

USAID-EI Salvador Regional Program
Strengthening Labor Justice CAFTA-DR
2Q FY08 Second Quarter Report
January - March 2008

1. Introduction

On March 5, 2007, the United States Agency for International Development (USAID) and Management Sciences for Development (MSD) signed a 27-month, US\$7,289,673 contract for the implementation of the USAID Strengthening Labor Justice Task Order in support of the CAFTA-DR Treaty.

This Task Order is in fulfillment of Regional E-CAM, SO 2 of the Economic Growth Office, Economic Freedom: Open, Diversified, Expanding Economic USAID to successfully implement the requirements of the CAFTA-DR treaty (see Section C-1, Project Background). In order to encourage and assist CAFTA-DR member countries to ameliorate deficiencies and be in compliance Chapter 16 of the Central American Free Trade Association Treaty (CAFTA-DR), the Strengthening Labor Justice Task Order is focused on providing assistance to judicial institutions and the other relevant CAFTA-DR government and private sector entities in support of achieving the objectives envisioned under SO2's Intermediate Result 1 (IR1): Adoption of laws, policies and regulations that promote trade and investment.

The Strengthening Labor Justice Task Order seeks to assist the Judiciary and other relevant CAFTA-DR government and private sector institutions through implementation of a three-part program: Component One: Electronic Judiciary Management Systems; Component Two: Raising Professional Standards in the Labor Judiciary; and Component Three: Procedural Streamlining.

2. Project Management

MSD President Alfredo Cuellar arrived in El Salvador for a two week support visit to assist with project program and administrative issues in addition to traveling to Guatemala Jan 28 – 30 to meet with court administration consultants and with Country Rep Cesar Barrientos.

Cesar Solanilla arrived in country on February 20 to begin work on a permanent basis as ADR and oral procedures specialist. Mr. Solanilla's expertise and experience in the region will also provide support to the office in the programming and implementation of the Project's regional activities.

Sandra Dueñas was selected for the Project Coordinator position after a search was carried out. Ms. Dueñas is a labor lawyer with a proven track record in El Salvador. This position was initially slotted as one under the proposed subcontract with Trust for the Americas. However, that Organization of American States (OAS) group opted out of participating in that particular line item of the project budget so the position became a MSD direct hire. Ms. Dueñas is scheduled to begin her affiliation with the Project in May as she is currently winding down activities as representative of a US Department of Labor funded project in El Salvador.

The Project hosted two inter-institutional donor agency meetings during the quarter.

- On January 30 twelve people participated in a meeting that reviewed programs tied to the Ministry of Labor in El Salvador and the region.
- On February 21 eight agency representatives met to discuss projects related to the judicial sector in the country.

Regional travel to Honduras and Guatemala by Project staff was carried out during the quarter.

3. Component One: Electronic Judiciary Management Systems

During this quarter, TRIAMER continued to support the development and implementation of the electronic case management system (ECMS) and the jurisprudence program (JS) by providing technical assistance, procurement of goods, software development and training activities focused on building the capability and capacity of the courts.

ACTIVITIES AND ACCOMPLISHMENTS

3.1 Support to the Guatemala Pilot Program

The implementation of the case management system in Guatemala is part of a much broader effort that will include changes in infrastructure, organization, and processes of the labor courts. The design of the changes, including a customized case management system, will be tested in a pilot project within the 4th labor court in Guatemala. During this quarter, TRIAMER provided IT support to the project by procuring computers for the pilot implementation team. Following the February, 2008 planning visit TRIAMER started the process to procure the

hardware and software required by the project office and the initial activities of the pilot (inventory of case files), to replace the obsolete workstations of the pilot court and to record oral trials. They conducted the appropriate market research to identify vendors, developed the technical specifications, qualified the vendors through site visits etc., obtained bids and negotiated the best price.

TRIAMER also developed a specialized indexing system designed to facilitate the inventory and recording of the existing case files. During the last week of March the system was successfully tested on the development environment.

Activities planned for the next quarter in this area include:

- Implementation of a test recording system to support the Courts
- Expansion of the indexing system to the full pilot test system

Support to the Supreme Court to El Salvador

The wiring and facility construction at the Court continued during this Quarter. The Court has experienced some delays in installing electrical current to the server room as a result of the complications involving the building's physical structure and the absence of the chief Court engineer as a result of illness. That delay has resulted in delays in bringing the newly acquired system fully on-line. All arrangements have been made to bringing the system to its full operational capacity in April. Also, during the quarter Triamer provided mentoring and technical assistance to the Court to prepare them to operate and maintain the system.

Activities planned for the next quarter include:

- Training on the use of the Routers and Switches.
- Training on the deployment servers.
- Architecture design and implementation conference for the Appellate court.
- Technical mentoring in preparation for the Information Security review.

3.2 Assessment and Technical Support an Costa Rica

Triamer participated in project efforts to provided assistance to the Supreme Court in Costa Rica (which had requested support from the USAID/MSD) to evaluate the operation of the integrated center at Goicochea (mega court). At the beginning of March, 2008 a group of MSD consultants evaluated the organization, infrastructure, and processes employed at the center. To complement that activity TRIAMER planned a visit to determine the status of the case management system that supports the operation of the center. During its visit TRIAMER interviewed users at different levels and IT staff, and attended a demo of the system (*SGT, Sistema de Gestión de Tribunales*). While the use of the system has improved transparency within the Judiciary and standardized the processes used by the courts the user community has an overall negative perception of the system. The systems core technology is becoming obsolete and difficult to maintain. Based on information technology assessment it is recommended that the system undergoes a significant upgrade or total replacement. This will be part of an integrated Project presentation to the Supreme Court scheduled for mid May.

3.3 Jurisprudence System

Based on a project plan scope and strategy agreed with the Supreme Court and functional consultants, Triamer conducted a requirements analysis, which consisted of the evaluation of software products required to start the implementation of the system including thesaurus building, contents management, OCR, and searching, and developed a prototype for the search component. In the month of May, It is expected that the basic software required to start the implementation in El Salvador as a pilot project will be purchased in addition to acquiring the scanners and other equipment necessary for moving ahead with this activity.

A general planning meeting was held with the Supreme Court Documentation Center for reviewing jurisprudence strategies for inclusion of all chambers and how to synergize those efforts with the support they are receiving from the World Bank. In addition to the Center's Chief Administrator, participants included heads of departments of Organizational Development, International Cooperation, Constitutional and Legislative areas and Institutional Planning. The Documentation Center will provide a detailed history and needs list to MSD for inclusion in the project's planning activities and future procurements.

The plan for the work carried out for jurisprudence systems in El Salvador is to have that work rolled out to other countries covered by the Project. In March, with the approval of the Guatemalan Supreme Court, the Project began assisting in the formation of its documentation center for that country program.

Regional contacts regarding El Salvador's experience with the documentation center and future work in jurisprudence are already underway. The Supreme Court in Honduras has been in communication with El Salvador regarding its experience and the Supreme Court of the Dominican Republic has also expressed interest in reviewing what has been implemented to date. The Project has offered to sponsor an orientation trip during the upcoming quarter so that Dominican Supreme Court technicians can carry out a field trip for that purpose.

3.4 Potential Challenges and Issues

The integration of the three separate component activities of the Project has not changed the scope of work of subcontractor Triamer's involvement but has modified to a large degree its acquisition strategy. The pilot projects under component 2 have specific needs that were not originally projected in proposed equipment purchase inventories. Equipment and software purchases have been slowed down rather than accelerated in order to provide assurances that procurement is being carried out in accordance with this integrated approach allowing for maximum results. This has caused a series of delays with the project procurement plan approval and will also require a series of modifications to that plan when other pilots are ramped up in the future.

The needs of the pilot projects are only recently being clearly understood so it is imperative that there is a close coordination among Triamer, lead consultants and project management.

4. Component Two: Raising Professional Standards in the Labor Judiciary

4.1 Court Administration Pilot Program

Implementation of the court administration pilot program was begun in Guatemala and El Salvador during the quarter.

The courts selected for the pilot project will be the models for court administration procedures analysis, reform and improvement. What is learned as a result of the pilot activities will be replicated in the future in other labor courts throughout each CAFTA-DR country through training to be carried out in the judicial schools. Court room laboratories will be installed in each training facility as a means of hands on training in the areas of administration, oral procedures and alternative dispute resolution.

Given the scarcity of experienced consultants for this type of work, the project plans to run only two separate pilot programs simultaneously (one per country). The fourth labor court of Guatemala City and the labor court of Santa Ana, El Salvador (Appendix 1) were selected as the first pilots after extensive consultation with the Supreme Courts of those two countries.

The length of time for each pilot project will vary in accordance with its complexity but it is estimated that each pilot will last from four to six months. The Project will then move on to the Dominican Republic and Honduras to implement future pilot projects.

4.1.2 Guatemala

Court administration pilot project work was begun in Guatemala on January 28 with the support of Project consultants Steve Urist, Magdalena Triviz, Jim Jui and Country Rep Cesar Barrientos. The team did an initial physical inventory of the selected pilot court to assess needs.

On February 1, Country Rep Cesar Barrientos and Project consultants Urist and Triviz made a presentation of the pilot implementation plan to the full body of the Guatemalan Supreme Court for its input and approval.

The pilot project staff office for Guatemala was prepared and handed over to the project by the Supreme Court on March 24. The Court has donated separate office space as the pilot court does not have sufficient space for both judicial work and pilot project support staff. Follow up work was done by local consultants, this work included: compiling quotes for the inventory of necessary equipment for the pilot and the arrangement of space for the pilot operators office needs.

4.1.3 El Salvador

Court administration pilot project field work began in El Salvador during the first week of February. MSD consultants carried out a physical inspection and inventory of the Santa Ana Labor Court which has been selected as the site for the pilot. The pilot office will be sectioned off within the pilot court area. Design work was carried out by architects affiliated with the Supreme Court and that work is currently under review.

Following the initial visits to the Santa Ana, site the court pilot team carried out a site inspection of the new integrated court building in Soyapango, El Salvador to assess the layout and procedures being used. The idea was to ensure that work done in the Santa Ana pilot is in synergy with other court (criminal, juvenile, commercial etc.) initiatives. The project was informed that Soyapango was also finishing up a study to determine the potential number of labor courts that could be transferred to the new facilities. Discussions were entered into with Supreme Court Magistrates on the possibilities of carrying out pilot activities there instead of in Santa Ana. However, although it would be logistically more efficient to implement pilot activities in Soyapango, the court cannot commit to a rapid placement of labor courts in that facility so the decision was made to continue the work in Santa Ana.

The initial equipment needs for the Santa Ana pilot have been compiled but the project is still waiting for the final analysis from Court architects on remodeling design and budget.

4.2 Costa Rica Goicochea Mega Court Diagnostic

During the court administration assessment work carried out in October of 2007, an informal request was made to the Project by the President of the Supreme Court for an analysis of the Goicochea courts problems related to case backlog and perceived administrative inefficiencies. Goicochea handles nearly seventy percent of the country's labor cases.

Official authorization was obtained from the Costa Rica Supreme Court President for the project's team intervention diagnostic in the Goicochea Mega Court and field work was carried out in February and March with a focus on the areas of court administration, information technology, statistics, oral procedures and alternative dispute resolution. The Project will make an official presentation of its

findings to the Supreme Court in mid May. This presentation will be the basis for future project activities in that country depending upon the Court's acceptance, or rejection, of implementation recommendations.

4.3 Judicial Training

Preparation was finalized for Judicial Masters program workshop to be carried out with University Law School Deans in El Salvador April 1 – 2 and the Judicial Masters Professors' training programs to be held April 3 – 5. The Judicial Masters workshop is the bridge activity for beginning implementation of the program. The first step will be the official preparation of the alliance among the 10 universities that will be participating. Later a cooperation agreement will be signed with the Education Ministry. The program will begin based out of the National University with participation of professors from the other universities committed to the program.

Training modules for the Judicial Masters seminar and workshops were completed in addition to modules for two additional training seminars:

- Labor Law and its Practical Effects on Labor Justice to be carried out in El Salvador and Guatemala
- Judicial Ethics Code Workshop to be carried out in Honduras.

Finally, during the quarter a review of the Guatemalan Judicial School bylaws was submitted to that school's Director for review and officials observations.

4.4 Potential Challenges and Issues

Judicial training has had a slow roll out as the original activities plan was extensive and understaffed. The Project recognized this and began reevaluating the implementation plan and securing additional human resources for attending to the delay. Alicia Warde, a senior consultant with vast experience in the region, will be brought on board in the next quarter to assist the Project in reinforcing this area.

The court pilot projects, although initiated in the two countries according to plan, also require additional technical staff for supervising those activities. Another

senior consultant will also be contracted in that area for the upcoming quarter to help accelerate pilot implementation.

While the court pilot programs fall within the scope of the original task order, the approach used in attending to the problems is different than that visualized when the Project was awarded. LOE totals and financial budget considerations will require modification during the upcoming quarter.

5. Component Three: Procedural Streamlining

5.1 Alternative Dispute Resolution

The project sponsored and carried out four one day seminars on labor law legislation for mediators in Guatemala, Quetzatelnango, Zacapa and Mazatenango. These seminars, coordinated with the Supreme Court, the Judicial School and the Alternative Dispute Resolution centers, (ADR- Alternative Dispute Resolution / *RAC- Resolución Alternativa de Conflicto*) covered an introduction to labor law issues for experienced mediators working the different RAC centers in the region. The mediators attending have been working for a number of years in the field but are lacking experience in basic labor issues. Over one hundred mediators were trained during the month. (Appendix 2)

Clare Connaughton was hired as a USN ADR consultant to assist in training module development and programming issues as support for ADR and Oral Proceedings specialist Cesar Solanilla. The focus was to accelerate the training schedule for ADR work. Ms Connaughton arrived in country in January to work on the initial draft module design.

The first Project ADR course was held in San Salvador February 26 – 29. The course covered ADR training techniques for 22 judges, public defenders, practicing attorneys and university professors. Follow up work will be done for the selection of potential candidates for subsequent El Salvador ADR Train the Trainers courses. (Appendix 3)

An ADR techniques course (Alternative Dispute Resolution) was held for judges, attorneys and university personnel at the Judicial School in Guatemala March 11 – 14 with 28 in attendance. As in Guatemala follow up work will be carried out to determine potential future trainers. (Appendix 3)

In both countries a seminar participant action group was formed for future follow up work in ADR. These ADR committees will focus on work in three areas:

- Promotion and diffusion of ADR techniques at different levels within the judicial and university environments.
- Legal issues affecting the ADR processes in each country.
- ADR support issues related to the court pilot programs.

Finally, programming was finalized for the ADR course to be held in Honduras April 8-11.

Potential consultants to help strengthen and accelerate the work begun by Mr. Solanilla and Ms. Connaughton have been contacted to begin work in the next quarter.

5.2 Oral Procedures

Oral Procedures work will begin during the next quarter. Initial training module design in El Salvador and Honduras will be carried out as a result of workshops including the participation of judges, attorneys and university personnel skilled in the area. The training approach will be similar to that used with ADR techniques. Seminars with a cross section of participants will be trained in techniques, potential future trainers will be identified and follow up committees of seminar participants will be formed for oral procedures promotion in each country.

Local specialists in oral procedures in El Salvador and Honduras will be added as the first step in this strengthening activity during the upcoming quarter.

6. Country Specific Challenges and Issues

Dominican Republic

A delay in start up work in Dominican Republic has been the result, in part, of difficulties in reaching an agreement with the Judicial School regarding Project involvement. Efforts to remedy this situation were to be undertaken in January but were postponed at the local mission's request due to unrelated factors. The Project COP and Country Representative Coordinator will travel in early April to attempt to resolve pending issues and achieve the Court's buy in to Project activities.

In the meantime FINJUS, the Project's institutional representative, has begun to promote labor reform in areas of interest to the project by utilizing their contacts with related institutions so that, once the Presidential electoral campaign ends in May, work can begin with public forums on issues of interest to the Project.

An example of this campaign can be found in the FINJUS op-ed piece in Appendix 4.

Nicaragua

Although the Country Representative has been active in the promotion of Project objectives no activities have been implemented in that country because of political issues involving restrictions on contact with the Supreme Court Magistrates. Potential work with civil society organizations and universities will be explored within the framework of the Project task order.

7. Monitoring and Evaluation

The Project changed consultants in 1Q FY08 contracting Carlos Gregorio for work in monitoring and evaluation. Mr. Gregorio finished the field work in all six countries during the quarter and was to submit his final plan in April. The plan will depend in part on statistical data retrieved in each country in addition to the construction of a Labor Justice Index in which country stakeholders will have input for measuring Project impact.

In addition to Mr. Gregorio' work, MSD contracted outside consultant Sue Nelson to assist MSD regional staff with the development of the Project Results Matrix Framework. (Appendix 5)

8. IAP's

For the panel composition of general stakeholder interests, the project entered into a tentative agreement with Trust for the Americas for the sharing of IAP groups. Trust received a State Dept. grant covering CAFTA-DR related institution building with unions, management organizations, universities, NGO's and civil society groups. As Trust ramped up with the establishment of the IAP's for their grant, MSD was to coordinate with them for the mutual benefit of both projects. In two of the countries, Nicaragua and Guatemala, both Trust and the

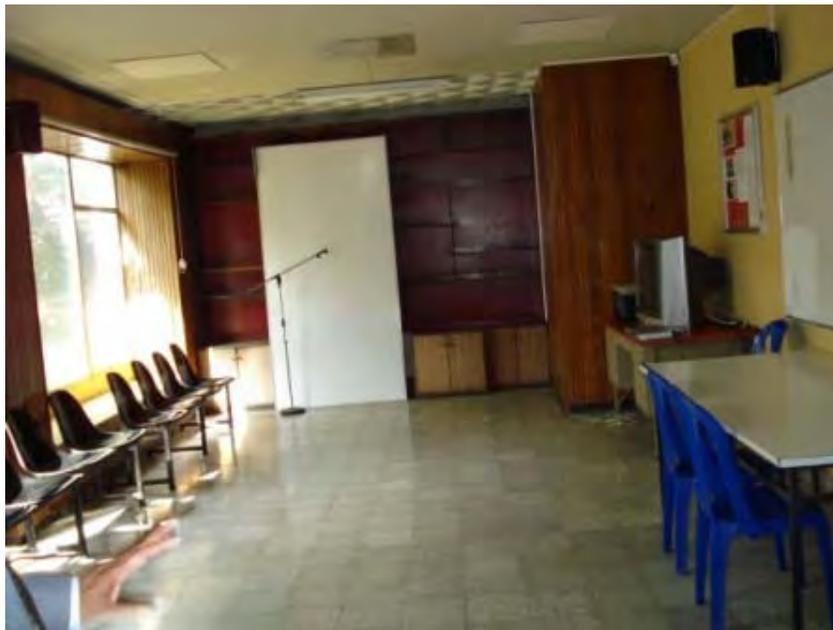
Project each utilize on a part time basis the services of the country representative. In Guatemala the Country Representative works 75% of the time with the Project and 25% of the time with Trust. In Nicaragua Trust utilizes the services of an NGO Institute with which the Country Rep is affiliated.

While the Project will continue to seek synergies with Trust in this area, that organization is delayed in their establishment of IAP's so the Project will continue to form its groups and will allow co-participation of panels when convenient for both institutions.

Appendix 1



Court Administration Pilot in Guatemala City, Guatemala.



Court Administration Pilot in Santa Ana, El Salvador.

Appendix 2.



Labor Orientation Course for Mediators - Quezaltenango, GT - Feb 8



**Labor Orientation Course for Mediators - Mazatenango, GT - Feb 29
Appendix 3.**



Labor Conciliation Course in El Salvador - Feb 26-29



Labor Conciliation Course in Guatemala – March 11-14.

Appendix 4.

MARÍA DOLORES DÍAZ ⇨ EN RD SE HA RECONOCIDO QUE LA JURISDICCIÓN LABORAL ES UN MODELO DE EFICACIA EN EL DESEMPEÑO DE LA FUNCIÓN JUDICIAL. POR LO GENERAL NO HAY MORAS, PREDOMINANDO UNA CULTURA DE ORALIDAD QUE PROMUEVE LA AGILIDAD DE LOS PROCESOS

Conciliación laboral

La justicia laboral ha sido tema central en foros internacionales que han enfatizado la necesidad de que los órganos y procedimientos judiciales laborales otorguen una efectiva protección de los derechos laborales con garantías de acceso y respeto de los principios procesales fundamentales.

En ese contexto, la entrada en vigencia del DR-Cafta plantea grandes retos a los países, obligándolos a formular y ejecutar reformas en el ámbito laboral, para que los impactos sociales y políticos de la apertura comercial se minimicen. Dentro de ellas se destacan la modernización de la justicia laboral, la simplificación de trámites y procesos administrativos y el desarrollo de mecanismos de resolución alternativa de conflictos.

Es precisamente a estos objetivos que apunta el Programa Regional para el Fortalecimiento de la Justicia Laboral que se implementa en los seis países del Acuerdo, dado que un moderno modelo judicial debe procurar tanto la satisfacción de las garantías y derechos fundamentales consagrados en la Constitución y de los compromisos asumidos con la ratificación de los Convenios de la OIT como la eficiencia del sistema con soluciones prontas y efectivas.

En el país se ha reconocido que la jurisdicción laboral es un modelo de eficacia en el desempeño de la función judicial. Por lo general no hay moras, predominando una cultura de oralidad que promueve la agilidad de los procesos. El sistema, sin embargo, no es perfecto. Presenta inconvenientes en su estructura, rezagos de escritura que se reflejan en las audiencias y poco o casi nulo empleo de la conciliación como mecanismo alterno de solución de conflictos. Una de las explicaciones de los pobres resultados de la conciliación en materia la-

boral se atribuye a que el Código de Trabajo de 1992 sustrajo la conciliación de la instancia administrativa, estableciendo un proceso conciliatorio en primer grado ante un juez, pero llevado a cabo por mediadores llamados vocales, cuyo rol es actualmente muy pasivo, a lo que se suman las pobres condiciones de privacidad en las salas de audiencias y la poca capacitación en técnicas de juicio de los vocales que no gozan de la credibilidad de las partes.

Ante este problema las soluciones propuestas son diversas. Unos estiman que los vocales no deben estar presentes en las audiencias y que la conciliación se debe hacer antes de éstas en un lugar con las comodidades y reservas que le son propias. Esto requeriría de un acuerdo con la Secretaría de Trabajo, de donde dependen los vocales y un amplio programa de capacitación, estabilidad y adecuada remuneración que concorra con la escogencia de conciliadores idóneos.

Otros más radicales piden excluir los vocales de la conciliación y realizarla en sede judicial con un juez conciliador, como instancia anterior al debate oral o realizado por centros de conciliación o mediación privados. Esto implicaría modificar el procedimiento laboral que otorga privativamente la competencia de conciliación a los vocales. Para hacer efectiva la conciliación laboral se requiere el concurso de todas las partes. Como los vocales fueron creados por consenso entre empresarios y trabajadores con aval institucional es necesario retomar la discusión, evaluar su efectividad y analizar las propuestas y alternativas para su mejoramiento.



ANTE
ESTE PROBLEMA
LAS
SOLUCIONES
PROPUESTAS
SON DIVERSAS

María Dolores Díaz es gerente de implementación de proyectos de la FNUJIS

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Appendix 5.

Strengthening Labor Justice Task Order - Results Framework

