

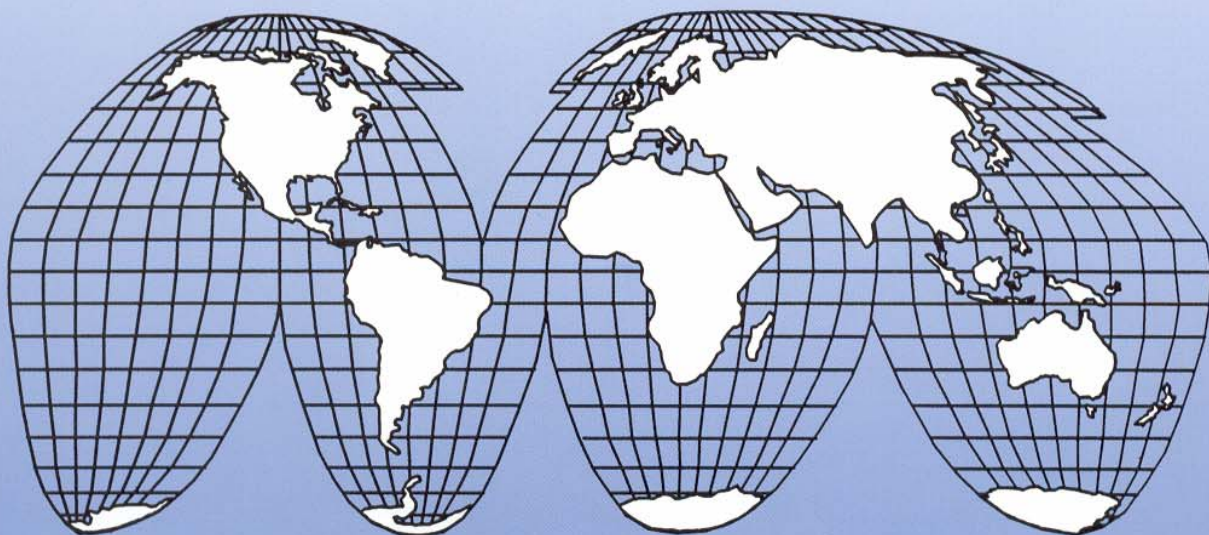
USAID

OFFICE OF INSPECTOR GENERAL

Audit of USAID/Guatemala's Justice Program

Audit Report No. 1-520-04-011-P

September 9, 2004



San Salvador, El Salvador



September 9, 2004

MEMORANDUM

FOR: USAID/Guatemala Director, Glenn E. Anders

FROM: Inspector General/San Salvador, Steven H. Bernstein “/s/”

SUBJECT: Audit of USAID/Guatemala’s Justice Program (Report No. 1-520-04-011-P)

This memorandum transmits our final report on the subject audit. In finalizing this report, we considered your comments on our draft report and have included your response in Appendix II.

The report includes two recommendations as follows: that USAID/Guatemala (1) include baselines and targets for justice program indicators defined in the Performance Management Plan and (2) require the next justice program contractor to use the same definitions and timeframes in workplans, proposals, statements of work, and performance reports to facilitate the monitoring of activities proposed under the different planning documents. Based on your comments and the documentation you provided, final action has been taken, and both recommendations are closed upon issuance of this report.

Once again, I appreciate the cooperation and courtesy extended to my staff during the audit.

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Summary of Results

As part of its fiscal year 2004 audit plan, the Regional Inspector General/San Salvador performed this audit to determine whether USAID/Guatemala's justice program activities were on schedule to achieve planned outputs and sustainable results (page 6).

We were unable to fully answer the audit objective because USAID/Guatemala did not establish performance indicator baselines and intermediate targets to measure the progress of justice program activities. As a result, this report is limited because we cannot state positively that USAID/Guatemala's justice program activities were on schedule to achieve planned outputs and sustainable results (page 6).

Based on the information provided and the tests performed, the following problem area came to our attention. USAID/Guatemala's 2002 and 2004 Democracy Strategic Objective Performance Monitoring Plans identified 26 separate indicators for measuring progress of justice program activities. However, only two of these indicators had established baselines, intermediate targeted output levels, and actual reported outputs or results for measuring progress. These two indicators did not provide enough insight into the Mission's justice program activities to determine whether the program as a whole was on schedule. Consequently, we could not determine whether the Mission's justice program activities were on schedule to achieve planned outputs and sustainable results (page 7).

Therefore, we recommended that USAID/Guatemala:

1. include baselines and targets for justice program indicators defined in the Performance Management Plan and
2. require the next justice program contractor to use the same definitions and timeframes in workplans, proposals, statements of work, and performance reports to facilitate the monitoring of activities proposed under the different planning documents (page 15).

USAID/Guatemala agreed with the findings and recommendations presented in this report and took appropriate corrective action. Accordingly, final action has been taken, and both recommendations are closed upon issuance of this report (page 15).

Background

Guatemala has suffered more than 36 years of internal conflict, which formally ended with the signing of the Peace Accords in December 1996. Guatemala is now in its seventh year of implementing the Accords, which provide the framework for transforming Guatemala into a more participatory, pluralistic and

equitable society. To aid in this transformation, USAID/Guatemala was working toward a more effective and responsive criminal justice system through increased functional integration among key actors, streamlined and improved transparency, efficiency of justice administration, and improved legal education. Current strategic plans for the democracy and peace accord support programs end with fiscal year 2003 funding. Funding for fiscal year 2004 will not be sought for the peace accord programs; however, at the time of our audit, new regional democracy program activities for Central America and Mexico were being developed for years 2003 – 2008. The justice program had been moved into the Mission’s democracy strategic objective which will terminate at the end of the 2004 fiscal year and will then become a part of the new democracy regional strategy. USAID/Guatemala was developing this strategy in conjunction with other missions in Central America and Mexico.

In May 1999, USAID/Guatemala signed a contract with Checchi and Company Consulting to implement justice program activities. The planned result of these activities would be a more effective and responsive criminal justice system in Guatemala. The program was divided into two phases:

1. Phase I, for \$7.9 million, ended September 30, 2002.
2. Phase II, for \$3.6 million, ends September 30, 2004.

The Mission’s financial reports disclosed obligations of \$11.5 million and disbursements of \$9.6 million through December 31, 2003.

Audit Objectives

As part of its fiscal year 2004 audit plan, the Regional Inspector General/San Salvador performed this audit to answer the following question:

- Were USAID/Guatemala’s justice program activities on schedule to achieve planned outputs and sustainable results?

Appendix I contains a discussion of the audit's scope and methodology.

Audit Findings

We were unable to fully answer the audit objective because USAID/Guatemala did not establish performance indicator baselines and intermediate targets to measure its justice program activity progress.

In order to fully answer the audit objective, the following performance indicator information would have been necessary as of the date of our audit scope (December 31, 2003):

- Target amounts for planned outputs and sustainable results

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- Target dates for planned outputs and sustainable results
 - Attained outputs and achieved sustainable results as of the target date identified above

Because USAID/Guatemala did not supply this information for 24 of 26 performance indicators, we could not state positively that USAID/Guatemala's justice program activities were on schedule to achieve planned outputs and sustainable results. However, this did not preclude us from reporting on a problem area that came to our attention.¹

As discussed above, we could not fully answer the audit objective. What follows is (1) a discussion of the justice program and (2) a description of what the justice program had reportedly achieved for two indicators.

Description of the Justice Program - The establishment of justice centers throughout Guatemala was the first of four general tasks under USAID/Guatemala's justice program. The other three tasks were (1) institutional strengthening, (2) legal education reform, and (3) alternative dispute and conflict resolution. These four tasks contributed to the overall justice program goal of creating a more effective and responsive criminal justice system in Guatemala.

The justice center, under the first general task, was a methodology, rather than a building or physical location. The justice center was a means to improve the coordination among parties involved in the criminal justice process. These parties included prosecutors, police chiefs, public defenders, and judges of the Courts of First Instance (the judges responsible for controlling investigations and scheduling cases for trial). Interaction and coordination among the parties were intended to expedite cases through the criminal justice system. For example, improved coordination should have assisted police in completing criminal reports properly and efficiently or fulfilling the requirements for issuing arrest warrants.

To meet its goal of coordination, the ideal, model justice center consisted of unit coordinators and executive committees.

Key to the success of the justice center was the unit coordinator, who was responsible for coordinating meetings among the various actors in the criminal justice system. Whether these actors met and agreed to coordinate efforts was largely the result of how successfully the unit coordinator could persuade them to do so.

The unit coordinator was a salaried position at the justice centers. Salaries were financed by Checchi and Company Consulting (Checchi), the Mission's sole

¹ A complete description of the essential information that USAID/Guatemala did not develop is provided in the following section.

contractor for implementing justice program activities. Funding for the unit coordinator positions will end when the strategy and contract end on September 30, 2004. Of the 16 justice center coordinators, the Mission reported that two had found alternative sources of funding from the Inter-American Development Bank. For the remaining 14 justice centers, this funding had yet to be located although the Mission and Checchi were seeking other options for financing. Without such funding, the justice centers might not be sustainable.

The executive committee was composed of justice sector operators and civil society organizations operating within the justice center's community. The committees were typically comprised of non-government organizations, advocacy groups, and lawyer associations, and differed from the unit coordinator groups in that the individual members were not government officials. The committees were organized around various themes, such as domestic violence or the rights of the indigenous population. The Mission provided funding, as well as tools for achieving sustainability, for the initial executive committee activities. The Mission reported that executive committee activities obtained an average of 61 percent of funding from other sources for the fiscal year ending September 30, 2003, although that percentage was based on reporting data from only 10 of the 16 centers (reporting data for all justice program activities will be discussed in further detail below). These committees will also need to find their own funding sources to be fully sustainable after September 30, 2004.

The second general task of justice program activities was institutional strengthening. This task included building effective criminal justice institutions in Guatemala. One such institution where reengineering activities were being piloted was the Guatemalan Public Ministry (the Public Ministry is similar to a public defender's office in the United States). Other activities included strengthening the judiciary to create a model Court of First Instance and expanding implementation of a case-tracking management information system for trial courts.

The third general task of justice program activities was legal education reform. These activities took place at national law schools such as the University of San Carlos. Activities included curriculum reform, improved financial and management information systems at law schools, improved legal education standards, and improved standards for bar exams.

The fourth general task was the establishment and expansion of community mediation centers. Activities included promoting resolution of appropriate cases through non-formal channels of dispute resolution, including indigenous customary law. By promoting non-formal channels, the Guatemalan judiciary system would be able to devote more resources to complex criminal cases. This activity involved hiring mediators for the purpose of resolving disputes. Funding for these mediators ended on December 31, 2003. Alternative funding sources had yet to be located, but the Mission and Checchi were actively seeking other sources.

As mentioned previously, such alternative financing is necessary for justice program activities to achieve sustainability. The Mission and Checchi were reportedly pursuing alternative financing options. The Inter-American Development Bank, for example, was considering a loan to the Government of Guatemala to finance the remaining justice centers in addition to the two already being financed. The Swedish Government's development agency also expressed interest. Draft legislation had been prepared for the Guatemalan legislature to finance the justice centers as well. Another possibility is filling the justice center unit coordinator positions with rotating volunteers. Given these efforts and given that the Mission's contract allows Checchi until September 30, 2004, to complete its tasks, we are not making a recommendation regarding alternative financing.

Justice Program Achievements for Two Indicators - USAID/Guatemala, in its 2002 and 2004 Performance Monitoring Plans for its Democracy and Governance Strategic Objective, developed 26 performance indicators to measure the progress of its justice program activities. However, of these 26 indicators, only two had established targeted output levels, baselines, and actual reported results. Those two outputs were (1) the number of justice centers open and operating and (2) the average number of months required to process a case through the Guatemalan criminal justice system.

The first output, according to the Mission, was achieved. The Mission had planned to open 16 justice centers throughout Guatemala by December 31, 2003, and Mission reports indicated that this had been accomplished by that date. Nevertheless, the opening of justice centers was not a measure of the work quality of the justice program activities, Mission officials explained.

The Mission determined that the second output, a more qualitative indicator, had not been achieved. Case processing time was found to be increasing, rather than decreasing. The Mission determined that case processing time was too broadly defined and proposed redefining the measure to more accurately reflect the work of the justice program.

Thus, with just one non-qualitative indicator with a measured output, we did not consider it appropriate to answer our audit objective, which applied to all justice program activities.

**Planned Output Levels were not Established
in the Performance Monitoring Plan**

Summary: USAID/Guatemala did not establish in its Performance Monitoring Plans (PMPs) planned levels of outputs and sustainable results against which to measure actual outputs and results, as required by the Automated Directives System. The project team did not develop the required items because it did not view the PMP as a managerial or tracking tool. As a result, Mission management could not know whether their justice program activities were having the desired effects or if activities needed to be adjusted in order to achieve the desired effects.

The exercise of establishing baselines and planned targeted outputs begins with the PMP, the initial strategic objective level document in which Missions should identify indicators and establish baselines and planned outputs and results.

USAID/Guatemala prepared a PMP for its strategic objective, “More Inclusive and Responsive Democracy,” which covered justice program activities and was dated June 24, 2002. In this PMP, the Mission identified 18 results-level indicators related to its justice program activities. As explained previously, we were able to identify two indicators with established baselines and targeted outputs: (1) the number of justice centers open and operating and (2) the average number of months required to process a case through the Guatemalan criminal justice system.

The Mission prepared a second PMP dated February 10, 2004, also covering justice activities. Many of the indicators defined in the 2002 PMP were not included in this PMP. The 2004 PMP defined 12 indicators for justice program activities. In both PMPs, the indicators were missing information on baselines, targets, or reported results.

The following table consolidates information from the Mission’s 2002 and 2004 PMPs and reported outputs and results from the 2003 Performance Indicator Reference Sheets (these sheets are completed annually by operating units to record and update all relevant specifications and details for a particular indicator).

Table 1 - Justice program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective						
No.	Indicator	Included in 2002 and/or 2004 PMP?	Baseline?	2003 Targeted output/result?	2003 Reported output/result?	Percent of target achieved
1	Number of justice centers open and operating	Both	Yes	Yes	Yes	100%

Table 1 - Justice program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective

No.	Indicator	Included in 2002 and/or 2004 PMP?	Baseline?	2003 Targeted output/result?	2003 Reported output/result?	Percent of target achieved
2	Average case processing time	Both	Yes	Yes	Yes	0%
3	Number of community mediation centers (CMCs) operating	2002	Yes	No	No	Unable to determine
4	Number and percentage of total cases resolved through CMCs	2002	Yes	No	No	Unable to determine
5	Number of cases assisted by trained interpreters in justice centers	2002	No	No	No	Unable to determine
6	Number of students and percentage of implementation in Indigenous Law Masters program	2002	Yes	No	No	Unable to determine
7	Number of law students involved in internships/practical skills program	Both	Yes	No	No	Unable to determine
8	Women's groups who know their rights	2002	Yes	No	No	Unable to determine
9	Justice sector personnel who understand/apply women's rights	2002	Yes	No	No	Unable to determine
10	Gender considerations included in law school curricula	2002	Yes	No	No	Unable to determine
11	Increased student access to modern research tools	2002	Yes	No	No	Unable to determine

Table 1 - Justice program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective

No.	Indicator	Included in 2002 and/or 2004 PMP?	Baseline?	2003 Targeted output/result?	2003 Reported output/result?	Percent of target achieved
12	Implementation of case management system	Both	Yes	No	Yes	Unable to determine without target
13	Criminal cases resolved without trial	2002	Yes	No	No	Unable to determine
14	Implementation of procedures to assist women	2002	No	No	No	Unable to determine
15	Networks to assist female violent crime victims	2002	No	No	No	Unable to determine
16	Number of detainees without convictions	2002	Yes	No	No	Unable to determine
17	Number of indigent defendants represented by Public Ministry	2002	Yes	No	No	Unable to determine
18	Greater number of appeals and writs brought by Public Ministry	2002	Yes	No	No	Unable to determine
19	Number of agreements adopted by justice center coordinating units	2004	No	No	Yes	Unable to determine without target
20	Percent of Exec. Cmte. activities funded by outside sources	2004	No	No	Yes	Unable to determine without target
21	Local crime-prevention strategies developed	2004	Yes	Yes	Data was not complete	Unable to determine without complete data

Table 1 - Justice program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective

No.	Indicator	Included in 2002 and/or 2004 PMP?	Baseline?	2003 Targeted output/result?	2003 Reported output/result?	Percent of target achieved
22	Number of accusation writs submitted to bring cases to trial	2004	No	No	Yes	Unable to determine without target
23	Percent of justice center coordinator salaries funded by outside sources	2004	Yes	No	Yes	Unable to determine without target
24	Number of cases tried under domestic violence laws	2004	No	No	Yes	Unable to determine without target
25	Number of cases attended by Office for Victim's Assistance	2004	No	No	Yes	Unable to determine without target
26	Sustainability of mediation centers	2004	No	No	No	Unable to determine

Of the 26 indicators listed above, only numbers 1 and 2 had established baselines, targeted outputs, and reported actual outputs and results.

The first PMP covering justice program activities was completed in June 2002—three years after the Mission signed its contract with Checchi, the justice program implementer, in May 1999. The PMP is intended to be a planning tool and should be developed **prior** to the commencement of activities. The current Cognizant Technical Officer (CTO) on the Checchi contract, who had only been CTO since February 2004, felt that the PMP and Portfolio Review (the tool used to measure actual outputs and results against targeted outputs and results) were reporting mechanisms for USAID/Washington and external parties, rather than useful managerial tools (the CTO is the individual who performs functions on a given contract that are designated by the Contracting or Agreement Officer). A Checchi official made a similar statement. This official said that completing the 12 Performance Indicator Reference Sheets was an exercise Checchi conducted only because it was required by USAID/Washington. Further, a Checchi official stated that, from the start of the program, the first CTO never adequately explained what types of reporting information the Mission needed or wanted in order to measure justice program progress (three CTOs had been assigned to Checchi's contract since May 1999). As a result, Checchi officials were somewhat confused about

what sort of information the Mission had expected over the course of their program.

This confusion was evident in, and magnified through, Checchi's proposals, statements of work, annual workplans, and quarterly reports. These documents identified outputs as benchmarks, expected results, and targets. But each of these documents defined these outputs inconsistently. For example, under the first general task, Justice Center Expansion, Checchi's original proposal (dated April 20, 1999) listed an increase of 20 percent in populations served by justice centers as one output. The annual workplan for 2003, however, did not include this as an output; instead it identified others, such as a decrease in the number of lynchings under an undefined 2002 baseline. Checchi's quarterly report for the quarter ending December 31, 2003, did not report on either of these outputs. The quarterly report was prepared as a narrative, describing activities that took place under each task, such as the number of meetings and topics discussed by unit coordinators and executive committees. Ultimately, Checchi's quarterly reports were never prepared in a manner that would report on specific outputs and results identified in the proposals, statements of work, and annual workplans.

A well-developed PMP, if used properly, can help eliminate these inconsistencies and assist communications between Mission and contractor officials. Automated Directives System (ADS) 203.3.3.1 states that at least one performance indicator is required to measure progress toward each Intermediate Result and that each indicator must include baseline levels and targets to be achieved over the life of the strategic objective. Operating units should have as many indicators in their Performance Management Plan² as are necessary and cost effective for management and reporting purposes.

ADS 203.3.4.5 also states that management should plan ahead for the analysis and interpretation of actual performance data against the performance targets. The Handbook of Democracy and Governance Program Indicators states that one of the PMP's purposes is to enable comparable performance data to be collected over time, even in the event of staff turnover (a necessity when CTOs change frequently). The preamble to USAID/Guatemala's 2002 Democracy Strategic Objective PMP stated that the Plan should be a useful tool for management and organizational learning—not simply a mechanism to fulfill USAID/Washington reporting requirements.

Without an effective system for analyzing and interpreting performance data against targeted outputs and results, Mission management cannot know whether the program is having the desired effect or whether the activities need to be adjusted in order to achieve the results.

² The Performance Monitoring Plan was changed to Performance Management Plan in 2003 per ADS 203.

Although Checchi's contract ends September 30, 2004, the Mission planned to continue justice program activities as part of its new Regional Strategy for Central America and Mexico from 2003 through 2008.

In light of these circumstances, we are making the following recommendations:

Recommendation No. 1: We recommend that USAID/Guatemala include in its next Performance Management Plan for Democracy and Governance: (a) a manageable number of planned outputs and sustainable results for justice program activities; (b) a methodology for generating baseline data and targets for measuring progress towards accomplishing planned outputs and sustainable results; and (c) language requiring actual outputs and sustainable results be measured against these established baselines and targets.

Recommendation No. 2: We recommend that USAID/Guatemala (a) require the next justice program contractor's workplans, proposals, and statements of work to use the same definitions and timeframes, and to be sufficiently clear and specific as to determine how and by when planned outputs and sustainable results will be achieved; and (b) require the contractor to report progress for planned outputs and sustainable results identified in its workplans, proposals, and statements of work.

Evaluation of Management Comments

USAID/Guatemala agreed with, and took steps to implement, the findings and recommendations presented in this report. For the first recommendation, the Mission defined indicators, units of measure, baselines, and targets for justice program activities in its Performance Monitoring Plan (PMP) for the upcoming Democracy Regional Strategic Objective for Central America and Mexico. For the second recommendation, the Mission placed language in the terms of reference for follow-on justice program activities clarifying that all contractor reporting shall be consistent with the indicators and benchmarks established in the contract and PMP. Accordingly, final action has been taken and both recommendations are closed upon issuance of this report.

USAID/Guatemala also made some comments regarding the methodology of our audit. We appreciate such comments and will give them due consideration in planning and performing future audits.

Mission comments to this report are included in Appendix II, with the exception of Annex 1 (the Activity Design Document) and Annex 2 (the Request for Quotations for the Rule of Law Program for 2004 – 2009). Based upon the Mission's comments and our analysis of these documents, we determined that

both recommendations are closed. Annex 3 is included in its entirety in Appendix II. Annex 3 is additional data describing justice program outputs and results which the Mission gathered and collated in response to this audit report.

**Scope and
Methodology****Scope**

The Regional Inspector General/San Salvador conducted this audit in accordance with generally accepted government auditing standards. Although we followed these standards, we could not fully answer the audit objective. USAID/Guatemala's management did not completely establish baseline data and targeted outputs levels against which to measure actual outputs and results for 24 of its 26 justice program indicators. Without this information, the Mission could not demonstrate that its justice program activities were on schedule to achieve planned outputs and sustainable results. In order for us to fully answer the audit objective, we would have needed to identify what USAID/Guatemala's planned and actual outputs and sustainable results were as of the date of our audit scope, December 31, 2003. The fact that management had not prepared this information constituted a limitation on the scope of the audit.

In planning and performing the audit, we assessed the effectiveness of management controls related to measuring progress of justice program activities. The management controls identified included management's preparation of its Performance Monitoring Plans; the Mission's annual self-assessment of management controls through its annual Federal Managers Financial Integrity Act review; justice program officials' reports from field visits; and data quality assessments.

The justice program activities were implemented by one contractor, Checchi and Company Consulting (Checchi). We conducted the audit at the offices of USAID/Guatemala, Checchi, and two justice centers located in Public Ministry buildings operated by the Guatemalan Government. At these offices, we interviewed Mission and implementer officials and reviewed documents such as contracts, statements of work, annual workplans, and performance reports.

According to USAID/Guatemala, the \$11.5 million awarded for justice program activities consisted of \$7.9 million for Phase I and \$3.6 million for Phase II.

Audit fieldwork was conducted from April 20 through June 9, 2004.

Methodology

To determine whether USAID/Guatemala's justice program activities were on schedule to achieve planned outputs and sustainable results, we reviewed the Mission's Performance Monitoring Plans, Performance Indicator Reference Sheets, Annual Reports, and annual Portfolio Reviews.

To determine whether justice program activities were on schedule, we had planned to verify reported actual outputs and sustainable results which had met or

exceeded planned levels of outputs and results as of the date of our audit scope. However, since the Mission had not established more than two indicators with planned levels of outputs and results as of the date of our audit scope, we could not answer the audit objective and therefore did not verify actual reported outputs and results.

To determine the significance of our findings, we had planned to consider the following as of December 31, 2003:

- Had at least 90 percent of the outputs and sustainable results achieved at least 90 percent of their planned targeted levels, we would have answered the objective positively.
- Had 80 to 89 percent of the outputs and sustainable results achieved at least 90 percent of their planned targeted levels, we would have answered the objective positively but with a qualification.
- Had less than 80 percent of the outputs and sustainable results achieved at least 90 percent of their planned targeted levels, we would have answered the objective negatively.

Management Comments

DATE: August 9, 2004

**REPLY TO
ATTN OF:** Glenn Anders, USAID/G-CAP DIR

SUBJECT: Comments to the Draft Report of the Audit of USAID/Guatemala's Justice Program

TO: Steven Bernstein, RIG/SS

USAID/Guatemala appreciates the opportunity to respond to the draft audit report. While we accept the audit recommendations, we also believe that the audit objective could have been achieved through a more comprehensive integrated methodology and greater interaction with USAID/Guatemala staff. As explained below, we have various means of determining whether our Justice Program is on track to meet planned results and we are confident of our oversight of this program. In our view, most of the key objectives of the Justice Program have been met or will be met by the completion of the program this year. Some objectives will not be fully met, but we have made important progress and laid important groundwork for achieving those objectives in the near future. In some areas, our expectations have been exceeded.

Audit recommendations are accepted, have been implemented, and are requested to be considered closed upon issuance of the final audit report - The RIG Audit identified inconsistencies in our use of indicators, targets, and benchmarks in project documentation and the Performance Monitoring Plans (PMP) for the Justice Program. We agree that we could have done a better job of integrating the performance indicators in contracts and other project documentation with the PMP and accept the audit recommendations. We could also have done a better job of documenting why changes in indicators and targets were made. We have already addressed the **first recommendation** in the Performance Monitoring Plan included in the approved SO-1 Activity Design Document (See **Annex 1** page 19). We have also addressed the **second recommendation** by placing language in the terms of reference for our follow-on justice program activities that will clarify that all contractor reporting should be consistent with the indicators and benchmarks established in the contract and PMP (See Attachment 1 to RFQ No. 520-Q-04-054 for the Rule of Law Program 2004-2009 under the new Strategy - **Annex 2**). **Therefore, on this basis, we request RIG/SS concurrence with our management decision and closure of these recommendations upon issuance of the final audit report.**

Information is available to achieve the Audit objective - Despite the fact that some performance information was not readily available in our formal documentation, much of that information is available and could have been used by the Audit Team to achieve the audit objective. For example, though some baseline data was not included in the latest draft of the PMP, in many cases the baseline information could be obtained and other data is available to compare with the end-of-project targets. We have

gathered some of this data to update the chart presented in the draft audit report (See **Annex 3**). We were surprised that the audit team did not ask us to work together with them to develop the information needed for them to achieve the audit objective; our contact with the team was minimal, primarily related to providing documents.

Available information suggests the Justice Program is on track to achieve key results -. Despite the inconsistencies between contract documentation and our Performance Monitoring Plan (PMP), we have a fairly clear sense of our progress toward achieving expected results under our Justice Program. The audit methodology and draft Audit Report focus very narrowly on our formal reporting on indicators for 2003 in relation to targets. Some of the results targeted by the Justice Program were achieved by the end of 2002 when the initial stage of the contract with Checchi was completed (e.g. reform of the law school curriculum) – therefore we did not include some of these indicators in the PMP update. When we exercised our option to extend the contract through September, 2004, some areas of initial activity were no longer a central focus, though we generally included some follow-up activities and a focus on sustainability. The PMP was revised to focus primarily in the areas of emphasis under the contract extension, reduce the number of indicators used, and weed out indicators that we felt were not useful or reliable. Since this contract extension was for less than two years, we did not specify targets for 2003, relying on the targets established in the contract for this period. The PMP also responded to the Mission Director’s request for some additional indicators to measure quality and further discussion with Checchi regarding indicators that they intended to use internally for their management purposes. We have gathered data available for what we see as the key indicators, providing information on the areas prioritized under the current contract with Checchi to implement the final years of the Justice Program³ (See Table 1 below). The data shows that we are generally on track to achieve what we consider the key objectives, but there are some areas that will require further attention in our follow-on activity.

Table 1 – Key Justice Program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective and the current Contract with Checchi, Inc.						
Indicator	In 2002, 2004 PMP and/or Contract	Baseline	2003 Targeted output/ result	2003 Actual output/ result	End-of-project target or benchmark	Current Achievement of planned results
Number of justice centers open and operating	2002 and 2004 PMP, Contract	2 (1997)	16	16	16	100%
Average case processing time	2002 and 2004 PMP, Contract	12.18 months (1999) 14.15 months (2000)	10 months (per Portfolio Review)	11.8 months	9 months where oralization began prior to Phase II, 10 months where newly introduced	17% of targeted reduction based on 1999 baseline, 57% based on 2000 baseline.
Percent of justice center coordinator salaries funded by outside sources	2004	0 (2002)	No	Yes	All justice centers sustainable	The Instancia has agreed to finance recurrent costs of Justice Centers once the legal basis is established and funds budgeted.
Percent of Executive Committee activities funded by outside sources	2004	0 (2002)	50% (per Checchi scope of work)	4 of the then 11 fully operational centers, achieved/surpassed the 50% target	100%	36% with more than 50% outside funding, 6% with more than 40% outside funding, 20% with 20-30%, 13.3% with 10-20%
Local crime- prevention strategies developed	2004 and contract	0 (2002)	4 new anti -crime strategies with activities initiated	Strategies developed in all 4 justice centers	Activities initiated in 100% of the targeted Justice	100% of targeted centers with strategies elaborated; 75% of

³ The RFP for the option period of the contract identified the expansion, improvement, and sustainability of justice centers and institutional strengthening of the Public Ministry as the areas of primary emphasis during this period.

Table 1 – Key Justice Program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective and the current Contract with Checchi, Inc.						
Indicator	In 2002, 2004 PMP and/or Contract	Baseline	2003 Targeted output/ result	2003 Actual output/ result	End-of-project target or benchmark	Current Achievement of planned results
			(per scope of work)	Activities initiated in 3 or 4 targeted.		centers with activities initiated
MP reorganization plan developed and implemented	Contract	0 (2002)	Plan developed by March and implemented by December	Plan advanced regarding Fiscalías de sección, Fiscalías de Distrito & Unidad de conciliación	Plan completed and implemented	30% (estimated)
Sistema de turnos reviewed and improved systems designed	Contract	0 (2002)	Sistem designed by December 2003	Partial analysis and proposal for a plan	Plan implemented	50% (estimated)
Performance appraisal system for prosecutors and other key staff revamped	Contract	0 (2002)	System revamped by July 2003	Partial proposal	System implemented	30% (estimated)
Evidence control and management systems in place in Guatemala City in all Justice Centers	Contract	2 (2002)	System in place in Guatemala City	Completed in September 2003	System in place in all Justice Centers by September 2004	Guatemala: 100% All Justice Centers by Dec 2003: 8= 53% (not including Nebaj)
Judges, public defenders and prosecutors in all target locations are trained in pre trial oralization procedures	Contract	No	All Justice operators trained by Dec 2003	By Dec 2003, 13 JC had received training in oral procedures = 86%	All Justice operators trained by Dec 2003	All Coordinating Units have received training on oral procedures - 100%
Oralization procedures are piloted in four Guatemala City criminal courts	Contract	0 (these are pilots)	No	0	4 pilots oralized	100% of 4 pilots currently conduct oral procedures
Oralization procedures are being used in all target locations	Contract	6 (2002)	No	11	15 (not including Nebaj)	73%
Sustainability of mediation centers	2004	0	No	By Dec 2003, 13 centers were still funded by JP	All mediation centers are functioning without Justice Program funding.	As of July 2004, 14 centers are still functioning without Justice Program funding

We suggest RIG modify its methodology for future program audits to supplement the reliance on numeric indicators and targets with other sources of information - While we believe additional information was available to help achieve the audit objective along the lines of the proposed methodology, this methodology was fundamentally flawed, and should be revised for future program audits for the following reasons:

- **Qualitative information and evaluation results not included** - The RIG audit team could have used additional information from the GAO audit of the Justice Program and an “Impact Study” of democracy activities contracted by the USAID Office of Democracy and Governance, both conducted during 2002, to augment their work and help achieve the audit objective. More recent justice sector assessments carried out by other donors and MINUGUA, and the draft evaluation of Peace-funded activities also provide some objective evaluation of the Justice Centers and other aspects of the USAID Justice Program. Though the team carried out various interviews and field visits, which should have helped achieve the audit objective, the information obtained from those sources is not included in the audit report.
- **Conclusions based on targets may reflect poor targeting rather than performance** – As stated in USAID’s Handbook of Democracy and Governance Program Indicators, “Setting targets for

democracy measures is very difficult. We know little at this point about probable rates of change and what factors affect those rates.” Much of the time we have no basis for determining reasonable targets and can only hazard a “best guess”. Often, any improvement from the status quo is good yet we are pushed to provide “false precision” by providing numerical targets. Sometimes we set high, maybe unrealistic, targets to spur our contractors and grantees to make their very best effort (and possibly even succeed) when even partial achievement would represent significant improvement. Democracy activities, including those focused on improving justice, frequently are affected by changes in key personnel, budgets, political currents, and unforeseen events that make setting targets even more of a guessing game. It is very easy to guess wrong and wildly over or underestimate the potential change that can occur. Sometimes intermediate targets really don’t make sense - for example, if we are successful in getting the “Instancia” to cover recurring justice center costs, all the existing centers will become sustainable at the same time and setting a target that half of them be sustainable midway through the time period would be inappropriate.

Methodologies such as the one proposed for this audit place inordinate emphasis on unreliable targets and encourage us to play a “target game” that rewards low-balling and punishes setting ambitious targets. Basing an analysis of “success” or “failure” only on these targets can highlight how well or poorly the targets were set rather than whether performance standards were met. Using arbitrary percentages of targets with very different units of measure as a determinant of the degree of “success” can further distort the analysis. Analyzing indicators should be only a part of a more integrated and comprehensive approach to determining whether programs are “on track” to achieve planned results.

- **Indicators and targets in contracts and initial performance monitoring plans should change based on reality and experience** – USAID’s guidance anticipates changes to indicators and targets as activities are implemented and better information becomes available. Many factors can determine whether indicators and targets are appropriate – changes in governments, key personnel, funding, etc. Early implementation provides better information about the pace of change and feasibility of meeting initially established targets. In reporting on indicators in the Annual Report, Missions are encouraged to adjust targets to realistic levels for the following year based on the current year’s experience. Sometimes the initial indicators and targets proposed in a contract require revision over time. Our revision of the PMP reflected the changes associated with a new phase of the program and a new contract – with changes in emphasis and focus.
- **Some indicators are more important than others** – Within a given program some results are more important than others and reflect more significant development changes. The indicators associated with those results should carry more weight in determining the overall success of the program. Weighting each indicator equally, as proposed in the RIG methodology, could provide a distorted view of the degree to which the program is having impact.

We feel that if the RIG’s methodology would have been more integrated and comprehensive, it would have made possible the achievement of the audit objective and allowed the RIG to identify the significant achievements that have taken place under the program, clarify where further work needs to be done, and help formulate recommendations that would make a substantive contribution to this work. During the weeks of field work undertaken on this program audit, much of this information was collected and could have been used to provide a more balanced audit report and more interaction on

substantive issues and approaches with USAID/G-CAP's Democracy Team would have also helped provide valuable additional information and insight.

Based on the above and the information contained in Annexes 1 and 2 of this memorandum, we reiterate our request for RIG/SS concurrence with our management decision and request closure of the two recommendations upon issuance of the final audit report. We thank you in advance for considering the inclusion in your final audit report of the detailed information contained in this response. This action will help better disclose the successes of our justice program in Guatemala. Please do not hesitate in asking for additional information related to the above requests. We thank you and your staff for your understanding and cooperation.

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ANNEX 3

Annex 1 - Justice program indicators from USAID/Guatemala's 2002 and 2004 Performance Monitoring Plans, Democracy and Governance Strategic Objective and the current Contract with Checchi, Inc.

No.	Indicator	In 2002, 2004 PMP and/or Contract	Baseline		2003 Targeted output/ result	2003 Actual output/ result	End-of-project target or benchmark	Current Achievement of planned results
1	Number of justice centers open and operating	2002 and 2004 PMP, Contract	2 (1997)		16	16	16	100%
2	Average case processing time	2002 and 2004 PMP, Contract	12.18 months (1999) 14.15 months (2000)		10 months (per Portfolio Review)	11.8 months	9 months where oralization began prior to Phase II, 10 months where newly introduced	17% of targeted reduction based on 1999 baseline, 57% based on 2000 baseline.
3	Number of community mediation centers (CMCs) operating	2002	6 (2001)		2002 target: 15 No further targets established.	16 as of 2002	15	107%
4	Number and percentage of total cases resolved through CMCs	2002	696 cases 58.33% mediated (2002)		No	1440 cases, no information on % mediated	No target beyond 2002 established	106.9% increase in cases.
5	Number of cases assisted by trained interpreters in justice centers	2002	Solid data for this indicator was difficult to obtain and the indicator was dropped for Phase II of the program.					
6	Number of students and percentage of implementation in Indigenous Law Masters program	2002	Number of students : 0 Percent age of imple mentation: 0 (2000)	No	Number of students: 25 Percentage of implementation: 100% (2002)	Indigenous law program operating	Percentage of implementation is 100%	
7	Number of law students involved in internships/ practical skills program	2002 and 2004 PMP, Contract	0 (2000)	No	227 students	Increased number of law students involved in internships	Internship program continues to operate with an increasing number of students	
8	Women's groups who know their rights	2002	24% (2002)	It was difficult to produce solid data for these indicators at a reasonable cost. These indicators were dropped for Phase II				
9	Justice sector personnel who understand/apply women's rights	2002	73% have knowledge; 16% apply the law					
10	Gender considerations included in law school curricula	2002	The activities regarding this indicator were to take the shape of a special course (<i>diplomado</i>) that due to budget constrains was not implemented. For the same reason the activities regarding this indicator were not included in Phase II.					
11	Increased student access to modern research tools	2002	0 (2001)	A computer laboratory was open to student use in USAC in 2002. No activities regarding this indicator were included in Phase II.			A computer lab provides access for law students	
12	Implementation of case management system	Both	0	No	11	16 (including Nebaj CAJ)	68.5 of final 2004 target reached:	
13	Criminal cases resolved without trial	2002	4896 (1998)	No	8074 in 2002	No final target	65% increase over baseline	
14	Implementation of procedures to assist women	2002	There was no realistic base to establish a target for implementation of procedures to assist women. However Checchi did report in its 17 th Quarterly Report (July-September 2003, pages 69-70) impressive achievements in the development of a network for victims services, that include more than 400 organizations with various areas of focus : legal, medical, social, and psychological. All of them assist victims of crime, including women.					
15	Networks to assist female violent crime victims	2002						

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No.	Indicator	In 2002, 2004 PMP and/or Contract	Baseline	2003 Targeted output/ result	2003 Actual output/ result	End-of-project target or benchmark	Current Achievement of planned results
16	Number of detainees without convictions	2002	5185 (63.3%)	No	4335 (53.4%) in 2002	No target beyond 2002 established	Reduction of 9.9%
17	Number of indigent defendants represented Public Defense Institute	2002	17994 (1999)	No	21409 (2001)	No target beyond 2002 established, no support to the IDPP was included in Phase II.	Increase of 18% over baseline
18	Greater number of appeals and writs brought by Public Ministry	2002	693 (appeals 381; habeas corpus 135; review 39; annulment 12; amparo 14; death penalty commutation 3; other 109) (2000) No baseline on writs of accusations	No	918 writs and appeals (appeals 437; habeas corpus 178; review 32; annulment 34; amparo 49; other 188) (2001) 790 (2003) writs of accusation	No target established	Increase of 32% over baseline in writs other than accusations.
19	Number of agreements adopted by justice center coordinating units	2004	0 (prior to justice center creation)	No	260 agreements during 2003	No target established	260 agreements adopted in 15 justice centers (apart from Nebaj) concerning themes from criminal investigation to drafting of sentences.
20	Percent of Exec. Cmte. activities funded by outside sources	2004	0 (2002)	50% (per Checchi scope of work)	4 of the then 11 fully operational centers, achieved or surpassed the 50% target	100%	36% with more than 50% outside funding 6% with more than 40% outside funding 20% between 20% and 30%. 13.3% between 10% and 20%
21	Local crime-prevention strategies developed	2004 and contract	0 (2002)	4 new anti -crime strategies within 6 months, activities initiated within 1 year (per scope of work)	Strategies elaborated in all 4 justice centers Activities initiated in 3 Justice Centers of 4 targeted.	Activities initiated in 100% of the targeted Justice	100% of targeted centers with strategies elaborated 75% of centers with activities initiated
22	Number of accusation writs submitted to bring cases to trial	2004	No	No	790 writs (2003)	No target established	
23	Percent of justice center coordinator salaries funded by outside sources	2004	0 (2002)	No	Yes	All justice centers sustainable	The Instancia has agreed to finance recurrent costs of Justice Centers once the legal basis is established and funds budgeted.
24	Number of cases tried under domestic violence laws	2004	No	No	2908 cases in 8 justice centers during 2003	Increased number of domestic violence cases prosecuted	Not fully determined

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No.	Indicator	In 2002, 2004 PMP and/or Contract	Baseline	2003 Targeted output/ result	2003 Actual output/ result	End-of-project target or benchmark	Current Achievement of planned results
25	Number of cases attended by Office for Victim's Assistance	2004	No	No	3459 cases attended in 12 Offices based in Justice Center Jurisdictions during 2003.	Increased number of crime victims receive judicial, psychological and social services by the OAV	Further data required.
26	Sustainability of mediation centers	2004	0	No	By Dec 2003, 13 centers were still funded by JP	All mediation centers are functioning without Justice Program funding	As of July 2004, 14 centers functioning without Justice Program funding
27	Decrease or no increase of lynching in Nebaj, Santa Cruz, Cobán and Huehuetenango over a 2002 baseline	Contract	Quiché (Nebaj and Santa Cruz) 5; Alta Verapaz (Cobán) 14; Huehuetenango 8. Petén 7; Quetzaltenango 4	No increase	Quiché 7; Alta Verapaz 49; Huehuetenango 12 Petén 2, Quetzaltenango 0	No increase	Increase in Quiché, Alta Verapaz and Huehuetenango. Decrease in Petén and Quetzaltenango
28	MP reorganization plan developed and implemented	Contract	0 (2002)	Plan developed by March and implemented by December	Plan advanced regarding Fiscalías de sección and de Distrito and Unidad de conciliación	Plan completed and implemented	30% (estimated)
29	Sistema de turnos reviewed and improved system designed	Contract	0 (2002)	Sistema designed by December 2003	Partial analysis and proposal for a plan	Plan implemented	50% (estimated)
30	Performance appraisal system for prosecutors and other key staff revamped	Contract	0 (2002)	System revamped by July 2003	Partial proposal	System implemented	30% (estimated)
31	Evidence control and management systems in place in Guatemala City and in all Justice Centers	Contract	2 (2002)	System in place in Guatemala City (fiscalía metropolitana) by July 2003	Completed in September 2003	System in place in all Justice Centers by September 2004	Guatemala: 100% All Justice Centers by Dec 2003: 8= 53% (not including Nebaj)
32	Judges, public defenders and prosecutors in target locations are trained in pre-trial oralization procedures	Contract	No	All Justice operators trained by Dec 2003	By Dec 2003, personnel in 13 justice centers had received training in oral procedures: 86%	All Justice operators trained by Dec 2003	All Coordinating Units have received training on oral procedures 100%
33	Oralization procedures are piloted in four Guatemala City criminal courts	Contract	0 (these are pilots)	No	0	4 pilots oralized	100% of 4 pilots currently conduct oral procedures
34	Oralization procedures are being used in all target locations	Contract	6 (2002)	No	11	15 (not including Nebaj)	73%
36	Curricular designs for Years 4-5 are completed	Contract	0 (2002)	No	100%	Designs completed	100%
37	Internship program is sustainable without further USAID support	Contract	Program supported by USAID Justice Program.	No	Management of these programs is done by <i>Bufete Popular</i> Director	Internship program is sustainable without further USAID support	Program is sustainable

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					%		
38	Internship programs by December 2003 in the law schools at Landivar, Mariano Galvez, & Marroquin	Contract	0 (2002)	No	No	Internship programs in the law schools at Landivar, Mariano Galvez, & Marroquin	Limited progress to date.
39	National Justice Commission effectively serves the justice sector	Contract	No		The Sub-Commission of Professional Excellency, the Sub-Commission and the Sub-Commissions of Modernization have developed draft laws, workshops, research studies, etc. with the support of the Justice Program and other donors.		
40	Number of translators available Justice Center institutions requiring interpreters	Contract	No	No	A study was conducted to propose a system for accreditation of translators. 38 translators provide services to the judiciary, Public Ministry, or Public Defense in 10 justice centers with significant numbers of indigenous clientele.		
41	Agreement on law school accreditation plan; implementation plan operational	Contract	No accreditation system exists	Technical Proposal adopted by CNSAFJ Sub Commission	Technical Proposal completed	Plan is operational	50%