAPPROVED: _____ DATE _____

DRAFTED:
T Delaney, PDSO *[Signature]* DATE 4/30/93

CLEARANCES:
B Arellano, C/PDSO *[Signature]* DATE 5/10/93
C Brown, RLA *[Signature]* DATE 4/30/93

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ON FILE AT USAID:

- **Harvard Law School Final Report**
 - **Analysis of the Public Ministry**
 - **Justice Sector Stocktaking**
 - **Final Report from Improved Administration of Justice Project (520-0369)**
 - **Memos/Cable Traffic with AID/W on Justice Sector Reform Process**
- U:\DDTOPUB\DOCS\AOJCONTE**

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**JUDICIAL SECTOR REFORM SUPPORT
(520-0407)**

I. PROJECT SUMMARY

Based on the experience of past A.I.D. interventions in the Judicial Sector and recent Government of Guatemala (GOG) commitments to reform of the justice system (most notably passage of the new Criminal Procedures Code and significant increases of the budgetary and staff resources of key sectoral institutions), the Mission has designed the \$5.0 million Judicial Sector Reform Support Project described in this Paper. The Project Goal is to support the right to due process under the law in Guatemala. The Project Purpose is to support the reform of the Guatemalan Criminal Justice System through the implementation of the new Criminal Procedures Code and corollary legislation, including the new Narcotics Law.

In order to accomplish this goal, the Project will provide support to the Guatemalan Supreme Court, the Public Ministry, and the Law Faculty of the San Carlos University, specifically in the areas of human resource development and institutional change/strengthening. The Project will finance critical, specialized training and technical assistance, to be provided locally, in the U.S., or in third countries. The components of the Project and the respective focus of A.I.D. assistance are:

1) Judicial Branch: \$1,694,872 to prepare the courts to expand oral trial proceedings and implement a legal defense program.

2) Public Ministry: \$859,156 to facilitate decentralization of Ministry functions and improve its investigative capacity.

3) San Carlos University: \$1,440,572 to adapt law school curricula and training methods to the demands of oral trial proceedings.

4) Specialized Training: \$650,000 to provide technical training to key sector personnel through U.S. Department of Justice programs (ICITAP/OPDAT).

5) Private Sector Advocacy: (\$45,000) to support private sector initiatives aimed at fostering a more equitable justice system in Guatemala, particularly through travel to other countries with more developed justice systems and more active private institutions. (Note: This component will be managed through the Agreement with San Carlos University. The \$45,000 budgeted for this component is included in the total of San Carlos; see 3 above).

6) Project Administration: \$355,400 to ensure coordination between implementing agencies and A.I.D. (includes AID direct expenses for audits and evaluation). (This covers project management costs for years 1 and 2. An additional \$229,600 is budgeted under the Judicial Branch Agreement to cover project management in years 3 and 4).

In addition to the A.I.D. resources cited above, GOG institutions will provide the equivalent of \$1,795,992 in counterpart contributions to the Project. Even more importantly, largely as a result of the criminal justice reform process, the annual budgets of both the Supreme Court and the Public Ministry have been increased significantly. In the case of the Supreme Court, an additional Q100,000,000 (approximately \$18,500,000) was approved as of CY 93 for reform support activities. The annual budget for the Public Ministry increased from Q6,000,000 (CY 91) to Q18,000,000 (CY 92), and again to Q40,000,000 for CY 93. All A.I.D. resources will be obligated in FY 1993 through Handbook 3 Agreements with the Guatemalan Supreme Court, the Public Ministry, and the San Carlos University, as well as through a direct transfer to/Participating Agency Agreement with the U.S. Department of Justice (ICITAP and OPDAT respectively), and A.I.D.-direct contracts. The majority of funding provided through the Handbook 3 Agreements will go into a contract with a U.S. institution that will provide and coordinate all assistance to the GOG implementing agencies. The monitoring and evaluation system under the Mission's Sustained Exercise of Inalienable Rights Strategic Objective will incorporate critical data related to the accomplishments of this Project.

II. PROJECT BACKGROUND AND RATIONALE

A. Overview of Democratic Development in Guatemala

1. Historical Understanding

The process of developing democratic institutions in Guatemala has meant overcoming nearly five centuries of authoritarian culture and rule. Beginning with the Spanish conquest in 1523, through independence in 1821 and into the middle of the twentieth century, the Guatemalan experience has been dominated by an aristocratic and rigid class society, where participation has been restricted to those few of wealth and power. The socio-political heritage of the country is fraught with autocratic models, including the Church, the Military, the Caudillo and the pater familias, each of which have promoted passivity toward power and political fatalism.

Independence from Spain, as well as the Enlightenment, brought new political models to the former colonies of Latin America. However, little changed in Guatemala, except the demise of power of the Catholic Church. Elected presidents

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remained in office only briefly, and always were followed by long periods of dictators wielding the force and control of seventeenth century monarchs. A more significant moment in this country's history is 1945, when hitherto unrepresented segments of Guatemalan society were motivated by the defeat of authoritarian governments in the Second World War. For a brief period, 1945 - 1954, serious socio-economic reformers were brought to power. Although three decades of conservative dictatorships then followed, the old imposed social tranquility was never reestablished. The seeds for economic and political change were planted, and would begin sprouting thirty years later.

In 1985 Guatemala adopted a new constitution and held the first of four open and honest elections. After five years of democratic government and the smooth transfer of power which occurred in January 1991, it is clear that the basic framework for a democratic system is in place. Nevertheless, the full participation of the citizenry, and the accountability of the system to them, remain weak. The autocratic practices of the past continue to pervade Guatemalan society. Access to power, justice and the holding of wealth is still in the hands of a relatively small percentage of the population. The only strong state institutions are the military and, to a lesser extent, the Executive Branch. The National Congress, the Court system and local government are fragile and to very significant degrees ineffective. Some members of the power elite, while criticizing the inefficiency of civilian institutions, in actuality see such weak organizations as helping to maintain the status quo. They justify not strengthening these institutions by pointing out that such efforts and resources would just be wasted or misused.

2. Current Constraints to Democratic Development in Guatemala

The principal challenges presently facing Guatemala in its political development include strengthening those institutions and processes so needed for increased popular participation and improved public sector responsiveness and accountability to the electorate. The National Congress is the main representative body in the Government, and yet it lacks internal efficiency, is ineffective in carrying out its legislative and oversight functions and is less than independent from the power of the executive branch. The types of checks and balances normally found in a democratic system are not evident between the three branches of the Guatemalan Government.

The culture of violence and lack of respect for human rights remains a serious problem. The level of protection afforded the human rights of the average Guatemalan citizen is among the two or three lowest in the western hemisphere. The Office of the Human Rights Ombudsman, constituted in 1985, began operations four years ago. Because of its expansive organizational

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objectives, the Ombudsman's Office has experienced difficulty in maintaining a focus on critical elements of human rights violations (e.g. murder and abduction). Its attention is often diluted by popular complaints about governmental decisions and policies which are considered marginal to the core human rights concerns in this country. Additionally, the OHRO has faced difficulty in obtaining the collaboration of other governmental entities (such as the police and the judiciary).

After years of military and de facto military governments, the Guatemalan people are only beginning to experiment in a serious way with democratic processes. Most of the Guatemalan population has never lived under a civilian government, except during the last five years. Civic and human rights education is virtually non-existent in the public school curriculum and in non-formal programs reaching the out-of-school population. Leaders at the local, sectoral and national levels have had little opportunity to learn and demonstrate democratic values and practices. Related to this educational problem is the lack of local democratic organizations to mobilize citizens to participate more fully in their government.

3. A.I.D. Assistance to Democratic Development

A.I.D.'s systematic involvement with democracy programs began with the founding of the Alliance for Progress, which established democratic institution building as one of its goals. Four areas of activity in support of democratic development were emphasized during the 1960's and 1970's: legislative capacity, local government, civic education and leadership training. In Guatemala specific projects were authorized to promote democratically-controlled cooperatives, AIFLD training programs and participant training programs in the United States. Equally important, however, has been the cumulative effect of three decades of U.S. economic aid on Guatemala's urban and rural poor. Major interventions in education, health and agriculture have contributed to the growing demand for increased access to the economic and political power structure of the country.

Since 1980, A.I.D. has responded to the political reforms initiated by the Guatemalans. Fueled by the Central American Initiative (CAI), which placed democratic development at the core of U.S. policy in the region, USAID began to directly assist the "infrastructure of democracy" in Guatemala through a series of projects. These activities included such programming areas as the: Election System; National Congress (diagnostic studies and basic commodities); Human Rights; Administration of Justice (AOJ); and Journalism. The USAID also supported activities complementary to democratic development such as strengthening the private sector, including cooperatives; funding for AIFLD; GOG

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local currency resource transfers to the municipalities; and short and long-term participant training in the United States under CAPS I and II.

USAID's efforts in the democratic initiatives sector have met with varying levels of success. The Supreme Electoral Tribunal (SET) received some \$1,400,000 in A.I.D. money to finance the hardware, software, commodities and training needed for the effective administration of elections. The project was an unqualified success and funding terminated at the end of March 1991.

USAID assistance to the National Congress over the last three years has served to sensitize the Congress to the need for institutional strengthening. In addition to the various diagnostic studies conducted during this period, a MIS system was designed and installed and a procedural manual for use by the deputies drafted. Current assistance is focused exclusively on strengthening the committee system.

In the area of Human Rights, the USAID Mission successfully completed a \$300,000 Project during FY 1990. Those funds were used to equip the central office and ten of the planned 22 regional offices of the Human Rights Ombudsman (OHRO). Moreover, new activities with the OHRO were designed and a new agreement signed in September, 1990 for \$341,500, as part of the initial Authorization under the Democratic Institutions Project (520-0398). This assistance helped the OHRO to focus more substantively on the performance of human rights throughout the country. It provided for the preparation of a case tracking system, public education in human rights, training for OHRO personnel and commodities for the remaining regional offices. In September, 1992 an additional \$1.5 million was obligated for expansion of these same activities under a new agreement with the OHRO.

Since 1987, USAID has authorized over \$7,000,000 for improving the Administration of Justice in Guatemala. The initial Project (520-0376), administered by Harvard Law School's Center for Criminal Justice, completed its field activities during the first quarter of FY 1991. It was particularly successful at identifying operational problems in the system, and then designing and testing improvements through a Pilot Courts Program. Progress under the second bilateral Project (520-0369) was slower. Whereas the development and strengthening of the Judicial Branch's legal information system proceeded satisfactorily, problems were encountered in trying to institutionalize an improved judicial training system and to pursue planned administrative reforms. The Mission closed out the Administration of Justice Project (520-0369) at the end of December 1991.

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During CY 1992 the Mission continued to interact with the justice sector at greatly reduced levels of resources: a limited scope grant agreement with the Public Ministry supported training of prosecutors; follow-on coordination with the Court's information network (CENALEX) facilitated hook-ups with the Congress and the San Carlos University Law Faculty, and technical/logistics support continued for the drafting and approval of the new Criminal Procedures Code.

4. Other Donor Assistance

Since a democratically elected government came to power in 1986, a number of international agencies have expanded their support for democratic initiative activities in Guatemala. With few exceptions, that support has been geared toward the promotion of human rights. German assistance has provided funds for the purchase of the office building of the OHRO. They also have made substantial contributions to the development of formal and non-formal educational materials, as have the Canadians, Dutch and British. Canada is supporting construction of a new library and auditorium, providing the OHRO a place to conduct seminars and public programs. Spain has provided reference materials for the OHRO library, while Australia has donated funds for administrative equipment. The Scandinavian countries have actively pursued human rights concerns through programs of interchange between the Guatemalan Congress and their counterparts in Sweden and Norway. The OAS has conducted investigations and prepared reports for its General Assembly on human rights in Guatemala. Lastly, the United Nations has organized public programs on human rights and has actively promoted the rights of refugees and children in Guatemala.

In response to local development problems, the Interamerican Development Bank has contributed some US \$18 million toward the strengthening of local government in Guatemala. Canada has also provided US \$7.6 million in support of local initiatives in community and municipal development, while the World Bank has financed community development and other participatory-type projects in the urban slums of Guatemala City. The UNDP has provided assistance for the implementation of the constitutionally-mandated decentralization plan which establishes local development councils to oversee the use of the 8% central government revenues allocated to Guatemala's 370 municipalities.

B. Overview of Justice Sector in Guatemala

1. The Problem of Crime in Guatemala

One of the primary socio-political problems facing the country is crime and the sense of insecurity which it causes. While it is difficult to measure criminality due to the deficiencies of statistics and the problems inherent in measuring this phenomenon, certain trends are evident. For several decades

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political killings were a major source of crime in Guatemala. During the last fifteen years, however, social crimes have escalated substantially. Judicial Branch statistics on crime reported in 1991 show theft with violence, common theft, and assaults to be the three most frequent types of crime committed. Early 1992 statistics corroborate this trend at an increasing rate.

To some observers, the increase in social crime is in direct relationship to the rise in population size. It is now estimated that population figures will reach 12 million by the Year 2000, with about two-thirds of Guatemala's people existing at or below the poverty line. Given this outlook, it is fair to assume that social crime will continue to increase in the foreseeable future, with coincident pressures on the Guatemalan criminal justice system.

2. Basic Characteristics of the Justice Sector

The justice sector is characterized by its complexity, traditionalism and inability to meet the demands placed upon it. The sector involves all three branches of government, which is most evident in the criminal justice subsector. There, the process is framed by a set of norms adopted by the legislative branch; the accused is detained and an investigation completed by the police (Ministry of the Interior) of the executive branch; prosecution is the responsibility of the Public Ministry, also of the executive branch; and a determination of probable cause and final adjudication is made by the judicial branch. The convicted person then serves a term of confinement in the correctional system, which is operated by the executive and judicial branches. All of these agencies are interrelated, and the entire system must be coordinated for the system to work efficiently and fairly.

The structure and performance of the criminal justice system have been analyzed and well documented under earlier A.I.D.-financed projects. These reports and assessments are listed in Annex C and are on file at USAID/Guatemala offices. Whereas the system faces many difficulties, several problems stand out as major roadblocks to the delivery of criminal justice in Guatemala. Although most of these problems are being addressed in the new Criminal Procedures Code recently passed by Congress, they still describe the system as it operates today.

(a) Low Conviction Rates - In 1988, it was noted by the Harvard Law School Project that the conviction rate of the Guatemalan justice system was very low, with less than five percent of defendants ever being convicted. Their analysis concluded that neither the courts nor prosecutor's office (in the Public Ministry) could properly investigate and prosecute criminal cases. Further, they believed this poor investigative performance

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stemmed from the lack of technical skills, a low sense of confidence and professionalism, and the failure of the system to hold anyone specifically accountable for solving crimes.

(b) **Absence of Transparency** - Although the old criminal justice code provided for limited oral proceedings, in practice, the system has continued to follow an inquisitorial, written model closed to checks and balances. The trial stage primarily entails the reading of a written file by a sentencing judge who convicts or acquits behind closed doors. In many cases, the judge makes a decision without ever having observed witnesses or listened to their testimony, and rarely views physical evidence. Under these circumstances, the ability of the judge to impose an appropriate, fair sentence is very limited and, indeed, leaves the process subject to suspicions. The written tradition, as used in Guatemala, fosters the potential for corruption and sloppiness, and leads to a lack of public confidence in the system. When justice is rendered secretly, there is no means for public scrutiny.

(c) **Lack of Prosecutorial Accountability** - Traditionally, the prosecutor has not played an important role in the Guatemalan justice system. As a result, prosecutors rarely contribute significantly to processing criminal cases. The public, as well as those working within the court system, view the Public Ministry (Attorney General's Office) as an ineffective institution, with prosecutors who possess no sense of accountability or responsibility. Prosecutors tend to leave all investigative tasks to the judiciary or police, and prosecutorial representation to private attorneys hired by victims who can afford them. Recently, the Public Ministry has attempted to improve the situation by increasing staff and raising salaries of prosecutors. It also is beginning to address high profile cases never before brought to trial and public attention. Nevertheless, a substantial job remains in redefining the role of the prosecutor, integrating the new function into the justice system, and properly training Public Ministry staff to execute these new responsibilities.

(d) **Poor Inter-institutional Cooperation** - All successful justice systems require cooperation between the police, courts, and prosecutors. Such cooperation has been extremely rare in Guatemala and has contributed greatly to the failure of the system to convict guilty offenders. There remains a great deal of confusion regarding the respective roles of each of the agencies within the justice system, while administrative arrangements for cooperation are woefully inadequate. Additionally, there are high levels of mistrust among the personnel of each of the three agencies.

(e) **Inadequate Criminal Defense** - Professional criminal defense services are only available to those who can afford to hire a private lawyer. Defense services for the indigent in Guatemala are provided by law school students as part of their

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training. Often times, these students are either ill-prepared or disinterested in providing adequate legal representation. Concurrently, case referral mechanisms are very inefficient, where even the most diligent students become involved in cases only after the court's investigation is largely complete. By the time a case is assigned defense assistance, the defendants have gone without representation through critical stages of investigation.

(f) **Limited Access to the System** - The majority of Guatemalans belong to a diverse array of indigenous cultural groups and frequently do not feel a part of national systems and institutions. Special factors exist in this country which severely limit Guatemala's rural poor from participating in the national justice system. They include: (a) major distances between courts, difficult physical terrain, and poor transportation; (b) language and cultural differences, which become major barriers in the courtroom; (c) low literacy rates, which are a primary detriment in a predominately written process; (d) indigenous distrust of the integrity of the formal justice system; and (e) parallel indigenous mechanisms for conflict resolution and mediation, which emphasize orality.

3. Past USAID Justice Sector Projects and Lessons Learned

- Regional Administration of Justice Project

A.I.D. began to work in the Guatemalan judicial sector in 1986 with the Regional Administration of Justice Project, implemented through the United Nations affiliated Latin American Institute for the Prevention of Crime and the Treatment of the Offender (ILANUD). The Mission's motivation for initiating assistance in this sector was the belief that the country's most recent experiment in democracy would not succeed until the justice system was perceived by the majority as being fair, effective, and a protector of the human rights of all citizens despite their status in the society. Initial activities under the regional project included the conduct of a justice sector assessment, completed in 1988; national and regional training; technical support in information management; small studies and seminars. These activities served as a catalyst for subsequent efforts by the Court, with support from A.I.D., specifically in training and information management.

- Harvard Law School Project

USAID's first bilateral program began in July of 1987 as a Cooperative Agreement between the Center for Criminal Justice at Harvard Law School (HLS) and the Guatemalan Supreme Court. The main thrust of this project was to test potential criminal justice reforms related to court operations and

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court cooperation with other justice agencies through the "pilot court experimental program."

Whereas the work of the Harvard project was highly respected, it did not go beyond the pilot testing stage. The single most important achievement of the project was experimenting with public oral hearings through the pilot courts. Although only 30 oral proceedings were held during the life of the project, the cases selected for these hearings were considered significant and of high interest to the public. This work had a very positive impact on the drafting and recent passage of the justice reform legislation because it proved that an enhanced investigative function, combined with oral proceedings, could work in Guatemala if given sufficient guidance and support.

A second significant achievement has been the sustained improved performance from judges who received training under the HLS project. In most part, these judges handle some of the most difficult criminal cases in the system (e.g drugs and murder, including those involving high military officials). In addition to improving their technical and administrative skills, the project delivered instruction on how to safeguard against intimidation and threats. Recent extraditions of accused drug traffickers are examples of a judiciary trying to improve both its performance and its image.

- Improved Administration of Justice Project

USAID's second bilateral effort in the sector was the Improved Administration of Justice Project (520-0369), signed in September 1988 as a three year, \$5.0 million endeavor. The design of this project, based on the findings of the sector assessment conducted under the regional project, proposed five components (and some 16 activities) for financing. The basic project components were: training of justice sector personnel; improving legal information; improving court system administration; and strengthening the National Justice Commission. Although this project was intended to be USAID's flagship program in the justice sector, it never really got off the ground. Effective support was provided to the National Center for Judicial Information (CENALEX), training at the Public Ministry, and the provision of some 23 studies on problems and issues impeding the improvement of system administration. Most of the remaining activities, however, never started or were left incomplete.

During a Mission "stocktaking exercise," carried out in late 1991, it was determined that the project remained "donor-owned" and the performance of the Judicial Branch was completely unsatisfactory, with little hope of change. On reaching the PACD (project assistance completion date) of December 31, 1991, the Mission decided to close the project and suspend all further assistance to the justice sector until the GOG could

demonstrate a more active interest in reforming the criminal justice system in Guatemala.

There were many lessons learned from project 520-0369, as outlined in the stocktaking report on file at USAID. Five recommendations deserve mention here.

-- First, USAID must be assured of the GOG's commitment to criminal justice reform and their interest in A.I.D. assistance in this area. Particularly with a change in leadership at the Judicial Branch in February 1992, significant discussions must occur prior to any new A.I.D. involvement in the Guatemalan justice sector.

-- Second, there must be an adequate provision of GOG resources for judicial sector reform as a condition to further A.I.D. assistance. In the past, the Judicial Branch was not required to make any substantial budgetary commitment to ILANUD, HLS or 520-0369, with the exception of typical in-kind costs.

-- Third, A.I.D. assistance should be targeted and focussed. Project 520-0369 called for a comprehensive undertaking of operational improvements with little understanding of the system's priorities or absorptive capacity. The project's orientation to start up quickly, and on a broad front, alienated the leadership of the Judicial Branch.

-- Fourth, USAID should seek to strengthen and sustain societal pressure for legal reform. If Guatemala is ever to overcome the ineffective traditions of its judicial system, strong advocacy channels outside the judicial system must be fostered.

-- Fifth, the studies and analyses generated by past A.I.D. assistance are still valid. Future A.I.D. assistance should build on those findings and not duplicate them.

4. Transition in Court Leadership

During 1991-92, a transition period for Supreme Court leadership, the Mission continued to provide targeted assistance to the justice sector:

- A Guatemalan lawyer was contracted to rewrite the draft criminal procedures code. This is the version that was finally passed by the Congress and signed into law in late 1992.

- A Limited Scope Grant Agreement provided funding for the Public Ministry to continue its training program for prosecutors.

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- Follow-on coordination with the Court information system (CENALEX) facilitated modem hook-ups with the Congress and the San Carlos University (USAC) Law Faculty.

- In coordination with ILANUD's regional project, the USAC Law Faculty developed an information network to support the judicial reform process.

- A Guatemalan lawyer was hired to draft strengthened narcotics legislation which was passed by the Congress in September 1992.

5. Other Donors

Other donor assistance either to the Judicial Branch or the Public Ministry has been minimal and channeled through ILANUD and the Inter-American Institute for Human Rights (IIHR), mainly with small contributions from Spain and Japan. Unlike the Judicial Branch, the Police have received substantial assistance from other nations. The principal donors have been Chile, Spain, Germany, and Venezuela. While European donors have reiterated their intention to support the judicial branch, particularly in the training area, to date this has not occurred.

C. Current Status of Judicial Reform in Guatemala

Two pivotal events have ignited the Mission's interest in reconsidering A.I.D. assistance to the Guatemalan justice sector. First, as of March 1992, Juan Jose Rodil assumed the Presidency of the Supreme Court for a six-year term. Rodil was a known proponent of transforming the way criminal justice is delivered in this country, with or without reform legislation. Second, after more than two years of review, in December, 1992, the President signed into law judicial reform legislation which provides the legal framework for far-reaching changes in the criminal justice system in Guatemala. At the same time strengthened narcotics legislation was signed into law.

1. New Penal Procedures Code

The new Penal Procedures Code (also referred to as Criminal Procedures Code), approved by the National Congress on September 28, 1992, and subsequently signed into law by the President, is based on the Iberoamerican Model Criminal Procedures Code. It calls for a more open and transparent system of justice which protects the human rights of those involved in its proceedings. In part, the new Code is a result of the 1990 United Nations Report on Human Rights in Guatemala, which declared that reform of the criminal justice system was essential to guaranteeing the rights and integrity of the individual Guatemalan citizen. To this

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end, the Code responds to the principles stated in the International Human Rights Treaty, to which Guatemala has made a commitment to respect. The more salient features of the Code are itemized below.

a. Improved Investigative Process

The Code reconceptualizes the prosecutorial function of the legal system and modifies the investigation process in several key areas. It requires collaborative efforts between the Public Ministry and the National Police, giving the initial investigation or public action to the Prosecutors. It provides for a wider participation of the victims in the justice process, as a collaborator to the Prosecutors or as the main character in the process. The Code also calls for the use of more modern and rapid investigation procedures, which in turn, contributes to a more adequate defense in the trial. Because of the vastly strengthened role of the Prosecutor, the Congress passed accompanying legislation which will reorganize the Public Ministry and enable it to become more effective in fulfilling its new prosecutorial responsibilities.

b. Enactment of Oral, Public Trials

Under the new Code, the system will develop a mixed oral/written approach to the administration of criminal justice, making it more open to public review and scrutiny. This change is particularly significant to the large percentage of the population who neither reads nor writes, and presently has to participate in a written, inquisitorial system. With the introduction of orality into court proceedings, various types of evidence will be presented, including the live testimony of witnesses and defendants. Additionally, the sentencing judges must "dictate" their sentences as part of a trial's proceedings, and express the reasoning for the sentences.

c. Mandate for Public Defense Service

In order to guarantee more efficient and effective public defense in Guatemala, the new Code requires the creation of a professional public defense system, which minimally will have a general directorate in Guatemala City and central offices in each department capital. The Judicial Branch will design, establish, and oversee the public defense service for the criminal justice system.

d. Clarification of Judges' Role and Responsibilities

The role and responsibilities of the judges under this new legislation are changed in some significant ways. With the prosecutorial function of the Public Ministry

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substantially strengthened, judges will no longer perform the investigative process. Rather, their role is one of listening, reviewing, and rendering verdicts based on the evidence presented by others. Under the new Code, judges are more accountable for the overall proceedings within the courts. They are required to oversee the respect for human rights throughout the criminal process, and guarantee that justice is done. The Code also establishes judicial control over the execution of the sentence, including the period of prison confinement. A special procedure also has been enacted in case of failure to provide Habeas Corpus, a particularly severe problem in Guatemala.

2. Related New Legislation

Following the drafting of the new Penal Procedures Code, a criminal reform legislation package was prepared to further support the transformation of the criminal justice system. These additional bills include: a new Organic Law for the Public Ministry, which supports a strengthened prosecutorial function as called for in the new Code; a new penal code, which identifies and categorizes types of crime; and new legislation covering the regulation of the national prison system; and strengthened narcotics legislation in keeping with the new Penal Procedures Code.

3. Expansion of Justice of the Peace Courts

In addition to the reforms contained in the new Code, the Judicial Branch has made a major commitment to improving access to the justice system in the rural areas of Guatemala. Formerly, Justice of the Peace Courts were held in every municipality and conducted under the authority of the local mayor. The 1985 Constitution, however, did not support the continuing local administration of justice by mayors. Consequently, the pre-1985 Justice of the Peace Courts were disbanded and, in its place, the Judicial Branch created an alternative approach called Juzgados Comarcales, or District Courts. Conducted under the authority of a judge, these courts are located in approximately 100 sites around the country, and cover the legal needs from two or more municipalities. Overtime, the Judicial Branch has found this change to be very inefficient. Without the former mechanism for dispute resolution at the local level, court case loads have increased exponentially.

In response, the Judicial Branch is now preparing to place Justice of the Peace Courts in every municipality. This time, however, they will be under the authority of a judge. Concomitantly, the Branch is developing court guidance for this level of proceedings, which take into account the cultural traditions and language differences that exist in the rural areas. Among other things, court translators will be provided to help ameliorate language barriers. In those situations where all the

participants in a case speak the same language, the trial can be conducted in that language. Implementation of this plan is a critical step toward alleviating some of the principal constraints to justice system access.

4. GOG Budgetary Resources

In order to demonstrate GOG commitment to major reforms in the justice sector, the Judicial Branch requested a Q100 million (approximately \$18,500,000) increase in its 1992 budget. That increase was approved in May, 1992 for the following line items: (1) general court supervision; (2) expanding Justice of the Peace Courts to all municipalities; (3) creating the planning unit in charge of implementing the new Criminal Procedures Code; (4) improving human and material resources in the justice sector; and (5) purchasing office equipment. This Q100,000,000 budget increase was again approved for CY93 to continue with these activities. In addition, the Public Ministry had its annual budget increased from Q6 million in 1991 to Q18 million in 1992. Its approved 1993 budget is Q40 million, with an additional Q40 million available upon request.

D. Major Constraints to Implementing the Judicial Reform

1. Socio-Cultural and Attitudinal

Successfully implementing judicial reform and the strengthened narcotics legislation in Guatemala requires confronting and overcoming some very entrenched patterns and attitudes toward the delivery of criminal justice in this country. Three basic problems stand out: real and perceived corruption in the system; intimidation of judges, prosecutors, and witnesses; and immunity of perpetrators of political violence.

a. Corruption

Guatemalan citizens generally believe that the courts are corrupt. This perception is reinforced by newspaper accounts highlighting unsolved crimes, as well as by a sense of "mystery" surrounding court proceedings. When this problem was reviewed under the Harvard Law School project, many of the participants within the system (i.e. judges, prosecutors, court staff, defense attorneys, and police) attested to a considerable amount of corruption in the system. In reality, the corruption problem has not been sufficiently analyzed to determine the extent of corruption in the system as a whole, nor to identify those stages within the system where it is most likely to occur. Additionally, there are no organizational mechanisms, within or outside the system, to track specific instances of corruption and take steps to deal with it.

• Action Memorandum for the Mission Director
Judicial Sector Reform Support Project
Page 3

Congressional Notification: The CN for this Project expired without objection on July, 14, 1992. (State 232894, dated 21 July 92)

Environmental Threshold Decision: Chief Environmental Officer, LAC, approved the Mission's request for a categorical exclusion on August 13, 1992. (State 266203, dated 18 August 1992).

Waivers: It is not anticipated that any waivers will be required under the LSGA. All procurements will be in accordance with the Agency's Buy America policy as stated in Handbook 1B, Chapter 5.

Authority: State 266502, dated 18 August 1992, provided the Mission programmatic approval to prepare this LSGA. Delegation of Authority No. 752 delegates authority to you to authorize a project if the project 1) does not exceed \$50 million over the approved life of project; 2) does not present significant policy issues; 3) does not require issuance of waivers that may only be approved by the Administrator or Assistant Administrator; and, 4) does not have a life of project in excess of ten years.

Recommendation: That you sign below approving this memo and the attached LSGA, and sign the attached Project Authorization for the \$450,000 Judicial Sector Reform Support Project.

Approved J.R. Date 9/25/92

Disapproved _____ Date _____

Attachments: Project Authorization
Limited Scope Grant Agreement
Request for Assistance
Initial Environmental Examination

Drafted: TDelaney/PDSO _____ Date _____

Clearances: BArellano/ODDT BA Date 9/25/92
CBrown/RLA OPEN DRAFT Date 9-22-92
GByllesby/CONT OPEN DRAFT Date 9-22-92

ACTION AID/2 INFO AME DCM ECON /5

Annex C

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SUBJECT: REVIEW OF GUATEMALA ACTION PLAN FOR FY 1994-95

1. THE USAID/GUATEMALA FY 1994-95 ACTION PLAN WAS REVIEWED ON FEBRUARY 23, 1993. A-AA AARON WILLIAMS CHAIRED THE DAEC MEETING ATTENDED BY REPRESENTATIVES FROM LAC/DR, DPP, DI, TI, CEN, POL/CDIF, STATE/ARA AND STATE/SA. USAID/GUATEMALA WAS REPRESENTED BY DIRECTOR TERRENCE BROWN AND ELIZABETH WARFIELD, CHIEF OF THE PROGRAM DIRECTION AND SUPPORT OFFICE. THE ACTION PLAN WAS APPROVED WITH THE CLARIFICATIONS OUTLINED BELOW.

2. THE A-AA COMMENTED THAT USAID'S ACTION PLAN WAS VERY WELL WRITTEN AND DEMONSTRATED A CLEAR SENSE OF FOCUS. HE FURTHER NOTED THAT THE INNOVATIVE APPROACH TO MANAGING THE PROGRAM AND STREAMLINING THE MISSION'S PORTFOLIO WAS A MODEL FOR OTHER MISSIONS. HE ALSO COMMENDED THE MISSION FOR ITS INSTRUMENTAL ROLE IN THE PASSAGE OF THE FISCAL REFORM PACKAGE, THE CRIMINAL PROCEDURES CODE, AND THE GROWTH IN NON-TRADITIONAL EXPORTS. USAID DIRECTOR BROWN NOTED THAT THE MISSION'S STRATEGY WAS ON TRACK AND OUTLINED SEVERAL MAJOR PROGRAM ACCOMPLISHMENTS OVER THE PAST YEAR, INCLUDING FISCAL REFORM, TRADE AND INVESTMENT REFORM, POPULATION AND EDUCATIONAL REFORM. SEVERAL

IMPORTANT MISSION MANAGEMENT INNOVATIONS WERE ALSO INTRODUCED, INCLUDING THE USE OF NEWLY FORMED SECTOR IMPLEMENTATION COMMITTEES AS A WAY TO STREAMLINE MANAGEMENT OF THE MISSION'S PORTFOLIO AND ENHANCE ACCOUNTABILITY.

THE MISSION CONTINUES TO DOWNSIZE ITS OPERATIONS. FSN STAFF HAS BEEN REDUCED TO A LEVEL OF APPROXIMATELY 170 AND USOH STAFF WILL BE REDUCED TO 19 IN FY94.

3. ACTION PLAN DECISIONS:

A. JUDICIAL SECTOR REFORM ISSUE. THE MAIN ISSUE RAISED BY THE BUREAU FOCUSED ON THE DIFFICULTY OF ACHIEVING SUBSTANTIAL JUDICIAL REFORM IN A CONTEXT OF UNCERTAINTY REGARDING BOTH THE ATTORNEY GENERAL'S OFFICE AND THE SUPREME COURT, AND HOW TO ACHIEVE COOPERATION AMIDST INSTITUTIONAL STRIFE. THE MISSION NOTED THESE DIFFICULTIES BUT ALSO NOTED MAJOR RESOURCES RECENTLY

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USAID/GUATEMALA

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UNCLASSIFIED STATE 002800/01
COMMITTED BY THE GOVERNMENT OF GUATEMALA (GOG) IN THIS
SECTOR. FURTHER, IN A RECENT MEETING, THE HEAD OF THE GOG
SUPREME COURT EXPRESSED STRONG INTEREST IN RECEIVING
ASSISTANCE FROM USAID.

THE MISSION IS PROCEEDING WITH A CAUTIOUS, PHASED APPROACH
AND IS SCALING DOWN THE PLANNED INITIAL FY93 OBLIGATION
FROM 5 MILLION DOLLARS TO 3.5 MILLION DOLLARS.
THE ISSUE OF ENSURING COORDINATION AMONG PARTICIPATING
INSTITUTIONS REMAINS A SERIOUS CONCERN AND WILL BE
CAREFULLY MONITORED AS ACTIVITIES ARE IMPLEMENTED. THE
BUREAU ENDORSED THE MISSION'S PROPOSED STRATEGY.

B. NEEDS:

1. THE JUDICIAL SECTOR REFORM SUPPORT PROJECT (523-0427)
WAS DISCUSSED AND AUTHORITY TO APPROVE THE PROJECT WAS
DELEGATED TO THE FIELD WITH AN LOP OF UP TO 8 MILLION
DOLLARS.

2. THE STREET KID'S SUPPORT PROJECT (523-0412) WAS
DISCUSSED AND AUTHORITY TO APPROVE THE PROJECT WAS
DELEGATED TO THE FIELD WITH AN LOP OF 3 MILLION DOLLARS.
THE INITIAL 1.5 MILLION DOLLAR OBLIGATION WILL BE
CENTRALLY FUNDED.

3. PROGRAM CONCURRENCE WAS GIVEN TO THE MISSION TO USE
ITS DELEGATION OF AUTHORITY TO EXTEND THE PACD OF THE
BASIC EDUCATION STRENGTHENING PROJECT (523-0374) FROM
7/L/95 TO 7/L/99 WHILE MAINTAINING AN LOP OF 30 MILLION
DOLLARS.

C. CLARIFICATIONS:

1. CHILD SURVIVAL: CONCERNS WERE RAISED THAT THE TIME
FRAME FOR PHASING OUT USAID SUPPORTED CHILD SURVIVAL
ACTIVITIES BY 1995 MIGHT NOT ALLOW SUFFICIENT TIME FOR THE
MINISTRY OF HEALTH AND OTHER DONORS TO HAVE IN PLACE
STRONG ENOUGH POLICIES, PROGRAM INTERVENTIONS AS WELL AS

FINANCIAL AND MANAGEMENT SYSTEMS TO SUSTAIN ACHIEVEMENTS GAINED WITH USAID INVESTMENTS SINCE 1985 - MORE THAN 45 MILLION DOLLARS.

THE A-AA REQUESTED THAT THE MISSION FOCUS ITS TECHNICAL ASSISTANCE AND POLICY DIALOGUE TO ENSURE THE SUSTAINABILITY OF ITS CURRENT INTERVENTIONS WITH THE GOG AND DEVELOP A PLAN TO MONITOR CHILD SURVIVAL INDICATORS TO AVOID SETBACKS IN THIS AREA AS THE MISSION PHASES OUT ITS ASSISTANCE AND OTHER DONORS INITIATE THEIR PRIMARY HEALTH CARE PROGRAMS. THE MISSION WILL CONTINUE TO INTEGRATE NUTRITION EDUCATION INTERVENTIONS AS APPROPRIATE INTO ITS REPRODUCTIVE HEALTH AND TITLE II PROGRAMS AND TO PROMOTE NUTRITION INTERVENTIONS IN ITS POLICY DIALOGUE WITH OTHER DONORS.

2. PEACE NEGOTIATIONS AND RETURN OF REFUGEES: DISCUSSIONS WERE HELD REGARDING THE APPROPRIATE RESPONSE TO THE RETURN OF GUATEMALAN REFUGEES FROM MEXICO. IT IS NOT POSSIBLE TO PREDICT WHEN PEACE NEGOTIATIONS AND RESETTLEMENT OF DISPLACED PERSONS BETWEEN GOG AND URNG REPRESENTATIVES WILL REACH AN ACCORD. THE MISSION EXPECTS TO EXTEND THE DELIVERY OF BASIC SERVICES TO RETURNING REFUGEES THROUGH ONGOING PROJECTS, I.E., FARM TO MARKET ACCESS ROADS, IMMUNIZATION AND ORT FOR CHILD SURVIVAL AND THE HIGHLANDS WATER AND SANITATION PROJECT TO HELP MEET THE NEEDS OF TARGETTED GROUPS AND TO AVOID GETTING INVOLVED IN THE INSTITUTIONAL MORASS OF GOVERNMENT AND NGO AGENCIES. THE BUREAU CONCURRED WITH THE MISSION'S PLANS TO USE UP TO DOLS 1.5 MILLION IN 92 ESF CARRYOVER, AS NEEDED FOR THESE ACTIVITIES. THE MISSION AND LAC BUREAU WILL COLLABORATE IN DEVELOPING A FINAL DETERMINATION ON THIS MATTER.

3. STREET KID'S PROJECT: THERE WAS DISCUSSION AS TO WHETHER THIS PROJECT WAS CONSISTENT WITH THE MISSION'S PLAN TO LIMIT NUMBER OF STRATEGIC INTERESTS. THE MISSION INDICATED THAT THE INITIATIVE WILL BE PART OF ITS INALIENABLE RIGHTS STRATEGIC OBJECTIVE. THE BUREAU CONCURRED WITH THIS DECISION.

4. CENTRALLY FUNDED RTAC II PROJECT: THE MISSION INDICATED ITS WILLINGNESS TO MAKE A DOLS 300,000

CONTRIBUTION TO THE RTAC II PROJECT. IT PREFERS TO MAKE THAT CONTRIBUTION FROM ITS OBLIGATIONS THIS YEAR, ASSUMING IT RECEIVES DOLS 300,000 OVER THE CURRENT 50 PER CENT ESTIMATE. A SECOND OPTION WOULD BE TO FUND IT FROM THE DOLS 10.5 MILLION ESF CARRYOVER. THE MISSION STATED THAT IT WAS NOT FEASIBLE TO FUND RTAC FROM THE FY93 DA (NOA) BUDGET. FINAL DETERMINATION OF THE FUNDING SOURCE FOR GUATEMALA'S CONTRIBUTION WILL BE SUBJECT TO FURTHER NEGOTIATIONS WITH THE MISSION.

5. THE ISSUE OF SUSTAINABILITY OF THE ACTIVITIES SUPPORTED UNDER THE BASIC EDUCATION STRENGTHENING PROJECT AND THE COORDINATION/TIMING OF IFI FINANCING WAS RAISED BY THE BUREAU. THE MISSION WILL TAKE THESE CONCERNS INTO

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ACTION MEMORANDUM FOR THE MISSION DIRECTOR

FROM: Elizabeth Warfield, C/PDSO

THROUGH: Stephen Wingert, DDir

SUBJECT: Judicial Sector Reform Support Project (520-0407)--PID
Determination

ACTION REQUESTED: That you determine not to require an approved Project Identification Document for the Judicial Sector Reform Project.

BACKGROUND: A.I.D. began to work in the Judicial Sector in 1986 through the Regional Administration of Justice Project. These initial efforts were followed by a cooperative agreement between USAID/Guatemala, the Guatemalan Supreme Court and the Harvard Law School. The Mission then authorized the Improved Administration of Justice Project in September 1988 to provide broader support to Guatemala's Judicial Branch. This Project was originally authorized as a \$5.0 million initiative. However, after obligating \$3.4 million, further support was suspended and the Mission decided that any future involvement in the sector would require clear signs of increased commitment to reform by the Government of Guatemala (GOG).

In anticipation of such a commitment, the Mission included a New Project Description in its FY1993-FY1994 Action Plan for the Judicial Sector Reform Support Program. This NPD outlined a \$17.42 million Program that included both project activities and policy-based disbursements. However, due to shrinking availability of ESF resources, as well as significant GOG actions taken in the absence of A.I.D. conditionality, the Mission has decided to proceed with a much more focused Project, which concentrates on supporting the implementation of the new Criminal Procedures Code, and eliminates the cash transfer component previously proposed. The NPD for this revised Project was approved with the Mission's FY1994-FY1995 Action Plan in February 1993.

DISCUSSION: In 1992, the GOG took several clear steps towards significant judicial sector reform. Based on the most important of these actions (passage of the Criminal Procedures Code and increased budgetary support to key sectoral institutions), the Mission prepared and reviewed a Concept Paper (still envisioning project and cash transfer support) in September 1992. Thereafter, a limited authorization (\$450,000) to support the initial efforts of the Guatemalan Supreme Court to implement the new legislation was approved by the Mission, but an agreement was not signed.

As it became clear that sufficient ESF resources would not be available to finance a judicial sector cash transfer component, the Mission began to define key areas for A.I.D. project assistance. Much of the technical analyses required to design such activities was reflected in the draft Concept Paper, based on the numerous studies carried out under previous A.I.D.-financed efforts in the sector. The most important of these was the detailed "stocktaking exercise" that was completed in late 1992. The criteria/rationale for renewed A.I.D.

b. Intimidation

Traditionally, it has been taken for granted that witnesses will be threatened with serious harm if they testify against ordinary criminals or powerful political or government groups in Guatemala. During the pilot court experimental program it was discovered first hand that the problem of intimidation also was a serious one for those judges, prosecutors, and police who are prepared to do their duty even when the defendant is dangerous. Based on experience from other countries in dealing with intimidation in the judicial process, the HLS project conducted a number of workshops with judges, high-level officials, and influential people from the private sector on this issue. Their work was merely a beginning; further attention and institutional follow-up is essential.

c. Immunity of Perpetrators of Political Violence

For several decades there has been a widespread belief that violent crimes committed for political purposes in Guatemala (particularly against those on the Left) will not be punished, and that their perpetrators are immune from responsibility in the criminal justice system. Further, it is believed that much of this violence is attributable to members of the army and police forces. The effect of having a large number of killings left without investigation seriously undermines the credibility of the courts and the self respect of the major actors within the system. The work of the Guatemalan Human Rights Ombudsman Office (OHRO) during the past 3 years has made some headway in publicizing human rights abuses and tracking human rights cases in the courts. They, however, cannot do the job alone. All of the entities within the justice system must come together in a common cause against political violence, and must receive unequivocal support from the executive and legislative branches of the government in this effort.

2. Human Resources

The human resource base of the criminal justice system is pitifully inadequate to implement the reforms of the new Penal Procedures Code. The problem is multifaceted. Those presently working in the system are generally dispirited, under-skilled, and cynical. Judges, court personnel, and prosecutors have a very negative image of themselves and their role; they have low status and enjoy little respect. Because the new Code introduces significant changes in the functions to be performed in the delivery of justice, the reform will only be as successful as the personnel within the system. Simultaneously, the system is sorely lacking the number of professionals it needs. As of December 1992, the Public Ministry (PM) only had about 20 prosecutors on its staff in Guatemala City and another 22

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prosecutors in regional offices. An additional 105 prosecutors have recently been hired. The PM is in the process of hiring a similar number of technical assistants (oficiales). These new employees require immediate training. The creation and establishment of the public defenders program will require a massive effort on the part of the Judicial Branch to recruit and train approximately 300 lawyers, to serve on a fixed-fee basis. The court system may not have to increase their personnel numbers substantially, but will have to reassign and possibly relocate present staff, and train many for new positions and responsibilities. Preparing the judicial system's human resource base for implementation of the reform is an enormous task in terms of recruitment, selection, training, supervision, and reward based on merit.

3. Institutional

The aforementioned Administration of Justice Project (520-0369) produced a series of studies which identified and analyzed significant administrative bottlenecks to improving the delivery of criminal justice. Those problems are further augmented by the analytical work performed by Harvard Law School. The institutional issues most germane to implementing the reform are highlighted below.

a. Public Ministry

The institutional constraints of the Public Ministry appear to stem from four basic deficiencies: lack of a coherent administrative organization; poor intra and inter-institutional communication and coordination; insufficient physical and financial resources; and ineffective training. A fifth, less tangible, deficiency is its lack of independence/autonomy of action and historical dependence on the powers-that-be in the Executive Branch. As a result of this deficiency, project support to the Public Ministry will be policy-based, against specific changes in the way the institution functions. Section II.E. 2.b. of this Project Paper describes this process. The new Code and new Ley Organica lay the basis for fundamental change at the Public Ministry. However, it will be unable to fulfill this new mandate without addressing critical organizational problems. Recognizing the Public Ministry's need to prepare administratively and technically for implementation of the criminal justice reform package, USAID entered into a modest limited scope grant agreement with the Ministry in January 1992. The focus of that grant is on strengthening the Ministry's administrative support system, and on supporting its 1992 training needs. Longer-term institutional needs include modernizing the operations and work quality of the prosecutor's section; expanding and strengthening the institution's personnel and training function; obtaining sufficient space for its increased staff; developing and sustaining cooperative relations

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with the police and the courts; and introducing consistent budget analysis and planning techniques into the overall management of the Ministry.

b. Judicial Branch

In reviewing the twenty studies conducted under project 520-0369, several recommendations for institutional improvements emerge as essential changes for implementing the reform. First, the court system is in dire need of administrative reorganization in order to separate administrative from judicial functions, to provide better administrative backstopping to lower courts in such areas as case processing, scheduling and statistical reporting, and to decentralize decision-making. One of the major benefits of this administrative restructuring is to free judges from cumbersome administrative chores and allow them to concentrate on the quality of the judicial process and the disposition of cases. Second, implementation of the reform will require an expansion and renovation of the physical infrastructure of the court system. Present court rooms will have to be renovated to allow for the introduction of orality and public attendance, and new courts will have to be constructed. Third, like the Public Ministry, the Judicial Branch will need to overhaul its personnel system to reflect changed job classifications and responsibilities. Concomitantly, the institution's training function will require substantial improvement to meet the human resource development needs it will be facing. Fourth, The 1991 AOJ report entitled Evaluation System postulates that the independence of the judiciary will be maintained most effectively only when it is self-evaluating and self-cleansing. At present, the Judicial Branch lacks effective evaluation procedures of its programs and activities. This function, however, will become a critical need for safeguarding the new processes and values implied by the reform legislation. Fifth, the Judicial Branch must be willing to establish appropriate communication and coordination mechanisms with the other participating entities within the system.

c. Ministry of the Interior/The Police

Although national police forces do not receive A.I.D. assistance, it still is important to recognize the significant part the police play in the Guatemalan criminal justice system. The new Penal Procedures Code will impact the role and responsibilities of the Guatemalan National Police, particularly as the strengthened prosecutorial function is implemented by the Public Ministry. The police force will be expected to coordinate with prosecutors and the courts in combatting crime and assisting in the investigation and conviction of criminals. The police face daunting constraints to fulfilling such a position in the system. Police recruits generally are undereducated (third grade or less); their wages are low and turnover is high. Whereas various international donors have assisted in the up-grade of police train-

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ing, the overall level of competence is still considered below average. Through ICITAP (International Criminal Investigative Training Assistance Program), the USG supported intensive training and the installation of modern crime lab facilities. However, repeated changes in the leadership of the National Police, have prevented the development and implementation of a coherent program of reform. Roughly 70% of the police force is assigned to the nation's capital, leaving minimal police services in the rural areas. At the same time, the agency is plagued with inadequate equipment and resource shortages. Corruption, both in recruitment practices and in the handling of cases, is considered rampant. Reforming and professionalizing the National Police of Guatemala must be considered a central component of any criminal justice reform effort in this country.

4. Financial

Substantial GOG resources are required to implement and sustain the reform of the criminal justice system. The above description of institutional and human resource constraints suggests a need for significant amounts of financing to improve, expand and operate the public entities within the judicial sector. The Government of Guatemala has started to exhibit its willingness to support improvements by pledging significant 1992 and 1993 budgetary increases for both the Judicial Branch and the Public Ministry. It is not yet known whether these increases will be continued at sufficiently high levels to cover the capital and human resource investments required during the next several years of the reform.

5. Legal and Regulatory

With the recent passage of the judicial reform legislation, most legal constraints to improvement in the sector are now lifted. With the Code in hand, the Judicial Branch and Public Ministry must now translate the articles of the Code into operational regulations and implementing guidance for their respective institutions. Without such rules and guidelines, the reform cannot proceed.

Along a different line, it also is recognized that some resistance to implementation of the Criminal Procedures Code might emerge, particularly from a very conservative group of lawyers within the Colegio de Abogados (the Guatemalan Bar Association). In the event that opposition grows very strong, the Bar Association, or other entity, could appeal elements of the Code to the Guatemalan Constitutional Court. In such an event, the Judicial Branch and Public Ministry must be ready to respond to the contest with the necessary legal expertise in order to protect the integrity of the new law.

E. Rationale and Strategy for Supporting Criminal Justice Reform in Guatemala

1. USAID Program Framework and Rationale

No governmental problem is more important to Guatemala than reform of the criminal justice system. Without an effective judicial system, street crime will continue to flourish, most political violence will remain unpunished, and the frequency of narcotics crimes will increase. As a result, domestic and international confidence in the Guatemalan government will suffer with concomitant repercussions for economic growth, investment and tourism. Even more importantly, democracy in Guatemala will never mature in the absence of a fully functioning system of criminal justice. Therefore, strengthening the rule of law, the elimination of human rights violations, and improved performance on conviction of narcotraffickers, are fundamental objectives of the U.S. Government in Guatemala.

In its Program Objectives Document (POD) for FY1993 to FY1997, the USAID Mission reaffirmed its support for democratic development in Guatemala. The Mission strategic objective in the democratic development area is to support the sustained exercise of inalienable rights. Within that context, four major processes which encourage the exercise of rights and are vital to the functioning of democracy have been identified for program attention: (1) the right to life and liberty; (2) the right to due process under the law; (3) the right to representation; and (4) the right to individual participation and assembly.

The GOG has given clear indications of its commitment to overhauling the criminal justice system of Guatemala. In response to their lead, and in support of the right to due process under the law in Guatemala, USAID proposes to initiate the Judicial Sector Reform Support Project (520-0407).

2. Project Strategy

Implementing the criminal justice reform package, including the strengthened narcotics legislation, is a daunting task for the Government of Guatemala, requiring sizeable resources, expertise, stamina, and will. Whereas the GOG recognizes it is their responsibility to put the implementation process in motion, it is seeking international donor assistance as a complement to their efforts. USAID perceives its role in this effort as one of targeted support, intended to help the GOG "hold the course" of the reform through what is sure to be some very turbulent waters. As in any process of change, there are factors within the environment which are helpful, and others which are hindering to progress. The constraints analysis contained in

Section II. D. of this paper outlines some of the more formidable factors hindering a successful transformation of the Guatemalan criminal justice system.

a. Multi-Institutional Approach

The Mission has developed ongoing and cordial relationships with all major sector institutions. On the one hand, these relationships have enabled each institution to articulate its specific concerns on its own internal weaknesses when faced with major sector reform. On the other, the Mission has had the opportunity to articulate its "sector approach" to its counterparts. The Mission has explained that no one institution is solely responsible for the reform process, thus support will be provided to a variety of institutions and agencies, to the extent that they demonstrate a commitment to act on the changes proposed in the legislation. Under this approach, project assistance is a composite package which performs as a comprehensive program of interrelated components. The project/program is managed analytically and selectively. Based on policy achievement and program performance, specific components receive relatively less or more support/emphasis.

b. Policy-Phased Assistance to the Public Ministry

Initially, no bilateral agreement will be signed with the Public Ministry. Serious issues have arisen surrounding the ability of the PM to act autonomously on key cases involving Executive Branch institutions. The Mission has established the following policy guidelines to proceed with assistance:

- Training of prosecutors will proceed under a PASA agreement with the Department of Justice Office of Professional Development and Training (OPDAT);

- Training of investigators through a budget transfer to ICITAP will not commence until the new Organic Law for the Public Ministry is passed by the Congress. The Organic Law establishes mechanisms which should guarantee the autonomy of the PM in carrying out its investigative functions.

- The bilateral agreement with the PM will only be signed when there is sufficient evidence that the PM leadership has demonstrated the political will to fulfill its role as the key independent prosecutorial/investigative entity, as established in the Criminal Procedures Code and the Organic Law.

3. Project Design Principles

The LAC Bureau recently captured its "lessons

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learned" in democratic initiatives in a document entitled Strengthening Democracy in Latin America and the Caribbean: U.S.A.I.D.'s Experience To Date and Plans for the Future. This document, other A.I.D. Washington guidance, and the Mission experience with democratic development in Guatemala, have rendered a series of strategic principles used in the negotiation and design of this Project.

a. Collaborative Design and Implementation - democratic development is a sensitive program area in Latin America. The most successful projects have been those where AID has worked closely with counterparts in the initial discussions and design, and have continued that relationship through the life of the Project. The "old way" of doing A.I.D. business through a major U.S. institutional contract does not always work well in the process of strengthening democratic institutions. The principle of close collaboration was used during the latter stages of preparing this Project and will continue during implementation. As noted in the implementation arrangements, Section V., USAID is planning a "management intensive" approach to implementing Project activities, while using a variety of mechanisms for technical assistance and training.

b. Flexible Programming - is key to effective assistance and must be built into the design of democratic development projects. Experience has shown that is important to take advantage of opportunities as they arise, and to change direction or emphasis as circumstances dictate. This Project has adopted a "rolling design" approach in defining activities, but always in the context of specific goals, objectives and clear criteria for financing. For that reason, it is useful to view and use this Project Paper as a detailed strategy document, rather than a traditional PP. The Project Description, Financial Plan, and Implementation Arrangements Sections describe the purposes for each component, as well as suggested activities, parameters for A.I.D. and counterpart involvement, the next steps to be accomplished, and illustrative inputs over the life of the Project. The more precise details required for Project implementation will be further defined in appropriate documentation, such as Action Memoranda, yearly workplans and official correspondence.

c. Phased Project Authorization and Implementation - Because of past experience in the justice sector, the USAID Mission has determined that A.I.D. funds would be best utilized for short- to medium-term focused efforts, rather than for broad-based, complex projects like the former AOJ bilateral project. To this end, USAID is designing a phased approach to authorizing and implementing project 520-0407. As noted earlier, USAID entered into a modest Limited Scope Grant Agreement (LSGA) with the Public Ministry in January 1992. At that time, with the passage of the new Code appearing certain, it was determined that the Ministry needed some immediate technical and administrative

assistance to help prepare for the ramifications of the new legislation. The Agreement was signed for \$140,000, and was amended in February, 1993 to permit the continued use of available funds through September 30, 1993.

With the passage of the reform package in September, 1992, USAID authorized this new Judicial Sector Reform Support Project for a period of one-year in the amount of \$450,000, for the purpose of helping the Judicial Branch prepare for the implementation of the new Penal Procedures Code. By Guatemalan law, they have one-year to complete preparations for initial implementation of the new Code. Over a five month period, the Mission and the Supreme Court negotiated this Limited Scope Grant Agreement. Subsequently, the President of the Court decided not to sign the agreement. However, in early 1993 the Supreme Court President approached the Mission to renew discussions on the content of USAID support.

The lengthy process of discussions and negotiations surrounding both limited scope grant agreements gave the Mission an opportunity to form systematic relationships with counterparts before entering into a larger and longer-term commitment with them. They also provide USAID a way to view first hand the possibilities and pitfalls to implementing the judicial reform. Rather than designing future assistance in the abstract, the Mission is able to formulate activities and analyze project feasibility on the basis of the experience of this first year. By beginning in a small, focused fashion, USAID is now in a much better position to assess whether it should proceed with supporting the reform, as well as to determine the type and pacing of A.I.D.-financed interventions.

d. Inter-Institutional Networking - fostering equitable, open, and accountable justice systems, can be difficult in environments accustomed to autocratic rule. However, experience suggests that there are a number of approaches to facilitating an exchange of ideas in non-threatening ways. The Project will encourage inter-institutional networking nationally and within the Central American Region and with relevant experiences from South America and the U.S. In addition to fostering relationships between institutions of similar types in other countries, emphasis also will be put on exchanges within Guatemala between those institutions receiving assistance and the private sector, NGO's, academia and municipalities.

e. Coordinated U.S. Approach - because of the political sensitivity and high visibility of U.S.-funded programs in this area, it also is important for A.I.D. to coordinate with all interested U.S. agencies on such critical policy issues for Guatemala as human rights and narcotics. An inter-agency committee

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has been formed here at Post, under the chairmanship of the DCM, and will be used to advance policy dialogue concerns and to share information which will guide USAID activities.

f. Long-Term Commitment - It is important that both A.I.D. and the GOG think of this Project as one of several stages in the improved administration of justice in Guatemala, and understand that follow-on activities may be proposed. The focus of the present Project is on helping key institutions move into an action mode to carry out their organizational mandates under the criminal justice reform process. Additional requirements may arise as each component evolves. These will be considered based on their relevance to continued progress and funding availability.

4. Relationship among Components

The Project has six components, each in its own way critical to the success of judicial reform. The first five components make specific contributions to the achievement of the three major policy areas which are the project's central focus:

a. Oral Trial Proceedings:

Component 1: Judicial Branch
Component 3: USAC Law Faculty
Component 4: Specialized Training
(OPDAT/Narcotics)
Component 5: Private Sector Advocacy

b. Strengthened Prosecutorial and Investigative Functions:

Component 2: Public Ministry
Component 4: Specialized Training
(ICITAP/OPDAT/Narcotics)
Component 5: Private Sector Advocacy

c. Legal Defense:

Component 1: Judicial Branch
Component 3: USAC Law Faculty
Component 5: Private Sector Advocacy

It is neither feasible nor desirable for any one institution to assume full responsibility for the reform process. This shared commitment and responsibility for its implementation must therefore be reflected in the project design. The sixth component is Project Administration.

Issues of inter-institutional coordination are addressed more fully in Section VII A (Constraints to Feasibility).

However, it should be noted, that every effort will be made to assure coordination based on each of the three policy areas for this project, and specific sub-areas of achievement. While more grandiose schemes of inter-agency coordination (i.e., National Judicial Commission) have failed, it is hoped that a more task-oriented approach to coordination, by functional area under the reform, will succeed. Experience has demonstrated that the Guatemalan counterpart agencies must take the lead based on an understanding that only through joint efforts will their own individual efforts have a chance to succeed in this ambitious undertaking.

F. GOG Policies and Proposed Agenda

The thrust of the new Criminal Procedures Code is to create a more open, equitable, and transparent system of criminal justice in Guatemala. The success of the new Code is dependent on the effective implementation of three basic judicial elements:

- A strengthened investigative and prosecutorial function;
- Public, oral trials occurring; and
- A professional public defenders program in operation.

With the passage of the new Penal Procedures Code and Narcotics Law, and the probable passage of a package of complementary legislation in 1993 (including the Organic Law for the Public Ministry, the Penal Code, and the law to govern the prison system), the legal framework will be in place for the reform. The focus of policy dialogue, therefore, will center on the institutional requirements and regulations for the implementation of the three elements or benchmarks mentioned above.

The best description of the policy dialogue strategy is "Keeping their eye on the prize". In the context of the three benchmarks, project efforts will be designed to support outcomes such as the drafting of regulations, training of key personnel, design of training and evaluation systems, increased coverage by oral trial proceedings, etc. In effect, implementation of the new Code sets the agenda for policy dialogue.

While project assistance will not be directly responsible for the detailed achievements under each benchmark, the following are examples of progress the Mission would work toward against each benchmark.

- **Strengthened Investigative and Prosecutorial Function**
 - regulations drafted and approved
 - additional prosecutors hired, trained, and assigned
 - performance evaluation system designed and functioning
 - trials in departmental capitals fully utilizing prosecution/investigative function

- **Public, Oral Trials**
 - regulations drafted and approved
 - judges, magistrates and court personnel trained in open, oral trial proceedings
 - implementation of open, oral trials in departmental capitals
 - implementation of open, oral trials in municipalities
 - performance evaluation system for court personnel in place and functioning

- **Public Defenders Program**
 - regulations drafted and approved
 - public defenders program designed and departmental offices established
 - public defense attorneys identified and trained
 - public defenders program functioning in all department capital courts
 - public defenders program introduced into courts at municipal level
 - public defenders program functioning nationwide

III. PROJECT DESCRIPTION

A. Goal, Purpose and Expected Accomplishments

The goal of the Judicial Sector Reform Support Project is to support the right to due process under the law in Guatemala. Achievement of this goal will be measured in terms of (1) people's attitudes regarding their access to fair and equitable judicial processes; and (2) judicial case tracking which documents the basic elements of due process, such as appropriate investigation, open and oral hearings, and adequate defense.

The purpose of this project is to support the reform of the Guatemalan criminal justice system through the implementation of the new Criminal Procedures Code and corollary legislation, including the new narcotics law. Accomplishment of this purpose assumes continuing political will for implementing the new Penal Procedures Code. Progress in achieving the project purpose will be measured in terms of the transparency of court operations, qualitative improvement in the performance of judicial sector institutions, and public opinion toward the effectiveness of the criminal justice system.

The following are the major expected accomplishments by policy benchmark:

Investigative and prosecutorial function: Project funds will support training, technical assistance and educational materials for the following activities:

- Drafting of regulations for the legislation;
- Establishing internal procedures for hiring, training, and assignment of new prosecutors, as well as existing personnel;
- Implementation of these new procedures and their decentralization to the departmental level;
- Training of prosecutors for their oral prosecution, coordination and management roles under the new code.

Public, Oral Trials: Through assistance to the San Carlos University Law Faculty, the four law faculties in Guatemala will revamp their training of law students and justice sector personnel for the reform process. In addition, assistance will be provided to the judicial branch to facilitate full implementation of oral trial proceedings nationwide. Special emphasis will be placed in all training activities on the importance of open trial proceedings in avoiding corruption in specific cases such as those of narcotics crimes. The funds will provide technical assistance, training, and learning materials/equipment. The assistance will support the following activities:

- Development of regulations and manuals for oral proceedings;
- Restructuring of first instance criminal sentencing courts introducing oral trial facilities and needed equipment;

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- Training of magistrates, judges, justices of the peace, court clerks and prosecutors;
- Establishment of a performance evaluation system to monitor effectiveness of oral trial proceedings;
- Revision of law school curricula to adapt to requirements of criminal code reform;
- Establishment of moot court proceedings and facilities, and in-service training of faculty;
- Development of an information and library network which serves all law faculties on the new criminal procedures process.

Public Defenders Program: Through the Judicial Branch and the San Carlos Law Faculty, a public defenders program will be designed and established, as set forth in the new Criminal Procedures Code. This process will include design of the program (including the role of the departmental offices), development of manuals, selection and training of public defenders, and introduction of the public defenders program into municipal level courts.

Other Areas of Assistance: Specialized training will be funded to enable Guatemalan professionals to have in-depth contact with legal experts experienced in the new penal procedures process. In addition, the Mission will examine options for private sector advocacy for improved administration of justice in Guatemala. The Mission recognizes that this is a critical missing element if long-term commitment to the reform is to be sustained. However, private sector mobilization around democratic issues in Guatemala is notoriously weak when compared to that of other Latin American countries. Also, funding will be provided for relevant studies and analyses as the reform implementation process proceeds and issues arise surrounding it. In addition, targeted support will be provided for training of sector personnel for their roles in the implementation of the new Narcotics Law.

B. Project Assistance

A total of \$5.0 million in projectized ESF funds is proposed for project assistance activities under the Judicial Sector Reform Support Project, over a four-year period. Two areas of emphasis are proposed for A.I.D. support: human resource development within the criminal justice system and focused institutional change and strengthening for implementing the reform. five operational project components supporting these areas have been identified, working with the following institutions:

- Component 1: Judicial Branch
- Component 2: Public Ministry
- Component 3: San Carlos University Law Faculty
- Component 4: Specialized Training
- Component 5: Private Sector Advocacy

1. Area of Emphasis One: Human Resource Development

The most critical problem blocking effective implementation of the new Penal Procedures Code and the new Narcotics Law is the present state of the human resource base of the criminal justice system. True transformation of the system will not be achieved until judicial personnel are: (a) independent of political influence; (b) incorruptible; (c) skilled in developing and evaluating evidence in order to reach conclusions; (d) infused with a sense of responsibility for discovering the truth where serious wrongs have occurred; (e) hard-working; and (f) proud. Project assistance will help the Judicial Branch, the Public Ministry, and the four university law faculties through San Carlos University develop and institutionalize high quality personnel and training systems within their respective organizations, and support training programs focused on imparting the knowledge, attitudes and skills required by the new criminal justice system.

The activities under this component will renew and improve key human resource functions, such as: human resources planning; recruitment and selection of new personnel; design and execution of training programs; and performance supervision and evaluation. The target groups of these efforts will be judges, court personnel, prosecutors and their technical support staff, public defense lawyers, criminal investigators, and law students.

2. Area of Emphasis Two: Institutional Change and Strengthening

Both the Public Ministry and the Judicial Branch must improve, and in other cases change, some of their basic organizational systems in order to effectively cope with the new demands placed on them by the passage of the judicial reform package, including the new Narcotics Law. The objective of activities in this area is to provide technical assistance, training and publications support for very targeted institutional development activities in these two implementing agencies.

As described above, institutional needs in the areas of personnel and training will be addressed under the human resources development activities. This second area of emphasis will address administrative weaknesses such as deficient strategic planning and evaluation, budget analysis and execution, and procurement and maintenance. It will also be concerned with

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providing assistance to those technical units within the Public Ministry and the Judicial Branch responsible for carrying out specific elements of the reform. For example, with its new responsibilities in investigation and prosecution, the Public Ministry must qualitatively improve the operations of the prosecutor's office. Assistance under this component would aid this institutional effort. Lastly, activities targeting institutional change and strengthening will focus on developing and supporting appropriate mechanisms for inter-institutional coordination within the criminal justice sector.

In addition, the door will be left open to support other public and private sector activities which contribute to consolidation of the reform process.

C. Description of Project Components

Component One: Judicial Branch

- **Role in the Criminal Procedures Process:** The new Criminal Procedures Code focuses the role of the Judicial Branch. The judge is now responsible for monitoring the penal process. With the transfer of key functions, such as investigation, to the Public Ministry, the judge is responsible for "quality control". He/she oversees the oral proceedings, determines the adequacy of the proceedings and the evidence and serves, ultimately, as judge.

- **Problem Statement:** The Judicial Branch is not prepared to assume its more focused and qualitative role. Neither its human resource base, nor its institutional structure, is positioned to fully implement the new Penal Procedures Code and Narcotics Law. There is a need for intensive efforts in both human resource development and institutional strengthening, particularly at the decentralized level, if the reform process is to succeed.

- **Assistance:** Technical assistance and training will be made available to the Judicial Branch to develop the internal systems and the human resource base which permit full implementation of the new package of legislation. These carefully targeted resources will complement the increased budget available to the Judicial Branch to expand justice of the peace level courts and hire additional personnel. Project resources will be utilized mainly to provide the specialized international and local-hire technical assistance to develop the regulations and administrative/management systems required by the legislation, as well as the training systems and materials to upgrade and adapt the sector's human resource base to the oral trial and legal defense processes.

Project funds will finance the salaries, travel and per diem of international and Guatemalan experts. Also, specific costs of training courses will be funded, including course design

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and materials development/reproduction, as well as the cost of specialized instructors. Technical assistance will also be funded to design the legal defense system, in close coordination with the Court and the Guatemalan Bar Association.

Component Two: Public Ministry

- **Role in the Criminal Procedures Process:** The Public Ministry will absorb a number of major functions under the new Criminal Procedures Code and Narcotics Law, including representing the GOG in the oral trial process, coordinating the collection of evidence for presentation in court, and prosecuting the accused in a coherent and articulate manner.

- **Problem Statement:** The Public Ministry (PM) is a historically weak institution which is in no condition to assume its expanded functions under the new system, particularly as these related to strengthened prosecution and investigation.

- **Assistance:** Under the current limited scope grant agreement with the Public Ministry (PACD 9/30/93), support is provided for the training of personnel and technical assistance to develop critical administrative systems. Under this project, technical assistance and training will be used to improve the prosecutorial capacity and those internal systems identified in the new Organic Law for the Public Ministry. The focus will be on systems development in an institution which to date is almost void of operational systems.

A major emphasis will be placed on the decentralization of the PM so that departmental offices are positioned to function effectively. International and local hire expertise will be utilized to work together with PM counterparts in the design and implementation of the systems required. Two major processes will be supported simultaneously: a) the immediate expansion of the PM staff to accommodate to the requirements of the new legislation, and b) institutional strengthening to guarantee the viability of the Public Ministry's role in the criminal justice process. Section II.E. 2.B., Policy-Phased assistance to the Public Ministry, describes the strategy for providing support under this component.

Component Three: San Carlos University Law Faculty

- **Role in the Criminal Procedures Process:** Legal training for criminal cases in Guatemala requires a total revision in the face of the new legislation. The San Carlos University (USAC) trains the majority of the country's law students (current enrollment 13,000) and establishes the curriculum for the other law schools in the area of criminal law. The role of the USAC in the development of a human resource base which can function effectively in the new system is a critical one.

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- **Problem Statement:** The country's four law schools have been marginal to the criminal reform process. While school officials support the reform, they have not been consulted on its implications for training of lawyers, nor included in planning for the full implementation of the reform. These law students will have to be able to perform as prosecutors, judges, defense attorneys, and possibly investigators, in courts of law and within the criminal law system.

- **Assistance:** Technical assistance and training will be made available to develop and adapt the USAC law school curriculum, faculty, and information/library system to the reform process. Funds will support technical assistance, training, materials development, and minimal equipment purchase to make the USAC law school a major player in the reform and a model for the other law faculties.

At the same time, support will be provided to the strengthen the information network already in place at USAC's Judicial Research Institute (JRI) to convert it into the central source of information and reference materials on the criminal procedures process. The objective of this assistance will be to consolidate the incipient system at the JRI so that it can provide services to all legal training entities in the country, including law schools and other judicial sector agencies.

Component 4: Specialized Training

- **Role in the Criminal Procedures Process:** The major procedures required by the criminal reform legislation are totally new to the Guatemalan legal community and the justice sector. Experience in these procedures exists outside of Guatemala, not locally. The upshot of this is that international expertise will have to be brought to bear on the Guatemalan situation if the new process is to be made viable in the Guatemalan context. Both international training and international technical assistance, in close coordination with Guatemalan counterparts, will be prerequisites to success of the reform.

- **Assistance:** International technical assistance will be sought for training in three areas:

a. **ICITAP (International Criminal Investigative Training Assistance Program):** This agency of the US Department of Justice specializes in the training of investigators for an enhanced role in the criminal justice process. ICITAP has a track record of working in Guatemala, mainly with the police. Under this project ICITAP would provide training of the Public Ministry's investigative unit over a period of four years for their expanded function in criminal investigation. As required, ICITAP

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would also train investigators in other institutions which play a key role in the collection of evidence, under the coordination of the Public Ministry.

b. **OPDAT (Office of Professional Development and Training - Department of Justice):** OPDAT will undertake courses which strengthen the prosecutorial function in the Public Ministry. OPDAT's expertise is in training prosecutors for oral trial proceedings. OPDAT's assistance will be sought out as a response to the critical need of the Public Ministry in this area, and based on their successful experience in other Latin American countries.

c. **Strengthened Narcotics Legislation:** As described in Section II. C. a. of this project paper, along with the passage of the new penal procedures legislation, the Guatemalan Congress adopted strengthened narcotics legislation. The two laws are complementary. The new narcotics legislation interprets the Penal Procedures Code as it applies specifically to narcotics cases. The desired outcome of this element of the Specialized Training Component is improved performance by criminal justice sector personnel in narcotics cases.

To insure effective implementation of the narcotics legislation by the Judicial Branch, the Public Ministry and the Ministry of the Interior, intensive training in both new laws is indispensable. The project will support specialized training for critical sector personnel over a four year period in both the content of the new laws and the specific functions to be performed in narcotics cases by each level of justice sector professional/technical personnel.

For example, judges from the first instance to the appellate level will be trained in the new criminal procedures code and the specific provisions of the new narcotics legislation related to oral trial, judgement, and sentencing. Public Ministry investigators and prosecutors will be trained for improved performance in narcotics crime scene management, gathering of evidence, and the presentation of narcotics cases in the context of oral trials established in the new criminal procedures code. As new personnel is contracted by the Court and the Public Ministry, intensive entry-level training on the handling of narcotics cases will be introduced as a standard part of the curriculum of both the Public Ministry and the Judicial Branch training programs.

By the end of the Project all professional and paraprofessional staff directly involved in narcotics cases will have become fully versed in the legislation governing procedures around narcotics crimes and have their post-training performance monitored based on the training they have received.

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In addition to those budget resources targeted exclusively for narcotics training, under its regional grant ICITAP will provide training to the Treasury Police and National Police at no cost to this project. Even more importantly, the regular courses described under components one through four of this project, dealing specifically with the new criminal procedures legislation, will include case studies of narcotics crimes and establish clearly the relationship between improved performance on narcotics crimes and the sustained exercise of due process in Guatemala.

Component Five: Private Sector Advocacy

- **Role in the Criminal Procedures Process:** Because of the historic nature of the changes implicit in the new legislation, it will be easy for special interest groups to attempt to undermine the implementation process. In effect, the history of the new legislation can be traced back to 1947 when a group of forward thinking Guatemalan lawyers first introduced the concept of the open trial process. Over the next 45 years these initiatives were not allowed to prosper, until the legislation was finally passed last year. The same lawyer who worked on the drafting of the final legislation, Dr. Alberto Herrarte, had presented the original version in 1947.

The significance of this lengthy process should not be underestimated. There is still strong opposition to the legislation, mainly from within the legal community, but from other sectors as well. Other experiences in Latin America in major judicial reform have demonstrated that, to assure integrity and progress in the implementation process, the beneficiaries of improved systems of criminal justice must be actively involved in defense of the new code. Private sector advocacy in the area of democratic initiatives in Guatemala is focused mainly on issues surrounding human rights and the peace process. The Mission is currently examining possible options for the area of judicial reform.

- **Assistance:** This component is designed to provide direct contact and communication with other similar efforts in the region, as well as training and technical assistance to organizations and individuals who could play a role in supporting the reform process. Assistance under components 1 through 4 is directed mainly at public sector organizations with a direct role in implementation of the reform (the exception being the coordinating role the USAC law faculty will play with the private law schools). Component five is designed to respond to private sector initiatives specifically aimed at fostering improved and more equitable justice in Guatemala.

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IV. PROJECT BUDGET AND FINANCIAL PLAN

A. Summary Budget

The Judicial Sector Reform Support Project will be implemented over a four year period at a proposed total cost of \$6,795,992. USAID's contribution will amount to \$5 million dollars or 74 % of the total budget. Approximately \$4.14 million will be obligated in FY 1993. The remaining funds for the Public Ministry (approximately \$859,000) will be authorized and obligated according to the plan outlined in Section II.E.2B of this Project Paper. The counterpart contribution is estimated at about \$1,795,992, or 26 % of total project costs. Of the total USAID contribution to the project, approximately \$1.5 million is budgeted for local costs (See Annex F, Table No.7). A summary of the Project Budget is shown by components in Table 1 below.

**Table 1
Summary Budget
(in \$000)**

	<u>USAID</u>	<u>COUNTERPART</u>	<u>TOTAL</u>	<u>PERCENTAGE</u>
1. Public Ministry	859,156	707,889	1,567,045	23%
2. Judicial Branch	1,694,872	614,002	2,308,874	34%
3. San Carlos University	1,440,572	474,101	1,914,673	28%
4. Specialized Training	650,000		650,000	10%
5. Project Administration	355,400		355,400	5%
TOTAL	5,000,000	1,795,992	6,795,992	100%
PERCENTAGES	74%	26%	100%	

Note: Fund for project evaluations and audits are included in the Public Ministry, the Judicial Branch, and the San Carlos University components. See tables Nos. 9, 10, and 11 for breakdown.

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The inputs to this project consist of substantial short-term technical assistance to be provided by national and international experts; a sizable amount of in-country training; a small amount of specialized international training; procurement of equipment to be used in the creation of a moot court at San Carlos University; the purchase of books and publications; preparation and printing of training materials, some international travel and evaluations and audits.

Implementation Arrangements, Section V, describes the various obligating and disbursing mechanisms to be used. As noted elsewhere in this Project Paper, USAID's previous experience in the justice sector in Guatemala suggests the need for a management intensive approach with this project on the part of the Mission. For this reason, funds have been allocated for a USPSC who will work in close collaboration with the Project Implementation Unit (PIU) in all aspects of project coordination, implementation and monitoring. The PIU will manage all projects funds provided by USAID, including the contracting of international and national expertise, the purchasing of equipment and materials, and the costs associated with training and travel. Evaluations and audits will be contracted directly by USAID through IQCs. See Table 2, Project Procurement Plan, for greater detail.

A determination was made that no financial analysis of counterpart institutions was necessary given that: a) these institutions could not be certified to manage AID funds since they do not account separately for project funds; and b) these are the only institutions through which we could implement project activities since they are key justice sector organizations.

B. Audits and Financial Reviews

Of the total amount to be obligated through Handbook 3 Agreements with the Guatemalan Supreme Court, the Public Ministry and the San Carlos University, all but \$100,000 will be used to contract a U.S. institution that will arrange and coordinate assistance to the GOG organizations. The institutional contractor will be audited annually by its cognizant IG office as prescribed under the Single Audit Act. No program funds need be budgeted for these routine contract audits since they will be covered by AID/FA/OP. The \$100,000 expected to be disbursed outside of the institutional contract to finance start up activities within the Judicial Branch will be subject to the standard terms and conditions of a Recipient Contracted Audit (RCA) program if reimbursements to the court total or exceed \$25,000 in any one year. The RCA will be performed in accordance with the "Guidelines for the Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General and the Government Accounting Office (GAO) "Government Auditing Standards" (1988 revision).

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Approximately \$24,000 will be set aside in each of the three Handbook 3 Agreements (a total of \$71,396) for periodic audits to review subjects to be determined by USAID in the course of project implementation.

C. Recurrent Cost Analysis

As noted above, the GOG's contribution to this project amounts to 1,795,992 or 26 % of the total budget. The majority of counterpart contributions is made up of all in-country expenses to effectively implement project activities, such as personnel costs and the in-kind value of the management and training systems that will be created or augmented during the course of this project within the Public Ministry, the Courts, and the University of San Carlos (supporting documentation on counterpart contributions is available in Mission file). During the implementation of the project, USAID will provide most foreign exchange costs to cover the short term technical assistance and training required to design and deliver a sustainable system of human resource development within the justice sector. An emphasis will be placed on the training-of-trainers to ensure a multiplier effect that will extend beyond the life of the project. In addition, a series of training guides and job performance manuals will be produced that will guide the design and implementation of future training sessions and serve as a reference point for the orientation of new personnel hired after the project ends. Also, the institutional strengthening of the counterpart institutions in the areas of strategic planning, systems management and human resource development will help ensure the long term continuity of project benefits.

It is assumed that at the end of the four year project period, the GOG will have acquired and institutionalized the necessary mix of technical expertise and resource materials to continue the effective and efficient implementation of the judicial reform process independent of USAID resources.

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V. IMPLEMENTATION ARRANGEMENTS/PROCUREMENT PLAN

Components 1, 2, and 3: Separate Handbook 3 agreements will be signed with the Judicial Branch, the Public Ministry and the San Carlos University Law Faculty, in order to obligate project resources. Conditionality for signature of the agreement with the Public Ministry is described in Section II.E.2.b. of this Project Paper. This agreement will only be signed when there is sufficient proof that all sections of the Public Ministry are staffed adequately to function as the autonomous prosecutorial and investigative units described in the new Code and the PM's new Organic Law. Subsequently one contract will be let to establish a Project Implementation Unit to work closely with each of the counterpart institutions and coordinate project activities.

The function of the unit will be that of facilitating project implementation within the guidelines established by AID accounting and procurement procedures. In addition, the unit will be charged with coordinating and rationalizing technical assistance and training activities among the grantees. One contract will be let with complete specifications for all training, technical assistance and procurement requirements.

This model for implementation of the agreements is considered most appropriate, carried out through a competitive award process to a contractor with a full knowledge of/experience with AID procedures and experience in administration of justice programs in the region. Direct Mission involvement in the technical and policy aspects of implementation is vital because of the extremely sensitive nature of the project. On the other hand, the Mission will assist the contractor in locating technical experts since the Mission and the counterparts have an access to a variety of appropriate sources for international and national technical expertise. The major challenge is the development of a mechanism which permits the timely access and funding of the appropriate services and activities within AID guidelines. The counterparts will authorize that project funds be utilized by AID to contract for these services.

The institutional contract will reflect two important lessons learned from previous justice sector activities:

- a. The Mission must have a direct, hands-on role in oversight and supervision of the contractor. A collaborative team approach among the Mission project staff, the institutional contractor, and all counterparts must be established from the outset.
- b. Each counterpart should feel ownership for the project. The institutional contractor and the Mission should not be perceived as the only interested parties. The counterparts must have

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frank and open information on those AID requirements which make an institutional contract the most appropriate option. The counterparts should be directly involved in the selection process and fully committed to its outcome.

Component 4: Each aspect of the Specialized Training component will be implemented in a different manner. In the case of ICITAP, funds will be transferred directly from AID/W under the existing mechanism established with the State Department to the Department of Justice, earmarked for activities in Guatemala. This program of activities will be agreed upon by the participating agencies (AID, ICITAP, Embassy, Ministry of the Interior and the Attorney General's Office). ICITAP will then take full charge of training activities, monitored both by AID and by the Embassy. Training to benefit the National Police or the Treasury Police will be funded through ICITAP's regional grant. A 660 waiver has been approved for these regional activities.

Funds to OPDAT for the training of prosecutors will be obligated through a PASA with the Department of Justice. OPDAT will assume full responsibility for implementation of the training program in coordination with the Public Ministry. Included in the PASA negotiations will be agreement on the scope and nature of activities to be carried out in Guatemala.

Funds for training to support strengthened narcotics legislation will be obligated in equal parts through the HB 3 Agreements with the Judicial Branch and the Public Ministry. These funds will be accessed through the institutional contract, and the contractor will have full responsibility for implementation in close consultation with NAS/DEA for technical orientation.

Component 5: The Private Sector Advocacy component will involve a variety of activities including international visits and exchanges, seminars, workshops, etc. Funds for this component will be obligated under the agreement with the San Carlos University Law Faculty.

Component 6: Project Administration - Because of the complex, institutional and policy issues inherent in working with the justice sector, it is essential that the Mission have adequate staff, funded under the project, to monitor and give proper direction to project activities. The AOJ project staff will consist of a USPSC, and an FSN Secretary.

The USPSC will have direct responsibility for project management and supervisory responsibility over the FSN secretary. The first two years of these services will be directly contracted by A.I.D. with the contracts as the obligating documents. Funding for the last two years of administrative services will be included in the Handbook 3 Agreement with the Public Ministry.

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**TABLE 2
PROCUREMENT PLAN**

LINE ITEM	DESCRIPTION	AGENCY	CONTRACT METHOD	ESTIMATED COST	EST. START DATE	NUMBER OF CONTRACTS	SOURCE/ORIGIN
1. Technical Assistance	Institutional Contractor	AID	AID Direct	2,520,494	1/94	1	USA
2. Technical Assistance	Judicial Branch	AID	AID Direct or Reimb.	100,000	6/93	Multiple	USA GUA
3. In-Country Training	Institutional Contractor	AID	AID Direct	580,500	1/94	1	USA
4. Specialized Training	ICITAP OPDAT	AID-DOJ AID-DOJ	Bud. Trans. PASA	300,000 361,396	9/93 9/93	1 1	USA USA
5. Materials and publications	Institutional Contractor	AID	AID Direct	118,000	1/94	1	USA
6. Private Sector Advocacy	Institutional Contractor	AID	AID Direct	45,000	1/94	1	USA
7. International Travel	Institutional Contractor	AID	AID Direct	131,000	1/94	1	USA
8. Equipment*	Institutional Contractor	AID	AID Direct	86,610	1/94	1	USA GUA
9. Project Administration **	USPSC FSN PSC's	AID	AID Direct	575,000	6/93	3	USA GUA
10. Evaluations **	IQC	AID	AID Direct	122,000	FY95 FY97	2	GUA
11. Audits **	IQC	AID	AID Direct	60,000	FY95 FY97	2	GUA

* See the following table for detail.

** Funding for Audits and Evaluations will be spread evenly in each of the three HB3 Agreements. The Public Ministry Agreement will also include funds for the last two years of Project Administration Costs. These agreements will include language that permits A.I.D.-direct contracting of these services.

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COMMODITY PROCUREMENT PLAN

Illustrative Budget
(figures in US Dollars)

Quantity	Description	FY1993 Amount	FY1994 Amount	LC
COMMODITIES				
for SAN CARLOS UNIVERSITY				
4	Blackboards/fernice with wheels		500	o
1	Professional sound stereo equipment system (microphones, speakers, amplifier, etc)		5,000	
1	Cassrecorder		2,000	
1	Large Screen Video Projector		2,000	
1	Large Screen for the Video Projector		1,000	
1	Overhead Projector for Acetate Transparencies		2,000	
1	Stereo Tape Recorder for Cassettes/AM-FM radio		2,000	
2	Professional Photographic cameras with Cases		1,500	
1	Personal Computer 80486/25 with CPU and enhanced English-Spanish keyboard		3,000	
1	UPS unit		1,000	
1	Voltage Regulator		300	
1	LaserJet Printer III Hewlet Packard or similar		1,500	
3	Packages of software		600	
1	Minograph machine		5,000	
2	Basole		200	o
2	Flipcharts		200	o
	Supplies (film, cartridges, cassettes, ribbons, pointers, special markers, paper, etc)		2,000	o
	Sub-total		30,000	
for PROJECT IMPLEMENTATION UNIT				
	office equipment/furniture		23,000	o
3 + 1	3 PCs + 1 printer		20,000	
1	fax		1,110	
1	photocopier		2,500	
	Sub-total		46,610	
for PROJECT ADMINISTRATION				
2	Personal Computer 80486/25 with CPU, enhanced English-Spanish keyboard + 1 Printer	10,000		
	Sub-total	10,000		
	Total	10,000	76,610	

NOTE: shipping, handling, and insurance costs were estimated.

o: To be procured locally.

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Table No. 3
 Methods of Implementation and Financing
 (figures in \$000)

Line Item	Implementation Method	Financing Method	Amount
Technical Assistance Int'l	Subcontracted by U.S. TA firm	Reimbursement	1,003,830
Technical Assistance National	Subcontracted by U.S. TA firm	Reimbursement	430,450
TA-Proj Implementation Unit	USAID Direct Contract	Reimbursement	1,166,214
Training	USAID Direct Agent	Direct Pay	500,500
Training (ICITAP)	Placed through ICITAP	Transfer of funds	300,000
Training (OPDAT)	PASA	Direct Pay	330,000
International Travel	Invitational Travel Orders	Advance/Reimbursement	131,000
Materials and Publications	Procured by U.S. TA contractor	Reimbursement	110,000
Equipment	Procured by U.S. TA contractor	Reimbursement	30,000
	Procured by AID	Direct Pay	56,610
Private Sector Advocacy	USAID Direct Contract	Reimbursement	45,000
Project Administration	USAID Direct Contract/PICs	Reimbursement	575,000
Evaluations	USAID Direct Contract with Profit Making Contractors	Reimbursement	122,000
Audits	USAID Direct Contract, IQC	Reimbursement	71,396
	Project Total		\$ 5,000,000

 \$: \$46,4610 for Project Implementation Unit and \$10,000 for Project Administration. See Commodity Procurement Plan for details.

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VI. EVALUATION PLAN

Three levels of evaluation will be utilized to measure the impact and efficacy of project-funded activities:

a) Performance Level: The Democratic Indicators Monitoring System (DIMS), for the Strategic Objective, Sustained Exercise of Inalienable Rights, will be initiated at approximately the same time as the project. Of the four indicators established under this strategic objective to measure progress, one deals specifically with the justice sector: access to due process under the law. During the life-of-project the DIMS will measure public attitudes and values toward their access to due process on three different occasions. In addition, the Court MIS will measure increased access with the creation of new Justice of the Peace Courts and implementation of the new code. The baseline for the DIMS will be established by June 30, 1993, and measurement of progress will be taken again in 1995 and 1997.

b) Program/Project Level: Under the strategic objective, Justice Sector Reform Support is the program output supported by this project. The three benchmarks discussed previously (oral trial proceedings, improved prosecution and investigation, and legal defense) will be the main focus of all project-level evaluation. In the case of coverage of oral trial and legal defense proceedings, the Court management information system will provide data on the use of improved prosecution and investigation techniques nationwide, as a follow-on to their training programs. Development and expansion of these systems will be the measure of success for the different project components and will guide both the mid-term evaluation in 1995 and the final evaluation in 1997.

c) Ongoing internal analysis and stocktaking: Because of the sensitive and politically volatile nature of the justice sector in Guatemala, project management must continually assess and reassess progress under each of the institutional components of the project. Reporting out on progress, major issues and problems which arise, will be a principle function of the project manager and his/her staff. As described earlier, the policy framework for the project was a condition precedent to the Mission's decision to reinitiate assistance to the justice sector. The special conditions surrounding the bilateral agreement with the Public Ministry are detailed in Section II.E.2.b. of this Project Paper. However, these and other issues surrounding the political will, and institutional capability, to implement the systems required by the reform will merit day-to-day monitoring/assessment of the institutional actors, and their commitment to going forward with the reform. The Project Manager will raise issues which arise with the Mission and the Country Team Working Group on Democratic Development and document any modifications required in the nature and extent of project assistance in a timely manner.

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VII. PROJECT ANALYSES

A. Constraints to Feasibility

Section II.D. and II.E. addresses in detail the major constraints to implementation of the judicial sector reform. These same constraints impact directly on project implementation and the ability of sector institutions to successfully carry out the programmed activities.

An additional constraint to be closely monitored throughout project implementation is the potential influence of political factors/interests on the judicial process and its institutions, as well as the lack of autonomy of decision making in the face of institutions which wield greater power in society. An example of this trend has been the recent replacement of investigators from the investigative unit of the Public Ministry with former members of army intelligence. Other key personnel in the Public Ministry have also been replaced to facilitate processing of cases against the President's political enemies. Increased narcotics crimes, and the tendency for corruption almost inherent in these cases, represent another constraint to full and successful implementation of the new legislative package.

The utilization of the judiciary for political purposes to insure one's power base or impunity from legal restrictions on the abuse of power, constitutes - at the present time - a major constraint to successful implementation of the new criminal procedures process. The specific case of the Public Ministry, and the Mission's strategy in this regard, has been described throughout this Project Paper. To the extent that the Mission establishes conditions and covenants which reflect the independence and strengthening of judicial sector institutions, this politicization of the judicial process will constitute a major constraint to project feasibility.

In addition, the continued lack of coordination among justice sector institutions is a constraint to effective and efficient project implementation. At present, no effort is being made to reconstitute the National Judicial Commission, initiated by ILANUD in 1988 and disbanded because of inaction in 1990. Coordination between the Judicial Branch, the Public Ministry, and the Ministry of the Interior is critical to the implementation of the reform. The Bar Association and the university law faculties will play important roles by laying the groundwork for human resource development under the reform. Lack of progress on inter-institutional coordination, or direct boycotting of one institution by another, would be very detrimental to the reform process.

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B. Summary of Project Analyses

Section II of this project paper, Project Background and Rationale, in its entirety addresses the extensive institutional and political issues surrounding the Mission's analysis of assistance to Guatemala's justice sector reform process and constitutes the Technical Analysis of this project paper. In addition to the assessment of institutional constraints provided in Section II. E., Annex I. 1., contains detailed information on recent developments in the principle grantee institutions as they prepare to implement the reform.

The Social Soundness Analysis (Annex I. 3.) addresses issues surrounding the delivery of improved justice sector services to a wider set of beneficiaries, as well as the gender constraints. The Economic Analysis (Annex I. 2.) relates the justice sector reform efforts to the overall climate for investment and economic growth in Guatemala.

VIII. CONDITIONS AND COVENANTS

As mentioned in Section II. F., GOG Policies and Proposed Agenda, most major policy agenda items were achieved prior to the Mission's decision to resume assistance to the justice sector. In that context, the conditionality and covenants under this project will be used to focus fully on the implementation of the reform process and the role of each of the three key project beneficiary institutions in this process.

A. Cross-Cutting Conditionality and Covenants:

Prior to the disbursement of any funds from any of the Project Agreements, the individual Grantee will have complied with the following conditions:

- have sufficient on-line human and financial resources available for the counterpart to execute and institutionalize systems and activities developed under the project;
- have agreed to a plan of activities for the first year of project execution.

The grantee institutions will covenant to the following:

- all persons trained with project funds will remain in their current positions for at least one year, in the case of in-country training, and two years, in the case of international training;

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- every attempt will be made to coordinate actions to maximize the use of financial/human resources, and rationalize plans and programs among the three principle grantee institutions with regard to the role and functions of each in the reform process;

B. Judicial Branch:

The Limited Scope Grant Agreement with the Supreme Court, as originally designed, established as conditionality the creation of the Planning Unit for the reform process, as well as the signing of the Criminal Procedures Code into law by the President. Though the LSGA was never signed, both of these conditions have now been met; therefore, no specific conditions precedent will be established for the agreement with Judicial Branch.

C. Public Ministry:

As described in Section II.E.2.b., the following are the major conditions precedent to assistance to the PM:

- The budget transfer for ICITAP assistance to support investigative training must be preceded by the passage by the Congress and signing into law by the President of the new Organic Law for the Public Ministry consistent with the spirit and intent of the new Criminal Procedures Code. This legislation is basic to the full implementation of the reform because it lays the institutional groundwork for the enhanced role of the PM.
- The bilateral HB3 Agreement will not be signed until the Mission has sufficient evidence that the PM leadership is fully committed to fulfilling its role as independent state prosecutor and investigator as established in the Criminal Procedures Code and the Organic Law.

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D. USAC Law Faculty:

In addition to the conditions and covenants mentioned above, prior to disbursement of funds from the USAC Agreement, the USAC Law Faculty will submit to AID the design of a mechanism whereby the benefits they perceive as a result of project assistance in reorienting training for criminal law are shared with the three private law schools in Guatemala. Funds will be budgeted under the project to this end, however from the outset the USAC Law Faculty must be conscious of its role as mentor for the other law schools.

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ANNEX A

COUNTRY SITUATION

Guatemala has a small, open economy dominated by agriculture. During the 1980's, the agriculture sector employed more than half of the country's working population, generated more than 25 percent of GDP and about 75 percent of the country's export revenues. The adoption of real exchange rate levels in the second half of the decade permitted relatively rapid economic growth largely based on traditional and non-traditional agriculture exports. However, the country's uneven distribution of land and income limited the impact of such growth on poverty. Guatemala's income distribution continues to be heavily weighted toward the wealthy. CEPAL (the Economic Commission for Latin America) in 1984 estimated that the richest 20% of the population received 54% of the national income while the poorest 20% received only 5.3% of the national income. The Ministry of Labor in 1987 estimated that 72% of the people had incomes below the level necessary to purchase food meeting minimum nutritional requirements.

In terms of its political structure, Guatemala follows a traditional tripartite model of government (executive, legislative and judicial). It also has several autonomous organizations pertinent to the development of democracy, such as the Constitutional Court and the Supreme Electoral Tribunal (SET). The Human Rights Ombudsman Office was created by the 1985 Constitution and is a dependency of Congress. Presidential and legislative elections take place every five years. Like most Latin American systems, constitutional equality among the three branches of government is not achieved in practice. Rather, the government is characterized by a strong executive and weak legislative and judicial branches.

The 1980's saw something of a turnaround in Guatemala's political arena. After 30 years of military or military-controlled rule, a civilian government under a Christian Democratic administration took office in 1986. The transition to a civilian government did bring a political opening. Grassroots organizations developed, and began to speak out more openly. However, a degree of political repression returned in 1988 and 1989 as the government failed to control the military and extremist political groups.

Despite the fact that the military continues as a dominant political force in the country, Guatemala has completed an essential step in its democratic development. For the first time in its history there was a peaceful transfer of power between two freely-elected civilian presidents, in January 1991. By all accounts this election was viewed as free and fair, and indeed is testimony to the capability of the Supreme Election Tribunal to plan and implement democratic elections. Additionally, Rios Montt's constitutional challenge for candidacy in this election, a potentially

explosive issue in the Guatemalan context, was handled by the due process of the court system and the outcome was accepted peacefully.

The first two years of President Jorge Serrano's government were characterized by uneven progress for democratic processes and institutions. The politicization of these institutions, not uncommon in Latin America, has brought with it in the case of Guatemala intense divisiveness and lack of focus. The programs of the major political parties have not contributed to the strengthening of the principal democratic institutions established in the 1985 Constitution. To the contrary, because of his own party's minority status, Serrano was forced to forge complicated political alliances to govern. With only a few notable exceptions, the legislature, the judiciary, and executive branch institutions have been affected negatively by these political playoffs.

While advances have been made toward achievement of several major policy objectives, the government's ability to regulate and implement such controversial legislation effectively (criminal procedures reform, fiscal reform and narcotics legislation), is seriously in question.

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ACTION MEMORANDUM FOR THE MISSION DIRECTOR

Date: September 24, 1992

THROUGH: Stephen Wingert, Deputy Director *SW*
FROM: Tom Delaney, PDSO *TRD*
SUBJECT: Judicial Sector Reform Support Project (520-0407)
Authorization

ACTION REQUESTED: It is requested that you approve the attached Limited Scope Grant Agreement and authorize the subject project for \$450,000.

BACKGROUND: In December 1991, the Mission terminated the Improved Administration of Justice Project after having obligated only \$3.4 million of the \$5.0 million authorized for the Project. A decision was made at that time to suspend all further A.I.D. assistance to the justice sector until the GOG demonstrated a strong commitment to reforming the criminal justice system in Guatemala. Towards this end, new leadership within the Judicial Branch and the political will of the Guatemalan Congress led to the approval of a new Penal Procedures Code on September 24, 1992. It is expected that the legislation will be signed into law by President Serrano shortly.

This legislation will, among other things, establish guidelines for oral hearings, require a public defenders program, strengthen/modernize investigative functions, and create a more transparent criminal justice system. The Mission, therefore, is prepared to reinstate assistance to the Justice Sector. The first phase of this assistance will be provided under a limited authorization (\$450,000) and implemented through a Limited Scope Grant Agreement with the Judicial Branch. It is anticipated that a broader, multi-year program will be developed for authorization and obligation in FY 1993.

On September 1, 1992, the Mission reviewed the LSGA to be signed with the Judicial Branch and the draft Concept Paper for the larger Program the results of that meeting are summarized below:

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Action Memorandum for the Mission Director
Judicial Sector Reform Support Project
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Rationale for A.I.D. Assistance to the Justice Sector: The development and foreign policy interests of the USG in Guatemala make it critical that A.I.D. provide both financial and moral support for the reform process cited above. The country-team, with the technical assistance of ILANUD, has determined that the final version of the Penal Procedures Code recently approved by the National Congress, includes the reforms deemed essential to promoting USG interests and safe-guarding the general well-being of Guatemalan citizens. It is expected that President Serrano will sign the legislation into law early in October.

Implementation Arrangements: The \$450,000 LSGA will include \$225,000 for training and a \$225,000 contract for technical assistance. Local procurement related to training will be financed primarily on a cost-reimbursement basis, possibly utilizing a GOG revolving fund. Some limited A.I.D. direct procurement may be necessary. The TA will be directly contracted by A.I.D. after informal competition in accordance with HB 13 regulations. The authority for an A.I.D.-direct contract will be included in the LSGA.

The Mission will begin to work with the Courts immediately in order to prepare them for the procurement and financial management certifications that will be required under the larger Program.

The Scope of Work for the TA contract will specify needs relating to the Courts' strategic planning efforts and international observation of the implementation/impact of the reform. To help define this SOW and other immediate actions to be taken, the Mission may fund a retreat for key justice sector personnel early in FY 1993.

Public Education: The "Design of Public Education" description in Annex A of the LSGA has been rewritten to emphasize A.I.D.'s intent to finance activities that address the public's expectations of the reform by providing information on the impact of the reform on the general populace.

Budget: The Project's Budget has been revised to show the funding breakdown by component (Strategic Planning, Implementation Requirements, Public Education) and to include materials production as part of the training line items.

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ANNEX E

LOGICAL FRAMEWORK

Life of Project: _____
 From FY 93 to FY 97
 Total U.S. Funding 5,000,000
 Date Prepared: _____

Project Title & Number: Judicial Sector Reform Support, 520-0407

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p>I. Goal:</p> <p>To support the right to due process under the law in Guatemala.</p>	<p>Increased percentage of favorable ratings on access to due process and heightened public confidence in justice sector officials and institutions (targets TBD by DIMs, 6/93)</p>	<p>Democratic Indicators Monitoring Systems (DIMs), baseline to be established 6/93 and follow-up studies to be conducted 6/95, 6/97</p>	<ul style="list-style-type: none"> • Continuing commitment of GOG to implement the criminal reform process in keeping with its original spirit and intent • Stable transition of political power through presidential elections in 1995

Handwritten initials/signature

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p>II. Purpose</p> <p>To support the reform of the Guatemalan Criminal Justice System through the implementation of the new Criminal Procedures Code and corollary legislation, including the new narcotics law.</p>	<p>1) 50% of prosecutors/investigators using improved techniques in implementation of new Penal Procedures and Narcotics Legislation.</p> <p>2) 50% coverage of oral trial proceedings nationwide in implementation of new Penal Procedures and Narcotics Legislation</p> <p>3) 50% coverage of Public Defense program nationwide</p>	<p>Management Information Systems (MIS) of Court and Public Ministry</p>	<ul style="list-style-type: none"> • Passage and implementation of Organic Law for Public Ministry (PM) • Additional resources authorized by Congress for PM are efficiently utilized on an annual basis • Improved budget execution and procurement of goods and services by PM • 300 municipal Justice of Peace Courts established and operational • Physical infrastructure for oral trial proceedings in place throughout court system • Legal defense program established and operational

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NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p>III. Outputs: A. TA/Training related to new Criminal Procedures Code</p> <ul style="list-style-type: none"> - Regulations drafted and approved for the implementation of new prosecutorial and investigative functions, oral trials and public defenders program - Prosecutors and clerks trained in new procedures - Judges/magistrates and other court personnel trained in oral trial proceedings - Investigators trained in improved techniques - Technical assistance provided in design of Public Defenders program completed - Public Defenders trained - Post training monitoring system designed and in-place 	<ul style="list-style-type: none"> - 100% of new regulations approved and in place - 300 prosecutors/300 clerks trained - Training received by: <ul style="list-style-type: none"> • 380 Judges (includes Justices of the Peace) • 330 Court Administrators • 1800 Clerks - 30 Investigators trained - Program in place and operational - 700 Public Defenders trained - System in place and operational 	<p>Regular Project Progress Reports</p>	<ul style="list-style-type: none"> • Court complies with implementation schedule established by Congress • Public Ministry maintains momentum in executing reforms in a timely manner • Hiring and assignment of new personnel • Low rate of turn over/rotation of critical personnel • Training systems of PM and Courts are staffed and operational • Courts and PM will seek appropriate outside technical assistance to design new systems and be committed to implementation of subsequent recommendations • Counterpart institutions perceive need to monitor and evaluate performance

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NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p>III. Outputs (cont'd)</p> <p>B. TA/training related to new Narcotics Legislation</p> <ul style="list-style-type: none"> - Course content for specialized narcotics training developed - Judges, Court Administrators and clerks trained in new legislation - Investigators and Prosecutors trained in new techniques 	<p>Training program approved and in place</p> <ul style="list-style-type: none"> * 2440 Court personnel receive training * 300 prosecutors / 30 investigators receive training 	<ul style="list-style-type: none"> • Regular project progress reports 	<ul style="list-style-type: none"> • Willingness of Court and PM to move forward with full and timely implementation of Narcotics Legislation

* See table 4 for US/AID inputs.

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Table No.4

**JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by line item
US Dollars**

Line Item	PY1993	PY1994	PY1995	PY1996	PY1997	Total
I. TECHNICAL ASSISTANCE						
TA International	20,000	169,190	204,800	204,800	264,800	1,003,890
TA National		71,100	126,450	126,450	126,450	450,450
Project Implementation Unit *		303,206	303,206	303,206	303,206	1,212,824
II. TRAINING						
Training		94,500	162,000	162,000	162,000	580,500
ICITAP	10,000	290,000	0	0	0	300,000
OPDAT	10,000	50,000	100,000	100,000	90,000	350,000
III. MATERIALS and PUBLICATIONS		41,250	34,750	28,250	13,750	118,000
IV. INTERNATIONAL TRAVEL		36,800	31,940	33,560	28,700	131,000
V. EQUIPMENT		30,000	0	0	0	30,000
VI. PRIVATE SECTOR ADVOCACY		0	8,000	19,000	18,000	45,000
VII. PROJECT ADMINISTRATION **	88,900	133,000	133,500	134,000	95,600	585,000
VIII. EVALUATIONS		0	45,000	0	77,000	122,000
IX. AUDITS		17,396	18,000	18,000	18,000	71,396
Total	128,900	1,216,442	1,247,726	1,209,346	1,197,586	5,000,000

* Includes EQUIPMENT for \$46,610. See Table NO.16 and Commodity Procurement Plan for details.
 ** Includes EQUIPMENT for \$10,000. See Table NO.12 and Commodity Procurement Plan for details.

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Table No.3

**JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by Line Item and Institution
US Dollars**

LINE ITEM	PUBLIC MINISTRY	JUDICIAL BRANCH	SAN CARLOS UNIVERSITY	ICITAP OPDAT	USAID (direct)	TOTAL	%
TECHNICAL ASSISTANCE							
TA International	334,610	334,610	334,610	0	0	1,003,830	20%
TA National	152,650	152,650	145,150	0	0	450,450	9%
Project Implementation Unit	0	606,412	606,412	0	0	1,212,824	24%
TRAINING	186,000	237,000	157,500	650,000	0	1,230,500	25%
MATERIALS and PUBLICATIONS	56,500	36,500	25,000	0	0	118,000	2%
INTERNATIONAL TRAVEL	65,500	33,100	32,400	0	0	131,000	3%
EQUIPMENT	0	0	30,000	0	0	30,000	1%
PRIVATE SECTOR ADVOCACY	0	0	45,000	0	0	45,000	1%
PROJECT ADMINISTRATION	0	229,600	0	0	355,400	585,000	12%
EVALUATIONS	40,500	41,000	40,500	0	0	122,000	2%
AUDITS	23,396	24,000	24,000	0	0	71,396	1%
Total	859,156	1,694,872	1,440,572	650,000	355,400	5,000,000	100%
%	17%	34%	29%	13%	7%	100%	

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Table No.6

JUSTICE SECTOR DEPRON SUPPORT
All Contributors
Illustrative Budget
Budget Summary and Financial Plan
US Dollars

Input	FY1993		FY1994		FY1995		FY1996		FY1997		TOTAL	
	Publin		Publin		Publin		Publin		Publin		Publin	
	JudBranch	USAC	JudBranch	USAC	JudBranch	USAC	JudBranch	USAC	JudBranch	USAC	JudBranch	USAC
TECHNICAL ASSISTANCE												
TA International	20,000		149,190	52,152	284,000	102,915	284,000	102,915	264,000	102,915	1,603,830	360,896
TA National			71,100	11,732	126,450	23,444	126,450	23,444	126,450	23,444	450,450	82,056
Project Implementation Unit			303,266		303,266		303,266		303,266		1,212,824	0
TRAINING	20,000		434,300	186,222	262,000	372,444	262,000	372,444	252,000	372,444	1,230,500	1,303,556
MATERIALS and PUBLICATIONS			41,250		34,750		20,250		13,750		110,000	0
INTERNATIONAL TRAVEL			36,000	1,052	31,940	10,078	33,560	10,078	20,700	10,078	131,000	34,403
EQUIPMENT			30,000	6,000	0	3,000	0	3,000	0	3,000	30,000	15,000
PRIVATE SECTOR ADVOCACY			0		0,000		19,000		10,000		45,000	0
PROJECT ADMINISTRATION	88,900		133,000		133,500		134,000		95,650		585,000	0
EVALUATIONS			0		45,000		0		77,000		122,000	0
AUDITS			17,396		10,000		10,000		10,000		71,396	0
Total	120,900	0	1,216,442	257,940	1,247,726	512,601	1,209,346	512,601	1,197,506	512,601	5,000,000	1,795,992
percentages												
											74%	26%

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Table No.7

JUSTICE SECTOR REFORM SUPPORT
All Contributors
Illustrative Budget
Budget Summary and Financial Plan
by Type of Currency
US Dollars

Input	USAID		Publin Je. Branch USAC		PROJECT TOTAL	
	FX	LC	LC	FX	LC	

TECHNICAL ASSISTANCE						
TA International	949,830	54,000	360,896	949,830	414,896	
TA National	0	450,450	82,056	0	532,506	
Project Implementation Unit	1,189,824	23,000	0	1,189,824	23,000	0
TRAINING	650,000	580,500	1,303,556	650,000	1,804,056	
MATERIALS and PUBLICATIONS	24,000	94,000	0	24,000	94,000	
INTERNATIONAL TRAVEL	36,000	95,000	34,485	36,000	129,485	
EQUIPMENT	27,100	2,900	15,000	27,100	17,900	
PRIVATE SECTOR ADVOCACY	0	45,000	0	0	45,000	
PROJECT ADMINISTRATION	510,000	75,000	0	510,000	75,000	00
EVALUATIONS	122,000	0	0	122,000	0	
AUDITS	0	71,396	0	0	71,396	

Total	3,508,754	1,491,246	1,795,992	3,508,754	3,287,230	
=====						
percentages	70%	30%	100%	52%	48%	

*: Includes EQUIPMENT for \$46,610. See Table NO.16 and Commodity Procurement Plan for details.
 **: Includes EQUIPMENT for \$10,000. See Table NO.12 and Commodity Procurement Plan for details.

ANNEX F

Table No.8

JUSTICE SECTOR REFORM SUPPORT
 All Contributors
 Illustrative Budget
 Budget Summary and Financial Plan
 by Component
 US Dollars

Component	USAID	Institution	Total	%
PUBLIC MINISTRY	859,156	707,889	1,567,045	23%
JUDICIAL BRANCH	1,694,872	614,002	2,308,874	34%
SAN CARLOS UNIVERSITY	1,440,572	474,101	1,914,673	28%
SPECIALIZED TRAINING	650,000		650,000	10%
PROJECT ADMINISTRATION	355,400		355,400	5%
Total	5,000,000	1,795,992	6,795,992	100%
percentages	74%	26%	100%	

Fund for project EVALUATIONS and AUDITS are included in the Public Ministry, the Judicial Branch, and the San Carlos University components. See tables Nos. 9, 10, and 11 for breakdown.

Table No. 9

Annex 7

JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by component and line item
US Dollars

	PT1993	PT1994	PT1995	PT1996	PT1997	Total
TECHNICAL ASSISTANCE						
International						
20 days/year, 5 consult @331	16,550	33,100	33,100	33,100	33,100	115,050
overhead: (100%)	16,550	33,100	33,100	33,100	33,100	115,050
travel: 5 @ 990	2,350	4,500	4,500	4,500	4,500	15,750
per diem: 265@9152	9,800	19,760	19,760	19,760	19,760	69,160
local travel: 1 trip@99100	500	500	500	500	500	2,000
admin support (1/3 @12,000)	4,000	4,000	4,000	4,000	4,000	16,000
National						
30 days/year, 6 consult @4125 + design	13,125	24,375	24,375	24,375	24,375	86,350
local travel: 4 trips@1006 consult	1,200	2,400	2,400	2,400	2,400	8,400
per diem: 4 trips@ 600@1006 consult	6,000	12,000	12,000	12,000	12,000	42,000
admin support (1/3 @12,000)	4,000	4,000	4,000	4,000	4,000	16,000
TRAINING						
30 part, 5 day/course, \$100 pp, 18 course/y	27,000	45,000	45,000	45,000	45,000	162,000
30 part, 6 courses/year, \$1000 per course	6,000	6,000	6,000	6,000	6,000	24,000
MATERIALS and PUBLICATIONS						
Administrative manuals	10,000					10,000
Technical manuals	5,000		1,000			6,000
Training manuals/resource materials	2,625	5,625	2,625	1,625		12,500
Publication of laws/regulations	2,000	5,500	5,500	3,000		16,000
Purchase of books, publications, etc	2,000	4,000	3,500	2,500		12,000
INTERNATIONAL TRAVEL						
travel: 5 people, 1 trip, 9900 + exchanges	10,750	12,550	13,450	10,750		47,500
per diem: 5 people@ 9900	3,600	5,040	5,760	3,600		18,000
(7 & 8 people in years 3 & 4)						
EVALUATIONS						
	15,000			25,500		40,500
AUDITS						
	5,396	6,000	6,000	6,000	6,000	23,396
Total	0	140,426	242,450	226,370	241,710	859,156

Table No.10

JUSTICE SECTOR REFORM SUPPORT
AID Contributions
Illustrative Budget
Expenses by component and line item
US Dollars

Component	FY1993	FY1994	FY1995	FY1996	FY1997	Total
JUDICIAL BRANCH						
TECHNICAL ASSISTANCE						
International						
20 days/year, 5 consult @ \$331	6,620	16,550	33,100	33,100	26,400	115,850
overhead: (100%)	6,620	16,550	33,100	33,100	26,400	115,850
travel: 5 @ \$900	1,800	2,250	4,500	4,500	2,700	15,750
per diem: 26*5*152	3,952	9,800	19,760	19,760	15,008	69,160
local travel: 1 trip*5* \$100	200	500	500	500	300	2,000
admin support (1/3 \$12,000)	800	4,000	4,000	4,000	3,192	16,000
National						
30 days/year, 6 consult @ \$125 + design		13,125	24,375	24,375	24,375	86,250
local travel: 4 trips* \$100*6 consult		1,200	2,400	2,400	2,400	8,400
per diem: 4 trips*5 days* \$100*6 consu		6,000	12,000	12,000	12,000	42,000
admin support (1/3 \$12,000)		4,000	4,000	4,000	4,000	16,000
Project Implementation Unit		151,603	151,603	151,603	151,603	606,412
TRAINING						
30 part, 5 day/cour, \$100 pp, 18 cour/y		27,000	54,000	54,000	54,000	189,000
30 part, 12 courses/year, \$1000/course		12,000	12,000	12,000	12,000	48,000
MATERIALS and PUBLICATIONS						
Technical manuals		5,000		1,000		6,000
Training manuals/resource materials		2,625	5,625	2,625	1,625	12,500
Publication of laws/regulations		2,000	3,000	3,000	3,000	11,000
Purchase of books, publications, etc		1,000	2,000	2,000	2,000	7,000
INTERNATIONAL TRAVEL						
travel: 5 people, 1 trip, \$900 + exchanges		10,750	6,250	6,250	6,250	29,500
per diem: 5 people*5 days* \$144		3,600				3,600
PROJECT ADMINISTRATION						
USPSC				115,000	82,000	197,000
Secretary				14,000	10,200	24,200
Equipment (see Illustrative Procurement Plan)						0
Other expenses				5,000	3,400	8,400
EVALUATIONS			15,000		26,000	41,000
AUDITS		6,000	6,000	6,000	6,000	24,000
Total	20,000	295,633	393,213	510,213	475,813	1,694,872

Table No.11

JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by component and line item
US Dollars

Component	FY1993	FY1994	FY1995	FY1996	FY1997	Total
SAN CARLOS UNIVERSITY						
TECHNICAL ASSISTANCE						
International						
20 days/year, 5 consult 00331	16,550	33,100	33,100	33,100	33,100	115,850
overhead: (100%)	16,550	33,100	33,100	33,100	33,100	115,850
travel: 5 @ \$900	2,250	4,500	4,500	4,500	4,500	15,750
perdiem: 26*5*152	9,800	19,760	19,760	19,760	19,760	69,160
local travel: 1 trip*5*100	500	500	500	500	500	2,000
admin support (1/3 \$12,000)	4,000	4,000	4,000	4,000	4,000	16,000
National						
30 days/year, 6 consult 00125	11,250	22,500	22,500	22,500	22,500	78,750
local travel: 4 trips*100*6 consult	1,200	2,400	2,400	2,400	2,400	8,400
perdiem: 4 trips*5 days*100*6 consult	6,000	12,000	12,000	12,000	12,000	42,000
admin support (1/3 \$12,000)	4,000	4,000	4,000	4,000	4,000	16,000
Project Implementation Unit	151,603	151,603	151,603	151,603	151,603	606,412
TRAINING						
30 part, 5 day/cour, \$100 pp, 15 cour/y	22,500	45,000	45,000	45,000	45,000	157,500
MATERIALS and PUBLICATIONS						
Technical manuals	5,000		1,000			6,000
Training manuals/resource materials	2,000	5,000	2,000			9,000
Publication of laws/regulations	1,000	2,000	2,000			5,000
Purchase of books, publications, etc	1,000	2,000	2,000			5,000
INTERNATIONAL TRAVEL						
travel: 5 people, 1 trip, \$900	4,500	4,500	4,500	4,500	4,500	18,000
perdiem: 5 people*5 days*\$144	3,600	3,600	3,600	3,600	3,600	14,400
EQUIPMENT						
See Illustrative Procurement Plan		30,000				30,000
PRIVATE SECTOR ADVOCACY						
Training		5,000	15,000	15,000	15,000	35,000
Materials		2,000	2,000	2,000	2,000	6,000
Travels		1,000	2,000	1,000	1,000	4,000
EVALUATIONS			15,000		25,500	40,500
AUDITS		6,000	6,000	6,000	6,000	24,000
Total	0	299,383	378,563	372,563	390,063	1,440,572

Table No.12

**JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by component and line item
US Dollars**

Component	FY1993	FY1994	FY1995	FY1996	FY1997	Total
ICITAP						
Training.Direct transfer AID/G-AID/W	10,000	290,000				300,000
OPDAT						
Training. PABA agreement	10,000	50,000	100,000	100,000	90,000	350,000
USAID (direct)						
PROJECT ADMINISTRATION						
USPDC	73,000	115,000	115,000			303,000
Secretary	4,300	13,000	13,500			30,800
Equipment (see illust. Procur. Plan)	10,000					10,000
Other expenses	1,600	5,000	5,000			11,600

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Table No.13

JUSTICE SECTOR REFORM SUPPORT
Counterpart Contribution
Illustrative Budget
Expenses by component and line item
US Dollars

Component	FY1993	FY1994	FY1995	FY1996	FY1997	Total
PUBLIC MINISTRY						
TECHNICAL ASSISTANCE						
International						
Salaries of technicians/counterparts	1,852	3,704	3,704	3,704	3,704	12,963
loc trav: per diem 1trip*3days*5*Q100	463	463	463	463	463	1,852
Office space + admin support Q200/m	19	37	37	37	37	130
Local						
Salaries of technicians/counterparts	2,770	5,536	5,536	5,536	5,536	19,444
loc trav: per diem 4trip*3days*6*Q100	1,111	2,222	2,222	2,222	2,222	7,778
Office space + admin support Q200/m	19	37	37	37	37	130
TRAINING						
Salary of participants Q200/day	50,000	100,000	100,000	100,000	100,000	350,000
Training Unit support (see details in bulk file)	44,556	89,111	89,111	89,111	89,111	311,889
INTERNATIONAL TRAVEL						
Replacement of traveler Q200/day		926	926	926	926	3,704
Total	0	101,722	202,056	202,056	202,056	707,889

Table No.14

JUSTICE SECTOR REFORM SUPPORT
Counterpart Contribution
Illustrative Budget
Expenses by component and line item
US Dollars

Component	PY1993	PY1994	PY1995	PY1996	PY1997	Total
JUDICIAL BRANCH						
TECHNICAL ASSISTANCE						
International						
Salaries of technicians/counterparts		1,852	3,704	3,704	3,704	12,963
loc trav: per diem 1trip*5days*50Q100		463	463	463	463	1,852
Office space + admin support Q200/m		19	37	37	37	130
Local						
Salaries of technicians/counterparts		2,770	5,556	5,556	5,556	19,444
loc trav: per diem 4trip*5days*60Q100		1,111	2,222	2,222	2,222	7,770
Office space + admin support Q200/m		19	37	37	37	130
Planning Unit (details in bulk file)		27,672	55,344	55,344	55,344	193,702
TRAINING						
Salary of participants Q200/day		50,000	100,000	100,000	100,000	350,000
Training Unit support 4-month budget						
INTERNATIONAL TRAVEL						
Replacement of traveler Q200/day plus		926	9,026	9,026	9,026	28,004
Int'l travel & per diem for 5 people						
Total	0	84,838	176,388	176,388	176,388	614,092

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Table No.15

JUSTICE SECTOR REFORM SUPPORT
Counterpart Contribution
Illustrative Budget
Expenses by component and line item
US Dollars

Component	FY1993	FY1994	FY1995	FY1996	FY1997	Total
SAN CARLOS UNIVERSITY						
TECHNICAL ASSISTANCE						
International						
Salaries of technicians/counterparts		1,852	3,704	3,704	3,704	12,963
loc trav: per diem 1trip*3days*50Q100		463	463	463	463	1,852
Office space + admin support Q200/m		19	37	37	37	130
Local						
Salaries of technicians/counterparts		2,778	5,556	5,556	5,556	19,444
loc trav: per diem 4trip*3days*60Q100		1,111	2,222	2,222	2,222	7,778
Office space + admin support Q200/m		19	37	37	37	130
Law Faculty Jud Invest Inst (1138)		17,480	34,960	34,960	34,960	122,360
TRAINING						
Salary of participants Q200/day		41,667	83,333	83,333	83,333	291,667
INTERNATIONAL TRAVEL						
Replacement of traveler Q200/day			926	926	926	2,778
EQUIPMENT						
Installation, Maintenance + Supplies		6,000	3,000	3,000	3,000	15,000
Total	0	71,307	134,238	134,238	134,238	474,101

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Table No.16
AID Contribution
Illustrative Budget
US Dollars

PROJECT IMPLEMENTATION UNIT	FY1993	FY1994	FY1995	FY1996	FY1997	Total
Salary Chief of Party (USA)	33,000	68,640	71,385	74,240	74,240	247,265
Salary Training Coordinator (LOCAL)	11,111	23,333	24,500	25,500	25,725	84,669
Accountant	4,630	9,722	10,208	10,208	10,719	35,279
Secretary	3,241	6,806	7,146	7,146	7,503	24,695
Messenger/Driver	2,315	4,861	5,104	5,104	5,359	17,639
Fringe Benefits, locals (36%)	7,667	16,100	16,905	16,905	17,750	58,422
Overhead (100%)	33,000	68,640	71,385	74,240	74,240	247,265
Fringe Benefits (USA)	20,005	40,010	40,010	40,010	40,010	140,035
Post assignment/end of tour	20,000				20,000	40,000
R&R, Home Leave			2,000	10,000		12,000
Transportation/Storage HSE	11,000	3,000	3,000	3,000	11,000	28,000
Transportation of POV	2,000				2,000	4,000
Equipment						
office equipment/furniture		23,000				23,000
3 PCs + 1 printer		20,000				20,000
fax		1,110				1,110
photocopier		2,500				2,500
Office rental and Utilities	15,400	17,800	22,600	25,000	25,000	80,800
Office supplies	6,500	11,000	11,000	11,000	11,000	39,500
International travel + Per diem	3,500	7,000	7,000	7,000	7,000	24,500
Local travel		400	800	800	800	2,800
sub-total	0	220,378	279,712	301,043	332,347	1,133,480
Fixed fee (7% of total contract)	0	15,426	19,580	21,073	23,264	79,344
Total	0	235,804	299,292	322,116	355,611	1,212,824

JUSTICE SECTOR REFORM SUPPORT
AID Contribution
Illustrative Budget
Expenses by implementing institution
US Dollars

INSTITUTION/LINE ITEM	FY1993	FY1994	FY1995	FY1996	FY1997	Total	%
PUBLIC MINISTRY							
TECHNICAL ASSISTANCE							
TA International		49,730	94,960	94,960	94,960	334,610	39%
TA National		24,325	42,775	42,775	42,775	152,650	18%
Project Implementation Unit		0	0	0	0	0	0%
TRAINING		39,000	51,000	51,000	51,000	186,000	22%
MATERIALS and PUBLICATIONS		21,625	15,125	12,625	7,125	56,500	7%
INTERNATIONAL TRAVEL		14,350	17,590	19,210	14,350	65,500	8%
EQUIPMENT							0%
PRIVATE SECTOR ADVOCACY							0%
PROJECT ADMINISTRATION							0%
EVALUATIONS		0	15,000	0	25,500	40,500	5%
AUDITS		5,396	6,000	6,300	6,300	23,996	3%
Sub-total:	0	148,426	242,450	226,570	241,710	859,156	100%
JUDICIAL BRANCH							
TECHNICAL ASSISTANCE							
TA International	20,000	49,730	94,960	94,960	74,960	334,610	20%
TA National		24,325	42,775	42,775	42,775	152,650	9%
Project Implementation Unit		151,603	151,603	151,603	151,603	606,412	36%
TRAINING		39,000	66,000	66,000	66,000	237,000	14%
MATERIALS and PUBLICATIONS		10,625	10,625	8,625	6,625	36,500	2%
INTERNATIONAL TRAVEL		14,350	6,250	6,250	6,250	33,100	2%
EQUIPMENT							0%
PRIVATE SECTOR ADVOCACY							0%
PROJECT ADMINISTRATION		0	0	134,000	95,600	229,600	14%
EVALUATIONS		0	15,000	0	26,000	41,000	2%
AUDITS		6,000	6,000	6,000	6,000	24,000	1%
Sub-total:	20,000	295,633	393,213	510,213	475,513	1,694,872	100%
SAN CARLOS UNIVERSITY							
TECHNICAL ASSISTANCE							
TA International		49,730	94,960	94,960	94,960	334,610	23%
TA National		22,450	40,900	40,900	40,900	145,150	10%
Project Implementation Unit		151,603	151,603	151,603	151,603	606,412	42%
TRAINING		22,500	45,000	45,000	45,000	157,500	11%
MATERIALS and PUBLICATIONS		9,000	9,000	7,000	0	25,000	2%
INTERNATIONAL TRAVEL		8,100	8,100	8,100	8,100	32,400	2%
EQUIPMENT		30,000	0	0	0	30,000	2%
PRIVATE SECTOR ADVOCACY		0	8,000	19,000	18,000	45,000	3%
PROJECT ADMINISTRATION							0%
EVALUATIONS		0	15,000	0	25,500	40,500	3%
AUDITS		6,000	6,000	6,000	6,000	24,000	2%
Sub-total:	0	295,363	378,563	372,563	390,063	1,440,572	100%
ICITAP, OPDAT							
TECHNICAL ASSISTANCE							0%
TA International							
TA National							
Project Implementation Unit							
TRAINING	20,000	340,000	100,000	100,000	90,000	650,000	100%
MATERIALS and PUBLICATIONS							0%
INTERNATIONAL TRAVEL							0%
EQUIPMENT							0%
PRIVATE SECTOR ADVOCACY							0%
PROJECT ADMINISTRATION							0%
EVALUATIONS							0%
AUDITS							0%
Sub-total:	20,000	340,000	100,000	100,000	90,000	650,000	100%
AID (direct)							
PROJECT ADMINISTRATION	88,900	133,000	133,300			355,400	100%
Total:	128,900	1,216,426	1,247,726	1,209,346	1,197,586	5,000,000	
%		3%	24%	25%	24%	24%	100%

Table No. 18

TRAINING PLAN

Illustrative Budget
(figures in US Dollars)

Number	Description	FY1993	FY1994	FY1995	FY1996	FY1997	Total
PUBLIC MINISTRY							
30	participants, 5 day course, \$100 per person, 18 courses per year, except year 1: 9 courses		27,000	45,000	45,000	45,000	162,000
30	participants, 6 courses/year, \$1000 per course		6,000	6,000	6,000	6,000	24,000
JUDICIAL BRANCH							
30	participants, 5 day course, \$100 per person, 18 courses per year, except year 1: 9 courses		27,000	54,000	54,000	54,000	189,000
30	participants, 12 courses/year, \$1000/course		12,000	12,000	12,000	12,000	48,000
SAN CARLOS UNIVERSITY							
15	participants, 5 day course, \$100 per person, 18 courses per year, except year 1: 7.5 courses		22,500	45,000	45,000	45,000	157,500
PRIVATE SECTOR ADVOCACY							
	Training		0	5,000	15,000	15,000	35,000
	ICITAP	10,000	250,000				300,000
	OPDAT	10,000	50,000	100,000	100,000	90,000	350,000
	Total	20,000	454,500	701,500	544,000	544,000	2,264,000

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GUATEMALA - 1993

SC(1) - COUNTRY CHECKLIST

Listed below are statutory criteria applicable to the eligibility of countries to receive the following categories of assistance: (A) both Development Assistance and Economic Support Funds; (B) Development Assistance funds only; or (C) Economic Support Funds only.

COUNTRY ELIGIBILITY CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUND ASSISTANCE

Narcotics Certification

(FAA Sec. 490): (This provision applies to assistance provided by grant, sale, loan, lease, credit, guaranty, or insurance, except assistance relating to international narcotics control, disaster and refugee relief assistance, narcotics related assistance, or the provision of food (including the monetization of food) or medicine, and the provision of non-agricultural commodities under P.L. 480. This provision also does not apply to assistance for child survival and AIDS programs which can, under section 542 of the FY 1993 Appropriations Act, be made available notwithstanding any provision of law that restricts assistance to foreign countries.) If the recipient is a "major illicit drug producing country" (defined as a country producing during a fiscal year at least five metric tons of opium or 500 metric tons of coca or marijuana) or a "major drug-transit country" (defined as a country that is a significant direct source of illicit drugs significantly affecting the United States, through which such drugs are transported, or through which significant sums of drug-related profits are laundered with the knowledge or complicity of the government):

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(1) has the President in the April 1 International Narcotics Control Strategy Report (INSCR) determined and certified to the Congress (without Congressional enactment, within 45 calendar days, of a resolution disapproving such a certification), that (a) during the previous year the country has cooperated fully with the United States or taken adequate steps on its own to satisfy the goals and objectives established by the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or that (b) the vital national interests of the United States require the provision of such assistance?

Yes.

(2) with regard to a major illicit drug producing or drug-transit country for which the President has not certified on April 1, has the President determined and certified to Congress on any other date (with enactment by Congress of a resolution approving such certification) that the vital national interests of the United States require the provision of assistance, and has also certified that (a) the country has undergone a fundamental change in government, or (b) there has been a fundamental change in the conditions that were the reason why the President had not made a "fully cooperating" certification.

Not applicable.

2. Indebtedness to U.S. citizens (FAA Sec. 620(c): If assistance is to a government, is the government indebted to any U.S. citizen for goods or services furnished or ordered where: (a) such citizen has exhausted available legal remedies, (b) the debt is not denied or contested by such government, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government or controlled entity?

No.

3. Seizure of U.S. Property (FAA Sec. 620(e)(1)): If assistance is to a government, has it (including any government agencies or subdivisions) taken any action which has the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property of U.S. citizens or entities beneficially owned by them without taking steps to discharge its obligations toward such citizens or entities?

No.

B

4. Communist countries (FAA Secs. 620(a), 620(f), 620D; FY 1993 Appropriations Act Secs. 512, 543): Is recipient country a Communist country? If so, has the President: (a) determined that assistance to the country is vital to the security of the United States, that the recipient country is not controlled by the international Communist conspiracy, and that such assistance will further promote the independence of the recipient country from international communism, or (b) removed a country from applicable restrictions on assistance to communist countries upon a determination and report to Congress that such action is important to the national interest of the United States? Will assistance be provided either directly or indirectly to Angola, Cambodia, Cuba, Iraq, Libya, Vietnam, Iran or Syria? Will assistance be provided to Afghanistan without a certification, or will assistance be provided inside Afghanistan through the Soviet-controlled government of Afghanistan?

No, the recipient country is not a Communist country.

5. Mob Action (FAA Sec. 620(j)):

Has the country permitted, or failed to take adequate measures to prevent, damage or destruction by mob action of U.S. property?

No.

6. OPIC Investment Guaranty (FAA Sec. 620(l)): Has the country failed to enter into an investment guaranty agreement with OPIC?

No.

7. Seizure of U.S. Fishing Vessels (FAA Sec. 620(o); Fishermen's Protective Act of 1967 (as amended) Sec. 5): (a) Has the country seized, or imposed any penalty or sanction against, any U.S. fishing vessel because of fishing activities in international waters? (b) If so, has any deduction required by the Fishermen's Protective Act been made?

No.

8. Loan Default (FAA Sec. 620(q); FY 1993 Appropriations Act Sec. 518 (Brooke Amendment)): (a) Has the government of the recipient country been in default for more than six months on interest or principal of any loan to the country under the FAA? (b) Has the country been in default for more than one year on interest or principal on any U.S. loan under a program for which the FY 1990 Appropriations Act appropriates funds?

No.

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9. Military Equipment (FAA Sec 620(s)): If contemplated assistance is development loan or to come from Economic Support Fund, has the Administrator taken into account the percentage of the country's budget and amount of the country's foreign exchange or other resources spent on military equipment? (Reference may be made to the annual "Taking Into Consideration" memo: "Yes, taken into account by the Administrator at time of approval of Agency OYB." This approval by the Administrator of the Operational Year Budget can be the basis for an affirmative answer during the fiscal year unless significant changes in circumstances occur.)

10. Diplomatic Relations with U.S. (FAA Sec. 620(t)): Has the country severed diplomatic relations with the United States? If so, have relations been resumed and have new bilateral assistance agreements been negotiated and entered into since such resumption?

11. U.N. Obligations (FAA Sec. 620(u)): What is the payment status of the country's U.N. obligations? If the country is in arrears, were such arrearages taken into account by the A.I.D. Administrator in determining the current A.I.D. Operational Year Budget? (Reference may be made to the "Taking into Consideration" memo.)

12. International Terrorism

a. Sanctuary and support (FY 1993 Appropriations Act Sec. 554; FAA Sec. 620A): Has the country been determined by the President to: (a) grant sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (b) otherwise support international terrorism, unless the President has waived this restriction on grounds of national security or for humanitarian reasons?

b. Airport Security (ISDCA of 1985 Sec. 552(b)). Has the Secretary of State determined that the country is a high terrorist threat country after the Secretary of Transportation has determined, pursuant to section 1115(e)(2) of the Federal Aviation Act of 1958, that an airport in the country does not maintain and administer effective security measures?

Yes, taken into consideration by the Administrator at the time of approval of the 1993 OYB.

No.

Guatemala is in arrears on the payment of obligations to the U.N. Guatemala's arrearages, both in general and for purposes of Article 19 of the U.N. Charter, were taken into account by the Administrator at the time of approval of the FY 1993 OYB.

No.

No.

13. **Discrimination (FAA Sec. 666(b)):** No.
 Does the country object, on the basis of race, religion, national origin or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA?

14. **Nuclear Technology (FAA Secs. 669, 670):** No.
 Has the country, after August 3, 1977, delivered to any other country or received nuclear enrichment or reprocessing equipment, materials, or technology, without specialized arrangements or safeguards, and without special certification by the President? Has it transferred a nuclear explosive device to a non-nuclear weapon state, or if such a state, either received or detonated a nuclear explosive device? If the country is a non-nuclear weapon state, has it, on or after August 8, 1985, exported (or attempted to export) illegally from the United States any material, equipment, or technology which would contribute significantly to the ability of a country to manufacture a nuclear explosive device? (FAA Sec. 620E permits a special waiver of Sec. 669 for Pakistan.)

15. **Algiers Meeting (ISDCA of 1981, Sec. 720):** No, Guatemala did not become a member of NAM until 1982.
 Was the country represented at the Meeting of Ministers of Foreign Affairs and Heads of Delegations of the Non-Aligned Countries to the 36th General Assembly of the U.N. on Sept. 25 and 26, 1981, and did it fail to disassociate itself from the communique issued? If so, has the President taken it into account? (Reference may be made to the "Taking into Consideration" memo.)

16. **Military Coup (FY 1993 Appropriations Act Sec. 513):** No.
 Has the duly elected Head of Government of the country been deposed by military coup or decree? If assistance has been terminated, has the President notified Congress that a democratically elected government has taken office prior to the resumption of assistance?

17. **Refugee Cooperation (FY 1993 Appropriations Act Sec. 538):** Yes.
 Does the recipient country fully cooperate with the international refugee assistance organizations, the United States, and other governments in facilitating lasting solutions

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to refugee situations, including resettlement without respect to race, sex, religion, or national origin?

18. **Exploitation of Children (FAA Sec. 116(b)):** Does the recipient government fail to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services? No.

B. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO DEVELOPMENT ASSISTANCE ("DA")

1. **Human Rights Violations (FAA Sec. 116):** Has the Department of State determined that this government has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, can it be demonstrated that contemplated assistance will directly benefit the needy? No.

2. **Abortions (FY 1993 Appropriations Act Sec. 534):** Has the President certified that use of DA funds by this country would violate any of the prohibitions against use of funds to pay for the performance of abortions as a method of family planning, to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilization as a method of family planning, to coerce or provide any financial incentive to any person to undergo sterilizations, to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning? No.

C. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO ECONOMIC SUPPORT FUNDS ("ESF")

Human Rights Violations (FAA Sec. 502B): No.
Has it been determined that the country has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, has the President found that the country made such significant improvement in its human rights record that furnishing such assistance is in the U.S. national interest?

gr

LAC/CEN:JVandenBos:kw:12/16/92:7-9541

Clearances:

LAC/CEN:JVandenBos: *[Signature]*
LAC/SAM:AMcDonald: *[Signature]*
LAC/DR:JHradsky: *[Signature]*
LAC/DPP:ESalliman: *[Signature]*
GC/LAC:NEittipaldi: *[Signature]*
ARA/CEN:JARndt: *[Signature]*
State/IOSB:THobgood: *[Signature]*
State/HA/BA:NJacobson: *[Signature]*
State/PP/ENA:DKemp: *[Signature]*
State/INN:KCarroll: *[Signature]*

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ANNEX G.2

5C(2) - PROJECT ASSISTANCE CHECKLIST

Listed below are statutory criteria applicable to the assistance resources themselves, rather than to the eligibility of a country to receive assistance. This section is divided into three parts. Part A includes criteria applicable to both Development Assistance and Economic Support Fund resources. Part B includes criteria applicable only to Development Assistance resources. Part C includes criteria applicable only to Economic Support Funds.

CROSS REFERENCE: IS COUNTRY CHECKLIST UP TO DATE?

A. CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUNDS

1. Host Country Development Efforts (FAA Sec. 601(a)): Information and conclusions on whether assistance will encourage efforts of the country to: (a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture, and commerce; and (f) strengthen free labor unions.

A more efficient and transparent justice system will provide a better climate for international trade and private competition. Other points are not applicable.

2. U.S. Private Trade and Investment (FAA Sec. 601(b)): Information and conclusions on how assistance will encourage U.S. private trade and investment abroad and encourage private U.S. participation in foreign assistance programs (including use of private trade channels and the services of U.S. private enterprise).

Private and public sector entities from the U.S. will be involved in providing technical assistance and training through this project.

3. Congressional Notification

a. **General requirement (FY 1993 Appropriations Act Sec. 522; FAANSec. 634A):** If money is to be obligated for an activity not previously justified to Congress, or for an amount in excess of amount previously justified to Congress, has Congress been properly notified (unless the Appropriations Act notification requirement has been waived because of substantial risk to human health or welfare)?

Congressional Notification pending will expire prior to obligation of funds.

b. **Notice of new account obligation (FY 1993 Appropriations Act Sec. 514):** If funds are being obligated under an appropriation account to which they were not appropriated, has the President consulted with and provided a written justification to the House and Senate Appropriations Committees and has such obligation been subject to regular notification procedures?

N/A

c. **Cash transfers and nonproject sector assistance (FY 1993 Appropriations Act Sec. 571(b)(3)):** If funds are to be made available in the form of cash transfer or nonproject sector assistance, has the Congressional notice included a detailed description of how the funds will be used, with a discussion of U.S. interests to be served and a description of any economic policy reforms to be promoted?

N/A

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4. **Engineering and Financial Plans (FAA Sec. 611(a)):** Prior to an obligation in excess of \$500,000, will there be:

- (a) engineering, financial or other plans necessary to carry out the assistance; and
- (b) a reasonably firm estimate of the cost to the U.S. of the assistance?

- (a) Yes
- (b) Yes

5. **Legislative Action (FAA Sec. 611(a)(2)):** If legislative action is required within recipient country with respect to an obligation in excess of \$500,000, what is the basis for a reasonable expectation that such action will be completed in time to permit orderly accomplishment of the purpose of the assistance?

Prior to disbursement of funds provided under a Grant Agreement with the Public Ministry, the President of Guatemala must sign the Ministry's new Organic Law. The law is currently being reviewed by congressional committees and is broadly supported by all three branches of Government. It is expected that the law will be enacted within three months.

6. **Water Resources (FAA Sec. 611(b); FY 1993 Appropriations Act Sec. 501):** If project is for water or water-related land resource construction, have benefits and costs been computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.)? (See A.I.D. Handbook 3 for guidelines.)

N/A

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7. **Cash Transfer and Sector Assistance (FY 1993 Appropriations Act Sec. 571(b)):** Will cash transfer or nonproject sector assistance be maintained in a separate account and not commingled with other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance)?

N/A

8. **Capital Assistance (FAA Sec. 611(e)):** If project is capital assistance (e.g., construction), and total U.S. assistance for it will exceed \$1 million, has Mission Director certified and Regional Assistant Administrator taken into consideration the country's capability to maintain and utilize the project effectively?

N/A

9. **Multiple Country Objectives (FAA Sec. 601(a)):** Information and conclusions on whether projects will encourage efforts of the country to:
(a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture and commerce; and (f) strengthen free labor unions.

See item (1) above.

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10. **U.S. Private Trade**
(FAA Sec. 601(b)):
Information and conclusions on
how project will encourage
U.S. private trade and
investment abroad and
encourage private U.S.
participation in foreign
assistance programs (including
use of private trade channels
and the services of U.S.
private enterprise).

See item (2) above.

11. **Local Currencies**

a. **Recipient Contributions**
(FAA Secs. 612(b), 636(h)):
Describe steps taken to assure
that, to the maximum extent
possible, the country is
contributing local currencies
to meet the cost of
contractual and other
services, and foreign
currencies owned by the U.S.
are utilized in lieu of
dollars.

Counterpart will cover most of
the in-country costs
associated with the activities
under this Project. No
U.S.-owned local currency is
available to support this
Project.

b. **U.S.-Owned Currency**
(FAA Sec. 612(d)): Does the
U.S. own excess foreign
currency of the country and,
if so, what arrangements have
been made for its release?

No

c. **Separate Account (FY**
1993 Appropriations Act Sec.
571). If assistance is
furnished to a foreign
government under arrangements
which result in the generation
of local currencies:

N/A (entire item)

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(1) Has A.I.D. (a) required that local currencies be deposited in a separate account established by the recipient government, (b) entered into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized, and (c) established by agreement the responsibilities of A.I.D. and that government to monitor and account for deposits into and disbursements from the separate account?

(2) Will such local currencies, or an equivalent amount of local currencies, be used only to carry out the purposes of the DA or ESF chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government?

(3) Has A.I.D. taken all appropriate steps to ensure that the equivalent of local currencies disbursed from the separate account are used for the agreed purposes?

(4) If assistance is terminated to a country, will any unencumbered balances of funds remaining in a separate account be disposed of for purposes agreed to by the recipient government and the United States Government?

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12. Trade Restrictions

a. Surplus Commodities (FY 1993 Appropriations Act Sec. 520(a)): If assistance is for the production of any commodity for export, is the commodity likely to be in surplus on world markets at the time the resulting productive capacity becomes operative, and is such assistance likely to cause substantial injury to U.S. producers of the same, similar or competing commodity?

N/A

b. Textiles (Lautenberg Amendment) (FY 1993 Appropriations Act Sec. 520(c)): Will the assistance (except for programs in Caribbean Basin Initiative countries under U.S. Tariff Schedule "Section 807," which allows reduced tariffs on articles assembled abroad from U.S.-made components) be used directly to procure feasibility studies, prefeasibility studies, or project profiles of potential investment in, or to assist the establishment of facilities specifically designed for, the manufacture for export to the United States or to third country markets in direct competition with U.S. exports, of textiles, apparel, footwear, handbags, flat goods (such as wallets or coin purses worn on the person), work gloves or leather wearing apparel?

No

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13. Tropical Forests (FY 1991 Appropriations Act Sec. 533(c)(3) (as referenced in section 532(d) of the FY 1993 Appropriations Act): Will funds be used for any program, project or activity which would (a) result in any significant loss of tropical forests, or (b) involve industrial timber extraction in primary tropical forest areas?

No

14. PVO Assistance

a. Auditing and registration (FY 1993 Appropriations Act Sec. 536): If assistance is being made available to a PVO, has that organization provided upon timely request any document, file, or record necessary to the auditing requirements of A.I.D., and is the PVO registered with A.I.D.?

N/A

b. Funding sources (FY 1993 Appropriations Act, Title II, under heading "Private and Voluntary Organizations"): If assistance is to be made to a United States PVO (other than a cooperative development organization), does it obtain at least 20 percent of its total annual funding for international activities from sources other than the United States Government?

N/A

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**15. Project Agreement
Documentation**

N/A

(State Authorization Sec. 139 (as interpreted by conference report)): Has confirmation of the date of signing of the project agreement, including the amount involved, been cabled to State L/T and A.I.D. LEG within 60 days of the agreement's entry into force with respect to the United States, and has the full text of the agreement been pouched to those same offices? (See Handbook 3, Appendix 6G for agreements covered by this provision).

16. Metric System (Omnibus Trade and Competitiveness Act of 1988 Sec. 5164, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy): Does the assistance activity use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate?

N/A

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Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

17. Women in Development (FY 1993 Appropriations Act, Title II, under heading "Women in Development"): Will assistance be designed so that the percentage of women participants will be demonstrably increased?

Yes. See response to question 6(d) of Part B.

18. Regional and Multilateral Assistance (FAA Sec. 209): Is assistance more efficiently and effectively provided through regional or multilateral organizations? If so, why is assistance not so provided? Information and conclusions on whether assistance will encourage developing countries to cooperate in regional development programs.

No

19. Abortions (FY 1993 Appropriations Act, Title II, under heading "Population, DA," and Sec. 524):

a. Will assistance be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization?

No

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b. Will any funds be used to lobby for abortion? No

20. Cooperatives (FAA Sec. 111): Will assistance help develop cooperatives, especially by technical assistance, to assist rural and urban poor to help themselves toward a better life? N/A

21. U.S.-Owned Foreign Currencies

a. Use of currencies (FAA Secs. 612(b), 636(h); FY 1993 Appropriations Act Secs. 507, 509): Are steps being taken to assure that, to the maximum extent possible, foreign currencies owned by the U.S. are utilized in lieu of dollars to meet the cost of contractual and other services. N/A

b. Release of currencies (FAA Sec. 612(d)): Does the U.S. own excess foreign currency of the country and, if so, what arrangements have been made for its release? No

22. Procurement

a. Small business (FAA Sec. 602(a)): Are there arrangements to permit U.S. small business to participate equitably in the furnishing of commodities and services financed? Yes

b. U.S. procurement (FAA Sec. 604(a) as amended by section 597 of the FY 1993 Appropriations Act): Will all procurement be from the U.S., the recipient country, or developing countries except as otherwise determined in accordance with the criteria of this section? Yes

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c. Marine insurance (FAA Sec. 604(d)): If the cooperating country discriminates against marine insurance companies authorized to do business in the U.S., will commodities be insured in the United States against marine risk with such a company?

N/A

d. Non-U.S. agricultural procurement (FAA Sec. 604(e)): If non-U.S. procurement of agricultural commodity or product thereof is to be financed, is there provision against such procurement when the domestic price of such commodity is less than parity? (Exception where commodity financed could not reasonably be procured in U.S.)

N/A

e. Construction or engineering services (FAA Sec. 604(g)): Will construction or engineering services be procured from firms of advanced developing countries which are otherwise eligible under Code 941 and which have attained a competitive capability in international markets in one of these areas? (Exception for those countries which receive direct economic assistance under the FAA and permit United States firms to compete for construction or engineering services financed from assistance programs of these countries.)

No

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f. **Cargo preference shipping (FAA Sec. 603):** Is the shipping excluded from compliance with the requirement in section 901(b) of the Merchant Marine Act of 1936, as amended, that at least 50 percent of the gross tonnage of commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) financed shall be transported on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates?

N/A

g. **Technical assistance (FAA Sec. 621(a)):** If technical assistance is financed, will such assistance be furnished by private enterprise on a contract basis to the fullest extent practicable? Will the facilities and resources of other Federal agencies be utilized, when they are particularly suitable, not competitive with private enterprise, and made available without undue interference with domestic programs?

Yes. U.S. institutional contractors and Department of Justice entities will participate.

h. **U.S. air carriers (International Air Transportation Fair Competitive Practices Act, 1974):** If air transportation of persons or property is financed on grant basis, will U.S. carriers be used to the extent such service is available?

Yes

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i. Termination for convenience of U.S. Government (FY 1993 Appropriations Act Sec. 504): If the U.S. Government is a party to a contract for procurement, does the contract contain a provision authorizing termination of such contract for the convenience of the United States? Yes

j. Consulting services (FY 1993 Appropriations Act Sec. 523): If assistance is for consulting service through procurement contract pursuant to 5 U.S.C. 3109, are contract expenditures a matter of public record and available for public inspection (unless otherwise provided by law or Executive order)? Yes

k. Metric conversion (Omnibus Trade and Competitiveness Act of 1988, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy): Does the assistance program use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate? N/A

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Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

1. **Competitive Selection Procedures (FAA Sec. 601(e)):** Will the assistance utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise? Yes

23. Construction

a. **Capital project (FAA Sec. 601(d)):** If capital (e.g., construction) project, will U.S. engineering and professional services be used? N/A

b. **Construction contract (FAA Sec. 611(c)):** If contracts for construction are to be financed, will they be let on a competitive basis to maximum extent practicable? N/A

c. **Large projects, Congressional approval (FAA Sec. 620(k)):** If for construction of productive enterprise, will aggregate value of assistance to be furnished by the U.S. not exceed \$100 million (except for productive enterprises in Egypt that were described in the Congressional Presentation), or does assistance have the express approval of Congress? N/A

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24. **U.S. Audit Rights (FAA Sec. 301(d)):** If fund is established solely by U.S. contributions and administered by an international organization, does Comptroller General have audit rights? N/A

25. **Communist Assistance (FAA Sec. 620(h)).** Do arrangements exist to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of the Communist-bloc countries? N/A

26. **Narcotics**

a. **Cash reimbursements (FAA Sec. 483):** Will arrangements preclude use of financing to make reimbursements, in the form of cash payments, to persons whose illicit drug crops are eradicated? N/A

b. **Assistance to narcotics traffickers (FAA Sec. 487):** Will arrangements take "all reasonable steps" to preclude use of financing to or through individuals or entities which we know or have reason to believe have either: (1) been convicted of a violation of any law or regulation of the United States or a foreign country relating to narcotics (or other controlled substances); or (2) been an illicit trafficker in, or otherwise involved in the illicit trafficking of, any such controlled substance? Yes

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27. Expropriation and Land Reform (FAA Sec. 620(g)): Will assistance preclude use of financing to compensate owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President? N/A
28. Police and Prisons (FAA Sec. 660): Will assistance preclude use of financing to provide training, advice, or any financial support for police, prisons, or other law enforcement forces, except for narcotics programs? Yes, except through ICITAP. See page 38 of Project Paper.
29. CIA Activities (FAA Sec. 662): Will assistance preclude use of financing for CIA activities? Yes
30. Motor Vehicles (FAA Sec. 636(i)): Will assistance preclude use of financing for purchase, sale, long-term lease, exchange or guaranty of the sale of motor vehicles manufactured outside U.S., unless a waiver is obtained? Yes
31. Military Personnel (FY 1993 Appropriations Act Sec. 503): Will assistance preclude use of financing to pay pensions, annuities, retirement pay, or adjusted service compensation for prior or current military personnel? Yes

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32. **Payment of U.N. Assessments (FY 1993 Appropriations Act Sec. 505):** Will assistance preclude use of financing to pay U.N. assessments, arrearages or dues? **Yes**
33. **Multilateral Organization Lending (FY 1993 Appropriations Act Sec. 506):** Will assistance preclude use of financing to carry out provisions of FAA section 209(d) (transfer of FAA funds to multilateral organizations for lending)? **Yes**
34. **Export of Nuclear Resources (FY 1993 Appropriations Act Sec. 510):** Will assistance preclude use of financing to finance the export of nuclear equipment, fuel, or technology? **Yes**
35. **Repression of Population (FY 1993 Appropriations Act Sec. 511):** Will assistance preclude use of financing for the purpose of aiding the efforts of the government of such country to repress the legitimate rights of the population of such country contrary to the Universal Declaration of Human Rights? **Yes**
36. **Publicity or Propaganda (FY 1993 Appropriations Act Sec. 516):** Will assistance be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress, to influence in any way the outcome of a political election in the United States, or for any publicity or propaganda purposes not authorized by Congress? **No**

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37. Marine Insurance (FY 1993 Appropriations Act Sec. 560): Will any A.I.D. contract and solicitation, and subcontract entered into under such contract, include a clause requiring that U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate? N/A

38. Exchange for Prohibited Act (FY 1993 Appropriations Act Sec. 565): Will any assistance be provided to any foreign government (including any instrumentality or agency thereof), foreign person, or United States person in exchange for that foreign government or person undertaking any action which is, if carried out by the United States Government, a United States official or employee, expressly prohibited by a provision of United States law? No

39. Commitment of Funds (FAA Sec. 635(h)): Does a contract or agreement entail a commitment for the expenditure of funds during a period in excess of 5 years from the date of the contract or agreement? No

40. Impact on U.S. Jobs (FY 1993 Appropriations Act, Sec. 599):

(a) Will any financial incentive be provided to a business located in the U.S. for the purpose of inducing that business to relocate outside the U.S. in a manner that would likely reduce the number of U.S. employees of that business? No

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(b) Will assistance be provided for the purpose of establishing or developing an export processing zone or designated area in which the country's tax, tariff, labor, environment, and safety laws do not apply? If so, has the President determined and certified that such assistance is not likely to cause a loss of jobs within the U.S.?

No

(c) Will assistance be provided for a project or activity that contributes to the violation of internationally recognized workers rights, as defined in section 502(a)(4) of the Trade Act of 1974, of workers in the recipient country?

No

B. CRITERIA APPLICABLE TO DEVELOPMENT ASSISTANCE ONLY

1. **Agricultural Exports (Bumpers Amendment) (FY 1993 Appropriations Act Sec. 521(b), as interpreted by conference report for original enactment):** If assistance is for agricultural development activities (specifically, any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training), are such activities: (1) specifically and principally designed to increase agricultural exports by the host country to a country other than the United States, where the export would lead to direct competition in that third country with exports of a similar commodity grown or produced in the United States, and can the activities reasonably be expected to

N/A

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cause substantial injury to U.S. exporters of a similar agricultural commodity; or (2) in support of research that is intended primarily to benefit U.S. producers?

2. **Tied Aid Credits (FY 1993 Appropriations Act, Title II, under heading "Economic Support Fund"):** Will DA funds be used for tied aid credits?

N/A

3. **Appropriate Technology (FAA Sec. 107):** Is special emphasis placed on use of appropriate technology (defined as relatively smaller, cost-saving, labor-using technologies that are generally most appropriate for the small farms, small businesses, and small incomes of the poor)?

N/A

4. **Indigenous Needs and Resources (FAA Sec. 281(b)):** Describe extent to which the activity recognizes the particular needs, desires, and capacities of the people of the country; utilizes the country's intellectual resources to encourage institutional development; and supports civic education and training in skills required for effective participation in governmental and political processes essential to self-government.

The Project will strengthen the institutional capacity of key judicial sector organizations through systems improvement and training for a significant portion of sector personnel in modernized investigation, prosecutorial and legal defense techniques.

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5. **Economic Development**
(FAA Sec. 101(a)): Does the activity give reasonable promise of contributing to the development of economic resources, or to the increase of productive capacities and self-sustaining economic growth?

N/A

6. **Special Development Emphases** (FAA Secs. 102(b), 113, 281(a)): Describe extent to which activity will:

(a) effectively involve the poor in development by extending access to economy at local level, increasing labor-intensive production and the use of appropriate technology, dispersing investment from cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using appropriate U.S. institutions;

N/A

(b) encourage democratic private and local governmental institutions;

An essential part of the criminal procedures reform is decentralization of the judicial system with concurrent strengthening of regional and local processes including expansion of justices of peace and legal defense coverage.

(c) support the self-help efforts of developing countries;

N/A

(d) promote the participation of women in the national economies of developing countries and the improvement of women's status; and

Training under the Project will specifically target women working in the sector. Additionally, as woman are more likely not to have the means to hire adequate legal defense and are more likely to be non-Spanish speaking, they will particularly benefit from the reforms supported by the Project.

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(e) utilize and encourage regional cooperation by developing countries.

N/A

7. Recipient Country Contribution (FAA Secs. 110, 124(d)): Will the recipient country provide at least 25 percent of the costs of the program, project, or activity with respect to which the assistance is to be furnished (or is the latter cost-sharing requirement being waived for a "relatively least developed" country)?

Yes, at least 25 percent counterpart will be provided.

8. Benefit to Poor Majority (FAA Sec. 128(b)): If the activity attempts to increase the institutional capabilities of private organizations or the government of the country, or if it attempts to stimulate scientific and technological research, has it been designed and will it be monitored to ensure that the ultimate beneficiaries are the poor majority?

Yes. Tracking of oral trial proceedings and legal defense-coverage will reflect benefits to the poor majority.

9. Abortions (FAA Sec. 104(f); FY 1993 Appropriations Act, Title II, under heading "Population, DA," and Sec. 534):

a. Are any of the funds to be used for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions?

N/A

b. Are any of the funds to be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations?

N/A

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c. Are any of the funds to be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization? N/A

d. Will funds be made available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services? N/A

e. In awarding grants for natural family planning, will any applicant be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning? N/A

f. Are any of the funds to be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning? N/A

g. Are any of the funds to be made available to any organization if the President certifies that the use of these funds by such organization would violate any of the above provisions related to abortions and involuntary sterilization? N/A

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10. **Contract Awards (FAA Sec. 601(e)):** Will the project utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise?

Yes

11. **Disadvantaged Enterprises (FY 1993 Appropriations Act Sec. 563):** What portion of the funds will be available only for activities of economically and socially disadvantaged enterprises, historically black colleges and universities, colleges and universities having a student body in which more than 40 percent of the students are Hispanic Americans, and private and voluntary organizations which are controlled by individuals who are black Americans, Hispanic Americans, or Native Americans, or who are economically or socially disadvantaged (including women)?

At least 10% of the funds allocated for the institutional contract will be subcontracted for such enterprises.

12. **Biological Diversity (FAA Sec. 119(g)):** Will the assistance: (a) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity; (b) be provided under a long-term agreement in which the recipient country agrees to protect ecosystems or other wildlife habitats; (c) support efforts to identify and survey ecosystems in recipient countries worthy of protection; or (d) by any direct or indirect means significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas?

N/A

13. Tropical Forests (FAA
Sec. 118; FY 1991
Appropriations Act Sec. 533(c)
as referenced in section
532(d) of the FY 1993
Appropriations Act):

a. A.I.D. Regulation 16:
Does the assistance comply
with the environmental
procedures set forth in A.I.D.
Regulation 16?

N/A

b. Conservation: Does the
assistance place a high
priority on conservation and
sustainable management of
tropical forests?
Specifically, does the
assistance, to the fullest
extent feasible: (1) stress
the importance of conserving
and sustainably managing
forest resources; (2) support
activities which offer
employment and income
alternatives to those who
otherwise would cause
destruction and loss of
forests, and help countries
identify and implement
alternatives to colonizing
forested areas; (3) support
training programs, educational
efforts, and the establishment
or strengthening of
institutions to improve forest
management; (4) help end
destructive slash-and-burn
agriculture by supporting
stable and productive farming
practices; (5) help conserve
forests which have not yet
been degraded by helping to
increase production on lands
already cleared or degraded;
(6) conserve forested
watersheds and rehabilitate
those which have been
deforested; (7) support

N/A

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training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing; (8) support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation; (9) conserve biological diversity in forest areas by supporting efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis, by making the establishment of protected areas a condition of support for activities involving forest clearance or degradation, and by helping to identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas; (10) seek to increase the awareness of U.S. Government agencies and other donors of the immediate and long-term value of tropical forests; (11) utilize the resources and abilities of all relevant U.S. government agencies; (12) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land; and (13) take full account of the environmental impacts of the proposed activities on biological diversity?

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c. Forest degradation:
Will assistance be used for:
(1) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems;
(2) actions which will significantly degrade national parks or similar protected areas which contain tropical forests, or introduce exotic plants or animals into such areas; (3) activities which would result in the conversion of forest lands to the rearing of livestock; (4) the construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undergraded forest lands; (5) the colonization of forest lands; or (6) the construction of dams or other water control structures which flood relatively undergraded forest lands, unless with respect to each such activity an environmental assessment indicates that the activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development?

N/A

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d. **Sustainable forestry:** N/A
If assistance relates to tropical forests, will project assist countries in developing a systematic analysis of the appropriate use of their total tropical forest resources, with the goal of developing a national program for sustainable forestry?

e. **Environmental impact statements:** N/A
Will funds be made available in accordance with provisions of FAA Section 117(c) and applicable A.I.D. regulations requiring an environmental impact statement for activities significantly affecting the environment?

14. **Energy (FY 1991 Appropriations Act Sec. 533(c) as referenced in section 532(d) of the FY 1993 Appropriations Act):** N/A
If assistance relates to energy, will such assistance focus on: (a) end-use energy efficiency, least-cost energy planning, and renewable energy resources, and (b) the key countries where assistance would have the greatest impact on reducing emissions from greenhouse gases?

15. **Debt-for-Nature Exchange (FAA Sec. 463):** N/A
If project will finance a debt-for-nature exchange, describe how the exchange will support protection of: (a) the world's oceans and atmosphere, (b) animal and plant species, and (c) parks and reserves; or describe how the exchange will promote: (d) natural resource management, (e) local conservation programs,

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(f) conservation training programs, (g) public commitment to conservation, (h) land and ecosystem management, and (i) regenerative approaches in farming, forestry, fishing, and watershed management.

16. Deobligation/Reobligation

N/A

(FY 1993 Appropriations Act Sec. 515): If deob/reob authority is sought to be exercised in the provision of DA assistance, are the funds being obligated for the same general purpose, and for countries within the same region as originally obligated, and have the House and Senate Appropriations Committees been properly notified?

17. Loans

a. Repayment capacity (FAA Sec. 122(b)): Information and conclusion on capacity of the country to repay the loan at a reasonable rate of interest.

N/A

b. Long-range plans (FAA Sec. 122(b)): Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?

N/A

c. Interest rate (FAA Sec. 122(b)): If development loan is repayable in dollars, is interest rate at least 2 percent per annum during a grace period which is not to exceed ten years, and at least 3 percent per annum thereafter?

N/A

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d. Exports to United States (FAA Sec. 620(d)): If assistance is for any productive enterprise which will compete with U.S. enterprises, is there an agreement by the recipient country to prevent export to the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan, or has the requirement to enter into such an agreement been waived by the President because of a national security interest?

N/A

18. Development Objectives (FAA Secs. 102(a), 111, 113, 281(a)): Extent to which activity will: (1) effectively involve the poor in development, by expanding access to economy at local level, increasing labor-intensive production and the use of appropriate technology, spreading investment out from cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using the appropriate U.S. institutions; (2) help develop cooperatives, especially by technical assistance, to assist rural and urban poor to help themselves toward better life, and otherwise encourage democratic private and local governmental institutions; (3) support the self-help efforts of developing countries; (4) promote the participation of women in the national economies of developing countries and the improvement of women's status; and (5) utilize and encourage regional cooperation by developing countries?

N/A

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19. Agriculture, Rural Development and Nutrition, and Agricultural Research (FAA Secs. 103 and 103A):

a. Rural poor and small farmers: If assistance is being made available for agriculture, rural development or nutrition, describe extent to which activity is specifically designed to increase productivity and income of rural poor; or if assistance is being made available for agricultural research, has account been taken of the needs of small farmers, and extensive use of field testing to adapt basic research to local conditions shall be made.

N/A

b. Nutrition: Describe extent to which assistance is used in coordination with efforts carried out under FAA Section 104 (Population and Health) to help improve nutrition of the people of developing countries through encouragement of increased production of crops with greater nutritional value; improvement of planning, research, and education with respect to nutrition, particularly with reference to improvement and expanded use of indigenously produced foodstuffs; and the undertaking of pilot or demonstration programs explicitly addressing the problem of malnutrition of poor and vulnerable people.

N/A

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c. Food security:

N/A

Describe extent to which activity increases national food security by improving food policies and management and by strengthening national food reserves, with particular concern for the needs of the poor, through measures encouraging domestic production, building national food reserves, expanding available storage facilities, reducing post harvest food losses, and improving food distribution.

20. Population and Health

N/A

(FAA Secs. 104(b) and (c)): If assistance is being made available for population or health activities, describe extent to which activity emphasizes low-cost, integrated delivery systems for health, nutrition and family planning for the poorest people, with particular attention to the needs of mothers and young children, using paramedical and auxiliary medical personnel, clinics and health posts, commercial distribution systems, and other modes of community outreach.

21. Education and Human Resources Development (FAA Sec. 105): If assistance is being made available for education, public administration, or human resource development, describe (a) extent to which activity strengthens nonformal education, makes formal education more relevant, especially for rural families and urban poor, and strengthens management

A significant element of all components of the project is human resource development, both through in-country training and technical assistance as well as some U.S.-based and third-country based training/observational travel.

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capability of institutions enabling the poor to participate in development; and (b) extent to which assistance provides advanced education and training of people of developing countries in such disciplines as are required for planning and implementation of public and private development activities.

22. Energy, Private Voluntary Organizations, and Selected Development Activities (FAA Sec. 106):
If assistance is being made available for energy, private voluntary organizations, and selected development problems, describe extent to which activity is:

a. concerned with data collection and analysis, the training of skilled personnel, research on and development of suitable energy sources, and pilot projects to test new methods of energy production; and facilitative of research on and development and use of small-scale, decentralized, renewable energy sources for rural areas, emphasizing development of energy resources which are environmentally acceptable and require minimum capital investment;

N/A

b. concerned with technical cooperation and development, especially with U.S. private and voluntary, or regional and international development, organizations;

N/A

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c. research into, and evaluation of, economic development processes and techniques; N/A

d. reconstruction after natural or manmade disaster and programs of disaster preparedness; N/A

e. for special development problems, and to enable proper utilization of infrastructure and related projects funded with earlier U.S. assistance; N/A

f. for urban development, especially small, labor-intensive enterprises, marketing systems for small producers, and financial or other institutions to help urban poor participate in economic and social development. N/A

23. Capital Projects (Jobs Through Export Act of 1992, Secs. 303 and 306(d)): If assistance is being provided for a capital project, is the project developmentally sound and will the project measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level? N/A

C. CRITERIA APPLICABLE TO ECONOMIC SUPPORT FUNDS ONLY

1. Economic and Political ability Yes
(FAA Sec. 531(a)): Will this assistance promote economic and political stability? To the maximum extent feasible, is this assistance consistent with the policy directions, purposes, and programs of Part I of the FAA?

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2. **Military Purposes (FAA Sec. 531(e)):** Will this assistance be used for military or paramilitary purposes? No

3. **Commodity Grants/Separate Accounts (FAA Sec. 609):** If commodities are to be granted so that sale proceeds will accrue to the recipient country, have Special Account (counterpart) arrangements been made? (For FY 1993, this provision is superseded by the separate account requirements of FY 1993 Appropriations Act Sec. 571(a), see Sec. 571(a)(5).) N/A

4. **Generation and Use of Local Currencies (FAA Sec. 531(d)):** Will ESF funds made available for commodity import programs or other program assistance be used to generate local currencies? If so, will at least 50 percent of such local currencies be available to support activities consistent with the objectives of FAA sections 103 through 106? (For FY 1993, this provision is superseded by the separate account requirements of FY 1993 Appropriations Act Sec. 571(a), see Sec. 571(a)(5).) No local currencies will be generated.

5. **Cash Transfer Requirements (FY 1993 Appropriations Act, Title II, under heading "Economic Support Fund," and Sec. 571(b)).** If assistance is in the form of a cash transfer: N/A

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a. **Separate account:** Are all such cash payments to be maintained by the country in a separate account and not to be commingled with any other funds? N/A

b. **Local currencies:** Will all local currencies that may be generated with funds provided as a cash transfer to such a country also be deposited in a special account, and has A.I.D. entered into an agreement with that government setting forth the amount of the local currencies to be generated, the terms and conditions under which they are to be used, and the responsibilities of A.I.D. and that government to monitor and account for deposits and disbursements? N/A

c. **U.S. Government use of local currencies:** Will all such local currencies also be made available to the U.S. government as the U.S. determines necessary for the requirements of the U.S. Government, or to carry out development assistance (including DFA) or ESF purposes? N/A

d. **Congressional notice:** Has Congress received prior notification providing in detail how the funds will be used, including the U.S. interests that will be served by the assistance, and, as appropriate, the economic policy reforms that will be promoted by the cash transfer assistance? N/A

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6. Capital Projects (Jobs Through Exports Act of 1992, Sec. 306, FY 1993 Appropriations Act, Sec. 595):
If assistance is being provided for a capital project, will the project be developmentally-sound and sustainable, i.e., one that is (a) environmentally sustainable, (b) within the financial capacity of the government or recipient to maintain from its own resources, and (c) responsive to a significant development priority initiated by the country to which assistance is being provided. (Please note the definition of "capital project" contained in section 595 of the FY 1993 Appropriations Act.)

N/A

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<i>3/11/93</i>	

Refuted letter

**PRESIDENCIA DEL ORGANISMO JUDICIAL
Y DE LA CORTE SUPREMA DE JUSTICIA**

REPUBLICA DE GUATEMALA

NUMERO

264/snc

Guatemala, 5 de marzo de 1993.

Señor Director de la
Agencia para el Desarrollo Internacional
AID/Guatemala
Terrence J. Brown
la. calle 6-77, Zona 9
Edificio Plaza Uno
Ciudad

Señor Director:

Me permito hacer referencia a las pláticas sostenidas con anterioridad entre esta Presidencia y usted y funcionarios de AID/Guatemala, relacionados a la posibilidad de asistencia en el área de administración de justicia penal al Organismo Judicial de Guatemala, por parte de la Agencia para el Desarrollo Internacional.

En virtud de que la aprobación del nuevo Código Procesal Penal implica desarrollar las actividades para hacerlo operativo a la mayor brevedad posible y mejorar el sistema penal, y siendo que en diversas ocasiones hemos sostenido reuniones y conversado sobre la posibilidad de apoyar estos cambios, quiero hacer de su conocimiento, el interés de esta Presidencia y de la Corte Suprema de Justicia, en establecer y firmar un Convenio de Cooperación en tal sentido.

Desde hace varios meses un profesional designado por este Organismo y personal técnico de AID/Guatemala han establecido las posibles bases de un "Convenio de Donación" con el objeto de apoyar al Organismo Judicial a prepararse para poner en ejecución el nuevo Código Procesal Penal el cual entrará en vigencia en el mes de Diciembre de este año.

En resumen, el Proyecto del Convenio establecería cooperación en actividades como las siguientes:

- Implementación de la restructuración física de los Tribunales de Justicia Penal y para introducir una atmósfera de oralidad a los espacios que se utilicen en cada juzgado penal.

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**PRESIDENCIA DEL ORGANISMO JUDICIAL
Y DE LA CORTE SUPREMA DE JUSTICIA**

REPUBLICA DE GUATEMALA

NUMERO

- b) Producción, impresión y difusión de material informativo sobre el nuevo proceso penal, para que se divulgue entre la sociedad guatemalteca la importancia y trascendencia del mismo.
- c) Realización de actividades pedagógicas tendientes a fortalecer el programa de capacitación especializada dirigido principalmente a magistrados, jueces y demás operadores de la justicia penal, como: Seminarios, talleres, paneles, simposios, conferencias, etc., con la participación de juristas especializados nacionales e internacionales.
- d) Implementación y realización de congresos y foros para dar a conocer la Reforma Penal a nivel regional.
- e) Becas para jueces, magistrados, y demás operadores de la justicia penal con el propósito de conocer el funcionamiento del juicio oral en otros países.
- f) Elaboración y redacción de los diversos reglamentos procesales que demandan el articulado del Código Procesal Penal para actividades específicas.
- g) Diseño, desarrollo e implantación del sistema de informática que apoye a la Transformación Procesal Penal.
- h) Implementación del servicio público de defensa penal.
- i) Conformación y funcionamiento del Instituto de Investigaciones Criminales del Organismo Judicial que velará por el apoyo inmediato a los jueces y demás operadores de la justicia en la investigación de los delitos.

Por este medio, me permito solicitar a la Agencia para el Desarrollo Internacional, financiamiento en calidad de recursos no reembolsables por medio de un Convenio Bilateral. Por su parte, el Organismo Judicial y la Corte Suprema de Justicia, como en el caso de proyectos similares, contribuirá con la participación de recursos profesionales y técnicos, instalaciones y gastos conexos ya presupuestados y que están disponibles en el Organismo para apoyar y viabilizar la ejecución del proyecto.

En espera de concretar los arreglos para suscribir el Convenio correspondiente, al presentarnos oficialmente los documentos para nuestra consideración y aprobación final, me suscribo del señor Director con las muestras de mi consideración y estima.

**JUAN JOSE RODIL PERALTA
PRESIDENTE DEL ORGANISMO JUDICIAL
Y DE LA CORTE SUPREMA DE JUSTICIA**



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Procuraduría General de la Nación y Ministerio Público

18 CALLE 10-36 ZONA I, GUATEMALA, C. A. 01001
TELEFONOS: 511113, 530482, 537154 Y 537173

FAN A11060-93
Guatemala, 15 de marzo de 1993

Señor Director:

Tengo el agrado de dirigirme a usted, en ocasión de hacer referencia a las conversaciones sostenidas con anterioridad entre funcionarios del Ministerio Público y la Agencia para el Desarrollo Internacional, relativas a la posibilidad de implementar proyectos de asistencia en el área de administración de justicia penal a la Procuraduría General de la Nación y Ministerio Público de la República de Guatemala.

En virtud de que la aprobación del nuevo Código Procesal Penal implica el desarrollo de toda una serie de actividades que preparen el campo para hacerlo operativo a la brevedad posible, y siendo que en diversas ocasiones hemos sostenido reuniones y conversado sobre la posibilidad de apoyar estos cambios, deseo transmitir a usted el interés de esta institución en establecer y firmar un Convenio Bilateral de Cooperación en tal sentido.

El proyecto del referido Convenio establecería cooperación en actividades como las que a continuación se presentan de manera general:

- Asistencia técnica en forma de asesoría académica y capacitación en materia de Derecho Penal y otras materias afines mediante la contratación de especialistas

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Señor
TERRENCE J. BROWN
Director de la Agencia
para el Desarrollo Internacional, AID
Ciudad de Guatemala

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Procuraduría General de la Nación y Ministerio Público

18 CALLE 10-36 ZONA 1, GUATEMALA, C. A. 01001
TELEFONOS: 511113, 530402, 537184 Y 537173

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nacionales y extranjeros, tanto para fortalecer la capacidad de planificación académica de la Unidad de Capacitación como para la ejecución de cursos específicos en la referida materia (como una ampliación al Convenio de Donación para Proyecto de Alcance Limitado vigente en la actualidad).

- *Fortalecimiento de la capacidad contable del Ministerio Público y la estructuración de su Secretaría Financiera Administrativa por medio de la contratación de un empresa asesora especializada.*

- *Elaboración de los manuales y reglamentos de cada una de las posiciones de la estructura organizacional del Ministerio Público.*

- *Implementación de una Biblioteca Jurídica actualizada para la Sección de Consultoría.*

- *Elaboración de un estudio para el crecimiento estructural del Ministerio Público previo a la elaboración de planos para la construcción de un edificio adecuado a sus funciones.*

El financiamiento que el Ministerio Público solicita a la Agencia para el Desarrollo Internacional es en calidad de recursos no reembolsables por medio de un Convenio Bilateral. Por su parte, el Ministerio Público contribuirá con la participación de recursos profesionales y técnicos, instalaciones y gastos conexos ya presupuestados y que están disponibles para apoyar y viabilizar la ejecución del proyecto.

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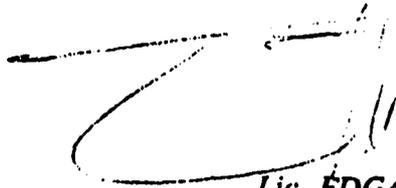
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Procuraduría General de la Nación y Ministerio Público

18 CALLE 10-36 ZONA I, GUATEMALA, C. A. 01001
TELEFONOS: 511113, 530482, 537154 Y 537173

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Página 3

Quedando a la espera de concretar los arreglos para suscribir el Convenio Bilateral correspondiente al serenos presentados de manera oficial los documentos para nuestra consideración y aprobación final, me es grato renovar al Señor Director las muestras de mi más alta y distinguida consideración.



Lic. EDGAR TUNA VALLADARES
Procurador General de la Nación
y Jefe del Ministerio Público



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FACULTAD DE CIENCIAS JURIDICAS Y SOCIALES

FILE

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<i>2/18/93</i>
ACTION TAKEN
(Date/initials)
<i>Reg. Office 2/17/93</i>

Guatemala, 5 de febrero de 1992

Dra. Bambi Arellano
Oficina de Desarrollo Democrático
y Capacitación
USAID/GUATEMALA
Presente

Dra. Arellano:

Respetuosamente nos dirigimos a usted para entregarle el Anteproyecto "Apoyo Académico-Financiero para la Transformación de la Justicia en Guatemala".

Como es de su conocimiento, la Facultad tiene muchas necesidades físicas y materiales, de equipamiento y de asistencia técnica, principalmente para afrontar la transformación del sistema de justicia penal en nuestro país.

A consecuencia de nuestras conversaciones y para poder formular alguna propuesta de solicitud de asistencia técnico-financiera de parte de la Agencia Internacional para el Desarrollo -AID-, consideramos de relevancia realizar un diagnóstico cuantitativo y cualitativo de las necesidades de la Facultad para poder definir qué es lo que realmente nuestra Facultad requiere para que podamos prestarle a nuestros estudiantes un decoroso y adecuado servicio, en función de su formación profesional buscando siempre. la excelencia académica.

El presente Anteproyecto contiene el resultado de ese diagnóstico, por ello nos permitos someterlo a su consideración y a la de AID para rogarles se sirvan considerar nuestra formal solicitud de apoyo a nuestra gestión en el o los componentes que ustedes se sirvan estimar. Hemos evaluado que la prioridad para nosotros se refiere a asistencia técnica para poder afrontar la coyuntura que vivimos en la capacitación y actualización de nuestros docentes, investigadores, asesores de tesis y de bufete, así como a nuestros estudiantes que se encuentran pendientes de

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FACULTAD DE CIENCIAS
JURIDICAS Y SOCIALES

exámenes generales (técnico profesional y de tesis) previo a graduarse, cantidad que asciende a aproximadamente 2,000 estudiantes. Lo anterior sin menospreciar obviamente nuestras necesidades de equipamiento.

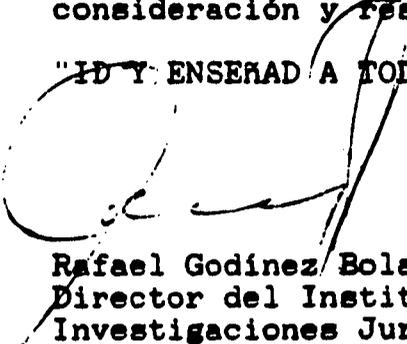
Sabemos que el proyecto es ambicioso y que posiblemente para concretarlo tendremos que captar el apoyo técnico-financiero de instituciones de desarrollo como el de AID, debido a nuestro exiguo e insuficiente presupuesto para inversión, pero también creemos que con iniciativas como ésta, entendiendo qué necesitamos y qué debemos hacer para concretarlo, estamos a un paso, más largo o más corto para poder ofrecer a nuestra sociedad una Facultad de Ciencias Jurídicas y Sociales desarrollada y que se proyecte a a la misma, a través de la formación de los futuros agentes del sistema de justicia, con dignidad y gestando en ellos no sólo capacidad, sino ética y honradez, pues de ellos (como siempre) en pocos años dependerá el futuro de Guatemala.

Queremos aprovechar la ocasión para agradecer el apoyo que hasta hoy nos ha brindado AID y reiterar nuestro agradecimiento a ILANUD por comprender nuestras necesidades y tratar en la medida de sus posibilidades, de brindarnos el apoyo tan indiscutiblemente necesario para nosotros.

El apoyo que nos brinden, será bienvenido en la Universidad y desde ahora lo agradecemos profundamente, puesto que estamos seguros que el desarrollo que ustedes propician, en la medida que ustedes dispongan, será beneficioso para nuestra comunidad.

Reciba Dra. Arellano nuestras muestras distinguidas de consideración y respeto.

"ID Y ENSEÑAR A TODOS"


Rafael Godínez Bolaños
Director del Instituto de
Investigaciones Jurídicas
y Sociales


Juan Francisco Flores Juárez
Decano

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ANNEX I.1.

INSTITUTIONAL ANALYSES

The following institutional analyses are updates on the in-depth institutional assessments which laid the groundwork for Section II, E.3. of the project paper. The strengths and weaknesses of the different justice sector institutions are addressed throughout the project paper. An integral part of the six years of USAID assistance to the sector was the ongoing analysis of institutional development requirements for key actors in the sector. These are described in detail in the documents on file in AID which are listed at the beginning of the project paper.

This annex describes recent developments in each of the grantee institutions toward implementation of the penal procedures code. Most of these developments have occurred over the last six to eight months and are still ongoing. They are presented here to give a sense of the actions and decisions the grantees institutions are taking in preparation for the reform process.

1. **Judicial Branch:** By the time Decree No.51-92 (Penal Procedures Code) was enacted on December 14, 1992, the Supreme Court had already established a Planning Unit for the reform process, with technical staff in place. In addition, a court decree established the Judicial School to provide in-service training for all justice sector personnel. The Judicial School replaces the Court's Training Unit and has now been fully staffed. Prior to the passage of the code by the Congress in September, the Court had already initiated training for judges and magistrates on its content in the major departmental capitals. The Court reports having trained over 5,000 persons during 1992 in preparation for the new criminal procedures.

In early 1992 the Supreme Court President requested, and received, an emergency Q100 million budget addition for 1992. He explained that this increase would support the creation of the 300 justice of the peace courts specified in the new legislation and staff them accordingly. Fifty of these courts have been established as of February 1993. In addition, the budget increase funded an improved salary and benefits package for judicial branch employees, including judges and magistrates, whose salaries have now become more competitive. Finally, the number of court supervisors was increased from two to twenty and an ambitious program of court supervision was developed.

The Supreme Court President is now requesting that the Congress make the Q100 million addition to last year's budget a permanent increase to the annual budget for the judicial branch.

2. **Public Ministry:** The Public Ministry has established, staffed and funded its Training Unit. The Training Unit is now housed in

refurbished premises and its course schedule for 1993 is in full execution.

The Public Ministry's budget increased from Q6 million in 1991 to Q18 million in 1992. For 1993 the Congress approved Q40 million with an option to double this amount if the planned expenditures are fully realized. Salaries have been increased so that professional staff levels are now competitive with other sector employees of the same level. In addition, 100 new professionals have been hired starting in 1993, 80 of whom are assigned to the Prosecution Section and 20 to the Investigation Section. There are plans to initiate hiring of an addition 200 professionals and technicians, most of whom will be prosecutors at the decentralized level.

Starting in early 1992, ASIENS provided technical assistance to the Public Ministry to formalize its organizational structure and establish a series of sorely needed procedures (budget, planning, personnel, international cooperation). In addition, a plan was developed to rationalize and maximize the use of equipment and space within the institution while more extensive facilities were sought for the expanded staff and functions of the Public Ministry.

3. San Carlos University Law Faculty: The Judicial Investigation Institute was assigned the role of planning and programming for the judicial reform process. Expanded facilities have been assigned to the Institute. The Dean of the Law Faculty has requested the budget resources required as counterpart for the reform support efforts in both curriculum reform and information management.

The position of Assistant Coordinator of the Institute has been established and funded to work specifically on the judicial reform program for the Law Faculty. Additional teaching facilities are being assigned to the Law Faculty and offices for professors are being refurbished. The Dean is also examining options for construction of at least one moot court facility in the same building as the institute. The Institute and the Dean have approved programs which systematize the participation of selected students in the judicial reform program.

4. Private Sector Advocacy: The AOJ Stocktaking developed by the Mission in 1991 cited the lack of private sector advocacy for justice sector reform as a major constraint to improved performance in the criminal justice area. During 1992 Mission officials raised this issue with Guatemalan public and private sector officials, with no clear consensus on why private citizens have not organized to demand changes in what is widely recognized as the major social problem the country confronts: random violence and criminality.

On the other hand, there are numerous private sector organizations focused on issues surrounding human rights, refugees and the peace process. It may be that these organizations respond to an external mandate which places higher priority (and financing) on these issues, or that there is a sense of futility automatically identified with efforts to improve the criminal justice system.

It is important to note that in those countries in Latin America where judicial reform is starting to take hold, the public sector has not gone it alone. Private sector organizations in Chile, Colombia, Argentina, Uruguay, Bolivia, and even El Salvador, have led the way in demanding reform, and monitoring the process closely as it proceeds. The Mission will continue to examine possible options with informed citizens, recognizing full well that an appropriate organization does not now exist in Guatemala which is capable of, or committed to, taking on this challenge in a systematic fashion.

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ANNEX I.2.

ECONOMIC ANALYSIS

A nation's system of justice impacts indirectly on the level and the pattern of its economic activity. As a society progresses towards democracy, at least in part through the modernization of its criminal justice system, it can be expected that economic performance will become more dynamic and efficient. Economic and financial decisions, at a national and firm level, are made based on projections of costs and benefits. Such decision making becomes more rationalized within the context of a stable social and political system that depends to some extent on a government's capacity to protect the individual rights of its citizens.

The strengthening of Guatemala's Judicial Sector, through the creation of an open and transparent legal framework, will represent a critical step in the nation's advance towards true democracy. While this process began in earnest in 1986, it is clear that democratically-elected governments and institutional reforms are not ends in and of themselves. Rather they are complementary to, and supportive of, the transition to market-oriented economies and broad-based equitable and sustainable economic development. Guatemalans and the A.I.D. Mission have recognized that development must address political, economic and social issues in a comprehensive manner.

The proposed activities of the Judicial Sector Reform Support Project have as their objective the improved performance of the Guatemalan criminal justice system. Project success in further establishing the rule-of-law as the guiding principle of the Guatemalan socio-political system will have two main impacts on the nation's economy:

- More attractive investment climate in Guatemala. The environment for doing business in Guatemala will be improved if the Project successfully promotes a more equitable application of the laws.
- More effective fiscal controls. A strengthened, more efficient judicial system will increase the perceived and actual capacity of the Government to enforce current tax laws, and therefore allow more effective fiscal controls. While the focus of the Project is in the area of criminal procedures reforms, the professionalization of justice sector personnel will result in the more equitable application of all laws. This in turn will help the Government to increase tax collections. Increased public revenues, combined with rationalized allocation of resources and greater emphasis on social investment, will improve the standards of living of all Guatemalans.

In summary, since the Project will improve the Government's capacity to deliver social goods, any effort to quantify its economic benefits would require complex and costly analyses that would add little or no substance to the project design. However, without rigorous analysis, it can be assumed that the improved political and social stability facilitated by the Project will contribute to income growth and increased standards of living for all Guatemalans. On the basis of these factors, the Project is judged to be economically sound.

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ANNEX I.3.

SOCIAL SOUNDNESS ANALYSIS

1. Socio-cultural Context:

At present, the general public holds little faith and confidence in the criminal justice system in Guatemala. As noted in a recent newspaper poll, 85% of the persons surveyed expressed more confidence in their legal framework than in the officials applying the law. They believed very few criminals were ever prosecuted in Guatemala due to the inefficiencies of the police and the lack of adequate evidence for judicial rulings. Poor public opinion is further aggravated by special interest groups who believe they can control or influence the administration of justice to their benefit.

This project will contribute toward a more conducive social environment for the changes being created by the judicial reform. As the reform measures become operational, citizens will become aware of their rights and responsibilities to due process under the law and will begin to experience first hand the benefits of a transparent justice system which mitigates against the inequities and vagaries that have characterized the system to date. Periodic public opinion polls will be conducted throughout the life of project to test this hypothesis, with comparisons made in the attitudinal shifts between direct project beneficiaries and the public-at-large.

2. Beneficiaries:

The most immediate beneficiaries of Project activities are the personnel within the judicial sector who will receive significant technical assistance, training and information support (publications) as they learn their new roles and responsibilities in the reform of the criminal justice system. They will be stimulated to acquire new knowledge, attitudes and skills in the performance of their jobs, and be contributors to a much improved judicial environment. In the medium-term, those Guatemalans who must participate in the criminal justice process (as victims, witnesses, or the accused), will benefit from the implementation of a more efficient and transparent system of criminal justice, which safeguards the human rights of everyone involved. Ultimately, all Guatemalans will profit from the institutionalization of the criminal justice reform, particularly as confidence in the rule of law increases and encourages further economic investment and tourism.

As already mentioned in Section II. C of this Project Paper, parallel to the implementation of the New Penal Procedures Code the Judicial Branch is expanding its Justice of the Peace Court coverage to all 326 municipalities in Guatemala. This increased

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access is targeted at the rural poor, many of whom are non-Spanish speaking and do not presently use the court system. This Project will strengthen and improve criminal trial procedures at all levels, and thus, the target group of the expanded Justice of the Peace system will also be beneficiaries of the Project.

In addition to the rural poor in general, it is foreseen that non-Spanish speaking females and children-at-risk could be direct beneficiaries of the criminal justice reform. In the first case, oral trial proceedings will allow for translators, which in turn will make the process more accessible and less threatening to non-Spanish speakers. By far, the largest percentage of monolingual Mayan language speakers is female. In the second case, with the strengthening of the Public Ministry's role in the justice system, the capability of the Section of Minors to adequately respond to cases involving children-at-risk will be vastly improved.

Finally, professional women at all levels within the justice system will be directly reached through this project. There is a significant number of women holding high positions such as judges, Magistrates of Courts of Appeals, Magistrates of the Supreme Court, Prosecutors and lawyers working for the Public Sector as legal advisors. Of the 3,000 active lawyers in Guatemala, approximately 900 of its members are women. This percentage is expected to increase, as University Faculties report that almost half of their recent student body are young women just entering law school. Special effort will be made to include a fair percentage of female participants in training programs and seminars offered through this project.

3. Resistance:

Section II, E of the project paper provides a detailed discussion of some of the socio-cultural constraints to the implementation of the criminal reform process which include: real and perceived corruption of the system; intimidation of judges, prosecutors, and witnesses; and immunity of perpetrators of political violence. These perceptions contribute to the climate of tolerance, resignation and/or fatalism which have characterized public reaction to the all too commonly known failings of the system as it currently exists.

The good news is that the GOG is in the forefront of the reform process which is designed to change both the perceptions and the realities of the justice system's most serious flaws. The new Criminal Procedures Law grew out of a collective recognition of the broad spectrum of political parties and the three branches of government that a credible and effective judicial system is the corner stone to an emerging democracy. While there may be differing opinions on some of the finer points of the new code and its accompanying regulations, there is general agreement on and widespread support for the tenor and spirit of the reform process.

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Nonetheless, there are pockets of resistance to the type of sweeping reforms that the new code envisions that pose a potential threat to the full and timely implementation of the law. For instance, those groups or individuals who have been able to manipulate the system to their benefit through political influence and/or intimidation will not be inclined to lend their full fledged support to a more transparent system. Also, some senior lawyers who have built their careers upon the written, inquisitorial legal process will be reluctant to adapt themselves to the radically different and somewhat intimidating oral, prosecutorial system. Likewise, there undoubtedly will be a number of judges who prefer the anonymity of the old system and will resist the increased accountability and public scrutiny that a transparent system portends.

However the far greater danger to the full and timely implementation of the reform process at this stage would be a failure of political will on the part of the GOG to stay the course. As pointed out elsewhere in this paper, the reforms embodied in the new code are complex, systemic and far reaching and will continue to require the serious attention and sustained vigilance of law makers, court officials and public functionaries alike if they are to come to fruition within the prescribed time frame (by December, 1993). The fact that we are heading into an election year puts an added strain on the time and attention that the principal actors will have to devote to the reform process and it subjects the process to the potential for politicization. The technical assistance to be provided under this project should mitigate against a derailing of the process due to election year politics, but these influences will have to be watched carefully in the months ahead.

4. Participation in Project Design:

One of the lessons learned in the previous justice sector program was the need to have GOG counterpart institutions on board from the outset and fully committed to the nature, scope and timing of project activities. Otherwise the project runs the risk of becoming "donor owned". Given the political sensitivities and nuances related to democratic reforms such as those discussed in this Project Paper, close collaboration in project design was considered a must from the very beginning. Key stakeholders from throughout the justice system have been included in various stages of project planning, including: Judicial Branch Public Ministry policy makers and line managers; court officials and technicians; faculty and administrators from the University of San Carlos and a variety of other system stakeholders such as judges, clerks, prosecutors and legal advisors. They will continue to be directly involved throughout all stages of project implementation and evaluation through both formal and informal channels of communication.

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5. Spread Effects:

It is expected that this project will assist the GOG in accomplishing its stated goal of improving the rights of its citizens to due process through the creation of a fair, efficient and transparent justice system. Clearly, the full realization of this goal extends well beyond the scope of this project. In fact, our most optimistic projections estimate that both oral trial proceedings and the Public Defenders Program will achieve a mere 50% coverage rate nationwide by the end of the project period. A similar target of 50% is estimated for the number of lawyers, investigators, and judges who will be using new and improved techniques in carrying out their revised roles under a revamped judicial system. Nonetheless, it is expected that this 50% will create the critical mass required to sustain the reform process over the longer term. As the demonstration effect takes hold and more and more of system's users are exposed to the benefits of oral trial proceedings and improved prosecutorial and investigative functions, there will be increasing demand for change in the areas not yet covered. Also, the training capacity and programs to be developed under the program in the Public Ministry, the Courts and the USAC Law Faculty will be firmly entrenched by the end of the project period and will ensure the continued outreach and education necessary to respond to the continuing demand for professional development within the justice sector.

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U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

LAC-IEE-93-14

REQUEST FOR A CATEGORICAL EXCLUSION

Project Location : Guatemala
Project Title : Judicial Sector Reform Support
Project Number : TBD
Funding : \$5,000,000
Life of Project :
IEE Prepared by : Edgar Pineda, ORD
Recommended Threshold Decision: Categorical Exclusion
Bureau Threshold Decision : Concur with Recommendation
Comments : None

James S. Hester Date April 16, 1993
 James S. Hester
 Chief Environmental Officer
 Bureau for Latin America
 and the Caribbean

Copy to : Terrence Brown, USAID/Guatemala
Mission Director

Copy to : Edgar Pineda, USAID/Guatemala

Copy to : Wayne Williams, REA/CEN/ROCAP

Copy to : Maureen Dugan, LAC/CEN

Copy to : James Hradsky, LAC/DR/CEN

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INITIAL ENVIRONMENTAL EXAMINATION

Project Location: Guatemala
Project Title: Judicial Sector Reform Support
Funding: \$5,000,000

I. BACKGROUND

In terms of its political structure, Guatemala follows a traditional tripartite model of government (executive, legislative and judicial). It also has several autonomous organizations pertinent to the development of democracy, such as the Constitutional Court and the Supreme Electoral Tribunal (SET). The Human Rights Ombudsman Office was created by the 1985 Constitution and is a dependency of Congress. Presidential and legislative elections take place every five years. Like most Latin American systems, constitutional equality among the three branches of government is not achieved in practice. Rather, the government is characterized by a strong executive and weak legislative and judicial branches.

The 1980's saw something of a turnaround in Guatemala's political arena. After 30 years of military or military-controlled rule, a civilian government under a Christian Democratic administration took office in 1986. The transition to a civilian government did bring a political opening. Grassroots organizations developed, and began to speak out more openly. However, a degree of political repression returned in 1988 and 1989 as the government failed to control the military and extremist political groups.

Despite the fact that the military continues as a dominant political force in the country, Guatemala has completed an essential step in its democratic development. For the first time in its history there was a peaceful transfer of power between two freely-elected civilian presidents, in January 1991. By all accounts this election was viewed as free and fair, and indeed is testimony to the capability of the Supreme Election Tribunal to plan and implement democratic elections. Additionally, Rios Montt's constitutional challenge for candidacy in this election, a potentially explosive issue in the Guatemalan context, was handled by the due process of the court system and the outcome was accepted peacefully.

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II. PROJECT DESCRIPTION

Based on the experience of past A.I.D. interventions in the Judicial Sector and recent Government of Guatemala (GOG) commitments to reform of the justice system (most notably passage of the new Criminal Procedures Code and significant increases of the budgetary and staff resources of key sectoral institutions), the Mission has designed the \$5.0 million Judicial Sector Reform Support Project.

The Project Goal is to support the right to due process under the law in Guatemala.

The Project Purpose is to support the reform of the Guatemalan Criminal Justice System through the implementation of the new Criminal Procedures Code and corollary legislation.

In order to accomplish this goal, the Project will provide support to the Guatemalan Supreme Court, the Public Ministry, and the Law Faculty of the San Carlos University, specifically in the areas of human resource development and institutional change/strengthening. The Project will finance critical, specialized training and technical assistance, to be provided locally, in the U.S., or in third countries.

The components of the Project and the respective focus of A.I.D. assistance are:

Component 1: Judicial Branch

To provide technical assistance and training to prepare the courts to expand oral trial proceedings and implement a legal defense program.

Component 2: Public Ministry

Training of decision-makers to facilitate decentralization of Ministry functions and improved its investigative capacity.

Component 3: San Carlos University

To give technical assistance to adapt law school curricula and training methods to the demands of oral trial proceedings.

Component 4: Specialized Training

To provide technical training to key sector personnel through U.S. Department of Justice programs (ICITAP/OPDAT).

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Component 5: Private Sector Advocacy

To support private sector initiatives aimed at fostering a more equitable justice system in Guatemala, particularly through travel to other countries with more developed justice systems and more active private institutions.

Component 6: Project Administration

To ensure coordination between implementing agencies and A.I.D.

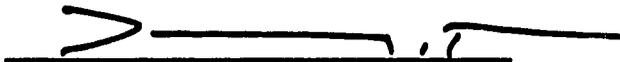
III. ENVIRONMENTAL CONSEQUENCES

The proposed project will not involve activities that have an effect on the natural and physical environment. The activities which will be carried out qualify for a Categorical Exclusion according to section 216.2 (c) (2) (i) of 22 CFR as "Education, technical assistance or training programs except to the extent such programs include activities directly affecting the environment (such as construction of facilities, etc.)".

IV. RECOMMENDATIONS

Based on the Categorical Exclusion discussed above, the Mission recommends that the Judicial Sector Reform Support Program be given a Categorical Exclusion determination requiring no further environmental review.

Concurrence:



Terrence J. Brown
Mission Director

3/25/93
Date

Drafter:

EPineda, OBD

03/19/93

Clearances:

PNovick, CORD

3/11/93

TDelaney, AC/PDSO

TF-P 3/22/93

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