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Guatemala: The Role of Judicial Modernization in Post Conflict Reconstruction and Social Reconciliation

The Peace Accords of 1996 brought an end to 36 years of armed conflict in Guatemala and signaled the beginning of a complex and challenging process of reconstruction and social reconciliation. A central plank of the consensus expressed in the Peace Accords was the overhauling of Guatemala's public institutions, which were seen to exacerbate the social and economic injustices that had contributed to the conflict. The Judicial Branch was identified as one of the key state institutions in a position to create the necessary conditions to help a divided and diverse population emerge from decades of conflict, social and economic exclusion, and mistrust in public governance. A World Bank-supported Judicial Modernization Project is in its third year of implementation and helping in this process along with other donors (UNDP, Sweden, Finland, IDB, Soros Foundation and others).

The fundamental principles underlying the Peace Accords were directed at creating sustainable economic and social conditions for lasting social peace and justice. A priority of the Peace Accords therefore was the recognition of the identity and the rights of the indigenous peoples of Guatemala, to create a fully “pluricultural, multiethnic and plurilingual” nation. The Peace Accords identified an array of challenges, outlined a road map for legal and institutional reform, and provided a clear mandate for social and political change. Under the Peace Accords, a Commission for Strengthening the Civilian State was created with the task of overhauling the justice system to achieve, among other things, the modernization of judicial processes, equitable access to justice, professional excellence and integrity, and civil society participation (see Box 1).

The Legacy of Conflict. The injustices of decades of conflict in Guatemala did not come to an end with the signing of the Peace Accords. Absent the rule of law, the period of transition to democratic government was made all the more challenging by the scant coverage and severe dysfunctions of the justice system. These conditions compounded the almost total lack of public confidence in the justice system and contributed to an additional deterioration in public safety, characterized by a spate of vigilante violence in the form of public lynchings (extrajudicial killings)¹. Low public confidence in the justice system derived from perceptions of corruption, impunity for human rights

violations and other crimes, the lack of institutional presence throughout the country and very limited access to justice services, particularly for the indigenous population, women, children and adolescents.²

Box 1. A Mandate for Change: Peace Accord for strengthening the administration of justice.

“The justice administration system, and within it, the functioning of judicial processes, suffer from weaknesses and deficiencies. Obsolete legal procedures, delays, the lack of modern systems for the administration of judicial offices, and the lack of oversight of judicial operators and personnel, promote corruption and inefficiency. The reform of the justice system is a priority, to remedy its inefficiency, eradicate corruption, guarantee free access to justice, impartiality in its application, judicial independence, the rule of ethics, the probity of the system as a whole, and its modernization.”

Peace Accord, Sept. 19, 1996 for the Strengthening of the Civilian State and the Functions of the Military in a Democratic Society.

Bridging Capability and Credibility Gaps. The Judiciary's challenge in contributing to Guatemala's reconstruction and reconciliation was therefore twofold: building institutional capabilities and generating credibility and public confidence in the Judiciary and its reform program. The institutional challenges facing the Judiciary may be appreciated by noting a few of the diagnostic findings prior to the implementation of the Bank-supported Judicial Modernization Project.³ In terms of coverage, all the

civil, family and labor courts at the time were concentrated in Guatemala City, leaving 22 cities without such services; 80 percent of criminal court judges had no adequate space for holding hearings; and about 30 percent of the country had no judicial branch presence (i.e., a courthouse or justice of the peace); the rudimentary administrative functions that were in place were also entirely concentrated in Guatemala City; there was no planning function; the exact number of judicial personnel was unknown; duties and functions of personnel overlapped or left gaps, and all administrative and human resource functions (e.g., budgeting and statistics) were done manually.

Given these conditions, Guatemala's justice system did not have the capability to provide such basic judicial guarantees as equality under the law, effective dispute resolution, or access to services for the vast majority of the population. Moreover, the ethnic and linguistic diversity of Guatemala's indigenous population (almost 50 percent of a total of approximately 12 million) had historically been marginalized by a justice system that was incongruous with the social norms and cultural values that governed indigenous society. Reconciliation and equitable justice therefore would require not only the legal recognition of indigenous rights and identities, but also a comprehensive approach to provide services attuned to the values and languages of half of Guatemala's population.

Planning for Consensus. Experiences in post-conflict countries indicate that the success of public sector reform programs depends as much on the quality of diagnostic assessments and the adequacy of reform plans, as on public awareness, stakeholder participation, and public support. Decades of violence and growing accusations in the media of endemic corruption in the courts had almost totally eroded public confidence in the Judiciary. Guatemala's Judiciary needed therefore to generate a broad consensus for its reform goals and strategies, and introduce mechanisms for keeping the public informed about progress. A participatory approach to project preparation was adopted and the judicial modernization program was launched through stakeholder consultations with judges, administrative personnel of the Judiciary, legal professionals, government agencies, NGOs and civil society organizations, including indigenous and gender advocacy groups, the media, business associations and chambers of commerce. These consultations were supplemented with surveys of public perceptions of the justice system, including

opinions about the goals set out in the Peace Accords.

The Modernization Plan for the Judicial Branch emerged as a product of these consultations and participatory assessment, with the global objectives of improving the efficacy, credibility and accessibility of judicial services, by strengthening and decentralizing judicial institutions, eliminating corruption, broadening and diversifying dispute resolution mechanisms, and improving communications and civil society participation. A social communications unit was created to respond to the Judiciary's need for effective social outreach, legal education and access to information.

The Nuts and Bolts of Modernization: Reengineering and Right-Sizing. 'Right-sizing' the Judiciary required matching resources and services to the needs of the population. Strengthening the institutional capacity of the Judicial Branch meant creating the necessary conditions for maximal efficiency in procedures and administrative services by overhauling the structure and procedures of the Judiciary. The strategic objectives achieved under the Project include:

- The creation of departments and the training of personnel to perform four critical tasks: planning, human resources, administrative services, and financial management. Reorganizing the workflow of the courts has involved introducing economies of scale and streamlined procedures, and introducing technologies for the creation, automation and management of court records and documentation. These changes were instituted through the implementation of a new Organizational and Management Model at the central and regional levels. Some of the gains achieved are the rationalization of administrative and jurisdictional services, including the creation of common administrative support services for the jurisdictional function, a reduction in bureaucracy, the optimization of resource usage and the creation of coordination mechanisms for improved planning and communications.
- The ongoing decentralization of judicial and other administrative functions at the regional level has successfully been piloted in the Huehuetenango area, which was strategically targeted as having borne some of the worst of the conflict (while work in Quetzaltenango, and Escuintla areas is in progress).
- The Judicial Branch set a target of equipping every municipality with a Justice of the Peace court,

and every Departmental capital with criminal, civil, family, and labor courts. Since 1997 there has been a 54 percent increase in coverage toward achieving that goal.

Community Outreach. Civil society education campaigns spearheaded by the Modernization Unit and the Supreme Court have made progress toward building a new public image of the Judiciary, while raising awareness about dispute resolution services. The high incidence of community violence in the form of lynchings was perceived as a critical priority in this regard. The Supreme Court, with the assistance of the World Bank and other entities, such as MINUGUA (UN Mission in Guatemala), undertook a community-based program to provide legal education and social outreach in communities. This project included more than 600 workshops which reached nearly 40,000 community leaders and citizens. Basing the approach on community dialogue and legal education about rights and judicial mechanisms for dispute resolution, the goal was to reverse and eliminate the worrying trend of vigilantism.⁴

Educational campaigns in schools were also identified as a potentially fruitful approach toward achieving the sustainability of social reconciliation by educating the younger generation in dispute resolution mechanisms and the social role of the Judiciary. One such initiative, carried out nationally in association with the Ministry of Education, is the program “A Day with the Justice System” aimed at students of State elementary schools. The program consists of a series of encounters between students and judges locally, including visits to the district courts, culminating in a visit to the Plenary Chamber of the Supreme Court for students selected as representatives of their District. At the request of secondary schools, a further education program was developed, called “Judge for a Day”. This program enables students to accompany local Justices of the Peace through their daily activities, learning about dispute resolution at the community level. Mediation was also introduced to the students, to promote a culture of dialogue and conciliation within the school environment. And, a training program for secondary school social studies teachers accompanied the introduction of a new curriculum entitled “Basic Guide to the Criminal Justice System.” In 2002, 1,549 educators in 21 Departments (provinces) participated in 16 training workshops, which impacted an estimated 150,000 students.

Investing in Human Capital. Confidence in the Judiciary depends in large measure on its institutional autonomy and the independence of its officers. Among the key determinants of judicial independence are the professional conditions under which judges function. This includes the mechanisms for appointing judges, their professional stability, training, incentives, and disciplinary oversight. The absence of any standardized judicial career norms or procedures was identified as a serious weakness in both the independence and quality of the judicial function. A Judicial Career Law and a Code of Ethics were introduced to regulate the hiring and promotion of judges and to institute standardized evaluation and oversight procedures. A transparent, competitive, merit-based process of recruiting judges was also instituted, and new a Disciplinary Board now investigates and sanctions ethical breaches.⁵ The development of the judicial career was also instrumental to enhancing the quality of judicial personnel. Comprehensive judicial training curricula were developed and entry-level and continuous training programs are now provided for judges and administrative personnel. The Judicial Training School was set up and now provides standardized and effective training nationally. As part of project implementation, seminars and workshops were conducted nationally to facilitate change management and the development of a culture of service orientation in the Judiciary.

Innovation and Diversification for Access to Justice: Mobile Courts and Mediation Centers. The need to introduce alternative dispute resolution (ADR) mechanisms was recognized in the Peace Accords as a direct corollary to improving the timeliness, and broadening the accessibility of dispute resolution services. The Judicial Branch created a dedicated unit for the promotion, evaluation and coordination of ADR mechanisms. Under the auspices of the Supreme Court and the Modernization Unit, a comprehensive program was undertaken to introduce these services, and to integrate them within communities and within the ambit of the formal judicial system. Mediation as an alternative to costly and lengthy court proceedings is the mainstay of this approach. 24 mediation centers have so far been created nationally—a number of which are attached to new integrated judicial centers—employing bilingual mediators in Spanish and local Mayan languages. Between 2002 and 2004, 14,992 mediation cases were handled, of which 6,146 were resolved by means of mutual agreement between the parties. The majority of

cases handled relate to land and property disputes, child maintenance, domestic violence, contract enforcements and wages, and minor criminal offences.

To support the full access of indigenous communities to the justice system, 49 community led workshops were carried out in 36 rural municipalities (as part of the Development Marketplace 2000 Award) to promote awareness of the role of newly created justice of the peace courts, and to educate judicial operators in the customs and values of indigenous communities (1,875 community leaders and 500 judicial operators participated in these workshops). Basic guides to legal procedures and laws have been published in Mayan languages, and radio broadcasts inform local populations about the role and availability of dispute resolution services through both formal and ADR mechanisms. A further innovative approach has been the creation of two pilot mobile courts, which are now operational in the Departments of Guatemala and Quetzaltenango. These provide free mediation and conciliation services. (Between May 2003 and March 2004, the mobile courts attended to 1,564 users, of which 63 percent were women). The use of mobile courts, mediation centers and indigenous languages reflect the project's reliance on innovation to overcome the significant obstacles to modernization that existed, including public mistrust, scarce resources, geographical isolation, multiple languages and ethnicities.

The project was designed to reap immediate, medium and long-term benefits. Poverty reduction is expected to be one of the long-term benefits of this project in conjunction with other milestones achieved by Guatemala. Since the inception of Guatemala's judicial reform and modernization program, remarkable progress has been achieved in improving and broadening access to dispute resolution services, strengthening the rule of law, promoting transparency in the administration of justice, and recognizing and protecting the rights of indigenous peoples.⁶ Although economic and political hurdles have hampered progress toward the full realization of the Peace Accords' goals, it is hoped that the Guatemalan Judiciary's experience can provide useful insights into the role of judicial modernization in supporting social reconciliation and equitable social and economic development for countries emerging from conflict.

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¹ Summary justice in the form of lynchings emerged as a direct vestige of the armed conflict, and as a by-product of the absence of formal judicial channels. In the consultations during project preparation, 52 percent of indigenous communities reported knowledge of lynching incidents and 76 percent expressed the opinion that the majority of Guatemalans approved of lynching as a form of summary justice. 69 percent of the non-indigenous population expressed the same opinion.

² *Reporte de Resultados Generales de un Estudio de Opinión Pública sobre la Administración de Justicia en Guatemala*. Programa de Modernización del Sistema de Justicia and The World Bank. 1997

³ *Diagnostic Study of the Guatemalan Judiciary*. Organismo Judicial and the World Bank. 1997.

⁴ Although the phenomenon has not been eliminated, the number of respondents nationally who expressed approval of lynching as a form of summary justice had dropped by August 2003, to 38 percent. Informe Final de un Estudio Cuantitativo de Opinión Pública, 2003.

⁵ A total of 2,778 complaints were filed against judges between August 2000 and 2004, resulting in 633 disciplinary proceedings, leading to 109 suspensions and 17 dismissals. A total of 3,307 complaints were filed against administrative personnel between 2000 and 2003, resulting in 657 suspensions and 148 dismissals.

⁶ *Doing Business in 2005: Removing Obstacles to Growth*. A co-publication of the World Bank, the IFC, and Oxford University Press. There is need to speed-up the improvements to commercial court decision enforcement mechanisms and expand knowledge sharing and information dissemination to NGOs, and business users on the overall reform process.

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