ulation Centers do not have to abide by national law, only the Constitution and international treaties on human rights.303

The new legislation also allows private citizens to bring private criminal actions in certain cases,304 such as damages to honor, intellectual property, corporate secrets or check fraud.305 In these cases, the individual interest and damage is deemed to be more important than the social damage: private interest in prosecution outweighs public interest.306 Another class of crimes, including incest and rape, require the victim to present a complaint before prosecutors will bring charges.307

IV. THE PRESENT AND FUTURE.
A. Continued Practice of the Old Code.

According to one account, over 500 judicial sentences under the new criminal procedure code had legal deficiencies either in applying law to facts or in evaluating evidence.308 Consequently, while the law may have changes, there remains a long way to go to make that change a reality in practice.


In the French Inquisitorial system, there is normally a right to a defense attorney. Since 1857, French law has required that an attorney represent the accused even during the process of the instruction. French law also requires that the accused be informed of a right to self-representation. However, this right is rarely exercised and is often waived by the accused.309

The new legislation also allows private citizens to bring private criminal actions in certain cases, but this does not mean that these actions will be pursued. In practice, private citizens are rarely willing to bear the costs and time involved in bringing a private criminal action.310

Until recently in Guatemala, the only access to criminal defense for the accused was through private attorneys or a volunteer from the Bar Association discharging ethical duties to represent the indigent.311

Under new legislation, the law now requires that the accused have a defender, paid for by the state in cases where the defendant cannot afford one.312

Based on these observations, a Public Service for Criminal Defense (Servicio Público de Defensa Penal) was created under the Presidency of the Court.313 However, despite creation of the new Service, cases remain where accused individuals languish in jail far beyond the time they would receive even if convicted. The Public Defender Service is simply so overwhelmed that it cannot effectively respond to remains silent during the instruction. Nevertheless, the French process of instruction nearly always looks for a confession in cases which do not end with a discharge.309 In Cuba, the guarantee of a right to counsel at public expense has been built into the Cuban code for some time.310

The use of students as defenders, or obligating private attorneys to defend the indigent, was not perceived as effective. Defendants were not properly represented. Further, the Constitution forbids forcing anyone to work without compensation.314

The Convención Americana sobre Derechos Humanos requires that the accused have a defender, paid for by the state in cases where the defendant cannot afford one.315

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In April 1954, San Carlos University created the first bufete popular in operation in the country. Now, the universities of San Carlos, Rafael Landivar, Mariano Galvez and Francisco Marroquin have all created bufetes populares.312

Under new legislation, the bufetes populares may no longer represent the indigent, unless under supervision and collaboration of a practicing attorney.313

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the demand. According to former Bar Association President Alfonso Novales Aguirre, in such cases, the state may be responsible civilly for its negligence. Specifically, the Supervisión de Tribunales must guard against such abuse, Novales warned. Still, according to the Commission for the Strengthening of Justice, about half of low income criminal detainees lack access to public defenders.

The Public Defender Service continues to undergo change. While new legislation comes on line, there are new calls to provide a service for indigenous Maya, and more specifically, defenders for Maya women. The new, autonomous, independent Service comes into effect in mid-1998.

V. CONCLUSIONS ABOUT THE NEW CODE.

Whether a legal system is classified as inquisitorial or adversarial is becoming more and more a question of history and style rather than substance. Whether Guatemala has an inquisitorial or adversarial system will not decide whether justice will be served; political systems designed to reach a result ordained by the Pinochet regime will not "democratic." In fact, the old Guatemalan Code was criticized for its authoritarianism, allowing the state to act on the margins of legality, with judges structurally incapacitated from criminal investigation and an ineffective Public Ministry. While it is true the adversarial system is used in countries like Canada, the United States and Britain, it is also true that Nazi Germany used accusatorial procedures, vesting great power in the prosecutor. Meanwhile, many of the world's democracies today use basically an inquisitorial system.

To its credit, Guatemala has risen above this debate over inquisitorial versus adversarial systems. Whether or not in theory one system is better than the other, it is clear the inquisitorial system utilized in Guatemala was bankrupt. The country made a bold choice opting for reform, and is now poised to reap the benefits. For the first time, defendants can hear publicly what they are accused of, present oral defenses, and have legal representation in their own language. In a country with a history of massive human rights abuse, this is a monumental step forward. The international community should recognize this advance toward a restoration of the rule of law.

VI. CONCLUSIONS: TOWARD IMPLEMENTATION OF THE PEACE ACCORDS.

The "Accord on Strengthening Civil Authority and the Role of the Armed Forces in a Democratic Society" recognized the obsolescence of current legal procedure, the slowness of process, the lack of modern court administration, the lack of supervision over justice sector employees and the presence of corruption and inefficiency. That document called for an end to impunity and corruption.

327. See id. at 86-87.
328. See id. at 86.
329. See id. at 86-87.
330. See id. at 86.
331. See id. at 86.
332. See id. at 86.
333. See id. at 86.
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The goal of a transparent, efficient criminal justice system, as envisioned in the new Code, remains just that — a goal. The obvious problem now is the operationalization of the new Code. Although advances have been made, corruption, impunity and citizen security are still heard in the street. In the courts and with prosecutors, these problems are manifested in low salaries, official corruption and deficient training. While roles are defined in the Code, they need to be translated into new administrative and organizational structures within the field. Such an endeavor will also require increased cooperation and collaboration among the police, prosecutors and judges.

Legal education at the University level must also track these changes and prepare new attorneys to face the new reality.

Steps are already underway to address these concerns and take Guatemala to the next level of administration of justice, the most important of which is the new political will to prosecute and convict former government officials deemed corrupt:

- Former President of the Supreme Court, Juan José Rodil Peralta, has been charged with misuse of Q201 million.
- Former Attorney General Ramos's Cuestas is under investigation by prosecutors.
- Another former Attorney General, Teléforo Guerra Cahn, has been indicted for attempted fraud of Q70 million.
- A number of military officials and police officers, some high-ranking, have been charged as being "narcomilitares."  
- The Attorney General is even trying to extradite former president Jorge Serrano from Panama to stand trial for his 1992 coup.

One example of the new transparency is that victims can now participate in and observe the trial process. See, e.g., En juicio oral, víctima reconoce a sus plagiarios, El PERIODICO, Nov. 26, 1997, at 6.

Six kidnappers, bank robbers, and former military police officers were arrested after an intense criminal investigation.

Similarly, the official human rights record greatly improved in 1997 over prior years, according to Human Rights Watch. Under the new

Code, the prosecution has established an approximately 70 per cent conviction rate.347

The major reforms in Latin America generally in recent years have been focusing on organizational and administrative issues.348 Code reform, if not combined with new organizational and administrative systems, does not necessarily yield the desired results.349 In court systems throughout the region, most notably in Costa Rica, Chile and Peru, new organizational and administrative structures have been designed and implemented with positive results in reducing delay, minimizing exposure to corruption, creating accountability, as well as establishing uniform practices, performance standards and systems to measure performance.350

With this in mind, another major advance in making justice work at the local level has been the creation of new justice centers. The Guatemalan Government designated Zacapa and Quetzaltenango as places to focus attention to make the new Code work. That model, developed with USAID assistance, consists of the following:351

[Statements about the model and its implementation]

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347. See Edwin Pulecio, Macro balance para la justicia en la ciudad, El Pueblo, Dec. 21, 1997, at 1 (reporting there were 480 judgments, of which 331 were convictions and 77 were acquittals since the new Code has come into effect). Unfortunately, there have been some very serious setbacks in prosecution, including the dramatic losses of the Moreno case and the Comision Alternativa case and the apparent ineptitude of the prosecution in the Gerardi case. See Gerardo Mexia, El MP pone en duda imparcialidad de juez, Siglo Veintiuno, Feb. 18, 1999 at 2; Donald Gonzales & Julia Corado, Gente en conflicto con abolicion, Siglo Veintiuno, Feb. 18, 1999, at 6; Julia Corado & Marco Tito Trejo, MP analiza solicitud de la clausura provisional del caso Gerardi, Siglo Veintiuno, Feb. 10, 1999 at 4; Elder Interiano, Orantes: Hoy libre o a juicio, Prensa Libre, Feb. 18, 1999, at 3. These dramatic failures have drawn into question the ability of the Public Ministry to carry out an effective investigation and prosecution.


350. See USAID/SOW, supra note 348, at 4. In recognition of this fact, the Guatemalan government opened a Clerk of Court office, Centro Administrativo de Gestion Penal, in Guatemala City, a first for a capital city in Latin America. This clerk office is based on the Justice Center model. See infra note 351.

351. See id. at 3-4; See generally, Tim Cornish & Maggie Triviz, Perspectiva: Sistemas de Gestión Administrativa de los Centros de Enfoque de Quetzaltenango y Zacapa, Presentacion al Plenario of the Supreme Court (May 28, 1997) [hereinafter Cornish & Triviz]. New Justice Centers were opened in 1998 in Nebaj (El Quiche), San Benito (Petan), and Escuintla.

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352. Article 90 of the Criminal Procedure Code requires interpreters for non-native Spanish speakers. Under Article 142, it is possible to have the criminal procedure in an indigenous language, with simultaneous translation into Spanish.

353. See generally, Cornish & Triviz, supra note 351.

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This new center, opened in February 1997, represents an extension of the existing formal system to a new location.\textsuperscript{354} USAID and MINUGUA continue to collaborate with the Guatemalan Government in expanding the justice center model and further promoting decentralized access to justice. In 1998, USAID joined forces with MINUGUA in Nebaj to integrate the administrative advances from the Justice Centers to the Nebaj location. Further, USAID supported Guatemalan government efforts to open new Centers in Escuintla and San Benito (Flores), again with the administrative advances from the Zacapa and Quetzaltenango experiences. In addition, as the Court’s management and oversight are based in Guatemala City, the USAID efforts included extension of the administrative model to the ten criminal courts (juzgados penales) in the Capital through creation of a clerks office (Centro Administrativo de Gestión Penal), a first for a capital city in Latin America.\textsuperscript{355}

New transparent systems of the justice centers in Zacapa and Quetzaltenango have served to deter corruption. Based in part on these experiences, the court looks to promote oral processes in other areas of law with a view toward increasing transparency and efficiency and reducing opportunities for official corruption.\textsuperscript{356}

With regard to salaries, discussion has already begun on how to increase the budgets of the courts, prosecutors and police.\textsuperscript{357} It is hoped that increased salaries will attract better qualified candidates, and provide an honorable salary, so that employees will not be as tempted by corruption. In all, the courts have fired about 40 judges, the police about 120 officers and the Public Ministry just under 40.\textsuperscript{358} Even so, it has been difficult for the government to rid itself of corrupt or incompetent officials given restrictions in the Labor Code.\textsuperscript{359}

Training needs are now being addressed. The Training Unit (Unidad de Capacitación o UNICAP) of the Public Ministry is in the process of a needs detection analysis and reforming the education process for prosecutors based on USAID technical assistance. First, UNICAP established the ideal profile of a prosecutor. It then determined the performance level of current prosecutors. Then, it adjusted its curriculum to meet the exact needs of prosecutors. Finally, a system is


now in place to measure the impact of the training exercises, so that corrections can be made to the curriculum on an as needed basis. Following the UNICAP lead, similar efforts are now underway at the Judicial School (Escuela de Estudios Judiciales) with USAID technical support.

New organizational relationships, at the national and local levels, are being worked out, to advance cooperation and collaboration. At the local levels, as discussed above, police, prosecutors and court officials are now working together at the justice center level.

On a national level, new inter-institutional collaboration is emerging. Historically, this has been difficult. Between 1986 and 1988, USAID paid the initial costs of supporting a National Justice Commission which became defunct. The National Commission was created in 1987 by the President of the judicial branch who made himself the head of the Commission. The Commission included the Public Ministry, Congress, Interior Ministry, Bar Association and law schools. Likely reasons for the Commission’s collapse include:

(a) It was created in response to an external request (USAID) rather than in response to the desires of the Guatemalan Government;
(b) Control by the Judicial branch probably reduced interest of others;
(c) The Commission had no workplan; and
(d) The natural tendencies of the institutions to avoid collaboration.

A new Commission for the Strengthening of Justice was called for in March 1997 to promote modernization, access to justice, streamlining of process and professional excellence. Further, the Court, Public Ministry and Interior Ministry, the three principle entities responsible for justice in Guatemala, have signed an agreement to improve coordination and advance a common agenda, through the Instancia Coordinadora. It now appears that inter-institutional coordination is working.

On a parallel track, a special “Commission for the Modernization of the Judicial Branch,” was established, made up of court functionaries and presided over by then Court President Ricardo Alfonso Umaña Aragón. From November 14, 1996 to April 28, 1997, the Commission held a series of conferences, with assistance funding from the World Bank and assistance from the United Nations Development Programme (UNDP). Based on those conferences, the Supreme Court drafted a modernization plan for the judicial branch to be carried out in 1997-2002. The participatory process that went into the drafting of the plan is unprecedented in Guatemala’s judicial system. The plan, unveiled on October 7, 1997, outlines five major areas: (a) inadequacy in carrying out court functions, (b) limited access to administration of justice, (c) corruption, (d) deficient institutional management, and (e) lack of confidence in the court system by the public. The plan is refreshingly frank in recognizing these problems and proposes an ambitious framework for addressing them.

Major reforms are now underway in legal education. At the request of the Law School Dean at the University of San Carlos, USAID is providing technical assistance to revamp the curriculum to
make it relevant to the needs of today's attorneys. In addition, new course materials in trial practice and trial advocacy, adapted to the new Guatemalan Criminal Procedure Code, are being produced in collaboration with the Universidad Rafael Landivar.

Until 1995, USAID was the principal and lead donor assisting the Guatemalan government to reform its justice sector. Since then, in the context of the peace accords, other donors have expressed interest in becoming involved. In the human rights area, MINUGUA has taken the major leadership role with its human rights verification mission. Under the peace accords, MINUGUA also has a role in institutionalization of legal reform, and has been active in support of programs for a pluri-cultural and pluri-linguistic access to justice (financed by the Dutch and U.S. Governments) and public defenders (financed by the U.S., with salaries of public defenders being paid via a Spanish Government contribution to UNDP).

A number of other donors are also now active. As mentioned above, the Spanish are involved with the public defenders and the reform of the police. UNDP has also begun activities in the justice sector in terms of the public defenders program and the technical assistance portion of the World Bank effort with the Commission for the Modernization of the Judicial System. The Inter-American Development Bank (IDB) is expected to become involved in 1998 along with the European Union, Canadians and others. The involvement of additional donors should keep up the pressure for additional

370. See USAID/SOW, supra note 348, at 3-4.
371. See, e.g., CREAIUSAID Report, supra note 360, at 6-7.
372. See Acuerdo Global sobre Derechos Humanos, Art. 9 (Mar. 29, 1994).
376. See Unión Europea: Darán US$31 millones para la PNC, SIGLO VEINTIUNO, Mar. 25, 1998, at 6. The European Union will provide about $30 million to the PNC to be used for training. However, the support to the Organismo Judicial is contingent upon passage of the Constitutional Reforms.
377. A Canadian diagnostic study, a step prior to investment, is now complete. See generally, Louis Perret and Jean-Denis Archambault, La Administración de Justicia en Guatemala: Reporte de misión y recomendaciones para la Agencia Canadiense de Desarrollo Internacional (Mar. 1997).
378. A number of governments sent representatives to a donor coordination meeting in Antigua, Guatemala, November 3-4, 1997. Among the invitees were Spain, France, Italy, Japan, Norway, the Netherlands, Canada, Chile, Denmark, Great Britain, Sweden, Switzerland, Argentina, Venezuela, Belgium and Austria.