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INTRODUCTION

A.I.D. began to try to improve the judicial sector in Guatemala in 1986 with Regional/ILANUD financed activities. The first bilateral effort was a three and a half year Cooperative Agreement with the Center for Criminal Justice of Harvard Law School (HLS), which began in July 1987. A second USAID funded project --Improved Administration of Justice (520-0369)-- was signed with the GOG in September 1988. In mid 1991 the USAID determined that ongoing efforts in the justice area were not bearing sufficient fruit. By then the Regional/ILANUD effort was negligible, the HLS effort was over and Project 520-0369 was limping along with no promise of accomplishments which justified its continuance. Therefore, the USAID decided to allow Project 520-0369 to expire at the end of CY 1991 and to perform a stock-taking exercise which could lead to new justice sector projects in FY 1992. Implicit in these decisions were beliefs that a) Guatemala's justice system continued to be very ineffective, b) an improved justice system was critical to the basic infrastructure of democracy, reductions in the high level of violence, improvement of Guatemala's appalling Human Rights performance and economic development, c) the passage of time --with growing public and private concern with the failings of the criminal justice system and the introduction into the National Congress of bills which would significantly alter that system-- had changed the sector's environment sufficiently that a fresh look was needed to assure that the USAID would focus on the highest priority problems which were of concern to both Guatemalans and A.I.D., d) new activities with the Judicial Branch should be negotiated with its leadership which would take office (six year term) in February 1992, and e) the USAID should enter into a separate agreement with the Public Ministry.

What follows is taken from formal reports, interviews and the personal observations of several A.I.D. or A.I.D.-funded persons who have worked on projects in this area. It is to serve both as an informal in-house evaluation of Project 520-0369 --a formal evaluation was not judged necessary-- and as a discussion paper leading to possible new projects.

A. BRIEF PROGRAM HISTORY

A.I.D.'s work in the justice sector in Guatemala began in 1986 when Guatemala was added to the Regional Administration of Justice Project (RAJP) with an earmark of \$1,145,000. RAJP's implementing agency has been the United Nations affiliated Latin American Institute for the Prevention of Crime and the Treatment of the Offender (ILANUD) located in San Jose, Costa Rica. In turn, ILANUD contracted with Florida International University (FIU) for Sector Assessments and for providing some of its technical assistance. In Guatemala the primary activities of RAJP have been:

- A Justice Sector Assessment conducted between 1987 and 1988. (Final Report rejected by Supreme Court President who banned everyone involved in the assessment from working on Project 520-0369 and reportedly forbid circulation of the assessment within the Judicial Branch.)
- Over 300 Guatemalan participants in regional and national courses.
- Technical assistance, budget support, computer equipment and software for the Judicial Branch's National Legislative Center (CENALEX). (This activity has been assumed and greatly expanded under Project 520-0369.)
- Provision of basic libraries to the Supreme Court and the Constitutional Court (Supreme Court's library continues to be disorganized).
- The initial costs of supporting the National Justice Commission (now defunct) and USAID AOT staff.
- Conduct of various small studies and seminars and preparation of manuals.

As of the end of FY 1991, RAJP was not very active in Guatemala, but still had about \$130,000 in funds earmarked for Guatemala available.

In mid 1987, at the urging of the USG, the Center for Criminal Justice of Harvard Law School (HLS) signed a Cooperative Agreement with the USAID. This Agreement ran through CY 1990 with expenditures totaling \$2,283,000. The Agreement's Scope of Work was unusually general --meetings in Cambridge and Guatemala, research and consultations-- as in 1987 neither HLS nor the USAID were clear as to what HLS could or should do. To a very significant degree both the early RAJP and HLS efforts were testing the water in a new and sensitive priority area for A.I.D.

After HLS began to understand the workings of the court system --primarily by inviting Guatemalan judges to Cambridge to work with HLS in analyzing the problems in the court system and designing solutions-- HLS focused its attention on creating and strengthening First Instance --Justice of the Peace, Investigations and Sentencing-- Pilot Courts through formal and on-the-job training. The principal objective of the Pilot Courts was to improve investigation; to a large extent the introduction of orality at First Instance was one tool used by HLS to try to accomplish that objective. (HLS training was complemented by ICITAP investigative training; both HLS and ICITAP training have been greatly praised by the trainees.)

HLS through combinations of consultations, seminars and the preparation of proposals also tried to improve (a) the Judicial Branch's personnel system, methods to deal with corruption and intimidation, and delivery of justice in rural areas; (b) public prosecution; (c) coordination among the courts, prosecutors and police; and (d) ending the immunity of perpetrators of political violence. As with the Pilot Courts, none of the above received any noticeable follow-up by HLS's clients.

What was to have been the USAID's flagship AOJ project --Improved Administration of Justice (520-0369)-- was signed in September 1988. Five million dollars were authorized for a three year program, with the expectation of substantially increasing both the time period and the funding. However, the USAID decided not to obligate more than \$3.4 million and to end the Project in December 1991.

To a large extent, this Project never got off the ground. Effective support was provided to CENALEX and to the Public Ministry for training. However, most of the remaining 14 activity areas included in the Project Agreement either were never worked on or were left incomplete. Section B of this report --Findings-- discusses why this Project failed.

NOTE: For sources of additional information on these projects see Appendix A - Bibliography.

B. FINDINGS

1. The Judicial Branch has not made a serious attempt to follow up on or to implement any of the reforms proposed by HLS or those, with the exception of the CENALEX activity, designed or proposed under Project 520-0369. The Projects have been treated as if they belonged to the donors, e.g. Guatemalans were simply sent to conferences or training programs 100 percent financed by donors, pilot activities were ignored and left unsupported as soon as donor assistance ended, consultants' reports failed even to receive acknowledgement. However, the revised Criminal Procedures Code prepared by the Judicial Branch would require some of the important reforms advocated by HLS, e.g. orality and active prosecutors.
2. The Judicial Branch has focused its recent attention on rewriting basic laws such as the Criminal Procedures Code and has not demonstrated serious interest in administrative improvements. This focus appears to have resulted in a seriously negative impact on Project 520-0369 because the administrative reforms called for in the Project were viewed by the Judicial Branch's leadership --lawyers and not trained administrators-- as being of secondary importance; activities to be accomplished after the law reforms. Unfortunately, this viewpoint was not communicated to the USAID, which caused much wasted time and effort.

While these laws clearly are important, they will not be self implementing. Trained people and reformed and improved administrative and procedural systems will be critical. Very little has been done to set the groundwork for the training and the design of the systems. The Latin American tendency to believe that the solution to a problem is simply to pass a law appears to have been at work.

3. There is a widespread lack of public faith in and respect for the Judicial Branch. The courts are seen as slow --taking two to three years to complete a case; the judges are seen as second class lawyers who had to settle for poor pay; court officials are seen as incapable and/or corrupt, etc.

4. The Prosecutorial function continues to be overwhelmingly ineffective. Prosecutors rarely contribute significantly to processing criminal cases. Historically the public, as well as those working within the court system, have viewed the Public Ministry as an ineffective institution with prosecutors who are passive, indifferent, and corrupt --with no sense of accountability or responsibility. They are seen as merely contributing "rubber stamps" to court documents that they receive on criminal cases. Prosecutors leave all investigative tasks to the judiciary and prosecutorial representation to private attorneys hired by victims who can afford them.

The fact that the Public Ministry is severely understaffed and underpaid generates a feeling among the agency's personnel that they cannot accomplish anything, "justifying" almost complete inaction on their part. Low self-esteem and lack of motivation also produce a sense that there is no purpose to their job. Although the Guatemalan Code of Criminal Procedure provides for active participation by the prosecutor from the outset of a case --a responsibility that will be mandated and, therefore, will increase enormously if a new Code of Criminal Procedures drafted by the Judicial Branch and under consideration by the National Congress is passed-- prosecutors rarely become involved at crime scene searches, court-questioning of witnesses and defendants,

or oral proceedings at the trial stage. Such negative self-image and widespread bad reputation, coupled with low wages, has made the job of prosecutor one that is not sought by highly-qualified and motivated lawyers. However, while improving the prosecutorial function is a sine qua non for significantly improving the criminal justice system, no donor effort can be successful in this regards unless the budget of the Public Ministry is substantially increased.

While some tentative steps have been taken recently by the Public Ministry to improve its situation, e.g. training, justification of a greatly increased budget for CY 1992 and drafting of a new organic law, the overall effectiveness of the institution is still very low.

5. The USAID objective of increasing access to the judicial system has not been met. Most observers state that Judicial Branch support, e.g., facilities and equipment, for rural courts is abysmal; and they believe that the Constitutional requirement to remove justice of the peace functions from mayors and the appointment of jueces comarcales (circuit riding judges) has worsened the rural access situation over the last five years as most municipalities now do not have a resident judge. Moreover, the Judicial Branch has failed to expand or support its Alguaciles program under which indigenous communities without a resident judge propose community members who are appointed by the Judicial Branch as local representatives, aids to judges and interpreters. Therefore, language and cultural barriers also continue to be major access problems for the indigenous population.

6. Human Resources development is a critical and continuing requirement for the justice sector. The 1988 sector

assessment noted that almost all AOJ training in Guatemala had been donor financed; that is still the case. While the design of Project 520-0369 gave preeminence to providing training and to strengthening the Judicial Branch's in-house training capability, little training has been presented that was not offered by donors --ILANUD, HLS, etc. To a significant extent the Judicial Branch's training unit's capability continues to be limited to providing logistics for courses, i.e. it has negligible in-house capability to determine training needs or to design courses to meet those needs and nothing is underway to correct these failings. On the other hand, the Public Ministry now has an active and capable training unit which has offered 30 training events during 1990 and 1991 which have responded to the felt needs of the Ministry's employees. The unit and its training activities are almost 100 percent financed by Project 520-0369. And the two full time professionals of the unit, who have been critical to its success, may be paid salaries exceeding what the Ministry will be willing to absorb. However, the Public Ministry has informally stated that it will absorb the fixed costs of the training unit beginning in 1992.

7. While implementation of the CENALEX program so far has been relatively successful, the withdrawal of external assistance, changes in Judicial Branch leadership and probable changes in senior CENALEX personnel may endanger the Program beginning in 1992. A.I.D. has invested over \$1 million in CENALEX, primarily for commodities. Unless the Judicial Branch provides to CENALEX increasing levels of financial support, it will begin to wither and die in 1992.

8. A long delay between the design of Project 520-0369 and the beginning of its implementation probably lessened everyone's understanding of the Project and their dedication to its success. The Project is fairly complicated and very ambitious, and over a year lapsed between the signing of the Project Agreement and the start-up of the contract staffing the PIU. In the interim there was no consistent interaction with the Judicial Branch concerning the Project. A.I.D. assumed that at least senior management of the Judicial Branch was still knowledgeable about the terms of the Project and its expectations. Nevertheless, at the beginning of project implementation A.I.D. scheduled a meeting of all donors (RAJO, ILANUD, ICITAP, HLS and USAID) with the Judicial Branch to refresh everybody's memory, regain commitment and improve coordination. However, the senior management of the Judicial Branch visited rather than attended the meeting and most of the staff offices that would be affected by the Project were not invited. In hindsight a greater effort should have been made to assure that the Judicial Branch leadership still understood and agreed with the Project's various proposed activities and that concerned staff were included in that effort.
9. One cannot interpret assent to documents as true agreement to their terms. Both the 520-0369 Project Agreement and the proposed 1990 Project workplan included detailed statements of what was to take place under the Project. Both documents were accepted by the Judicial Branch. Later, it became apparent that the Judicial Branch did not believe that it was bound by their terms or even prepared to pay much attention to them. Either more time should have been spent in explaining the content of those documents (assuming that the directors of the Judicial Branch would take the time to receive

the explanation) or much more generally worded documents, which would have allowed for flexible and more reactive activities should have been used. The latter approach would have been more consistent with the way the court system was accustomed to operating, but it would have required a more ad hoc approach to implementation than AID generally likes.

10. Project 520-0369 tried to start implementation on too large a scale, beyond what is now recognized as the limited absorptive capacity of the Judicial Branch. The Project Agreement called for undertaking a comprehensive program of improvements in the operation of the Judicial Branch's administration and complementary work with the National Justice Commission and the Public Ministry. It also called for the creation of a Project Implementation Unit (PIU) to conduct most of the implementation actions. The contractor, with the Mission's and the Judicial Branch's agreement, hired personnel and rented office space to accommodate the expected level of activities. This responded both to the design of the Project and to the desire to make up for the time lost between the signing of the Project Agreement and the contract for the PIU. It appears that the effort to start-up quickly and on a broad front may have contributed to the difficulty of the Judicial Branch's being able to respond to --or to be willing to read-- very long documents and multi activity proposals from the PIU. The achievement of true understanding among the PIU, the Mission and the Judicial Branch on how the activities would be carried out clearly suffered. It would have been better to have adopted a slower, more tentative pace with which the Judicial Branch might have been more comfortable. It might also have avoided the problem of having hired more staff and rented more space than it turned out was needed by the level of activity achieved.

11. One should not expect that a massive institutional reform undertaking will succeed without selling the activities to the staff of the institution involved. The Judicial Branch has a highly centralized decision making system, e.g. 22 units reported directly to the President who decided everything important until the beginning of 1991, after which the full Supreme Court began making administrative decisions. And activity proposals, with the exception of CENALEX, were not vetted with the Judicial Branch's staff. To a dangerous extent Project 520-0369 was designed around expectations, which proved false, regarding the actions and ability of one person. No attempt was made to gain a constituency for change among those who would implement the change either before or during the detailed design periods of the activities. The assumption seems to have been that changes would be accomplished by fiat. When the President of the Judicial Branch --who is widely viewed as a scholar, but not a strong administrator-- did not push for implementation, the result was donor activities ignored by the institution.
12. The technique of using a Project Implementation Unit (PIU) poses dangers which need to be recognized and addressed. The designers of Project 520-0369 saw the PIU as an entity independent of, but responsive to, both the Mission and the Judicial Branch. The PIU was to relieve both of the parties of most of the administrative burden of the Project while providing them with professional advice and services. The concept assumed that there was and would continue to be fundamental agreement between the Mission and the Judicial Branch on the major steps to be taken or that the PIU could help bring about such agreement when necessary; and that the Judicial Branch would see the PIU as a professional organization whose views and assistance were valuable to it.

The feasibility of this concept of the PIU was supported by its apparent endorsement by the Judicial Branch during the design work and by the way in which the President of the Judicial Branch had treated HLS activities. However, in practice the concept proved very difficult to implement. The Judicial Branch did not appear to want a PIU which was in any sense independent of it; indeed, it appeared to be quite concerned that the PIU might act in ways which would not be compatible with its wishes. Furthermore, important differences in approach to the implementation of the Project arose between the Judicial Branch and the Mission, and the PIU was unable to bridge those differences. Certainly to some extent the problem with the implementation of the PIU concept was due to the various factors discussed in the rest of this paper. In any event, if such an approach to implementation is used in the future, it would be wise to recognize that the relationships among the parties will require extraordinary attention. One cannot assume that the parties will adjust to the concept even if they say that they accept it.

13. The physical separation of an advisory group from its counterpart organization is undesirable. At the insistence of the Judicial Branch, the PIU established its offices outside the buildings belonging to the Judicial Branch. Although the Judicial Branch never explained its reasons, it seems that it wanted to avoid the appearance of being influenced by a foreign presence. However, the Judicial Branch has permitted other --non U.S.-- external advisors to use space in its offices. Indeed, it has used the granting or denial of even visiting rights to the various offices of the Judicial Branch by persons in the PIU or elsewhere as a way of expressing its regards for those persons and/or their work. The physical location of the PIU may well have contributed to the lack of close working relations between the PIU and the court.

14. A project should not be undertaken in a new and sensitive area unless Mission management is prepared to devote the time and leverage to make it work. The President of the Judicial Branch --an organization not familiar with A.I.D. and its procedures-- may have expected to deal at the level of Mission management on matters of concern to him and to Project 520-0369. Although perhaps understandable from the point of view of the Mission's priorities at the time, it probably was a mistake for Mission management not to have been involved more directly and sooner in the discussions with the President of the Judicial Branch and not to include Administration of Justice concerns in the Mission's operative Policy Dialogue Agenda. Probably there should have been periodic (perhaps quarterly) formal reviews of progress with the Judicial Branch in which Mission management and the contractor participated. And the justice sector should have received attention in overall program discussions with the top officials of the Executive Branch, similar to the attention accorded macro-economic issues.
15. The problems arising from personal conflicts need attention. There have been almost continuous personal conflicts and a lack of good working relationships between the Judicial Branch and both the PIU and the Mission. Because at least some of the conflicts have seemed to be based on either petty issues or exaggerated reactions to events, there was a tendency to react by ignoring them on the assumption that time would put them in proper perspective. That attitude proved to be wrong. It would have been better for both the Mission and the contractor to have dealt more promptly and decisively with the problems of personal conflicts and seriously faulty personal communications.

16. The use of AID funds and of a foreign assistance group to hire local personnel for the Judicial Branch is unwise. The Project's design called for AID funds to be used to finance Guatemalan technical assistance to the Judicial Branch, and indicated that in selected cases AID funds might be used to provide additional Guatemalan personnel for the Judicial Branch. The Judicial Branch originally insisted that the Project Agreement state that efforts would be made to utilize Guatemalan persons to provide technical assistance and support, and that only if such persons were not available would AID funds be used for external technical support. During the preparations for implementation the Mission and the Judicial Branch decided that the PIU should be responsible for contracting both the services of Guatemalan technical advisors and persons to provide expanded support to the Judicial Branch. This proved to be a difficult responsibility to meet. The Judicial Branch appeared to think that it had the right to name anyone it chose to be the technical advisors or support staff, to ignore the qualifications established for positions in the selection of personnel and to set salary levels for them without reference to their immediate past earnings. Moreover, the Mission asserted that it did not want AID funds used to pay persons who were or recently had been government employees --especially of the court system; although it made a few exceptions which became widely known. The contractor was unsure to what extent it had an independent responsibility to recommend persons and salary levels; and in seeking to identify possible candidates for the positions, it took actions, e.g. interviewing possible candidates, which proved to be anathema to the Judicial Branch. Eventually the President of the Judicial Branch told the Mission and the PIU that he wanted no Guatemalans to be

considered as possible sources for providing technical advice and support. The use of AID funds to compensate Guatemalans raised more expectations and caused more hard feelings than any other factor in the Project's implementation.

17. The Judicial Branch was not required to provide any counterpart to the ILANUD, HLS or 520-0369 Projects with the exception of the in-kind costs of the salaries of people in training, i.e. there was no requirement for any budgetary commitment on the part of the Judicial Branch. When it was requested to provide new permanent staff that were required e.g., a statistician or a librarian for an activity designed and ready to be implemented by expatriate T.A., commodities, etc. which the USAID would fund, the Judicial Branch simply did not act. (However, the Judicial Branch was willing to draw upon part of its significant 1990 budgetary surplus to hire high priced expatriate T.A. for the drafting of laws.)

18. The National Commission is defunct and there is no noticeable effort on anyone's part to resurrect it. It was created in 1987 by the President of the Judicial Branch, who made himself President of the Commission. The membership consisted of the Judicial Branch, the Congress, the Public Ministry, the Ministry of Government, the Bar Association and the law faculties.

While a definitive determination of why the National Commission failed is not possible, the following probably are the most significant factors:

- It was created in response to an external request (RAJP/ILANUD) rather than in response to the desires of its membership. The costs of the Commission were fully borne by A.I.D., thereby not requiring any commitment on the part of the Judicial Branch.

- The domination of the Judicial Branch probably reduced the interest of other members. Moreover, after 1988 the Judicial Branch did not make a noticeable effort to involve the Commission in significant judicial reform activities.
- The Commission did not have a workplan, i.e. meaningful reasons for meeting. As a result, it had nothing to offer its members, who may well have determined that it was a waste of time.
- The natural tendencies of each of the member institutions to guard its independence and for the Judicial Branch President to quarrel institutionally with the other members. (The latter, however, should not necessarily be considered a permanent situation, but perhaps a reflection of the personality of the incumbent President of the Judicial Branch).

19. Juvenile delinquency --so far not subject to any A.I.D. intervention-- is a serious and growing problem which is not receiving adequate attention. There are an estimated 15,000 "street children" in Guatemala city (10,000 boys and 5,000 girls). In the absence of an adequate system to deal with the delinquency of these children some policemen have acted violently toward the children.
20. The Guatemalan Bar Association, to which all lawyers must belong, is the only organization in Guatemala which attempts to provide continuing education. However, the Bar suffers from serious financial limitations, lacks professional staff outside of the administrative area and changes leadership annually. Despite widespread disenchantment among its membership with the legal system, it has not taken upon itself a strong role in pushing for reform and modernization of that system!

And the Judicial Branch has not encouraged it to assume such a role. As a result, the Bar does not have a significant continuing education program and it cannot be considered a really major force for strengthening and modernizing the legal system. While the USAID was able to make a few small local currency grants to assist the Bar with seminars in the 1988 - 1990 period, this funding source is no longer available and contact with the Bar has diminished. However, if a new Criminal Procedures Code requiring orality is enacted, there will be an important requirement to train private defense lawyers in orality.

21. The law faculties have not been included in any donor activities and state that in general they have been excluded by the Judicial Branch from the reform process. Effort has not been made to gain the support of, or to utilize, the faculties as a force for modernization and improvement of the legal system. The faculties appear strongly in favor of reforms; however, San Carlos opposes that part of the proposed Criminal Procedures Code which would require that lawyers and not law students defend indigents.

Despite low budgets, part-time faculties, outdated libraries and a lecture system of education (problems which are most evident at San Carlos University which has over 10,000 law students and is the source of most public sector lawyers) neither the faculties nor the students seem greatly concerned about the quality of legal education (77% of the law students rated their education as "good" in 1987). However, outside observers and many Guatemalan lawyers have stated that legal education in Guatemala is too theoretical, outdated and has declined markedly at San Carlos over the last couple of decades. As a result the legal system generally receives a poor product. Given the part time nature of the law professors, faculty building efforts, i.e.

faculty time available for training programs, would be limited to short and primarily in-country courses.

22. Despite all of the preceding, the environment for reform does seem to have improved over the last few years. Public and private sector criticism, domestic and international, of the appalling failures of Guatemala's judicial system can be found at least every week --if not daily-- in the newspapers. Lawyers are especially critical of the system. All of the persons interviewed stated that they believed that major law reforms would be adopted. Perhaps ILANUD and HLS especially can take some of the credit for getting people to at least talk about improving the judicial system.

The leadership of the Judicial Branch which takes office in February, 1992 will find itself under pressure for reforms; pressure which the Executive Branch already feels and to which it has responded with calls for reform. However, the absence of any organized private sector movement or pressure group dedicated to legal reform is troublesome. Sustained high level GOG commitment and support --from all three branches of government-- will be needed to assure the resources needed to strengthen the judicial system, to wear down the resistance to change found in all bureaucracies and to demand accountability.

23. A.I.D. assistance to improve the judicial system is well accepted (if not always well used). The Public Ministry actively seeks A.I.D. assistance. The Judicial Branch also has areas, e.g., CENALEX and training, in which it continues to seek assistance. None of the persons interviewed indicated any concerns or sensitivities to USG assistance in this sector. And most suggested where A.I.D. should concentrate its attention, which included areas such as training judges and prosecutors, once considered too sensitive for A.I.D. involvement.

C. RECOMMENDATIONS

1. Assuming that the proposed Criminal Procedures Code is adopted by the end of CY 1991, assisting the GOG to implement it should be the centerpiece of 1992 and 1993 AOJ activities. This effort, if successful, would bring about a great improvement in the criminal justice system and provide a departure point and psychological base for further reforms. And it would tax the GOG institutions involved to the point that other possible activities would be undesirable distractions. If the proposed Criminal Procedures Code is not adopted by the end of CY 1991, then the USAID should move slowly and cautiously in making commitments to the Judicial Branch. In part to imply our concern and to provide admittedly limited leverage for reform, but also because the continuing uncertainty caused by pending legislation could continue to negatively affect assistance activities.

2. The Public Ministry should be a primary immediate target of USAID assistance. A strong prosecutorial function is basic to a criminal justice system. However, Guatemala's prosecutorial system is notoriously weak. And the proposed new Criminal Procedures Code would shift large responsibilities from the court system to the Public Ministry thereby requiring a quantum jump in its performance, while reducing the demand on the court system. The Public Ministry is not yet capable of responding to the proposed changes or even of quickly absorbing donor assistance. Therefore, job related training, especially of fiscales, and the important, but relatively modest organizational and procedural technical assistance activities proposed in the Analysis of the Public Ministry of Guatemala (pgs. 64 through 68) should be the first activities supported by A.I.D. along

with preparation of a manual for fiscales. The equipment (some of which will be donated under 520-0369) and new personnel recommended in the report should be primarily the responsibility of the Public Ministry. This training and technical assistance is justified without any new legislation, necessary to create the administrative infrastructure critical to allowing the Ministry to absorb higher levels of assistance, and wanted by the Ministry's leadership; although institutionalization of the training unit founded and still funded under Project 520-0369 should be required. A significant increase in the Public Ministry's budget should be expected before entering into a larger program.

3. The USAID should not reinitiate a program of assistance to the Judicial Branch prior to satisfactorily completion of a serious dialogue with the Judicial Branch authorities who will take office in February 1992. "Satisfactory" should be defined as reaching real mutual agreement with both the leadership and the concerned staff on what will be done, including significant investments by the Judicial Branch in each activity to be undertaken in order to assure the Judicial Branch's active support and interest in the activity. Negotiations with the Judicial Branch should include timetables for Judicial Branch inputs which will assure some "up front" GOG investments.
4. The HLS and 520-0369 Projects have provided a number of still valid recommendations and activity designs which would improve the Judicial system with or without new legislation (in some cases, e.g. the use of orality at the first instance level, the legislation would simply mandate what is now permissible and recommended by HLS). The leadership of the Judicial Branch that takes office in 1992 should be provided copies of the 1988 FIU

Sector Assessment and the Harvard and Checchi and Company final reports. The dialogue recommended in (3) above could be initiated by a conference at which the results of the assessment and the final reports are orally presented. After the Judicial Branch's new leadership has had an opportunity to digest the reports it should be requested to submit its program for improvement and the staff it will commit to that program. Assuming that the new Criminal Procedures Code is enacted by early 1992 and consistent with recommendation (1) above, only those activities which would support implementation of the new code should be tackled in 1992.

5. Assumption by the Judicial Branch of a full and satisfactory level of support for CENALEX should be a "Condition Precedent" for USAID assistance to the Judicial Branch in 1992 and thereafter.
6. Human Resource development should be the main focus of 1992 and subsequent years activities. This focus is appropriate for a number of reasons:
 - For the most part, personnel in the justice sector have received little or no training for their positions. This has resulted in significantly reduced levels of job performance.
 - Training is an important way to sell reforms to the staff and to improve their professional moral. And without the active support of the staff, reforms are more difficult or impossible to implement.
 - Expected reforms in key laws, especially the Criminal Procedures Code, will introduce significant changes in the ways people --judges, court support personnel, prosecutors and defense attorneys-- perform their jobs. Unless people understand how to implement these changes, compliance with the new law(s) will suffer and the reforms themselves may be

discredited. Moreover, these reforms will require a large number of new employees, especially prosecutors, who will need orientation and training to perform their responsibilities.

7. Adequate provision of resources by the GOG for the Judicial System should be a major policy dialogue issue. The needs will be substantial, but have never been calculated. Capable judges and prosecutors cannot be recruited and retained with salaries of from \$400 to \$500 equivalent per month; substantial increases will be needed in the number of prosecutors and judges; courtrooms will need remodeling and equipping for oral hearings and general needs, especially in rural areas; etc. The USAID can no longer just say that the Guatemalan Constitution earmarks 2.5 percent of the National Budget for the Judicial Branch (San Carlos University gets 5 percent; sports gets 3 percent) and behave as if this, in and of itself, is sufficient counterpart or an appropriate budget level.

8. Passage of a satisfactory Career Judicial Service Law should be a major policy dialogue issue. The Judicial Branch is widely viewed as unprofessional from top to bottom. Knowledgeable Guatemalan observers of the Judicial Branch are especially critical of the use of untrained law students --some of whom never graduate and remain in the courts-- as court officials. They are viewed as incompetent, irresponsible and corrupt; and they often are the only ones who the accused and defense attorneys see, i.e. the judge decides cases based upon files prepared by his/her staff. If requested, the USAID should be prepared to provide T.A. to assist the new Supreme Court to review the bill for the Career Judicial Service law, prepared by the Judicial Branch, which has been languishing in the National Congress

since 1988. The training recommended in (5) above should be tailored to strengthen the system adopted in the law.

9. Continuing poor accessibility to the judicial system in many rural areas should be a major policy dialogue issue. A number of Guatemalans familiar with this issue believe that at least one justice of the peace should be located in each municipality. (Some countries appoint part-time justices of the peace, who agree to desist from litigating for the period of their appointment, in smaller municipalities.) Also of major concern is the failure of the Judicial Branch to provide for bilingual court personnel in heavily indigenous areas.
10. The appalling state of criminal investigation should be a major policy dialogue issue. The judicial system is a three legged stool --investigation, prosecution and judgement. At the moment the Guatemalan stool has no legs. If the courts and the prosecution are improved, the stool still will not function satisfactorily without a capable investigation system which identifies the culprits and collects the evidence needed for convictions. The GOG should decide what the responsibilities of the police and the proposed Public Ministry investigators will be, and provide the resources to attract, train and retain capable and honest investigators.
11. The USAID's implementation mechanism(s) for any new projects should be flexible so as to accommodate rapid or slow implementation. Consistent with number (3) above, agreement on each activity should be carefully hammered out --with direct USAID participation-- probably sequentially so as not to overload the Judicial Branch. Any contracts should be relatively modest, but allow for expansion if that is indicated. The "too much, too soon" design and implementation schedule of Project 520-0369 should be avoided.

12. If the GOG wants a National Commission for Justice Sector Reform, we should be prepared to support the GOG's efforts. A National Commission can help to stimulate interest, commitment and interinstitutional cooperation. However, we should not attempt to force creation of a commission, which would go through the motions for a while and then fade from the scene.

13. The USAID should seek to strengthen and sustain societal pressure for legal reform. Project 520-0369 appears to have been based on the faulty assumption that the Judicial Branch was sold on administrative reforms and that its President would carry the Project. However, if Guatemala is to overcome a tradition of accepting a notoriously ineffective and corrupt judicial system, one which serves the interests of the powerful who can manipulate and/or ignore that system, then sustained and effective societal pressure will be needed to provide the resources required and to demand proper performance. Otherwise reforms may be shelved or subverted. Methods should be sought to engage and to foster communications and cooperation among the Colegio de Abogados, law faculties, and other private sector groups such as ASIES and FLACSO, e.g. through the funding of research, seminars and training.

D. PROPOSED STRATEGY

USG efforts should seek to reinforce the demand and momentum for reform and strengthening of the criminal justice system that has developed within Guatemala. The probability of reform legislation being enacted soon and the seating of a new Supreme Court in February 1992 strongly suggest that the next six months will be a seminal period for sector policy dialogue and program negotiations. There will be requirements for USG inter-Agency cooperation, a dialogue with all three branches of the GOG and separate time phased courses of action for each GOG institution involved. An important strategic consideration will be that "a chain is only as strong as its weakest link," i.e., the investigative, prosecutorial and judicial functions all must be strengthened if the criminal justice system is to function effectively. The following are suggested courses of action.

October 1991 thru January 1992

Development by the Country Team Working Group of a non paper on a program to improve the criminal justice system and reservation of FY 1992 ESF funds which could be used to support that program, followed by high level meetings with GOG officials at which the non paper will be delivered and explained. The following are the major courses of USG action for GOG institutions.

Presidency and Congress

- Encourage election of highly qualified Supreme Court Magistrates.
- Support approval of bills before the Congress to reform the criminal justice system.
- Support a 1992 budget increase for Public Ministry.

- Encourage GOG development and support of a plan to reform and strengthen the police.

Ministry of Finance

- Support a 1992 budget increase for the Public Ministry.

Ministry of Interior

- Encourage GOG development and support for a plan to reform and strengthen the police.

Public Ministry

- Continue ongoing support to in-house training program.
- Negotiate and sign Agreement on use of commodities available due to closure of Improved Administration of Justice Project Implementation Unit.
- Negotiate and sign Limited Scope Grant Agreement (LSGA) covering CY 1992 so as to provide continued and expanded support for training and to initiate technical assistance (manuals for organization and administrative and personnel procedures, and for Fiscales) early in CY 1992.
- Begin development of a proposal for a larger follow-on to the LSGA program based upon expected approval of increased Public Ministry budget, revised Criminal Procedures Code and revised Organic Law of Public Ministry.

Judicial Branch

- CENALEX activities only terminating at end of CY 1991.

Private Sector

- Identify and enter into a dialogue with private sector organization willing and able to provide sustained pressure for Judicial Sector Reform.

February Thru April 1992

Presidency and Congress

- Continue to support any unfinished pre February actions, e.g., pending legislation and police reform plan.

Public Ministry

- Continue in-house training program. Expand it if required to accommodate additions to Fiscalia, e.g., orientation programs and training by expatriate prosecutors (due to lack of positive local role model).
- Conduct technical assistance funded under LSGA.
- Assuming continuing positive USG view of Public Ministry's attempts to improve performance, finance travel by Attorney General, Chief of Fiscalia and Chief of training to Uruguay --which recently has converted to oral hearings, has one of the best judicial education programs in Latin America and has embarked on a study of ways to reduce the administrative burden on the Supreme Court-- to see its Fiscalia, training program and oral hearings (could be combined with similar Judicial Branch visit --see below).
- Conduct study of Public Ministry's budgetary and personnel requirements which would allow it to satisfactorily implement reform legislation.

Judicial Branch

Once new Supreme Court is seated and has elected its President:

- Meet with new President --or with full court if possible-- to deliver non-paper (updated, if needed) and to state our interest in supporting a Judicial Branch prepared development program. USAID offers to sponsor a March seminar at which contents of FIU sector assessment and HLS and Checchi Final Reports are presented orally (participants also receive written copies). Ideally, Attorney General, his senior aids and Ministry of Interior senior representation also invited.
- Assuming favorable readings on the New Supreme Court's position on reform, president and two or three others from Judicial Branch invited to visit Uruguay (see preceding Public Ministry section).
- Judicial Branch requested to designate a senior level committee which will prepare and discuss with USAID Judicial Branch development program. (Committee should include those who went to Uruguay.)
- Review by USAID of adequacy of Judicial Branch's support to CENALEX and status of its development.
- Possible small LSGA to bridge gap until negotiation of a larger program, but only to support training and/or T.A. for implementation of New Criminal Procedures Code.

Private Sector

- Develop and sign initial Agreements for research, seminars and training.

May thru August 1992

Judicial Branch

- Development, negotiation and signature of an incrementally funded multi-year Agreement including conditionally for USG assistance.

Public Ministry

- Study completed on financial and personnel requirements, which are reflected in reprogramming of Ministry's 1992 budget and its 1993 budget request, and in USG conditionality for assistance (see below).
- Development, negotiation and signature of an incrementally funded multi-year assistance Project, including conditionality for USG assistance.

E. RESOURCES REQUIRED

Any attempt at this point (before dialogue with the beneficiaries and preliminary design of the projects) to set out definitive amounts of funds required would be artificial. The following are suggested guidelines.

- FY 1992 Public Ministry LSGA would be for \$170,000. (A Program for these funds has been developed.)
- FY 1992 Cooperative Agreements and/or Purchase Orders totaling about \$100,000.
- In addition, FY 1992 funds would be obligated in separate Agreements:
 - * HB 3 Agreement(s) with the Judicial Branch and the Public Ministry. The amount obligated should

be sufficient to fund about 18 months of expected activities, which would limit the USAID's exposure while it observes commitment and actions related to Project. Estimated FY 1992 obligation \$1.5 million.

- * An Agreement signed by the Ministry of Finance, Public Ministry and Judicial Branch under which set amounts of dollars would be disbursed to the GOG to finance agreed upon imports from the U.S. in response to implementation of agreed upon reform measures. Local currency thereby generated would be used by the Judicial Branch and Public Ministry for agreed upon investment costs, e.g., court remodeling and purchase of office equipment. GOG salaries would not be eligible. Estimated FY 1992 obligation \$6 million.

- Reforms we would seek for non-project assistance --if not already achieved-- would include:
 - * Ongoing and satisfactory program of training which would allow implementation of a new Criminal Procedures Code.
 - * Enactment of a satisfactory Career Judicial Service Law.
 - * Enactment of new Organic Law of the Public Ministry.
 - * Adoption of salary levels for Judicial Branch and Public Ministry which would attract and retain qualified personnel.

- * Appointment of a full or part-time justice of the peace in each municipality.
- * Recruitment of about 100 new fiscales based upon satisfactory selection criteria.
- * Police (to be developed in coordination with Embassy and ICITAP).

APPENDIX A
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** These Final Reports discuss and reference a number of significant technical reports prepared as part of the Projects.

(RW-2179Ualc)

ATTACHMENT B

Persons Interviewed

Ricardo Alvarado Ortigoza - Subdirector of FIU Judicial Sector Study

Alfredo Balsells Tojo - Past GBA President/Litigant

Alberto Binder - Advisor to the Judicial Branch

Fernando Bonilla Martínez - Past Magistrate, Law Professor and Law School Dean

Víctor Hugo Cano - Ex head of Judicial Branch union, now Advisor to the Attorney General

Carmen María de Colmenares - Dean of Law Faculty, Rafael Landívar University

Josefina Coutiño - Director of CENALEX

Mauro Chacón Corado - Litigant

Jose Luis González Dubón - Litigant

Eduardo Mayora Alvarado - Dean of Law Faculty, Francisco Marroquín University

Héctor Mayora Dawe - Litigant, Congressional Deputy, Supreme Court Interest

Arnoldo Ortíz Moscoso - Past GBA President/Litigant

Francisco Palomo - Criminal Lawyer

Enrique Peralta Méndez - Litigant, Supreme Court Interest

Rene Poitevin Dardón - Director of FIU Judicial Sector Study

Juan José Rodil Peralta - Lawyer, Congressional Deputy, Supreme Court Interest

Ricardo Sagastume Vidaurre - Ex-President Supreme Court

Manuel Arturo Soto Aguirre - Litigant and Vicepresident of the Congress

Cipriano Francisco Soto Tobar - Dean of Law Faculty, San Carlos University

John Swank - Past GBA President

Ernesto Vitteri - Lawyer, Advisor to the President of the Republic

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