PN-ABZ-329 TSO #14
91926

NATIONAL CENTER FOR STATE COURTS

REGIONAL ADMNISTRATION OF JUSTICE PROJECT

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
BUREAU FOR LATIN AMERICA AND THE CARIBBEAN
OFFICE OF DEMOCRATIC INITIATIVES

Recommendations and Proposed Implementation Plan:

Court Organization under the New Guatemalan Criminal Code

Submitted to:

USAID Mission to Guatemala
November 1993

Prepared by:
Robert W. Page, Jr.

in consultation with the
National Center for State Courts

National Center for State Courts
1110 North Glebe Road, Suite 1090
Arlington, Virginia 22201
(703)841-0205 / Fax (703) 841-0206

RECOMMENDATIONS
AND PROPOSED IMPLEMENTATION PLAN
FOR
COURT ORGANIZATION
UNDER THE NEW GUATEMALAN CRIMINAL CODE

1. INTRODUCTION 2

2. OBJECTIVES OF THE TECHNICAL ASSISTANCE 3

3. THE CURRENT SITUATION 4

   3.1 DESCRIPTION OF THE EXISTING PENAL PROCESS 4

   3.2 CURRENT ADMINISTRATIVE ORGANIZATION AND ENVIRONMENT 6

4. THE NEW PENAL PROCESS 8

   4.1 THE BASIC PHILOSOPHY OF THE NEW CODE 8

   4.2 THE STRUCTURAL CHANGES DICTATED BY THE CODE 9

   4.3. WORK CONDUCTED TO DATE TOWARD IMPLEMENTATION OF THE CODE 10

5. CRITICAL ISSUES RELATED TO THE ORGANIZATION OF THE COURTS UNDER THE NEW CODE 12

6. PROPOSED IMPLEMENTATION PLAN, MODEL COURT DESIGN AND GENERAL ISSUES 15

   6.1 IMPLEMENTATION PLAN 16

   6.2 SPECIFIC RECOMMENDATIONS 19

7. CONCLUSIONS 20

TECHNICAL ASSISTANCE TO THE ORGANISMO JUDICIAL
UNIDAD DE PLANIFICACION Y TRANSFORMACION DE LA JUSTICIA PENAL

1. INTRODUCTION

USAID/Guatemala requested the National Center for State Courts (NCSC) to provide technical assistance to the Guatemalan judicial branch's Criminal Justice Planning Unit (Unidad de Planificación y Transformación de la Justicia Penal of the Organismo Judicial) in defining administrative changes necessary to implement the new criminal code.[1] The NCSC responded by sending Robert W. Page Jr., a consultant in court management issues (hereinafter the consultant) to Guatemala in accordance with the terms of reference for the effort. The terms of reference were developed by Lic. Cesar Barrientos, Director of the Unidad de Planificación y Transformación de la Justicia Penal of the Organismo Judicial of Guatemala.

The technical assistance was carried out primarily during a visit to Guatemala from September 26-October 9. In conducting the work the consultant visited courts in and outside the capital, interviewed judges and court personnel, analyzed the new code, reviewed existing studies and work developed to date by the Unidad and others, talked with USAID officials and held intensive working discussions with the director and staff of the Unidad. The recommendations and conclusions of the consultancy were developed in collaboration with the staff of the Unidad. A draft of the report was given to and discussed with the director and key staff of the Unidad. While the report is the product of the consultant, the exit interviews indicate a high level of agreement with the findings and recommendations.

The work is organized in two parts--one in English and one in Spanish. The English part is directed to the USAID audience. It contains some background information on the current situation in the criminal courts and how procedures will change under the new code. The report includes a list of the critical issues that the Organismo Judicial will have to confront to implement the new code; outlines the elements of a five year implementation program, describes some of the specific technical recommendations made in the Spanish text and then outlines a set of conclusions which include recommended actions to be taken.

The Spanish text which is directed to the Organismo Judicial in general and the Unidad de Planificación in particular, includes the summary of major issues, the implementation plan,

---

[1] The Democratic Initiatives Office, Bureau for Latin America and the Caribbean (LAC/DI), authorized the NCSC services requested by USAID/Guatemala pursuant to a contract (LAC-0669-C-00-1040-00) with NCSC to provide technical support under LAC/DI's Regional Administration of Justice Project.

and then develops the technical recommendations in detail. These include recommended job descriptions, standards for space allocations, standards for personnel assigned to each type of court and model courtroom layouts. It includes the conclusions also. Consequently, there is some overlap between the English and Spanish text.

2. OBJECTIVES OF THE TECHNICAL ASSISTANCE

The objectives of the technical assistance were agreed by representatives of the Guatemalan court and USAID and the consultant to be:

1. Make recommendations on the restructuring of the criminal judicial offices based on the new criminal code including:

   a. Administrative organization

   b. Proposed redistribution of duties of personnel

   c. Definition of the necessary resources to operate a criminal court under the new system including physical resources, communications, notifications.

   The recommendations should be divided into immediate and longer term recommendations.

2. Make comments on other aspects of the development plan for the transition to the new system as appropriate.

3. THE CURRENT SITUATION

3.1 DESCRIPTION OF THE EXISTING PENAL PROCESS

Until the adoption of the new criminal code, the criminal process in Guatemala had not undergone major reform in recent years. One exception was the change around 1987 that separated the instruction and the sentencing functions so they were carried out by two separate judges(at least in the larger departments and urban areas).

The current criminal process begins with the police who either are involved in the initial apprehension of a defendant or investigation of a crime or are notified of a potential crime by a citizen. A police official called an **escribiente de novedades** writes out what is essentially a police report called a **parte policial** and sends it through the police hierarchy to the judicial branch.

The parte policial is assigned to the **juez de paz de turno** which is equivalent to the duty judge at the lowest court level. Outside of the capital, the case would automatically go to the juez de paz with geographic jurisdiction.

The case is registered with the justice of the peace in the **registro de nuevas causas**. The case is given a number which usually includes the year and perhaps the month and an identifying number of the clerk receiving the case. The juez de paz has three days to complete his or her responsibilities. In some instances, the case will stay with the juez de paz for all further proceedings. Cases involving less than two years of imprisonment and other minor traffic or criminal matters fall into this category or matters which roughly approximate our misdemeanors.

The responsibilities of the juez de paz are to begin to obtain the necessary information to decide the appropriate action to take. The juez de paz may order and receive the **Declaración Indagatoria**, which is the statement of the accused, **Declaración de Ofendido**,which is the statement of the victim, **Declaración de Medico Forense**, which is the forensic statement and sometimes requests to the police for further investigation. Much of the work on the case may be done by one of the **oficiales** or clerks who work in the juez de paz office. In the capital, each juez de paz has four clerks. The prosecutor is not involved at this level.

The cases move to the **juzgado de instrucción** after three days. The **comisario**, or clerk in charge of correspondence and the reception of papers receives the case and enters the case into the registro of the juzgado. The juzgado de instrucción has 15 calendar days to complete its work.

If a case involves a prisoner, it generally goes directly to the judge for processing, while non-custody cases are assigned to an **oficial**. At the juzgado de instrucción level, there are

generally six oficiales.

Cases in which there is no known suspect are called **Sobre Averiguar** cases. Approximately sixty percent of criminal cases are in this category. Once the basic paperwork is completed, these case are given low priority until a suspect is apprehended.
The defendant, usually through an attorney, can request to have bail established. If the judge grants bail and the defendant has the funds, the defendant can go free, **bajo finanzas**. Bail can be deposited with the court treasury or at times with a bank or other institution. If bail is paid, the case will fall to a lower priority for processing. Many times the bail money will remain in the treasury without being returned to the defendant or otherwise disposed of unless the lawyer moves to have the case closed in order to get the money returned to pay legal fees.

At the instrucción phase, the duty of the judge is to decide whether the defendant should be held over to the sentencing phase which is roughly equivalent to the trial phase. To this end, the court may order further **diligencias**, which is roughly equivalent to our concept of discovery. The judge will also resolve any differences in the testimony received, at times by bringing the prisoners to the court, do a **reconstrucción del hechos** working with the **oficial** assigned to the case and perhaps the **fiscal** or the prosecutor to recreate what happened, receive **declaraciones de los testigos del cargo** or those officers involved in the arrest.

The manner to obtain the necessary information, which is investigatory in nature, is for parties to come to the court and make statements before an oficial. The oficial takes the testimony and types it. The oficiales have forms indicating the questions that they should ask of witnesses depending on who the witness is(victim, defendant etc.) and what type of case it is.

The judge has three basic options to consider: allow the defendant to go free on his or her own recognizance, agreeing to appear when cited; establish bail so the defendant can go free on bail, or hold the defendant to answer and bind the defendant over to the sentencing court.

If a defendant is held over, in the capital the case first goes to the **Secretaria de la Corte Suprema** for assignment to a criminal court.

Once assigned to a sentencing court, the **juez de sentencia** oversees all the activities that are associated with trial and sentencing. The judge conducts an initial review of the case and decides what to do. In some courts, this review may be done by the **secretario.** The initial decisions to take include: close the case; change the custody status of the defendant and/or open a case at the sentencing level.

For cases that are moved forward, a **prueba al proceso**, or case file is opened. The prosecutor and any defense attorney involved each outline what investigation they believe should be undertaken. The judge will take these suggestions and then outline the discovery that he wants carried out. The case then is prepared to the point where the judge finally dictates the sentence in the case. This phase is scheduled to take 15-30 days. The oficiales perform

similar investigative functions at the sentencing level to get the case ready for the judge to make a decision.

There are no oral proceedings in the existing process with the possible exception of when the case is passed from instrucción to sentencia phases. At times, there is a public presentation of the issues in the case by the prosecutor and the defense, although there is no debate on the issues.

The prosecutor's involvement in the process is limited to the sentencing phase. The Ministerio Publico is also involved in family, juvenile and other matters so have limited resources for the prosecutorial function. There are 22 fiscales in the capital and one per department outside of the capital.

3.2 CURRENT ADMINISTRATIVE ORGANIZATION AND ENVIRONMENT

The current condition of the Guatemalan court system has been documented in other consultant reports. For the purposes of this report, there are several relevant points which should be emphasized.

1. Although the Unidad de Planificación has worked very hard to provide courses on the new code and its requirements, the state of preparation for the switch to the new code(which without Congressional approval of a postponement will take place in December) is almost non-existent at the trial court level. In the courts visited, the awareness of the requirements of the code, e.g., to provide a place where a three judge court can hold oral hearings, is limited and little if any local planning is taking place. There is an attitude of waiting for the Supreme Court to tell them what to do.

2. The courts outside of the Capital function in an environment that is generally lacking in terms of equipment, supplies, adequate physical facilities, and training materials.

3. The allocation of personnel to the courts under the present system is often out of sync with workloads, being more based on formulas for standard working units per type of court as opposed to workload. Under the new penal code there will be even greater inequities in the distribution of personnel, without major shifts in that personnel. Of particular note is the personnel currently in the court doing investigative functions which under the new code transfer to the Ministerio Publico.

4. The political events since last May have created a paralysis in the normal decision making processes within the judicial branch. Many critical decisions are not being addressed by the Supreme Court or the Chief Justice in their capacities as administrative policy makers for the court system. That paralysis may continue for the foreseeable future, at least, until after the popular referendum.

5. The mental shift to the philosophy of the new code has not occurred, at least based on the interviews held by the consultant. There is a real risk of the judges of the court system holding on to the vestiges of the investigative system, even though the code calls for a shift in this function to the Ministerio Publico.

4. THE NEW PENAL PROCESS

4.1 THE BASIC PHILOSOPHY OF THE NEW CODE

The new criminal process scheduled to be implemented in December is driven by a number of laudable goals and objectives. These are paraphrased from Lic. Cesar Barrientos in the Curso Básico Sobre Derecho Procesal Penal Guatemalteco, 1993, pp. 36-92. They are as follows:

- Introduce the accusatory as opposed to inquisitive criminal system with the accompanying basic philosophic changes, namely that a defendant is presumed innocent until proven guilty and that certain guarantees are built into the system which assure the individual rights of a defendant.

- Establish an oral and public system.

- Introduce a new criminal judicial organization limited to the functions of judging and overseeing the execution of those judgments which has the appropriate jurisdictional divisions and personnel throughout the country.

- Have the investigation and accusation in criminal matters be the responsibility of the Ministerio Publico(prosecutor).

- Create a public defense system under the direction of the judicial branch, either through full time defense attorneys, by contract or through volunteers.

- Introduce alternative dispute resolution methods for cases which should be resolved rapidly and through abbreviated proceedings.

- Concentrate resources for public debate cases on those criminal activities that represent the most potential damage to society.

- Modify existing methods and introduce new methods to object to testimony or written evidence during the criminal process and new bases of appeal of errors and decisions.

- Create differential case management tracks for certain types of cases.

- Exercise judicial control over the execution of criminal sentences.

- Allow for related civil matters to be consolidated with criminal cases to resolve.

- Introduce bilingual proceedings so that the proceedings are translated into indigenous

languages simultaneously and the written acts of the court are also translated. In areas in which an indigenous language dominates, the presumption is that oral proceedings will be held in the indigenous language and then translated into Spanish.

- Implement changes in the military code so that common crimes committed by members of the military will be investigated and prosecuted by the Ministerio Publico. The military court will be limited to decide whether the defendant should be held to answer.

4.2 THE STRUCTURAL CHANGES DICTATED BY THE CODE

Under the new system, the new courts will be:

Juzgados de paz (Art. 44)
Juzgados de narcoactividad (Art. 45)
Juzgados de delitos contra el ambiente (Art.45)
Juzgados de primera instancia (Art. 47)
Tribunales de sentencia (Art. 48)
Salas de la Corte de Apelaciones (Art. 49)
La Corte de Apelaciones (Art. 50)
Juzgados de ejecución (Art. 51)

The main steps in the criminal process will be:

Prepartoria (investigación)
Intermedia (calificación)
Juicio Oral (debate y sentencia)
Impugnación (revision)
Ejecución de la Sentencia Penal

The code also establishes five distinct procedures for common cases:

Procedimiento Abreviado

Cases in which the sentence is less than two years or a fine and a non-serious crime, the defendant can plead and be sentenced before the judge of first instance.

Procedimiento Especial de Averiguación

Special proceeding to avoid the illegal imprisonment of persons and reinforce human rights. The Supreme Court is petitioned to order the Ministerio Publico to investigate within five days.

Juicio por Delito de Acción Privada

A form of mediation for matters that are not of societal interest. The matter is brought before the sentencing court and a solution is sought with the last resort opening a public debate and eventual sentence.

Juicio por Faltas

Informal proceeding in front of juez de paz within his or her jurisdiction. The proceeding is designed to be completed in one hearing, although the decision is appealable.

Juicio para la Aplicación Exclusiva de Medidas de Seguridad y Corrección

Proceeding in which the prosecutor petitions the court to place the defendant in custody because of the defendant's danger to society.

4.3. WORK CONDUCTED TO DATE TOWARD IMPLEMENTATION OF THE CODE

The **Unidad de Planificación y Transformación de la Justicia Penal** has spearhead activities to move toward the implementation of the new penal Code. Unfortunately, because of the grave political situation in the country which directly focuses on the Supreme Court, there is a paralysis at the policy making level. Critical steps such as creating an oversight committee of judges, representatives of the Ministerio Publico, police and others to develop and implement necessary steps in the transition have not happened.

Most agree that the wisest policy at this point is to postpone the implementation of the new code for up to six months. Since Congress is not sitting, there is a vacuum as to how to make such a request.

With that difficult backdrop, the Unidad de Planificación with the help of USAID and others is continuing to work on those aspects of the implementation of the code that it can.

The work completed to date includes the development and publication of a transition plan, **Informe de Relizaciones Y Projecciones de la Unidad de Planificación Y Transformación de la Justicia Penal**, in August, 1993. The Unidad has undertaken several basic activities including proposing a system for naming criminal judges under the new system, developed a project for the creation of execution courts, developed a proposal for the public defense system and develop projections as to the number of public defenders that will be necessary; and developed projected caseloads under the new criminal system.

USAID has an interim agreement with the Unidad to provide additional assistance to the court

system through the use of local experts to provide necessary implementation plans that will be created in the remaining critical areas such as how the new courts, e.g. tribunales de sentencia, juzgados de narcoactividad etc. will be organized and function. This interim agreement is designed to assist the court system while the larger court assistance project is being developed.

5. CRITICAL ISSUES RELATED TO THE ORGANIZATION OF THE COURTS UNDER THE NEW CODE

Under the new code, the basic function of the judicial branch will change and functions currently carried out within the judicial branch will no longer be judicial responsibilities while new responsibilities will have to be assumed. There currently are more questions than answers as to how the system will be implemented.

From an administrative point of view, there are several critical issues which must be resolved for the system to be implemented. Few can be resolved by the current December implementation date. Needless to say, there are many more issues pending but those listed are on the critical path and until they are resolved other decisions cannot be made. It should be noted that many of these issues have been identified in the scope of work for interim activities to be assisted by USAID during the period between October and June. They are repeated here to reemphasize their importance and give a context to the work completed by the consultant; that is at best, only a small portion of the work that needs to be done.

Jurisdictional Issues

1. In the capital and possibly in some other large cities will the new three judge tribunals be constantly rotating or will judges be assigned to one panel permanently. Will there in fact be three judge panels since the code does not mandate it.

2. Will there be any attempt to create purely criminal courts outside of the capital, separating them from other jurisdictions(civil, familia, laboral etc.)

3. What will be the operational definition of "coadyuvar"(Art. 308) the Ministerio Publico in the investigative process, which the code uses in referring to the role of judges of first instance.

4. What new courts will be needed and where(projections have already been developed); when will they be created; at what cost; and what will happen in the interim.

5. What changes will be required in justice of the peace processes.

6. Where will the new courts being created(execution, narco-trafico, environmental) be located

Administrative Structure

1. What will be the make-up of the staffs of the new sentencing courts.

- What functions will no longer be required.

- What new functions will need to be carried out.

- What differences will there be in staff and structure between the capital and the departments.

2. How will the new courts being created(execution, narco-trafico, environmental) be staffed.

3. What will be the specific duties of the various positions in the different courts.

4. If there is excess staff in certain courts now, will that staff be reassigned to other courts or new tribunals.

5. In the capital how will the following issues related to centralization versus decentralization be resolved:

   - Notification
   - Clerks office(other than immediate staff to judges) for reception of papers

Administrative Process

1. What registers, indices and other record series should be maintained(and others abandoned)

2. What manuals should be developed outlining administrative procedures.

3. What forms should be developed to assist in the process.

4. How will the record of the trial be maintained(in written, tape recorder, video).

Support Functions

1. How will the Public Defense be organized.

2. Will the Public Ministry have sufficient staff and other resources to carry out the investigative function.

Equipment

1. Will funds be available to upgrade the equipment available to courts, e.g. computers, open shelf filing equipment.

2. Will there be vehicles or other means to move the tribunals to various locations as contemplated in the code. If so, what are the projected needs.

3. Can current equipment and systems, e.g., CENELEX, be better utilized and/or distributed.

Physical Issues

1. Where will trials be held, given that there are not court facilities generally adequate for this purpose.

2. What should a model trial courtroom look like

3. Should provision be made to house the following in court facilities:

   - Public defenders
   - Interpreters
   - Prosecutors

Implementation Issues

1. Will a coordinating committee of court, Ministerio Publico, police, criminal bar members be appointed to assist in the transition.

2. Will there be a pilot program(s).

3. Will there be any staged implementation of the provisions of the code.

6. PROPOSED IMPLEMENTATION PLAN, MODEL COURT DESIGN AND GENERAL ISSUES

In the following, proposals are made to address the issues raised in 4 above in terms of an implementation plan and the design of some of the elements of a model court system which fully implements the new code. The implementation plan attempts to address the reality of the Guatemalan moment and focus what is truly feasible. The plan was developed with the personnel in the Unidad de Planificación.

The model court design focuses on organizational and administrative areas which are within the area of expertise of the consultant and were emphasized by the Director of the Unidad Planificación, Lic. Cesar Barrientos, in the terms of reference and in personal conversations. As the implementation of the code progresses, there will be a need to look at other areas in depth and develop specific plans or issue implementing rules of court.

As the issues list indicates, it would be hard to underestimate the task facing the judicial branch in implementing the change in the penal code--both from the perspective the philosophic change necessary and the actual procedural, organizational and administrative changes. The proposed solutions in the following represent only a small part of what the judicial branch must confront in implementing the new code.

In the implementation plan, the consultant has emphasized the creation of implementation committees--one overall committee with participation from all the players in the justice system--courts at all levels, Ministerio Publico, the police, the bar etc. and a series of internal committees working with consultants and/or staff to study specific issues in the implementation process. This approach is generally used by court systems in the United States when they are facing implementation of major changes.

The importance of establishing internal working committees is two-fold. First, the practical experiences of the committee members tends to make the analytical work more grounded and practical; and second, the committee process creates more ownership of the solutions arrived at since they are internally generated. Almost all of the major elements of the implementation, e.g., creating a delay reduction program, creating operating manuals, standardized forms, registers and statistics, creating a system of interpreters etc., lend themselves to this approach.

Also as a cautionary note, there is a real risk inherent in moving on to new programs without solidifying programs which have been started and have not achieved their objectives. As one who has observed the Guatemalan reality over the last seven years, it is fair to say there is no other judicial system which has had more lofty goals but more limited institutional change. As the implementation of the new code progresses, continued emphasis should be given to programs such the delay reduction of existing cases and the computerization

program(CENELEX) which have been started, but may be stalled. Also the work of previous consultants, such as that of Jesse Casaus in 1991, should be referred to and built on as opposed to restudying the same subjects. The judicial branch in Guatemala needs to make a commitment to the changes necessary, not just to plans for the changes necessary.

6.1 IMPLEMENTATION PLAN

Difficult as the task facing the court system is, it is possible to define an implementation plan which will allow the implementation of the code as mandated (assuming at least a six month delay in the implementation date and that the Ministerio Publico is undertaking similar planning and preparation to assume its investigative role).

Basic implementation of the code is Phase 1 of the implementation plan and will cover the first year of operation. The emphasis will be on training and efforts to change the mentality of judges and court employees from the current system to the accusatory system. Organizational and administrative disruptions will be limited to those absolutely necessary to implement the code(in part also because existing memorandum of understanding with many court employees limit changes in work assignments. Any major changes in work assignments will have to be negotiated).

The Phase II will focus on implementing more permanent and ideal solutions. New trial courts will be created and staffed at the appropriate levels. These courts will be used as models or pilot projects to ensure that the most appropriate procedures, organization and staffing patterns are finally implemented throughout the court system.

In Phase III, the entire court system will be brought to standards defined in the second stage. The whole process should take five years to complete although the court system will be functioning under the new code the entire time.

The specific elements of the proposed implementation plan are outlined in the following.

PHASE I: ONE YEAR FROM IMPLEMENTATION

Create an **implementation committee** consisting of members of the judicial branch from all levels and representatives from the Ministerio Publico, the private defense bar, the police, the prisons and others as appropriate. The goal of the committee will be develop coordinated solutions to problems in the implementation of the code.

Adopt a **transition plan** for the shift to the code, including subject areas requiring in-depth study and how the current pending criminal cases will be dealt with.

Create **internal subject matter specific committees** to address specific implementation

issues such as the design of forms to use in the criminal process, necessary rules of court and administration.

Develop **training programs** focusing on changing the mentality of court personnel, e.g. interactive workshops, workshops with judges, prosecutors, defendant's attorneys etc. and specialized programs in the areas of new judicial responsibilities, e.g. execution of sentences.

Develop necessary **administrative and case processing rules.**

Implement a **program to ensure judges for the various new jurisdictions:**

> Create a team of 10 judges located in Guatemala to form the tribunals for the oral hearings along with the local sentencing judge as chief judge of the trial(two judges from the central team would be sent to each hearing to make up the three judge panel). These judges would work on reducing existing pending cases when not sitting on trials.
>
> Assign the new jurisdictions of controlling the investigation in narcotrafico and environment to existing courts. Trials in these matters will be hear by sentencing tribunals.
>
> Create four courts to oversee the execution of sentences, probation, parole and diversion programs.

Create a **special delay reduction program** to deal with cases now pending, including using the new judges named to hear oral debates to work on the backlog when not involved in oral debates.

Create certain **centralized offices in the courts in Guatemala,** namely the citing office(notificadores) and the assignment of cases office.

Develop **operating manuals, standardized forms, standardized registers and filing systems and required statistics** for the criminal process.

Create an **adequately funded public defense system** through a combination of full time employees, and contracts with law schools and contracts with individual attorneys and law firms, based on a public bidding process. The program will be administered by an office of the public defense located in the administrative office in the Supreme Court.

Create the **Office of Court Interpretation** in the Supreme Court to start to put together certification programs, identify language needs and solutions as to how to provide interpreter services.

Transform the current Patronato de Carceles to a **Oficina Nacional de Control de Ejecución** whose role will be to define the responsibilities of the staff of these courts, over see training, make projections as to personnel needs and other functions in the development of these courts.

Review how the **computerized information network** that is being developed could help in the implementation of the penal system.

Certify courts and other public buildings as being adequate to hold oral trials based on meeting minimum standards.

PHASE 2: TWO YEARS

Based on the volume of cases filed, **create the initial permanent new courts**(trial, nacrotrafico, environment) with permanent judges and staff. For the trial courts, if a location has sufficient trial volume to warrant the creation of a full time court, two judges from the central team will be assigned to that court permanently and along with the resident sentencing judge form the court.

Adjust the personnel levels assigned to the various courts to match volume of work with personnel instead of the current system of assigning essentially the same non-judicial staff to each court regardless of volume. This adjustment may include transferring court clerks to the Ministerio Publico since the investigative work that they now do will be assumed by that office.

Use the permanent courts created as pilot programs to evaluate processes, administration organization etc. to determine the appropriate structures for the courts in processing criminal cases.

Continue with efforts to **reduce the delay in the pending caseload.**

Create a **certification program for all languages(spoken and sign)**. Create internal interpreter positions in certain courts based on volume and contractual agreements with interpreters in other courts.

Review existing recommendations on the administration of the courts(central administrative offices and for juzgados and trial courts) and implement the appropriate recommendations. (See Jesse Casaus, Infraestructura Recomendada Y Otros Cambios Organizacionales Para el Mejoramiento de La Administración de Tribunales en Guatemala, 1991 and others.)

Adopt a new personnel classification and evaluation system for the judicial branch.

Construct model courts (instructional and trial) designed to meet the needs of the new crime process.

Refine standards for case processing and administration based on the evaluations.

Expand computerization at the instrucción and trial court levels.

Continue with training programs, using the experiences of pilot courts as a framework.

PHASE 3: THREE YEARS

Fully implement the criminal system nationwide.

6.2 SPECIFIC RECOMMENDATIONS

In the Spanish text which follows recommendations are made in specific administrative areas. These include distribution of personnel to the various courts under the new penal code and to new national offices that will be required, e.g., office of court interpreters; job descriptions for the immediate personnel of the court under the new code, e.g., secretario, oficiales, secretaria etc.; space and equipment requirements for the new courts; and model layouts for the juzgados de instrucción and tribunales de sentencia. The material was developed based on review of the new code, interviews with court personnel, visits to courts and analysis of the experiences of other countries. While they are presented with some confidence, they should be seen as first step to be reviewed and revised as more experience and study dictates.

7. CONCLUSIONS

The following conclusions are made from the consultancy:

1. A transition plan which includes the three phases outlined should be adopted by the Supreme Court and distributed throughout the justice system.

2. The recommendations for the distribution of personnel to the various courts and to the new offices that will be created; the job descriptions for the basic personnel in the judicial team; the requirements for space and equipment; and the model layout for the instrucción and sentencing courts should be reviewed by a committee of judicial personnel, revised as necessary and then adopted as models for the penal system.

3. The judicial branch should seek funding for the additional positions required to implement Phase I of the plan, namely, the traveling team of 10 sentencing justices, the judges and staffs for the oversight(ejecución), drug(narcotrafico), and environmental(delitos contra el ambiente) courts; the public defender system; and the new national offices, e.g., office of interpretation, office of oversight courts; and other requirements for the first year of operation under the new code.

4. The Unidad Planificación should begin work to broaden the range of court personnel and others developing the solutions to the issues under the new code by creating a series of subject matter working committees to work with consultants and staff. Subject matters that should be dealt with in this manner include:

   -Analyzing how to provide public defense
   -Analyzing how to provide interpretation and translation services
   -Designing delay reduction programs for existing cases
   -Defining what the basic administrative processes of the courts should be, e.g., what record series should be maintained, what uniform forms should be used etc.
   -Defining how the oversight(ejecución) courts will function
   -Determine the model court layout and develop a certification program for public building to be used for oral proceedings

5. Some working committees as outlined in 4 above should begin work immediately to show the benefits of the committee approach and start getting needed proposals out into the court system. The materials developed in this consultancy surrounding the

organization of the judicial offices under the new penal code would be an appropriate starting point. The consultant has also developed a statement of work for the area of administrative processes which would also be a good starting point for the use of this committee structure since the solutions are not politically sensitive and are almost totally of interest internally to the court system(see the proposal on pages 26-28 of the Spanish section of this report).

6. The Unidad de Planificación should continue its work with as much support as appropriate. The task facing the unit is daunting. At the same time, assistance to the unit should be within its institutional capacity to absorb. The consultant does not favor a significant expansion of the general staff, except in areas of specific endeavor, e.g., interpretation, requiring specialized skills.

7. The Unidad de Planificación should utilize short term, subject specific consultancies in the areas outlined as appropriate to work with committees and staff to develop proposed solutions. The consultant also favors using a variety of skill specific consultants, hopefully local consultants, as opposed to having one consultant or firm attempt to take on a wide range of tasks. Specifically, legal experts should be contracted to assist in developing necessary procedural rules of court, while management consultants should be contracted to look at distribution of personnel and organizational issues.