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Report and Recommendations for Direction of Judicial Reform and Enhanced ADR in Guyana

**Guyana Democratic Consolidation and
Conflict Resolution (GDCCR) Project**

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Guyana Democratic Consolidation and Conflict Resolution
(GDCCR) Project

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Purpose of the Report

This report was prepared at the request of the Guyana Democratic Consolidation and Conflict Resolution (GDCCR) Project. The purpose of the report is to make comments on furthering the design of a technical assistance program for the Guyana court systems and an approach to improve case management of the High Court and Court of Appeal in Guyana. The report also provides specific comments on:

- Planning for reduction and maintenance of court case backlog
- Strategies to promote capacity and interest in alternative dispute resolution
- Specific training needs of court personnel
- Other areas of needed reform in Guyana's court system
- Relationships with the IDB project on justice modernization

The work to prepare this report was carried out in Guyana from March 5 to March 18, 2005, by James Hargreaves, a former judge and case management and court operations expert with extensive experience in court modernization programs in developing and transitioning countries. Mr. Hargreaves conducted extensive interviews, reviewed key documents and reports, and carried out on-site observations during his time in Guyana. A list of interviewees and documents reviewed is presented at the end of this report.

Key Findings

1. USAID indicated it has reassessed the importance of the role of the court system in the ongoing development in Guyana and now believes that the court system is central to the development effort.
2. The original scope of work involving the courts in Guyana as set forth in the current GDCCR Project Plan will not fully meet the needs of the courts in Guyana.
3. A new, comprehensive plan needs to be developed that will address the full range of needs of the courts in Guyana, including the Magistrate Courts, High Court and Court of Appeal.
4. The general approach to dealing with the needs of the High Court and Court of Appeal as outlined in the, "Assessment and Initial Approach to Business Process Enhancement and Automation of Case Management in the High Court and Court of Appeal of Guyana" submitted by the GDCCR Project to USAID in November of 2004, while still a viable general outline of the approach, is too limited to result in a substantial improvement in the efficiency and effectiveness of the High Court and Court of Appeal.
5. The component of Inter American Development Bank (IDB) program to establish a separate Commercial Court in the High Court, while certainly of potential value to the High Court, is

currently designed in such a way that it may produce negative impacts on the ability to address the High Court's needs in an integrated, well organized and comprehensive way. The current project design appears to view the development of a Commercial Court and mediation within the commercial realm as separate from other court operations and the ADR program currently operated by the court. Such an approach may create "islands" of organization and technology within the greater court structure that will hamper the court's ability to function as a fully integrated organization.

6. The Chief Justice, as is the case with most judges, has little training or experience in managing a complex organization. However, he is committed to good management and committed to the modernization process. He is simply hampered by the lack of background and training.

7. The High Court of Australia has a Lotus Notes Domino case management system that they are willing to make available for use by the courts of Guyana if it should prove to be adequate to meet the courts' needs. They have previously made their system available to another USAID-funded project in Egypt.

Recommendations

1. The current scope of work relating to court reform under the GDCCR Project should be expanded to be able to have a substantial impact on the problems in the High Court and Court of Appeal. The focus should be on improving court work processes, reducing case backlogs, expanding ADR, and training court personnel.

2. Except for some needed activities to keep the process moving at this critical time, it is important to avoid "piece meal" activities within the High Court and Court of Appeal as well as the Magistrate Courts while a new, comprehensive work plan is being developed, approved, and put in place. An integrated, comprehensive plan is needed as a guide to ensure that activities undertaken within the courts contribute to this comprehensive plan in an organized manner. The planning process then needs to be given time to work.

3. Reasonable efforts should be expended to secure the agreement and cooperation of the Chief Justice and the IDB to integrate the activities of the High Court Commercial Court Project into a new, comprehensive plan for working with the courts. When that has been accomplished, the GDCCR Project and the IDB Project should use their best efforts to coordinate so the High Court can receive the full benefit of both projects in an organized and integrated fashion.

3. Close contact should be maintained and efforts to coordinate with the IDB found as the IDB moves forward on its Institutional Assessment of Justice Sector and Implementation Plans project followed by Preparation of a Justice Modernization Plan (GY-T1005). There is a high potential for direct overlap between this project and the GDCCR Project, especially in the area of strategic planning and the creation of an implementation plan. Unless close cooperation is secured, duplication of planning efforts is almost certain to occur and worse, it may result in conflicting outcomes.

4. Based on the GDCCR Project's November 2004 assessment report, and what has been learned since that time, to adequately address the needs of the High Court and Court of Appeal, at the least the issues set out below need to be comprehensively addressed in an organized and integrated fashion in a new work plan. It is important to not lose sight of the fact that two different courts are involved, the High Court and the Court of Appeal. The issues set out below need to be addressed in each court. Some of the issues may well be able to be addressed together for both courts while others will require separate consideration and work.

In the following, key issues are developed in more detail

A. IDB Project

Other than the GDCCR Project, the main international donor initiative relating to the judiciary is the Inter-American Development Bank (IDB) Justice Modernization Program (GY-T1005). The IDB project has commenced an initiative in the High Court, the main components of which are, a) develop a Commercial Court division within the court, b) develop a commercial component for the existing ADR program, c) develop an MIS system for the Registry for the Commercial Court division, and d) perform monitoring, coaching, and evaluation of court performance and management, among other activities.

Javier Reyes of the IDB has indicated that IDB's Justice Modernization Program is in the process of awarding a contract to undertake strategic planning with each of the various agencies involved in the justice arena in Guyana, including the High Court and Court of Appeal. As part of the strategic planning process, implementation plans for each agency are to be developed which would then be funded and carried out under subsequent contracts.

It is clear there is an urgent need for cooperation and coordination between the initiative of the IDB and the program to be carried out through USAID, particularly as related to the High Court and Court of Appeal to avoid duplication of effort and to try to ensure a unity of purpose. IDB has given assurances it was most interested in this cooperation and coordination.

No contracts had yet been signed to commence the work on IDB's Justice Modernization Program. It is advisable to request the IDB project postpone moving forward with major actions without coordinating with USAID and the GDCCR Project.

B. Plan for Reduction and Maintenance of Court Case Backlog

With respect to improving the courts' business processes and reducing case backlog, to ensure broad participation by judges, staff and other stakeholders, such as attorneys and prosecutors, for example, a governance structure for the reform needs to be established by each court. Normally such a structure would consist of some sort of executive committee, a larger project committee, and subcommittees to work on certain aspects of the project with the GDCCR team. Not only will this approach help organize the work and spread the burden, by involving people in the process they become project "sponsors" in a sense and develop a sense of ownership in the process. When people take ownership they become much more dedicated to seeing that there is a successful outcome.

To increase the efficiency of the High Court and Court of Appeal, and to reduce the high level of case backlog, the issues that need to be addressed are:

- **Strategic Planning and Court Vision**

The court vision is a description of how the court wants to be. It describes the ideal functioning. The strategic plan is the path to be followed from where the court is today to its end state of operating in conformance with its vision. Without both a vision and a strategic plan, courts tend to wander aimlessly in their quest for excellence. The Project team should work with the High Court and Court of Appeal to develop court visions and strategic plans for each court in relation to improving court efficiency and reducing backlog.

- **Planning and Continuous Improvement**

Successful courts recognize and accept that change is a continuous process. The more a court changes, the more it finds to change. Just as the strategic plan gives the overall direction for change, each project needs to be planned to ensure that it is carried out in an organized fashion and is consistent with the strategic plan and vision of the court. To ensure long-term improvement, and maintaining the efficiency gains made with the Project's assistance, the Project team should work with the courts to implement effective and sustainable planning and continuous improvement processes.

- **Case Flow and Court Work Processes**

Efficient work flow is one of the essential elements of good court management. Whether dealing with the path that cases take to reach resolution or with how case information is recorded or otherwise processed in the Registrar's office, courts need to strive for the most efficient, effective, and direct movement of cases or information. An initial assessment of the courts' processes shows that there are inefficiencies and redundancies in the processing of cases. The Project should perform a more detailed assessment of these internal processes and work with the courts to improve them.

- **Case Management**

Case management always involves a number of difficult issues, not the least of which is the question, "Who is going to do the managing?" At one time there was a general attitude in most courts that lawyers would manage the cases and courts would simply respond to their expressed needs. Experience has shown, however, that courts that exert consistent, firm control over the management of cases from the time they are filed with the court until they are resolved have the least delays, the lowest backlogs and produce the highest satisfaction with the public for getting their matters resolved in a timely fashion. The project should organize a series of seminars for the courts, judges and attorneys and prosecutors, to be conducted by an international case management and delay reduction expert. The seminars should educate judges on techniques to increase control over the progression of their cases, and at the same time educating judges and attorneys to the benefits of faster case processing and modern case management methods. If feasible, selected judges from the Magistrates Courts could be invited to the seminars.

- **Time standards**

Firm and consistent application of reasonable time standards for the movement of cases through the court to the point of resolution is at the very heart of good court management. The Project should organize a working group to develop reasonable time standards that appropriately differentiate between cases of different types and complexities. The Project should support efforts to have the time standards adopted in the court rules.

- **Registrar’s Organization and Office Business Processes**

The Registrar’s office is at the center of data collection and the management of the paper that makes the court run. As with most courts, it appears that the office is swamped with work. It is critical that this office operate as effectively and efficiently as possible and that it receive whatever assistance it may take to reach and maintain that position.

- **Court Rules**

Laws and case decisions control the legal rights and responsibilities of those who use the courts to resolve their disputes. Court rules generally define the process to be followed to reach resolution of the dispute. Having, clear, accurate, rational and up to date court rules are critical for attorneys, judges and the Registrar. The court rules for the High Court and Court of Appeal need to be updated concurrently with changes to court and registrar processes. A working group is currently engaged in revising the court rules. The Project team should support this effort, and ensure the revised court rules support, and do not interfere with, the process improvements supported by the Project.

- **Electronic Case Management System (CMS)**

The courts’ current reliance on manual and repetitive processes leads to inefficiencies and delays. An automated case management system is a very important tool that allows courts to store data, track work, and generate reports that are vital to managing the work of the court. There are generally three ways for a court to acquire such a system; borrow one from another court and make modifications as needed (the High Court of Australia has offered theirs), purchase a system from a commercial vendor and make modifications as needed (there are many to choose from), or build a system (the most risky and time consuming and usually the most expensive approach). The Project team should work with the courts to decide on a CMS, implement it, and train court staff on using it in the best manner possible.

- **Recording of Court Proceedings**

In both the High Court and Court of Appeal, disputes and delays result from the current process of handwriting a record of proceedings. Digital audio recording of court proceedings should be instituted. When properly used, it should speed up the trial process and provide judges with an accurate record to assist them in summing up as well as in making finding for appeals. It would also assist the appellate courts in reviewing the record of the trial court proceedings. Recording avoids the problems earlier perceived to exist with the attempted introduction of the use of stenographic reporters. The Project team should provide equipment, assistance with implementation, and training to the courts to implement digital audio recording.

- **Change Management**

This is one of the most important and least understood types of work that needs to be undertaken any time a court makes major changes in the way it does business. The work involves working with various stakeholders, both inside and outside of court, to get them ready to accept, if not embrace change. Old habits are hard to overcome. The unknown is almost always scary. People resist what they do not know or understand. Change management work needs to be extensive and ongoing throughout the life of the project.

- **Backlog Reduction Plans**

The activities above are all aimed at increasing efficiency and reducing delays and backlogs in the courts. In addition to the efforts listed above, concrete backlog reduction plans need to be developed by the courts. Every court has a backlog of cases. Like every other aspect of a well-run court, the backlog needs to be actively managed so that it remains at a reasonable size and case age. The case backlog in the High Court and Court of Appeal has reached an unmanageable size and cases are of an unconscionable age. The High Court has taken important steps to identify inactive cases and remove them from the docket. They have also negotiated settlements in some criminal cases. More can and should be done in this direction to attempt to reduce this backlog. The Project team should assist the courts in adopting backlog reduction plans that give strategic focus to the courts' backlog reduction efforts.

The Chief Justice should be encouraged to engage *all* of the judges of the High Court in a more extensive effort to settle older pending cases, both civil and criminal. While the Chief Justice and *all* of the judges should be encouraged to work with the attorneys and prosecutors to develop additional settlement strategies for pending cases, one approach that should be tried is to use a random assignment system to assign judges to work diligently to attempt to settle each other's cases through the use of settlement conferences involving the settlement judge, the attorneys (and prosecutor in criminal cases) and the clients. To the extent the Chief Justice and the judges are willing to pursue this approach to case settlement additional details for organizing such a process can be supplied to assist them.

C. Strategy to Promote Alternative Dispute Resolution (ADR)

A current ADR program with limited capacity exists in Guyana. The level of interest of the public and attorneys in using ADR instead of the court system is also limited. ADR is an important adjunct to the litigation process within the court. It gives litigants an expeditious and inexpensive alternative to the litigation process. As long as the mediator is knowledgeable in the legal area giving rise to the dispute (civil, commercial, family etc.) mediation can be successfully pursued. The same mediation skills and procedures apply no matter the nature of the case. In the High Court the issue of compensation of mediators needs to be resolved and a program undertaken to increase the visibility of the program to the public. The court needs to take an active roll in encouraging attorneys to suggest mediation to their clients as a viable alternative to litigation.

The strategy to promote ADR in Guyana should include discussions between USAID, the Chief Justice, the director of the current ADR program and appropriate government authorities to try to reach an agreement whereby USAID could begin contributing funds on some sort of diminishing scale over time that would be used to pay mediators for their work in the ADR program. As the

USAID contribution decreased over time, the government would have to commit to increasing its funding until the government is fully funding the cost of the mediators.

The IDB is planning to engage in expanding and improving commercial arbitration capacity. The Project team will need to work closely with this project to coordinate efforts and avoid duplication.

Specific activities to promote wider use of ADR in Guyana should include:

- Perform a more detailed evaluation of current status of ADR services in Guyana, including capacity, quality, and level of use by private parties
- Review the processes and operations of the existing ADR services
- Make recommendations made for: increasing capacity and range of case types handled by ADR services, improving processes and operations of ADR services, and speeding up disposition of ADR cases
- Conduct seminars and a media campaign to educate the public about the recommendations that are developed, to raise the interest of attorneys and public in using ADR, and to inform society on use of ADR mechanisms
- Support implementation of the recommendations developed by the Project
- Organize trainings for new mediators
- Organize existing mediators, court representatives and other appropriate parties to quickly develop a solution to the problem of compensation for mediators

D. Recommendations on specific training needs of court personnel

One cause of court backlogs is inadequate management skills of Guyana court judges and non-judicial staff.

Training is an overarching issue that touches all court personnel and all aspects of court management. To be effective it is essential that training be closely integrated into the new, comprehensive work plan so that the right type of training is delivered to the right people at the right time.

Training using modern teaching techniques should be carried out, as far as possible, using a “train the trainer” methodology to ensure that there is a transfer of skills to court personnel so that continuation of training can occur after the completion of this project. The trainings should target priority substantive legal topics. Trainings should be given on new court processes and case management practices that are implemented with the Project’s assistance.

Specific training activities should include:

- Arrangements should be made to send the Chief Justice and the Registrar to management training at the National Judicial College in the United States. It would be very good if the Chief Justice could attend the course, “Management Skills for Presiding Judges” beginning on June 6, 2005. It would also be good for him to attend the course, “Case Management,” beginning on November 12, 2005. In addition it would be good for the Chief Justice and the Registrar to attend the course, “Court Management for Judges and Court Administrators,” beginning on August 29, 2005.

- A series of seminars for judges by an international expert on case management. This course could be offered to selected Magistrates Court judges, in addition to High Court and Court of Appeal judges
- Trainings for judges in decision writing
- Training for judges in identified substantive legal subjects. A training needs survey should be conducted in coordination with local counterparts to identify priority course topics
- Trainings for judges and non-judicial court staff in the following areas:
 - change management (should include attorneys and prosecutors)
 - new processes and procedures (should include attorneys and prosecutors)
 - CMS and use of computer equipment
 - strategic planning and continuous improvement practices
 - judicial ethics

E. Other areas of needed reform

Outside of the above described areas, three additional areas of needed reform have become clear. These are the need for judicial performance evaluations of High Court and Court of Appeal judges, the need to improve the case assignment system, and the need to initiate improvements in the Magistrate Courts.

▪ **Judicial Review Body**

It has become clear that a significant problem is the lack of work ethic and performance of some High Court and Court of Appeal judges. At the High Court and Court of Appeal level judges are appointed for life. There is no review body to which judges are accountable for their actions (or inactions). Research should be carried out to find out how other countries, preferably in the region, handle this issue. Legislation should be pursued to establish some sort of judge performance evaluation review body and basic acceptable standards of conduct for judges. Assistance should be given to implementing the new system and building the capacity of the judicial review body.

▪ **Case Assignment**

There are a number of accepted ways for assigning cases. A court might assign cases to specific judges upon filing. Likewise, a court may use a system where the pretrial case work is assigned to various judges and the case is only assigned to a specific judge when it is ready to be tried. There are other approaches as well. However, the universally accepted standard for case assignment, whatever the system, is to make assignments as random as possible. To increase public confidence in the integrity of the courts, the Project should work with the High Court and Court of Appeal to develop and implement a case assignment system conforming to international standards.

▪ **Magistrates Courts**

Magistrate Courts present a whole different challenge that needs to begin to be addressed. Anecdotal evidence suggests that the majority of the work of the courts in Guyana is done in Magistrate Courts throughout the country. While in large measure the work of these courts

involves minor criminal and civil matters, it is the part of the court system from which much of the population draws its impressions of the courts and the administration of justice in Guyana. As such, the Magistrate Courts play a vital role in shaping public attitudes.

Anecdotal evidence also suggests that the organization and management of the work of these courts is poor; that many judges do not carry out their duties in a timely fashion; that police and prosecutors tend to be inadequately trained; and that bribery and coercion are commonplace. The Project team could initiate improvements in the Magistrate Courts by performing an in-depth assessment of the workings of the Magistrate Courts followed by the development of a work plan to assist the courts in addressing the issues identified.

Immediate Next Steps

- 1.** The critical next step is for USAID to decide on a new work plan for the judicial reform in Guyana that comprehensively addresses at least those issues set forth above. This needs to be approached with a real sense of urgency. There is a danger that this project is going to lose momentum that has been generated in the High Court and Court of Appeal leadership. If that momentum is lost it may be difficult to rebuild support to move forward rapidly on this project.
- 2.** Arrangements should be made with the High Court of Australia to transfer a copy of their case management system to a server in Guyana. When this has happened someone from the Australian court should be brought to Guyana to demonstrate the system and to assist in the initial evaluation of the system to see if it is reasonably adaptable for use in Guyana.

Interviews

- Mike Sarhan, USAID Mission Director
 - March 7
- Ana Klenicki, USAID Senior Democracy & Governance Advisor
 - March 14
- Carl Singh, Chief Justice of High Court
 - March 8 and March 16
- Desiree Bernard, Chancellor
 - March 11
- Javier Reyes Montano, Inter-American Development Bank Modernization of State Specialist
 - March 15
- Sita Ramlal, Registrar of Supreme Court
 - March 17
- Earl Brown, Chief of Party Guyana Democratic Consolidation and Conflict Resolution Project
 - Various time March 7 through March 11
- Gloria Richards Johnson, Deputy Chief of Party, Guyana Democratic Consolidation and Conflict Resolution Project
 - Various time March 7 through March 18
- Country Team at the U.S. Embassy
 - March 16
- Ruth Lee, Project Coordinator, Commercial Court/Alternative Dispute Resolution Project sponsored by the Inter-American Development Bank

Documents Reviewed

- *Consultation on Justice Reform Aimed to Achieve Increased Capacity to Resolve Disputes in a Timely Manner*, a report by the National Democratic Institute and the Carter Center from May 30, 2000 proceedings.
- *Review of the Guyana Judicial System*, a report by His Honour Esyr Lewis QC and His Honour John Baker dated July 10, 2000.
- *Prequalification Documents for Procurement of Consulting Services and User's Guide* issued by the IDB for the Commercial Court Project.
- *Terms of Reference for Registry/Court Administration Specialist* issued for the IDB Commercial Court Project.
- *Terms of Reference for Commercial Alternative Dispute Resolution Specialist* for the IDB Commercial Court Project.
- *Preparation of a Justice Modernization Program (GY-T1005) Terms of Reference Institutional Assessments of Justice Sector and Implementation Plan* for the strategic planning project about to be undertaken by the IDB.
- *Various newspaper articles about the judicial system and its problems.*