CHILE: TEAM PLAYER, FREE MARKET ECONOMIC POWER, AND ENTRANT INTO THE ADVERSARIAL CRIMINAL PROCEDURE SYSTEM

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EXECUTIVE SUMMARY

Impunity, corruption and citizen security are top concerns in nearly every day's headlines among the major papers in Guatemala. In 1994, Guatemala began a major overhaul of its Criminal Procedure Code in part to address these concerns, based on earlier Guatemalan drafts dating back to 1961.

The new Code is a first of its kind in Latin America. It does away with the inquisitorial system, a document-based system originally from French law, in favor of an oral process and a new adversarial system. Major features of the new Code are shortened pre-trial detentions, plea bargaining, introduction of evidence through oral proceedings, the presumption of innocence and a right to defense, a right to use one's native language, and changes in appeal processes. Most striking is the advancement of community understanding of and participation in the criminal justice system, due to the new oral process.

To promote justice at the local level and make the new Code operational, Guatemala has found new institutional will. It is taking steps to investigate, prosecute, convict, sentence and put in prison, persons committing crime. Already, some important, high profile criminal prosecutions have begun. New justice centers are providing...
increased access to justice at the community level in Zacapa, Quetzaltenango, Escuintla, Petén and Nebaj, and others are set to come on line. New and innovative training programs to improve the quality of judges, prosecutors and litigators are also being implemented for the first time.

Guatemala is at a unique point in its history: there is an open window for reform for the first time in forty years. The promise is great, but the risk of failure is similarly great. Guatemala will have to make strides to show tangible results in the short term to keep the recently-signed peace accords alive. Meanwhile, it will have to ensure that reform proceeds over the longer term: the current situation was not created over night, and will not be solved in the short term. On the contrary, the Government of Guatemala, along with international donor partners, will have to stay the course for a number of years to effect real change.

I. INTRODUCTION

Guatemala is the northernmost country in Central America with a population of over 10 million. It borders Mexico to the north, Belize and the Atlantic Ocean to the east, Honduras and El Salvador to the south and the Pacific Ocean to the west. The capital, Guatemala City, has a population of about two million. The economy is the largest in Central America, with a gross domestic product (GDP) of about $14.7 billion.1

Roughly two thirds of Guatemalans live in poverty.2 Indigenous people comprise about half the Guatemalan population. Illiteracy is high, running at 37 percent for males, 53 percent for females, and at least 80 percent among Mayan women, one of the highest rates for a population group in the hemisphere. About 90 percent of indigenous people are in poverty and 80 percent are in extreme poverty. Despite four percent annual gains in economic growth since 1986, Guatemala’s rapid population growth has all but wiped this out, leaving per capita GDP at 12 percent below that achieved in 1980.3


1998] INNOVATION IN CRIMINAL PROCEDURE

Business executives cite crime and insecurity as the principal economic problems facing the country.4 Kidnapping has become a prospering, post-war industry.5 Sales of car alarm systems have increased dramatically during the last three years due to the high level of car thefts and robberies.6 In 1996, car theft was the most reported crime, making up over half of all crime reported in Guatemala.7 Demand for personal safety and security products is expected to continue rising in

6. See Suchito, supra note 1. This trend seems to be continuing into 1998. See En cuatro dias, 33 casos robados, EL PERIODICO, Jan. 5, 1998, at 4. On the positive side, however, there may have been a slight decrease in car thefts from 1996 to 1997. Officially, in 1996, there were 5,303 car thefts. In 1997, there were 4,593 official reports of theft, a reduction of 760. See Ganderia se pone a la defensiva, EL PERIODICO, Jan. 6, 1998, at 6; Disminuyeron robos de vehiculos, SIGLO VEINTIUNO, Jan. 6, 1998, at 8. The car phenomena continued into 1999. See Julio F. Lara, Robos a vehiculos en parques publicos, PRENSA LIBRE, Feb. 4, 1999, at 8.
the foreseeable future, with an estimated annual rate of growth of about 25 percent for the next three years. In this context, the U.S. recently signed an agreement on stolen cars with Guatemala. To summarize, Guatemala is experiencing a crime wave.

In 1997 and 1998, bank robberies exploded in Guatemala. From January to September 1997, there were more assaults on banks than in the prior four years combined (1993-1996), creating a “wild west” atmosphere. In 1997, there were at least fifty assaults on banks. In 1998, there were only ten. From 1990 through 1996, there were fifty-seven. According to the Interior Minister, many of these have been carried out by former military police officers. Many of the same

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10. See Donald Gonzalez, Nuevo en el mundo de los delitos, CTI, May 29, 1998, at 47.

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The President of the Supreme Court cites corruption as one of the major problems facing the Guatemalan justice system, including within the judicial branch. Within the Bar Association, it is practically impossible to disbar a member for unethical or illegal conduct. In part to respond to concerns of incompetence and corruption by police, a new police force—the National Civilian Police (PNC)—was created, modeled on the Spanish Guardia Civil model. Still, within weeks, new complaints of corruption emerged under the new police structure, threatening to undermine the war on impunity.

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Beverly Sandoval, twenty-one suspects were detained, of which 90 percent were former military. Other cases involve six ex-police officers who were charged with the kidnapping of a minor and the 1996 kidnapping and murder of Isabel de Botrán by the gang Los Pasaco, even when gang leader Guillermo López Linares (alias El Negociador, or Fernando Palacios Luna) was captured. Linares subsequently walked out of jail in a police uniform in obvious coordination with outside help. In yet another case, the Vendors Committee for the Christmas Fair charged that Treasury Police (Guardia de Hacienda) were involved in a scheme to steal Christmas trees. Similarly, police are accused of stealing cars being held as evidence or recovered from others as stolen property. Such cases give the impression that the military and government are part of the cause of crime, rather than its solution. This frustration is evidenced in popular phrases such as “The Police take longer to catch the criminals than the Courts do in letting them free,” or “The criminals enter one door and exit the other.”

To underscore this point, a recent survey documented the widely held belief among Guatemalans that the Guatemalan justice system favors some groups more than others, undermining the public’s confidence in the fairness of the justice process. In a specific survey in Quetzaltenango, a more indigenous population, citizens believed the system favored the non-indigenous (Ladinos) over the indigenous population, and the rich and powerful over the rest of the public.

Recent public opinion polls show discontent with the security situation in the country. In one poll conducted during the last week in May and the first week in June, 1997, 98.8 percent claimed they felt “insecure.” More than a third of those, 35.4 percent, attributed this insecurity to the inadequate abilities of the Interior Ministry. Only 1.2 percent felt “secure.” A newspaper editorial headline proclaims “Guatemala: Kidnapping Capital of the World.” Attacks on American citizens have also put Guatemala’s security situation into international papers.

Judges themselves feel insecure. For example, Judge Olegario Labbé Morales began receiving death threats after his involvement in


40. Miguel Ignacio Acabal, Sugieren capacitación de jueces y fiscales para agilizar la justicia, PRENSA LIBRE, Nov. 3, 1997, at 20. Supreme Court President Angel Alfredo Figueroa takes strong exception to these views. He notes that Courts cannot hold suspects unless there is evidence. See Figueroa: jueces no protegen a defensores, PRENSA LIBRE, Jan. 30, 1998, at 20. The public is growing uneasy about criminals who do not serve out their entire sentences, but instead are released early. See, e.g., Carlos Castañeda and Carlos Ameal Sobrénoris, Justicia: Las sentencias que pocos cumplen, SIGLO VEINTIUNO, Feb. 5, 1998, at 3.

41. See infra note 79, at IV-6.


the case of ex-military officer Cándido Noriega Estrada. That same judge was later fired, after letting Noriega free of 156 criminal charges. In a similar vein, the Public Ministry has assessed witness protection programs, but lacks funding to provide such security. Still, the need is critical. In many cases, victims and their family members must flee the country out of fear and intimidation if they report crime to authorities. Prosecutors, too, receive death threats. After the assassination of one prosecutor, twenty-five threatened resignation if security measures were not take. According to

47. See Juez Labbé pide traslado por supuestas amenazas, PRENSA LIBRE, June 17, 1997, at 6.
52. See Luis Eduardo de León, Justicia: Guatemala, el patín de las eternas amenazas, CRÓNICA, Oct. 24, 1997, at 24; Raúl Hervás, MP denuncia amenazas del cartel Luciano para evitar juicio este viernes en el Alto Petén, PRENSA LIBRE, Jan. 7, 1998, at 4; Fiscalis desilusivos en su lucha por seguridad, EL PERIóDICO, June 16, 1998, at 5. The situation has gotten to the point where prosecutors, in some instances, are asking for “danger pay.” See, e.g., Fiscal del caso Beverly quiere huir de riesgo, EL PERIóDICO, June 19, 1998, at 5.
53. See Rolando Antonio Castillo López, Fiscal es reubicado en bloque, PRENSA LIBRE, May 23, 1998, at 2; Francisco Mauricio Martínez, Fiscal es protegido, PRENSA LIBRE, May 24, 1998, at 4; Mario Ramos, Dos capturados por asesinato de fiscal, EL PERIóDICO, May 25, 1998, at 6; Marco Tulio Trejo, MP denuncia intervención de los fiscales, SIGLO VEINTIÚNO, May 24, 1998, at 6; Edwin Palacios, Se prevé desbandada de fiscales del MP, EL PERIóDICO, June 8, 1998, at 7; Edwin Palacios, MP contrariará a policías privados, EL PERIóDICO, June 9, 1998, at 4; Procurador Fernando Mendizábal, chief of the office of special cases, and lead prosecutor in the Los Pinácu case, El Canguro, Beverly Sundlof and Alfredo Moreno cases, is resigning.

MINUGUA Director Jean Arnault, the perception of citizen insecurity is a threat to the peace process. The public is also very suspicious as to whether human rights abuses by government authorities continue. On June 11, 1997, Congress heard testimony from Interior Minister Rodolfo Mendoza and Defense Minister Julio Balconi to the effect that the Estado Mayor Presidencial (a military police force under the command of the President) was not involved in the disappearance of Juan José Cabrera Rodas, alias Mincho, during the capture of Rafael Augusto Baldivión Núñez (alias Comandante Isaías), accused of the kidnapping of Olga Alvarado de Novella. Interestingly, that particular case is causing los of prestige not only for the government, but also for the former guerrillas, since Rodrigo Asturias Amado (alias Gaspar Ilom), a guerrilla leader, is implicated in the de Novella kidnapping. Also compromised was the United Nation’s human rights verification mission in Guatemala (MINUGUA), that knew about Mincho, but did not reveal its information. The shocking murder of Catholic Bishop Juan Gerardi Conedera on April 24, 1998, days after his human rights report to the nation, renewed fear of abuse. Within two weeks, the due to security and other issues. See Editorial: Cuando el fiscal prefiere retirarse, SIGLO VEINTIÚNO, June 10, 1998, at 14; Marco Tulio Trejo, Mendizábal se acogerá al retro voluntario, SIGLO VEINTIÚNO, June 10, 1998, at 2. The Public Ministry has discussed getting private security and life insurance for prosecutors. See, e.g., Protección y seguro de vida para los fiscales, SIGLO VEINTIÚNO, June 19, 1998, at 8. See, e.g., La CSJ desluce al juez Olegario Labbé, PRENSA LIBRE, June 9, 1998, at 5.
59. See Méndez, supra note 55, at 3. See Asuntos y sus abogados se retiran para plantear su posible defensa, SIGLO VEINTIÚNO, Sept. 9, 1997, at 3.
60. See Gobierno contempla solicitar revisión del papel de Minugua, PRENSA LIBRE, Oct. 8, 1997, at 6; Edward Hegstrom, U.N. official in Guatemala draws fire from right, left, MIAMI HERALD, May 17, 1997, at 20A. Other criticisms have been leveled at MINUGUA regarding MINUGUA’s public opinions on the Estado Mayor Presidencial, EMP, e.g., Rafael Amado Deras and Myriam Larra, Gobierno rechaza errores a Minugua, PRENSA LIBRE, Oct. 18, 1997, at 3; Edén Hernández, Gobierno pide a MINUGUA aclarar fundamentos jurídicos del informe, SIGLO VEINTIÚNO, Oct. 18, 1997, at 3. More recently, MINUGUA has been attacked for overstepping its role as human rights observer. See, e.g., Oneida Najarro, OJ: MINUGUA debe asumir su responsabilidad, PRENSA LIBRE, May 24, 1998, at 7; Conflicto humánico: Piden que se re- visión de MINUGUA, SIGLO VEINTIÚNO, May 24, 1998, at 6.
Mayor of Santa Cruz del Quiche was also assassinated. To be sure, one class of individuals, the homosexual community, asserts that human rights abuses continue under the new regime. Also, children in prison appear to be a particularly vulnerable group for human rights abuses. Finally, the Army is once again being used in a law enforcement role.

Branches of government have in the past blamed each other for the problems in the justice sector. For example, Vice President Luis Flores Asturias and Interior Vice Minister Salvador Gandera openly criticized the court for public insecurity and inability to administer justice. In response, Court President Ricardo Umana Arragón sent a letter to President Alvaro Arzú Iriyoyen, asking the President to rein in his men. Similarly, the Human Rights Ombudsman has accused the Public Ministry of being responsible for the problems of the justice sector.

Curiously, even new legislation seems to be adding to the problem of institutional coordination and clarification of roles in law enforcement. Then Attorney General, Héctor Hugo Pérez Aguilera, sent a letter to the Congress complaining about unconstitutional and unlawful aspects of the new Civil National Police Law, giving too much power to the police at the expense of the Public Ministry. Congress, for its part, demands that the Executive branch draft an emergency plan to reign in violence.

In the United States, the Guatemalan government has been praised for its efforts to combat drug trafficking and to improve the justice system. President Clinton has listed Guatemala as a major illicit drug-producing or drug-transit country, in accordance with Section 490(h) of the Foreign Assistance Act of 1961. With U.S. government support, the Guatemalan government counter-narcotics officials seized almost four metric tons of cocaine in 1996, a 400 percent increase over 1995. The Guatemalan government itself estimates that at least one out of four Guatemalan adults suffers from some sort of chemical dependency, principally alcohol abuse. Illicit drug use has not been effectively documented, but government officials believe it has increased steadily since 1990 and contributes to the extremely high level of violence in the country, especially within the capital city.

The actual level of crime, however, is difficult to quantify. One account listed Guatemala as the country suffering from the second highest level of violence in the Americas. The actual level of crime, however, is difficult to quantify. One account listed Guatemala as the country suffering from the second highest level of violence in the Americas.

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highest level of crime in Latin America.73 According to official government sources, there were thirty kidnappings between January 1, 1996 and May 30, 1997,74 and seventy between January 1 to December 10, 1997.75 As of February 21, 1997, there were 227 individuals in criminal detention, pending trial, on charges of kidnapping.76 Regardless of statistical source, however, most seem to agree that in 1997 kidnappings declined, while bank robberies increased.77 Meanwhile, Guatemala suffers from at least one rape per day.78

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<td>4,455</td>
<td>6,121</td>
<td>31,454</td>
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*Segundo lugar en criminalidad," SIGLO VEINTIUNO (Dec. 11, 1997) 3, reporting the results of a study by Raúl Zepeda entitled "Violencia y Seguridad Ciudadana" (The article cites this data as coming from MINUGUA). "Only 1994 to 1996"

The U.S. Agency for International Development has commissioned its own attitudinal survey of Guatemalan values on democracy, civil society and justice.79 In that review, 22 percent of Guatemalans reported that they, or some member of their family, had been the victim of a robbery, assault or kidnapping in the last 12 months.80 Nearly half the residents of the Guatemala City metropolitan area indicated they had been the victim of a crime within the last year.81 In urban areas, 29 percent of individuals indicated they, or a family member, had been victims of crime, while the figure fell to 15 percent for rural areas.82 Interestingly, indigenous status is negatively related to being a victim.

73. See Segundo lugar en criminalidad, SIGLO VEINTIUNO, Dec. 11, 1997, at 3 (reporting the results of a study by Raúl Zepeda entitled "Violencia y Seguridad Ciudadana." According to the article, Guatemala had 49 homicides in 1996 per 100 thousand population. Colombia was in first place with 89 per 100 thousand population. Following Guatemala in the list were Brazil, Mexico and Venezuela, each with rates of less than 20 per 100 thousand. The worst cities in Guatemala were Escuintla (16.5 per ten thousand), Iximate (12.7 per ten thousand), Jutiapa (11.4 per ten thousand), Santa Rosa (11.1 per ten thousand) and the Capital (10.1 per ten thousand)). As a point of comparison, the murder rate in the United States was 7.4 per 100 thousand in 1996. See THE WORLD ALMANAC AND BOOK OF FACTS: 1998, at 959 (World Almanac Books, 1997); Randolph E. Schmid, Associated Press, Murder rate lowest since 1989, DETROIT NEWS (Oct. 5, 1997) <http://www.detnews.com/1997/nation/971005/1000089.html>. In other words, the murder rate in Guatemala is six to seven times what it is in the United States. Escuintla has a murder rate of more than twenty times the U.S. rate. The Zepeda report also cites an increase in sexual assaults in Guatemala, from 152 reported cases in 1995, to 231 in 1996. See Anerunmen denuncias por abuso sexual, SIGLO VEINTIUNO, Dec. 12, 1997, at 4.


75. See Bauduy, supra note 72, at 4. But see Flores, supra note 74, at 3 (detailing the account of a private group known by the Spanish acronym FADS (Familiares y Amigos contra la Delincuencia y el Secuestro, or Relatives and Friends against Crime and Kidnapping) which reported that over two hundred cases occurred between January 1 to May 30, 1997). FADS declared the year 1997 to be a failure in administration of justice, and placed the lion's share of responsibility on the Government sources. There were thirty kidnappings between January 1, 1996 and May 30, 1997,74 and seventy between January 1 to December 10, 1997.75 As of February 21, 1997, there were 227 individuals in criminal detention, pending trial, on charges of kidnapping.76 Regardless of statistical source, however, most seem to agree that in 1997 kidnappings declined, while bank robberies increased.77 Meanwhile, Guatemala suffers from at least one rape per day.78

76. See Julie López and Carlos Canteo, De 210 secuestradores consignados sólo hay tres condenados a prisión, SIGLO VEINTIUNO, Feb. 21, 1997, at 3.


78. See En Guatemala ocurre una violación cada día, SIGLO VEINTIUNO, Jan. 24, 1998, at 3 (citing an official record of 165 cases in 1997).
crime victim — it is more likely for a ladino than an indigenous person to be a crime victim. There is also a positive relationship between level of education and probability of being a crime victim.

The extent of child kidnapping, especially for purposes of foreign adoption, has been debated in the press. In at least one case, an attorney and medical doctor were charged with falsifying records for the “export” of stolen children.

Murder and deaths connected with other crime are also on the increase in Guatemala. Most of these incidents involve fire arms. From January 1 to November 15, 1996, 5,000 people lost their lives violently in Guatemala. From January 1 to November 30, 1997, the figure increased to 6,652. Thus, in 1997, roughly twenty people a day died of violent crime in Guatemala.

Linguistic concerns further complicate administration of justice in Guatemala. Beyond Spanish, the country has at least 22 ethnic groups, speaking 20 languages derived from Maya, Garifuna and Xinca. Consequently, language differences greatly complicate attempts to advance access to justice, especially for those most likely to be monolingual in a language other than Spanish — indigenous groups, the poor, women and children.

These disadvantaged groups have differing experiences with the justice system, perhaps in part as a result of their economic, social, racial and linguistic status. According to one survey, indigenous people who can be identified as such by the wearing of traditional dress perceive the greatest level of inequality of treatment by police and courts, favoring ladinos. Similarly, the average level of confidence in judges are honest. See J. Michael Dodson, Donald W. Jackson and Laura Nuzzi O'Shaughnessy, Comparing the Survey Results from El Salvador and Guatemala, Nov. 1997, at 2. Contrast it may be that more poor people on public buses, for example, are crime victims than university-educated residents of zones 10, 14 and 15 — the higher income areas of Guatemala City: the poor are often less vocal and less polled.

83. See DIDS, supra note 79, at III-5.
84. See id.
86. See Rolando Quemel Velásquez, Quetzaltenango: Alarma por robo de menores, SIGLO VEINTIUNO, Dec. 5, 1997, at 79.
89. See DIDS, supra note 79 at III-10. Fortunately, however, the gap is closing, comparing data from 1993 with 1997. See id. at III-11.

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the justice system for men is much higher than for women. Finally, there is an inverse relationship between level of confidence in the justice system, and level of education — less educated people have more confidence in the system than more educated ones do.

Guatemala today has sixty one appellate judges, 170 trial judges (jueces de primera instancia), 253 criminal justices of the peace and 2,603 support staff members (auxiliares de justicia). There are a total of 480 courts in place.

II. Historical Context of Social Conflict and Abuse of Law.

The original Spanish colonization did not promote a rule of law in Guatemala. According to the Catholic Priest Bartolomé de las Casas, a contemporary and friend of Christopher Columbus, the Spanish committed extraordinary human rights abuses in Guatemala against pregnant women, mothers of newborn babes, children and old men. He further alleges that don Pedro de Alvarado (one of Cortes' officers, who was in charge of the campaign in Guatemala) was responsible for “butchery and destruction” and the deaths of “four or five million souls over the fifteen or sixteen years, from 1524 to 1540.”

In the 19th and 20th centuries, long-term reigns of strongmen gave the country political stability. However, political opposition was brutally repressed, and the small aristocratic class held power zealously.
In 1944, a new Constitution was enacted, representing a dramatic break with the past. This new Constitution introduced to Guatemala the Jeffersonian principle of popular sovereignty and individual rights, a fair and honest political system, and noble social guarantees. In March 1945, Juan José Arévalo became a democratically-elected president. In 1950, Jacobo Arbenz Guzmán became the second democratically-elected president.

Because of Arbenz policy of agrarian reform (which could have potentially damaged United Fruit, a U.S. company), among other issues, the U.S. began to plan his overthrow. Senator Henry Cabot Lodge, whose family owned stock in United Fruit, was a major supporter of this effort. Also on board were John Moors Cabot, the Assistant Secretary of State for Inter-American Affairs, whose family also had shares, Secretary of State John Foster Dulles (who had done legal work for United Fruit) and Allen Dulles, then head of the CIA (who also had done legal work involving United Fruit).

A. Return of Repression: 1954-1985

In the period 1954 to 1996, Guatemala experienced severe problems in terms of democratic government and the rule of law. After the Arbenz coup, Col. Carlos Castillo Armas came to power, handpicked by the U.S. to be Guatemala’s “liberator.” However, despite continued American aid, the situation within Guatemala deteriorated. Many of the new officials considered Castillo Armas’ victory a license to steal money. In collaboration with American gangsters, Arana was assassinated prior to the election in a plot involving the chauffeur of Arbenz’ wife. Although it is not sure whether Arbenz himself was involved, the assassination was certainly done in his interest.

In 1957, Castillo Armas was assassinated and was followed as President by Miguel Ydígoras, an early ally of Castillo Armas.

In 1963, Ydígoras was deposed by then Defense Minister Peralta Asurdia, a more reactionary politician who had received backing from the U.S. His forces murdered hundreds of anti-government activists. Many simply “disappeared.”

In 1966, Peralta Asurdia kept his promise of holding elections. However the principle candidate, a centrist, Mario Méndez Montenegro, was found dead four months prior to the election. His brother, Julio César Méndez Montenegro, stepped forward in his place and won the elections. However, he was soon reduced to a figurehead and was forced to give the military a free hand, which benefitted from $6 million in U.S. military aid and $11 million in American military equipment.

During that presidency, Col. Carlos Arana Osorio, a veteran of U.S. Green Berets training, introduced political assassination on a mass scale. Thousands of people suddenly met death at the hands of unseen gunmen. Many had been middle-class professionals who had supported Arévalo and Arbenz.

From 1966 to 1970, the United States allocated more than $2.6 million for police instruction and equipment under the U.S. Office of Public Safety (OPS) Program. By 1970, over 30,000 Guatemalan police had benefitted from OPS training. At the time, Guatemala had the second-largest American police assistance program in the hemisphere after Brazil, which had twenty times the population.

Amid a growing guerilla movement, Arana went on to become the next president, running as the “law and order” candidate in an election controlled by the military. Arana was followed by conservative general Kjell Eugenio Laugerud García. In 1978, after a fraudulent election, Fernando Romeo Lucas García became President, promising a “harsh campaign against guerilla groups.” During that time, death squads linked to the Army reached into every sector of national life, on a daily basis. According to René de León Schlotter,
ruption, with government officials including Cerezo himself purchasing large homes with public funds. 132

In 1986, with the new 1985 constitution and formal democratic elections, 133 the U.S. Agency for International Development began work in the Guatemalan justice sector through the Regional Administration of Justice Project. This project was implemented through the Latin American Institute for the Prevention of Crime and the Treatment of the Offender (ILANUD), 134 located in San José, Costa Rica. ILANUD contracted with Florida International University 135 in a project to advance training and seminars and eventually a sector assessment in 1987-88. However this was rejected by the Supreme Court. 136 Indeed, the court banned everyone involved in the assessment from future work and forbid the circulation of the assessment. 137

Unfortunately, human rights problems continued to persist. 138 According to the International Human Rights Law Group, in the 1980's, Guatemala was the most repressive country in the hemisphere. Successive military rulers killed tens of thousands of people, mostly Mayan from the highlands. In addition, they drove hundreds of thousands more into internal and external exile, razed some four hundred villages, and killed or kidnapped thousands of people in Guatemala City. Whether civilian criminal justice could enforce respect for human rights and establish the rule of law was, at the very least, an open question. 139

From 1987 to 1990, USAID contracted with the Harvard Law School's Center for Criminal Justice. That project focused on training, problem identification and implementation of a pilot court program in

132. See id. at 16.
133. See Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y Tratamiento del Delincuente (ILANUD), La Administración de Justicia Penal en Guatemala, Mar. 1988, at 31 [hereinafter ILANUD].
134. See Brian Treacy, Retaking Stock: An Update to a 1991 Justice Sector Reform Stocktaking 2 (1996)(draft), on file with the Southwestern Journal of Law & Trade in the Americas [hereinafter Treacy], lists 1986 as the start date. The actual ILANUD-USAID agreement was signed March 22, 1985. See ILANUD, supra note 133, at 1.
137. See USAID/Guatemala, Stocktaking, supra note 135, at 3.

1981, the President of the Court had requested assistance from ILANUD to introduce oral proceedings to Guatemala. B. Julio Maier and Alberto Martin Binder Barzizza, both Argentines, began work with the Court to draft new legislation. The commission included justices of the peace, trial court judges and appellate level judges. 142 In 1986, Binder and Barzizza completed additional work on another draft based on a new Criminal Procedure bill that was pending in the Argentine legislature. 143 In 1988, the Código Procesal Penal Modelo para Iberoamérica was published (in Rio de Janeiro, Brazil, by Jaime Bernal Cuellar, Fernando de La Rúa, Ada Pellegrina and Julio Maier), adding greater weight to the need for reform. 144 In 1990, Binder and Maier finished another draft bill. 145 This finally led to Supreme Court President Edmundo Vásquez Martínez' presentation of a new bill to Congress on May 23, 1990. 146

In 1990, lay preacher Jorge Serrano Elías became the second consecutive democratically-elected president in Guatemala. 147 However, his government quickly became one of the most corrupt in Guatemala's history. 148 Congress initially objected to the legislation, noting the Argentine participation in the latest draft, even though it reflected input from the earlier drafts carried out by Guatemalans. 149

To a very significant degree, the ILANUD and Harvard efforts represented USAID's testing the water in a new and sensitive priority area. 150 In 1990, USAID followed the Harvard activity with the "Improved Administration of Justice Project" (IAOJ). This project was
terminated abruptly in December 1991 when counterparts were unwilling to collaborate.\textsuperscript{151} USAID concluded that its future work in the justice sector should use as its centerpiece a new Criminal Procedures Code,\textsuperscript{152} and further USAID assistance to the justice sector was conditioned on reforming the antiquated criminal procedure code.\textsuperscript{153}

A new version of the bill was prepared by Guatemalan Attorneys Alberto Herrarte and César Ricardo Barrientos Pallecer, with strong support from two members of Congress, Jorge Skinner Klee and Arabelle Castro Quiñones.\textsuperscript{154} In 1993, the President attempted to dissolve Congress and the Supreme Court through a “self-coup” (autogolpe). Instead, this led to the resignation of the President and Congressional elections for a transition period. Ramiro de León Carpio, the former Human Rights Ombudsman, became President.\textsuperscript{155} Shortly thereafter, USAID resumed support for the justice sector.\textsuperscript{156} The in-coming government reinvigorated negotiations with the \textit{Unión Revolucionaria Nacional Guatemalteca} (URNG).\textsuperscript{157} Further, new Court President Edmundo Vásquez Martínez submitted the bill to reform the criminal procedure code. The bill was accepted and passed in September 1992,\textsuperscript{158} as the first piece of legislation after the Jorge Serrano coup.\textsuperscript{159}

C. The “Firm and Lasting Peace”.

In 1996, Alvaro Arzú was elected by a narrow margin over Alfonso Portillo, a populist supported by the traditional right. Arzú fo-

\begin{itemize}
  \item \textsuperscript{151} See Tracce, supra note 134, at 3.
  \item \textsuperscript{152} See USAID/Guatemala, Stocktaking, supra note 135, at 20; Barrientos Pallecer, supra note 144, at 23.
  \item \textsuperscript{153} See Unclassified cable from the U.S. Embassy in Guatemala to James Michel, the Assistant Administrator for Latin America at the Agency for International Development’s office in Washington (May 7, 1992) (on file with the \textit{Southwestern Journal of Law & Trade in the Americas}).
  \item \textsuperscript{154} See Albeino Ovando, supra note 121, at 47; Barrientos Pallecer, supra note 144, at 22.
  \item \textsuperscript{155} See Centro Evangélico, supra note 27, at 2; Human Rights Watch/América, \textit{Human Rights in Guatemala During President de León Carpio’s First Year} 3 (1994).
  \item \textsuperscript{156} Later in 1993, USAID provided some technical assistance to the new court. See, e.g., DPK Consulting, Technical Assistance to the Organismo Judicial Unidad de Planificación y Transformación de la Justicia Penal, (Oct. 12, 1993)(draft), on file with the \textit{Southwestern Journal of Law & Trade in the Americas}. This renewed assistance was provided via the National Center for State Courts. Later, in 1994, a new project, referred to as “CREA - Centro de Apoyo a la Reforma del Estado de Derecho” came on line. In English, the project was called the Judicial Sector Reform Support Project (JSRSP). See, e.g., U.S. Agency for International Development, Project Paper (July 14, 1993).
  \item \textsuperscript{157} See Montes Calderón, Diagnóstico, supra note 88, at 3.
  \item \textsuperscript{158} See Albeino Ovando, supra note 121, at 47.
  \item \textsuperscript{159} See Barrientos Pallecer, supra note 144, at 26.
\end{itemize}
aid of the judicial police (Spanish: Policía Judicial, French: Police Judiciaire) and other court officials to carry out investigations. This “instruction” is a cumbersome, bureaucratic process which may take a great deal of time.

The instruction is carried out in secret, in theory to protect the accused from adverse publicity prior to a determination that the government has a strong case for prosecution. In this sense, the instruction is somewhat similar to a grand jury hearing in the U.S., which are secret and weigh evidence to decide whether the accused should be indicted. However, grand jury hearings are very short, and only designed to avoid frivolous actions, and thus are quite distinct in purpose from the instruction.

Basic to the inquisitorial system as it exists today in “civil law” countries is that its processes cannot be aborted by the accused’s “guilty” plea. Even if the accused does admit guilt, the inquiry must continue through a formal trial to decide the proper application of the law to the facts. A formal trial is also necessary to decide what punishment, if any, or rehabilitation steps are needed.

The process of investigation (instrucción) consumes an inordinate amount of time, during which the person under investigation, at least in major crime cases, will likely remain in jail, or if at liberty, under a public cloud of suspicion. The potential for abuse in a lengthy, secret pretrial proceeding is obvious. Often, the accused may remain in jail, without even possibility of bail, while the instruction is going on. In 1984 in France, for example, 51.9 percent of those in detention were awaiting trial rather than serving sentences.

The complete record of pretrial proceedings under the instruction is called the “dossier.” The dossier also serves to inform judges, defense attorneys and others about the testimony of key witnesses and the evidence to be presented at trial.

167. Articles 120-123, Código Procesal Penal, Decreto 32-73 (repealed).
171. See ID.
172. See Tigar, supra note 162, at 5.
173. For the cases of France, see Tigar, supra note 162, at 6.
174. See FAIRCHILD, supra note 163, at 126-127.
175. See id. at 127.
176. See id. at 127.
177. See id. at 127.