

USAID/GUATEMALA-CAP
JUDICIAL SECTOR REFORM SUPPORT PROJECT - JSRSP -
PROJECT NO 520-0407

EXECUTIVE SUMMARY OF THE JSRSP EVALUATION

I Background

In the mid-1980s, with the election of a constitutional assembly and the government of Vinicio Cerezo, some semblance of democracy returned to Guatemala. Since then USAID, acting pursuant to USG human rights foreign policy concern for criminal justice, has consistently supported GOG justice reform efforts. After various fits and starts in relatively ineffective attempts to reform its poorly regarded criminal justice system, the GOG adopted a major legal reform measure to modernize the criminal procedure code in late 1992, to take effect in mid-1994. Recognizing that such legal reform of itself amounts to little without strong implementation measures, USAID undertook to support such implementation with a \$5.0 million project, subsequently increased to \$6.0 million.

The Reform

Within a thorough overhaul of a dated criminal procedure code, the major reforms required opening up the system through oral proceedings to much increased transparency and accountability, and enhancement of competence through increased specialization. The judge's role would become one of presiding over the trial and applying the law, with responsibility for directing investigation assigned to the hitherto underemployed "fiscales" or prosecutors.

The Project

Sharply focussed on support for implementation of this major reform initiative, the Justice Sector Reform Support Project or "JSRSP" embodied a three-pronged strategy: 1) to furnish training and technical assistance to the courts and the prosecution to prepare them for their new roles under the reformed system, 2) assistance to the law schools, and particularly the national University of San Carlos (USAC), to help them develop new curriculum and teaching methods to prepare their students for practice under the new reforms, and 3) assistance to other justice system-oriented private sector agencies in developing their capacity to support justice sector reform.

Changes in Context

USAID designed and authorized JSRSP between mid-1992 and mid-1993 when the Judicial Branch, the lead agency in the sector, was headed by a reformer with several years left in his term. Also substantial reform momentum had built up with passage of the new code and with several other justice reform measures pending before the Assembly. By late 1994, however, when the JSRSP institutional contractor arrived on site, the situation had changed greatly. The 18 month preparation period for Code implementation had passed without substantial preparation, the Code was not being implemented and was coming under heavy attack. In the turmoil following the Serrano auto-golpe attempt in 1993, the Supreme Court was completely shaken up with new leadership whose anti-corruption priorities took precedence over criminal justice reform, and the priorities of the USAC counterparts also proved out of line with the project. The Public Ministry leadership, while weak, was at least receptive.

USAID weighed the strong US human rights foreign policy interest against the increased risk of project failure, and decided to move ahead with the more limited opportunities then available. With recent positive changes in leadership in the Judicial Branch, Public Ministry, USAC and Bar Association, this decision has proven fortuitous in the face of much improved opportunities for achievement.

II Principal Findings

From an **overall perspective**, after a problematical start in a difficult situation, the Project has been building up strong momentum in solid accomplishment, especially during the past year as leadership and implementation capability has strengthened substantially in the institutional contractor as well as its Guatemalan counterparts.

Throughout project implementation there has been heavy emphasis on **training**. At the outset training focussed on informing justice system operators of the theory and conceptual content of the new criminal procedure code, in the later stages the focus is shifting to training and technical assistance in putting the concepts of the new code into practice. With increasing emphasis on technical assistance there is more use of longer term advisors instead of short term consultancies. At the beginning there was substantial dependency on foreign instructors, due to the lack of Guatemalan experience with even the concepts of the new code. As more Guatemalans have acquired knowledge of, and experience with, the new code, some are being trained as trainers, and the dependence on foreign instructors is diminishing. Such transition could be more rapid and effective, however, with more emphasis in selection criteria on interest and ability in instruction.

As is described more fully below the focus centers have afforded a particularly effective means of putting the new concepts into practice on a decentralized basis, using training as well as technical assistance and incorporating training of trainers as part of an overall decentralized strategy.

As the emphasis has thus shifted to sustainability, CREA/USAID is now working with the Guatemalan training institutions to develop their own capability to assess training needs in the future. This participatory needs detection process also provides institutional strengthening benefit through clearer definition of position and organization requirements to get the work done under the current reforms.

In contrast to El Salvador, where a single judicial school serves prosecutors and defenders as well as judges, in Guatemala concern for judicial independence has led to continuance of separate training institutions for the judiciary and the prosecutors (the defense is still a part of the judiciary). The judicial school, recipient of considerable USAID support under prior projects, was expected to be a key counterpart institution during JSRSP design. Between JSRSP authorization in 1993 and the late 1994 arrival of the institutional contractor, the judicial school was thoroughly gutted by dismissal of all instructors as well as the reformist head of the institution. This forced a heavier burden on CREA/USAID to provide instructors instead of support for judicial school instructors. Cautious leadership of the judicial school combined with the lowered priority for criminal justice reform and some relative coolness of the Supreme Court toward USG and USAID have resulted in notably slower pace of program development at the judicial school as compared to the Public Ministry's UNICAP training operation.

UNICAP started from nothing following separation of the Public Ministry's prosecution function from the other functions of the former Attorney General's office, but has moved ahead relatively rapidly.

Within an overall successful training program there have been some lessons to be learned. The organizing of the numerous courses for the Judicial Branch and the Public Ministry was carried out with great zeal. If, in hindsight, this stage of the training activities continued too long, it was at the time considered by all institutions involved to be necessary. As the Project matured, CREA/USAID reassessed course methodology, contracting for an independent evaluation of its training program in late 1996. That evaluation recommended major changes which are presently being implemented.

Initially, in the context of getting the radically new code up and running some of the more exacting challenges to the training programs were underestimated or misunderstood. The written word and legal concepts captured the attention and such dimensions as the professional trauma, the institutional revolution, the personal fears and retaliatory defense tactics that it evoked were sometimes ignored, rejected or misinterpreted. People who distrust a reform will not be zealous participants in its implementation.

Further, it is not clear that adequate forethought was given to the different types of learning processes and teaching methodologies involved at different stages of implementing the Code. CREA/USAID could have done more of such discrimination at the outset of the Project. Also prior to substantial investment in training more systematic and thorough assessment of the characteristics of the human resources in the criminal justice sector institutions could have assisted design of a more appropriate training program.

CREA/USAID is now strengthening the training of trainer activities in both the Judicial Studies School and UNICAP. Although the Judicial School has tended to resist inclusion of prosecutors in courses for judges, it might be persuaded to accept joint courses for all trainers in areas of general teaching skills and the use of dynamic methodologies such as role playing. This would ideally be linked to particular course preparation activities within the respective training programs. With CREA/USAID encouragement and support, the Supreme Court leadership has recently joined with the Bar Association in sponsoring multi-institutional workshops to define and discuss justice sector problems.

We note with favor, but with concern over recent slow pace, CREA/USAID's efforts to develop investigator and judge manuals collaboratively with users, and otherwise to build up a battery of attractive course materials which can be used frequently, assuming that an inventory of all training materials will be developed, maintained and circulated to trainers throughout the sector.

There is need for more thought on how best to evaluate substance and impact of training efforts. New training models such as the focus centers and interinstitutional training activities should have close follow-up to be able to determine when each type of methodology can be used to the best advantage.

For the **Public Ministry** and its criminal prosecution/investigation function, JSRSP support extended beyond training, to help this heretofore relatively weak and ineffective appendage of the justice system to become a principal actor therein under the new Code. Technical assistance was provided for reorganization and functional restructuring, and development of effective management information systems which would also facilitate case management.

There is still a long way to go toward full and effective implementation of the Code mandate for prosecutor direction of criminal investigation, among both judges and police there is still substantial adherence to the previous "inquisitorial" practice of judicial direction of criminal investigation. To

a substantial degree, however, the transition depends on building competence and confidence of the prosecutors in their new role. Also helping to facilitate the transition is the development of effective models of the desired collaboration between judges, prosecutors and police, now being established with JSRSP support at the **focus centers** in Quetzaltenango and Zacapa.

The focus center at Quetzaltenango after over a year of active implementation has achieved much in establishing a viable model for inter-agency coordination toward improved justice as well as improving performance of each agency in its own area of functional responsibility. Judicial respect for improving prosecutor competence has led to major reductions in judicial intervention at the investigation phase. The new system for intake and preliminary processing of criminal complaints has achieved significant impact in mediation of disputes and reduction of court caseload. Also, as noted above, with CREA/USAID's encouragement and support the focus center is being used as a means to provide decentralized training for the participating institutions, and, unlike the central level, is including trainees from all four criminal justice institutions as appropriate, with consequent favorable impact on inter-institutional working relationships.

Also, while at the central level the judiciary has tended to resist CREA/USAID's offers of support for court administration reform, at the focus center level the courts have welcomed assistance in substantially improving efficiency with relatively simple, low-cost innovations in file and case flow management. At Quetzaltenango, because of much greater interest of the appellate court, reform implementation began there rather than at the much busier, more needy, trial court. Success in the more favorable situation has now raised interest for extension to the trial court level, and recently it has even sparked interest of judicial branch leadership to extend the model to Guatemala City.

The organization of both centers might have included more modern and innovative court organizational restructuring. Beyond introduction of modern technology and procedures, increasing the effectiveness and efficiency of court systems requires reform of organizational structure. Especially useful in Guatemala would be the introduction of professional court administrators to assist the judges and prosecutors with routine administrative tasks and eliminate the use of valuable judicial time on non-judicial work. But this sort of institutional reform depends on endorsement and support from the top, which has thus far been lacking. JSRSP did what it could in the space allowed it.

Although forms and procedures developed at the Quetzaltenango focus center have already been used elsewhere in the system, the focus center is still in the process of development, and not to be considered a finished model for indiscriminate replication. Another focus center is now being established at Zacapa with some variations from Quetzaltenango. Also with potential support from other donors as well as USAID, the focus center concept is being considered for extension elsewhere following current evaluation and consideration of modifications and alternatives to be tested at the next stage.

Associated with the Quetzaltenango focus center under the rubric of **justice system access** was the CREA/USAID contribution of a trainer within a larger MINUGUA program for training of court interpreters to serve Mayan parties and witnesses in court. This pilot activity, still evolving in seeking maximum effectiveness, is significant as the precursor of a much larger effort, pursuant to the Peace Accords, to adapt the national justice system to provide or otherwise permit real justice for the Mayan half of the population.

In addition to the above described training of judges and prosecutors at the judicial school, UNICAP and the focus centers, JSRSP has also supported reform of law school methodology and curriculum for preparation of their graduates in new criminal procedures code, and strengthening of Bar Association training capacity for continuing legal education to lawyers generally, private as well as public, relative to content of, and practice under, the new code

At **San Carlos University Law School** ("USAC") little in fundamental reform could be accomplished until new law school leadership in mid 1996 welcomed CREA/USAID assistance. The most effective methodology for participatory reform of course content and the respective teacher training appears to be that used with CREA/USAID support since mid-1996 in the preparation of the trial advocacy manual and course. A CREA/USAID staff member is working with a group of USAC and private university law professors, together with prosecutors, public defenders and private lawyers who, based on a slow but steady review of the criminal procedure code, are creating a trial advocacy teachers manual. For prospective widespread use thereof in both public and private sector teaching, USAC is to adopt the course as part of its standard curriculum and train other law school professors in its application. Further the USAC legal aid program should be encouraged and supported to ensure that the oral proceedings manual is employed to best advantage in this practical training context.

Similarly with the **Bar Association**, new leadership in 1996 aggressively sought and received substantial CREA/USAID assistance for strengthening of its continuing legal education program relative to criminal justice, as well as useful forums bringing public sector lawyers, judges, prosecutors and defenders together with private practitioners to discuss the new code and its implementation. Further to institutionalize such CLE strengthening the Bar Association has set up, and incorporated into its regulations a Training Unit to carry on legal education similar to that offered with CREA/USAID support.

Apart from the Bar Association, criminal justice related NGOs have received relatively little attention under JSRSP. This deviation from the original project design has been justified by reference to the above described heavy demands elsewhere upon limited JSRSP resources, human as well as financial, and the relative success of such NGOs in attracting support from other sources.

CREA/USAID initially read the **Private Advocacy** component as referring to support for the new Penal Procedure Code, but it also has a broader objective to promote the principles of due process and effective administration of justice, including concern for access to justice services and the quality of those services. An early assessment of the private advocacy capacity relative to these subjects should have been carried out in order to develop an adequate strategy.

Wide spread community legal education regarding individual and collective rights is a task which is fundamental for the reconstruction of public awareness and expression in Guatemala. The Bar Association has the potential to become a strong private advocacy organization, but CREA/USAID work in this area could have made a more valuable contribution toward the private advocacy objective if it also extended to NGOs that have this as their primary goal. Also, to strengthen private advocacy capacity in Guatemala USAID might consider contracting out to suitable Guatemalan NGOs its evaluations, justice sector monitoring, resource inventories, material design etc where appropriate.

The **USAID project design** was well focussed on achievable objectives, but there is a lesson to be learned from the design mix of long and short term consultancies. The USAID/CREA contract

originally called for only one resident long term consultant, the chief of party, with the remaining technical assistance and training to be provided through short term consultancies. USAID and DPK have subsequently concluded that institutional development of the sort sought by this project, including change of basic attitudes as well as systems and procedures, requires more continuity of counsel and more project and situation-specific knowledge and understanding than is available from short term consultants.

The competence and continuity of **USAID project management** has enabled it to deal particularly effectively with project implementation problems and opportunities as they have arisen. Some unsuitability of **institutional contractor** personnel combined with the then unfavorable sector environment contributed to a slow start in project implementation, but now the contractor's excellent team on site is also a strong positive factor in the highly favorable situation.

Unlike El Salvador, there has been no national justice sector coordination commission to facilitate project implementation. USAID therefore asked for the formation of a **sector Liaison Committee** consisting of representatives of the principal counterpart agencies together with USAID. This appears to have promoted coordination and cooperation among the counterparts more generally than just in JSRSP implementation.

USAID **coordination with other donors** to the justice system has been strong, as well befits the lead donor in this field over the past decade. Relatively informal among the few donors active in the justice sector at the outset, coordination among the rapidly expanding number of donors now interested in justice has become more structured, but still effective, within a multilayered group of committees and subcommittees at the consultative group, mission management, and technical levels. To avoid tension in a donor situation which could readily become competitive, even conflictive, USAID and other donors need to make special efforts to inform well, and to be well informed, as to their respective activities, and in joint activities to describe accurately their respective roles.

III Principal Conclusions

The project design was well focussed on support of specific criminal justice reforms, and implementation generally well supervised by able USAID management.

After some initial difficulties, DPK has established a strong team of technical advisers in the field.

The project has achieved particularly good results in institutional strengthening of the Public Ministry and developing operational models for interagency teamwork at the focus centers.

Although training needs could have been better diagnosed at the outset, the initial emphasis on course work was largely justified, and the program now is properly directed more at practical training on site, training of practitioner/trainers, and institutional capacity to assess training needs through participatory profile analysis.

Such analysis carries with it substantial benefits for institutional analysis and organizational reform.

The project has made good use of the current bar association president's proactive disposition to extend knowledge, understanding and support of the penal procedure code reforms through the association's continuing legal education program and forums which bring together its

judge, prosecutor, and public defender members as well as its private practitioners

IV Principal Recommendations

That USAID continue its support of the criminal justice sector reforms well begun under JSRSP, to include strengthening the prosecution function through self sustaining practically oriented training, extending the coordination of the prosecution function with criminal investigation, defense and judicial functions through additional focus centers, strengthening private sector law-related education and advocacy functions, including effective monitoring of system performance, and devising and implementing additional means for improving the service of the system to the Mayan half of the population

That such continuance of support be designed and contracted for as soon as feasible to minimize the disruption of a program recently gathering momentum and currently blessed with relatively strong GOG counterparts within a reform minded Guatemalan government

V Principal Lessons Learned

Working in a smaller world, with lower profile and closer personal relationships, pilot projects such as the Quetzaltenango and Zacapa focus centers are particularly apt for intra-institutional innovation as well as for developing new models for inter-institutional cooperation and coordination

Training in support of a major reform must be preceded, or at least accompanied, by explanation of, and justification for, the reform, must employ varying approaches at different stages in the reform process, and requires thorough and sophisticated needs assessment at an early stage to help assure effectiveness

System reforms of the depth and breadth of those supported by this project require more provision for longer term technical advisors for closer follow up and deeper working relationships than was included in the project design

Despite the cautionary doctrine that if anything can go wrong, it will, this project well demonstrates that there can be good breaks as well as bad, and, when the stakes are higher, it can pay to accept higher risk of failure

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