
**CAFTA-DR El Salvador Regional Program Strengthening Labor Justice
(Task Order/Contract No. DFD-I-00-03—04-00175-00)**

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 USAID Regional E-CAM, SO 2 of the Economic Growth Office, Economic Freedom: Open, Diversified, Expanding Economies 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.

Summary of April – June 2008 Quarter activities

During the second quarter (April – June 2008), MSD conducted the following:

- Consolidated the three components involving the pilot projects in Guatemala and El Salvador
- Initiated re-organization of labor courts in Honduras
- Obtained authorization from the Supreme Court of Costa Rica for the initiation of processes leading to the decongestion and re-structuring of the Goicochea megadespacho
- Organized a meeting of the documentation centers for the purpose of enhancing public understanding of jurisprudence and the establishment of judicial precedents.
- Obtained authorization from the Supreme Court of El Salvador to work on the unification of labor jurisprudence and the establishment of legal precedents.

- Initial labor conciliations were tested following training provided in El Salvador, Honduras and Guatemala.

2. Project Management

Regional office staff was increased with the addition of Sandra Duenas. Ms. Duenas was hired in the position originally slotted as Project Coordinator for the Trust for the Americas subcontract. Trust was not interested in pursuing placement of that position. However, as a result of internal changes regarding work in Component 2, it was decided that the experience and expertise of Ms Duenas could be better used as Coordinator of that component dealing with raising professional standards. She will be in close coordination with consultant Silvana Stanga.

Alicia Warde was also contracted for STTA that will run through August. Ms Warde is working with the project in the area of judicial training, training module development for court administration work in addition to assisting in the planning and implementation of the regional seminar on August 28 and 29 entitled “Towards a Model of Labor Justice: Different Approaches and Perspectives”. This seminar will include top Supreme Court Justices in the CAFTA DR region and requires a lengthy period of preparation.

Component 3 activities in Alternative Dispute Resolution (ADR) was strengthened with the contracting of STTA consultant Julie Scandale and Oral Procedure work was begun in El Salvador with the contracting in El Salvador of Rommel Sandoval who will also be used in regional work.

Zindy Mejia was also brought in to work in coordination with Karla Lainez as administrative and secretarial support for technical programs covered under all three components.

No interagency donor meetings were held in El Salvador during the quarter. However, an information and orientation meeting was held with the Vice-Minister of Labor to review White Paper issues. Participation in the meeting included Supreme Court Magistrate Perla and Supreme Court Magistrate Valdivieso’s technical staff in addition to AID personnel. The Project is proceeding cautiously with this type of Labor Ministry information orientation so that normal communication channels are not circumvented regarding the Project’s official direct ties with AID and the Supreme Court.

A two-day Country Representative meeting was held in June to follow up on planning for country level activities and to seek synergies for the programming of regional events.

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 Court Pilot program developed for the 4th Labor Court in Guatemala was begun in February and March.

During the current quarter Triamer President and chief information technology consultant traveled to Guatemala to purchase equipment for the court administration pilot project including computer hardware/software and furniture. The procurement request was solicited and approved by AID.

Two lower-level technicians and a pilot secretary were contracted. The technicians have been involved in updating the case backlog in pilot court and have also been expanding the indexing system being implemented.

Recording equipment was being analyzed for use in oral procedures work. While the initial plan was to attempt using recording systems similar to those already in use within the court system of Guatemala, costs and vendor problems have forced the Project to review other options.

3.2 Support to the Supreme Court to El Salvador

The electronic case management system for the El Salvador Supreme Court was initiated in August 2007 with the purchase and installation of servers and accompanying computer equipment for the Court's Civil Chamber.

During this quarter the final two servers were delivered to the Civil Chamber. This constitutes the final portion of direct support to that area of the Court. Future information technology support will be focused on an integration of this chamber with the '*Contencioso Administrativo*', which also deals with labor cases. As a follow up to that objective, a user's group meeting was held at the El Salvador Supreme Court for dealing

with technology issues and for promoting coordination with IT groups of the other Court chambers.

Training sessions were provided by Triamer for equipment set up. This training was geared towards the four new information technology technicians that were contracted by the Court as part of its counterpart support to the program.

The Court Pilot in El Salvador was established in the Labor Court in Santa Ana in February. During this quarter initial basic computer equipment was purchased by Triamer to begin the same process of case backlog updating that was begun in Guatemala and local technicians were identified to start the backlog work.

3.3 Jurisprudence System

During this quarter progress was made with the El Salvador Supreme Court documentation center to advance work on Center's involvement with future jurisprudence work to be carried out over the next four months. Planning was begun with project consultants and the Director of Supreme Court documentation center for analyzing jurisprudence system alternatives. A working meeting was held in May with Supreme Court Magistrates Cardoso, Avilez and Perla in addition to Court Documentation Center Director Carolina del Cid to secure Court collaboration with Project jurisprudence work. Weekly work meetings were carried out after that with Ms. Cid.

A half-day training session was also provided in June to 40 technicians of the Supreme Court, mostly those from the Documentation Center. The focus was on a general overview of the project objectives and goals in addition to details regarding what will be required for a functioning jurisprudence system.

Planning was initiated for a regional documentation center and jurisprudence conference to be held in late July. The purpose is to begin standardization of jurisprudence concepts throughout the region

3.4 Potential Challenges and Issues

While some good wins have been achieved in this component in El Salvador there is concern regarding the subcontractor's ability to provide quick and efficient service on some of the procurement to be carried out in the near future. Delays beyond what is considered normal for these types of projects have occurred. MSD has required that the

subcontractor Triamer contract additional personnel with AID procurement experience but the situation will still need to be monitored.

Thus, advances have been made regarding the integration of the three separate component activities of the Project as it relates to information technology. MSD has requested that all necessary steps be taken to speed up the implementation process. For its part, MSD will re-double its efforts in supporting Triamer, working more closely and collaboratively with the Triamer team and the court administration short-term consultants (Steve Urist, Maggy Triviz and Frances Brito, in particular)

In the jurisprudence areas the main concern is the Supreme Court's commitment to publication of all jurisprudence, not just selected cases. While most of the Supreme Court magistrates favor this transparency, there is some reluctance to publishing all cases as the custom over the years has been one of selectivity rather than universal release of case decisions to the general public.

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 second quarter of FY08.

The courts selected for the pilot project are 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.

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.

This quarter saw continued efforts in the work by local technicians in decreasing the backlog of cases at the 4th Labor Court in Guatemala City which serves as the pilot court.

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 was selected as the site for the pilot.

Basic pilot office computer equipment and furniture were purchased and work on the backlog of cases was begun by local technicians. A short two-day training workshop was provided to the two technicians who will be working on the project.

4.1.4 Honduras

An initial assessment of the needs for a court administration pilot project was carried out in May. The work for pilot establishment will require support for computer software and STTA but the Honduran Supreme Court has already instituted some work in case files management in an effort to standardize work in that area on a national level.

Project funded low-level technicians for case backlog work will not be necessary as the court already has personnel available. In June a two-day national workshop was held with twelve judges attending as an important step in indexing and classifying labor cases in a standardized method throughout the entire country.

4.2 Costa Rica Goicoichea 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 Goicoichea courts problems related to case backlog and perceived administrative inefficiencies. Goicoichea handles nearly seventy percent of the country's labor cases. After authorization from the Costa Rica Supreme Court President the MSD team completed a diagnostic during 2Q FY 08. The diagnostic focused on the areas of court administration, information technology, statistics, oral procedures and alternative dispute resolution.

In June the team presented the results to the Supreme Court including the President, three Supreme Court Justices from different chambers plus information technology and court administrative personnel. Initial comments were favorable but the official reply referring to Project intervention in Goicoichea would be submitted by the full body of the Court and its Labor Commission in July. The proposal by MSD is to begin immediate work on

decongestion of the court case log in labor issues with both ADR and Oral Procedures training.

4.3 Judicial Training

4.3.1. El Salvador

The initial steps for introducing the theme of establishing a Judicial Masters program with a labor focus in El Salvador were a result of the country diagnostics carried out during the last quarter of FY07 and the general orientation workshop held in October of 2007 with support of the National Judicial Council.

During the April 1 – 5 period two workshops were held with law school personnel and Judicial Council members to provide specific orientation required for the establishment of the master program including both the sequential steps necessary for its legalization and administration in addition to the course content and teacher skills required for an effective program.

On April 1 the National Judicial Council inaugurated the workshop with the official signing of an alliance of nine law school universities that were committed to working with the program. The Council has proposed that the program be coordinated through the El Salvador National University although efforts are being made to provide a parallel effort with both that national public university and one of the prestigious local private universities.

The Project began work in June for programming work with the National Public Defenders Office for the establishment of its own training unit. The proposal includes funding for equipment and furniture procurement in addition to the scheduling of seminars involving local and international consultants through March 2009 for the preparation of trainers to carry on work beyond the Project completion date.

A workshop was implemented on May 20 for 25 lawyers, university personnel and Labor Ministry technicians in Santa Ana for planning of Labor Rights Diploma (*diplomado*) program proposed by the Labor Court of that city. The diploma program is being established for local lawyers, students and court pilot personnel and includes academic studies plus on the job training that will be incorporated into the court pilot activities in areas dealing with court administration, alternative dispute resolution and oral procedures.

4.3.2 Dominican Republic

In the Dominican Republic the Association of Law School Deans sponsored an international seminar on judicial training. MSD consultant Silvana Stanga was featured as key speaker for the event providing her expertise on challenges facing the Association in its effort to expand its training program. The project will sponsor follow up workshops on judicial training for the Association during 4Q FY08 with the support of Dr. Stanga.

4.3.3 Honduras

Groundwork has been laid for 4Q FY08 work in judicial ethics for the Supreme Court in Honduras. The Supreme Court President solicited the design of a judicial code of ethics that follows the international Iberamerican Code developed in Spain five years ago.

4.3.4 Regional

Planning was begun in May for a high-level regional seminar to be carried out in late August. The seminar will deal with new approaches and perspectives related to labor justice in the region and will involve participation of the Supreme Court Presidents from all CAFTA DR countries with the exception of Nicaragua. Judges, judicial technicians, businessmen and workers will also be invited to attend.

4.4 Potential Challenges and Issues

The Judicial Master program in El Salvador has experienced delays related to internal problems of the program counterpart, the National Judicial Council. These internal conflicts have delayed the implementation schedule for that part of the program. The Project is promoting the parallel implementation of both the public and private universities in the Master rollout with the idea that the private universities have more resources available and would be able to carry on the program in the event the Council does not respond as required. However, all efforts are being made to continue working the program through the initial channels established for implementation.

5. Component Three: Procedural Streamlining

5.1 Alternative Dispute Resolution

During the second quarter activities were begun in Alternative Dispute Resolution (ADR) in both Guatemala and El Salvador with project sponsoring the first basic seminars in new ADR techniques for judges, practicing attorneys, public defenders and law university personnel. Work was also carried out on labor law issues for more than one hundred practicing mediators in Guatemala.

This quarter showed a rapid expansion of activities in ADR with follow up work in El Salvador and Guatemala and first round seminars in Honduras. The lead ADR consultant team (Cesar Solanilla and Clare Connaughton) was reinforced with the contracting of another experienced expert, Julia Scandale.

From April 8 -11 the first ADR seminar was held in Honduras for twenty eight judges, attorneys and law school professors. Two more introductory level seminars on Alternative Dispute Resolution techniques were also held both in Guatemala and El Salvador with over fifty judges, lawyers and university personnel. These seminars constituted the second round of introductory work on ADR techniques.

The focus of the ADR efforts is based on a round of two or three basic seminars in ADR techniques in each country that set the groundwork for follow up work by ADR committees established in each country and the pre-selection of potential candidates for a Train the Trainers course on the same topics. Committees have been established in El Salvador, Honduras and Guatemala and are being monitored and supported by the ADR consultants and the Country Representatives. Monthly meetings were held by the El Salvador, Guatemala and Honduras committees although the Honduran ADR Committee requires more follow up work by the Country Representative in order to make it more operational.

These ADR committees are focused on work in three areas:

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

Potential ADR trainers have been identified from these events for future Train the Trainers seminars to be carried out. While the initial plan was to conduct one Train the Trainer seminar in each country, it has now been decided that one regional trainers' seminar will be held with participants from all three countries involved to date.

While in country the consultants have also taken advantage of their presence to carry out events beyond the scope of the four day introductory course.

- A one day ADR techniques orientation workshop was held in Quetzatelnango, Guatemala with over 30 lawyers in attendance followed by a workshop held in Mazatenango with the local bar association with over 35 lawyers in attendance.
- The bar association of Santa Tecla, El Salvador was provided with a presentation of ADR techniques with twenty five lawyers present.
- ADR techniques were the focus of a half day public assembly at the Labor Court in Santa Ana. MSD consultant Clare Connaughton made that presentation to over thirty participants from different backgrounds in the community

The close of the third quarter also evidenced the first official training activities carried out in Nicaragua. Because of the political issues prohibiting Project relations with the Supreme Court the ADR consulting team planned and implemented four half day workshops in Managua on Alternative Dispute Resolution (ADR) techniques. The four groups were represented by union leaders (19 participants), practicing attorneys (28 participants), judges and prosecutors/defense attorneys (11 participants) and university professors. This is seen as possible opening for work in both ADR and oral procedures. The work was coordinated with the Association of Universities in Managua. Follow up plans are now being made for four day ADR seminars in Managua based on the experience already obtained from seminars held in El Salvador, Guatemala, and Honduras. These will begin in September.

The first draft of the training manual for Alternative Dispute Resolution work was completed. This manual is the result of the experiences gained from the first five seminars that have been held in Guatemala, Honduras and El Salvador and will be refined and used in different facets of the program.

5.2 Oral Procedures

Oral Procedures work began during this quarter. Experienced oral procedures consultant, Rommel Sandoval was contracted to begin collaboration in training module design for work in that area.

A two day workshop was carried out in El Salvador on June 24-25 including the participation of fifteen judges, attorneys representing both business and labor, and university personnel skilled in the area. The purpose of the workshop was to provide a

needs assessment on oral procedures that would be included in the subsequent training events and training materials designed. The training approach will be similar to that used for 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 experts will also be contracted in each country to work together with both regional office staff and Country Representatives in order to provide in country expertise so that training can be applied in such a manner that local laws and practices are taken into account.

Project staff also met with Public Defenders office of El Salvador to review training issues on oral procedures and to begin work on development of training curriculum for public defenders.

6. Country Specific Challenges and Issues

6.1 Dominican Republic

The initial delays in implementation due to the lack of participation by the national judicial school have been dealt with during the quarter although the process was carried out at a deliberate pace. Two meetings were held during the quarter in April and June with Supreme Court President and the magistrate in charge of labor. The Court officially accepted the scope of activities outlined in the Project task order and have officially requested Project support.

6.2 Nicaragua

The prohibition by USAID and the US mission of direct contact with the majority of the Supreme Court, including its President, has halted Project progress in that country. However, work will begin in 4Q FY08 with the association of universities to provide limited support in the areas of alternative dispute resolution and oral procedures.

6.3 Honduras

Meetings were held with the Supreme Court President in Honduras to promote an exchange of letters of intent as the basis for project activities in country. A signed commitment from the Honduras Supreme Court was received during the quarter supporting the proposed project activities. There is an urgency to advance as quickly as

possible in the areas of ADR, oral procedures and judicial ethics since it is probable that most or all of the members of the Supreme Court will be replaced in January 2009.

6.4 Special Consultant Report prepared by Clare Connaughton

Introduction

This is the second quarterly report (2Q) on the activities related to COMPONENT 3 of the Project and my particular role with respect to that Component, which is to conduct activities which will promote the use of ADR (*RAC*) in the resolution of labor disputes. The main activities thus far employed to promote RAC are: (1) capacity training and (2) development of professional standards. Capacity trainings are four days in length and follow a 40 hour basic training model, in which participants are expected to master basic conceptual and communication skills found to be fundamental to the mediation/conciliation process. To date, we have conducted five (5) training programs in the region: 2 in Guatemala, 2 in El Salvador and 1 in Honduras.¹ Our goal is to complete three training programs in each of the three Tier 2 countries to be followed up by more advanced training programs in order to “train the trainer”² The specifics of these advanced programs are more fully discussed below. In order to develop professional standards, we invite all training graduates to form and participate in a RAC committee in order to focus on these standards and related issues. A **Comite RAC Juridico** (CRJ) has been formed in each of the three countries where we have trained. To date, the CRJ in El Salvador has had three meetings and its members are involved in a number of different activities. In Guatemala, the CRJ met on May 13th and will meet again on July 28th. Honduras has formed their CRJ and will be meeting for the first time on August 4th.

We will continue programming these activities. Further basic trainings are scheduled for July 27th through August 8th in Honduras and in Guatemala along with scheduled committee meetings as stated. With a total of almost nine trainings completed, we expect to have an adequate pool of participants to nominate for our train the trainer program. Our long range plan is to train a sufficient number of trainers in the region that are able to replicate our basic training program. This is key to raising professional standards for mediators and conciliators and to the overall sustainability of RAC in the region.

The basic training programs continue to be well received and the participants typically manifest heightened conceptual and communication skills by the end of the 3rd day of the four day program. As has been the case with all of the trainings thus far, concerns about the obstacles to resolving labor disputes via RAC continue to generate lively debates.

¹ Please refer to the previous report (1Q) for a discussion of previous trainings.

² After each program, we discuss possible trainer candidates we have observed. We have developed a preliminary list of those candidates which we will augment at the end of July after our next round of trainings. We will then invite those on the final list to attend the advanced training program scheduled for September of this year.

One of the reasons we have placed such importance on the formation of CRJs in the region is to study these practical problems and to find ways to address them. At the close of this report, I will address one obstacle in particular that I believe represents a fundamental flaw in the current practice and which could, if not addressed, derail any attempt to institutionalize court sponsored RAC programs.

EL SALVADOR

- Basic Training

We held our second training program³ in San Salvador which ran from June 17th through June 20th, 2008. As before, the program was held at FUSAL, a well known training center in the capital. Thirty two participants attended the four day program. Since our last report, MSD has contracted with Julia Scandale, a lawyer-mediator from Argentina, who has substantial experience in conducting similar training programs in the region. (Annexed hereto as Attachment #1, please find Report of Julia Scandale.)

As discussed in the last report; the training program was followed by the formation of a committee (or, in this case, by adding new members to the previously formed CRJ). A number of participants in that training have also been designated as possible trainer candidates and their names will be added to our draft list.

GUATEMALA

- Comite RAC Juridico

On May 13, 2008, we held the first Meeting of the Comite de RAC Judicial ('CRJ') in Guatemala. Our country representative, Cesar Barrientos, did an admirable job of organizing the event, which was held, as are all other programs, at the Judicial School in Guatemala City.

Prior to the start of the meeting, Dr. Barrientos and I met with the Director of the Judicial School, Lic. Aida del Rosario. We discussed several issues of concern to the School. (1) Since the School plans its programming by semester, attendance must be organized well in advance of the program dates. (2) Program content has to be reviewed for eligibility for accreditation. If not reviewed and accredited, the School will not give credits to those who attend. I assured the Director that we would make every effort to plan all future programs accordingly. Since attendees can get professional 'credits' for attending our programs, there is an additional incentive for a wider audience to attend and participate. We should therefore cooperate fully with their protocol.

The Comite RAC Juridico was attended by approx 25 people, all of whom graduated for our basic training program held the previous month. We used the Agenda model previously used in El Salvador as a guide for both organizing the meeting and for developing committee business.

³ This is a basic, 40 hour training program that we have now standardized for the region.

The initial **Administrator**, Lic. Edy Caceres suggested he have a Co-Administrator from Guatemala City due to the fact that he resides in Peten, which is approximately 300 miles from the capital city. He therefore nominated Jueza Diana Carolina Ruiz as his Co-Administrator and she accepted her nomination with the committee's approval. The group then worked on a **Mission Statement** which resulted in the following:

“La Mision del Comite RAC es Contribuir al Desarrollo del Pais, a la Cultura de Paz Social, a la Salud Economica y al acceso a la Justicia por medio del uso de RAC en los juzgados, centros de mediacion, las universidades, colegio de abogados, oficina de derechos humanos, sindicatos, organizmos administrativos y las iglesias.”

The group then formed several sub committees, each with its own focus:

(1) Promotion of RAC (2) Training of Mediators and Conciliators (3) the study of Legislative issues and (4) hosting Special Events. The group decided that each sub committee should have its own chairperson and they nominated Elizabeth Ramirez to chair the sub committee on Training, Lic. Vicky de Montenegro for Legislative issues; Carlos Rojas for Promotion and Maria del Carmen for Special Events.

Finally the group decided that committee meetings would be held every two months and chose the third Monday of the month as a standing date with a meeting time of 3:30 pm. They set down the following dates for future meetings: July 18th; September 19th; and November 21st.

On Wednesday May 14th we visited the Centro de Mediacion at the OJ in order to get an overview of the center, the mediators, their resources and concerns. This center is Guatemala's first mediation center, now followed by 74 others nationwide. We observed several mediation sessions and the mediators appeared to be adequately trained. They did express a deep concern for additional staff: at least one other mediator, access to the internet, and a receptionist to attend to greet the parties and do intakes. Lastly, they expressed a desire for training in administrative processes, something “to guide us” as one mediator explained, so that the center is well run. In spite of their scarce resources, however, they each conduct approximately 15 mediations weekly. With one additional mediator, they could mediate an additional 15 more cases weekly.

That same day (May 14th)) we met, as planned, with the **Magistrate of the Supreme Court, Beatriz de Leon.** We discussed how best to go forward and promote the use of RAC in labor justice. The Magistrate assured us that she was ‘on board’ with the project and would do whatever she could to promote using RAC in the juzgados. She was very enthusiastic about the fact that they are ‘opening ‘new labor courts and will have 8 additional judges coming on line to handle the caseload. They found a building in building in Zona 4 with enough space to house the additional courtrooms and staff. Magistrate De Leon was confident that the locale would be adequate in all respects. We agreed to meet again in the months ahead in order to discuss court annexed conciliations.

We also discussed where further training would be beneficial and the two areas that emerged were in 1. Los Juezes de Paz and 2. Los Juezes and Magistrados de la Corte Suprema. I suggested that we might want to look to the model of our own RAC Judicial program which is administered by our federal courts. (See below for a more detailed discussion of follow up and recommendations.)

We finished our day long visit in the afternoon when we met with Jueza Sandra Mazariegos, the Judge for the *Plan Piloto* in Guatemala. We discussed a number of issues and annexed hereto is a synopsis (in Spanish) prepared by our secretary, Xiomara Elias. (See: Attachment 2). Judge Mazariegos is the only Juez Conciliadora in that juzgado but she has 4 administrative assistants working with her. It is not clear how many of the cases are resolved by conciliation. It would be helpful to observe a conciliation in process but there were none scheduled at the time of our visit. We did however, have the opportunity to observe the judge conducting an Audiencia she had scheduled.

On Friday, May 16th, we attended a program in Quetzaltenango, the second largest city in Guatemala. A breakfast meeting of TRUST was held at the Bonifaz Hotel and approximately 17 business people were in attendance. Our country representative, Cesar Barrientos, gave a well organized presentation about the obligations embodied in the CAFTA treaty and the findings of a survey taken on the relative familiarity of management with those obligations. At the close of the TRUST meeting, some of the business owners engaged in a lively discussion on some of the more troubling labor-management issues experienced in Guatemala, or at least in 'Xela'. One business man insisted that the *Codigo de Trabajo* was the culprit and it had to be changed. He said it was "too rigid" for the employer. His chief complaint was centered around of "out of job title" activities. As he described it, "*you can't change the employee's activities without changing their contract.*" Another employer disagreed with that assessment and described labor management relations in his business as trouble free. Many agreed that Guatemala is a *cultura de choque* (or confrontation) which, in spite of the Acuerdos de Paz, continues to affect behavior down to the present day. The worker, they claim, sees the employer as the enemy and is quick to file a complaint and provoke an *Inspeccion de Trabajo*. This labor-management polarization should be addressed openly in programs and trainings and underscores the need for more training in labor conciliation, not just in letter but in spirit.

Later that same day we hosted an event sponsored by ACER JUSTICIA at the **Gran Karmel Convention Center** in Quetzaltenango. There were approximately 17 participants at the event, most of whom were *abogados litigantes*. Several judges and magistrates were also in attendance. Using a fictitious case I had previously written for our training programs, entitled "*La Panaderia... where no Todo es Dulce*", we discussed the differences between (1) a legal analysis of the history given (or a '*rights based*' analysis) and (2) a conciliation analysis (or an '*interest based*' analysis). The group first had to outline the legal issues found in the case. They then had to discern the underlying needs and interests of both the employer and the employee. By using a case scenario as the basis for discussion, the group began to see how the '*rights based*' analysis involved

legal issue spotting and fact finding but failed to investigate the needs and interests of either side to the conflict.

We had an engaging discussion about the peace making aspects of mediation as compared to the side-taking model that characterizes litigation. In a broader discussion of a *Cultura de Paz*, some of the participants, in particular a very vocal judge, spoke about the tragedy of *linchamientos* and its antecedents in Guatemala. Most agreed that this extreme form of violence is often the result of a lack of faith in the judicial system where people embroiled in conflict end up taking matters into their own hands. At the close of the meeting, two of the participants, both judges, expressed a desire to join us (in what capacity yet to be determined) in further programming in the area.

On Saturday, May 17th, we finished our week of activities in Guatemala by hosting a Lawyer's Luncheon at a restaurant in Mazatenango. Some 18 participants attended, most of them *abogados litigantes*. We discussed CAFTA and particularly Component 3, which includes the promotion of RAC. Once again, we engaged the participants in a discussion on how to analyze a case in litigation as compared to mediation or conciliation. We again used "*La Panaderia*" as a case model for discussion. At the close of the conference, several lawyers commented that they did not have this kind of analytical understanding of mediation prior to the event and expressed a desire to attend our four day training program in the future.

GUATEMALA, EL SALVADOR, NICARAGUA

On June 16, I returned to the region, first arriving in Guatemala to conduct another 4 day basic training program, which ran from June 17th through 20th. Once again, the program was hosted by the Escuela Judicial and was well organized and well attended. Our group consisted of lawyers, judges and mediators. The dynamic was especially rich and we closed out the 4 day program with the entire group singing a resounding rendition of "Noches de Ipacarai" a delightful Paraguayan love song that everyone enjoyed remembering (and singing). This followed our final day Competition where we had five "teams" competing for the winning conciliation. We had four judges who had to evaluate each conciliation on five different areas. Annexed hereto (see: Attachment # 3) is a copy of the Judge's sheet. At the end of the competition, we huddled to discuss each of the teams and we agreed on the winner with a quick consensus. The conciliator of the winning team was Judge Fabian Ramos, a labor court judge from Quetzaltenango. By Day # 4, he was clearly a 'convert' in the ways and skills of conciliation. He was also the leader of the chorus that was initiated at the close of the program when he took the microphone and led the group with his own powerful voice! We also decided to give a prize for best actor to a young woman, Manuela Morales, a Mediator from Quetzaltenango. She came to the program dressed in her 'typical' (indigenous) skirt and blouse and rarely, if ever spoke, in spite of my repeated efforts to engage her participation. During one of the role plays, however, I asked her to take the part of the worker, in a case involving a "*despido injusto*." In spite of her reserved manner, she strode up to the center of the class where we had put together a mock despacho, complete with a desk and 3 chairs, 2 on one side (for the parties in dispute) and 1 on the other side

for the conciliator. She took her seat and, when the conciliator asked her to describe what happened at her job, this seemingly shy and reserved young woman began to rant and complain and express anger and all forms of insult and basically took the class by storm! We were mesmerized by her performance. I later told the class that she was a living and breathing example of a point we had touched upon earlier. In our interactions with one another, we humans often have no idea “what lies beneath” ! When we therefore announced later on that we had a special category for “best actor” and that the prize went to Lic. Morales, the applause was deafening!

Meanwhile, our project *piloto*, Juan Gamboni, had also been doubling as a filmmaker during the program and captured many of these mock conciliations (and the final sing along) on tape.⁴ We therefore gave him a prize for “best filmmaker”. As the participants started filing out of the auditorium, the enthusiasm and upbeat tone palpable. We hope and expect to see many of these new graduates at the upcoming reunion of the Comite RAC on July 28th.

On June 21st, I flew to San Salvador for a week at the MSD offices. We spent some of our time in team meetings where we reviewed the project and ultimately set down dates in July, August, September and October for further RAC trainings and related activities in the region. In addition, we reviewed and edited all of our existing training materials for the purpose of developing a Regional Manual for use in all of the project countries. Our newest consultant, Dr. Julia Scandale collaborated on these activities. We had several round table discussions about our goal of completing three trainings in each of the three Tier 2 countries and began to plan programs accordingly.

As stated earlier in this report, we have scheduled two more trainings in Honduras and one more in Guatemala during the last two weeks of July. In September, we will hold another training in El Salvador, at which point our goal (to complete three trainings in each of the three countries) will be met. We completed the work on the regional manual and it is now being bound for use in these upcoming programs.

On June 30th, I flew to Managua to conduct previously planned presentations on the labor provisions embodied in CAFTA and it’s relationship to the project and, in particular, Component 3 and RAC. We held four ½ day separate programs for judges, lawyers, academics and union leaders. All of the programs were hosted by UPOLI in Managua⁵. Each of the four groups had their own particular needs and concerns. Overall, the reception to the presentations was very positive and the interest in future training programs was very high. A more detailed discussion of our visit and our plans for programs in Nicaragua will be included in the next quarterly report.

RECOMMENDATIONS

⁴ We do have the compact discs available for viewing.

⁵ Universidad Politecnica de Nicaragua, **Costado Sur Colonia Rubén Darío, Managua, Nicaragua**

Given the comments and discussion that emerged at the TRUST meeting in Quetzaltenango, our project should promote events where labor and management can discuss their respective concerns in a non threatening environment. The ability to discuss the cultural issues, the CAFTA Treaty and labor law problems generally would promote dialogue and, hopefully better understanding. All actors in the area of labor justice should be heard on their respective needs and interests and most importantly, should be educated on the promise of RAC.

In all training programs thus far, we have given a substantial amount of time and attention to group discussions concerning the legislative, cultural, institutional and practical concerns that impede the use of conciliation to resolve labor disputes. We need to continue to foster membership and professional activities on the part of the CRJs so that members will work on many of these obstacles and find ways to make the necessary changes systemically and culturally. One problem that I see as a fundamental flaw however, is found in the current practice of conciliation in the courts. The final recommendation is below.

RECOMMENDATION FOR COURT ANNEXED CONCILIATION PILOT PROGRAM

The current practice in most of the areas we have visited thus far is as follows: A *juez conciliador* or judge-conciliator is assigned to a case but is first required to conduct a conciliation, often as a prerequisite to a plenary hearing. The conciliating judge speaks with the parties to see if they are able to reach an accord and thereby avoid the hearing altogether.⁶ If the parties do reach a settlement, the process is completed by the preparation of the necessary *instrumentos ejecutivos* and the case does not proceed to hearing. If the parties are not able to settle the matter however, and this I believe is a fundamental flaw in the current practice, this very same juez, will then preside over the subsequent hearing. This is in my view, and that of many others we have spoken with in our trainings, is an untenable practice.

First, the parties cannot be expected to speak candidly in the ‘RAC’ phase. This lack of candor defeats the third party’s ability to facilitate a meaningful dialogue between the disputants who realize or, having been justifiably silenced by legal counsel, that there is the potential for self incrimination and that the consequences of such revelatory communications (if the case then goes to the hearing stage) are grave.

Secondly, the judge-conciliator is theoretically a neutral at that point, offering at least the promise of impartiality. What he or she cannot offer however, is confidentiality, another fundamental ingredient in the RAC process. Judges are human beings as well. Once the judge-as-conciliator has heard prejudicial information during the conciliation process, it is naïve to think that he or she can then ‘*un ring the bell*’ at a subsequent hearing.

⁶ Not only is the process flawed by conflict of interest issues, we have been repeatedly told that *juez conciliadores* generally spend very little time in this preliminary phase and, due to lack of training and orientation, rarely employ any of the analytical or conceptual skills considered effective in the practice of mediation and conciliation.

We already have a **model program in the U.S.** that we could easily replicate in the region. We could begin a 'pilot program' in the courts by lending technical assistance in the administration of such programs. We are already in the process of building the professional base needed to form RAC Panels of certified mediators/conciliators. In this model of court annexed mediation programs, mediators (or conciliators) are assigned the matter prior to a hearing but , if the parties are unable to settle the matter, these same neutrals do not adjudicate these same cases and, of critical importance, they are not required to share any of the information they have acquired during the process. With this model, the fact that confidentiality is honored encourages the parties to negotiate freely and to communicate 'with impunity'.

A pilot program could serve as a guide in terms of (1) the administration of judicial RAC (2) the selection criteria for referral of cases to mediation (3) the creation of a Panel of trained Mediators available to accept appointments (4) the management and control of issues of conflict of interest, preservation of rights in litigation; mediator performance (feedback) (5) the sponsorship of continued training and (6) the overall ability to assess needs within the judicial framework

This last recommendation should be addressed immediately. Our desire to promote the use of RAC in the region must be support by best practices if we are to see success and sustainability over the long run.

7. Monitoring and Evaluation

With the 2007 release of the initial consultant contracted for Monitoring and Evaluation the plan has been delayed in its approval. The contracting of Carlos Gregorio for that work in December 07 required some reworking of what was already begun. Mr. Gregorio finished the field work in all six countries during the 1Q FY08 and presented the plan in April which has been reworked and edited at the request of AID.

Mr. Gregorio will also be incorporated into the project for work on the establishment of the labor justice observatory in each of the countries in addition to his work with statistical and information generation issues within the court pilot programs.

8. IAPs

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. However, due to the slow implementation of Trust in their program activities, the

synergies sought for mutual benefit were not achieved during the quarter. Nicaragua and Guatemalan Country Representatives offer their services to Trust in addition to the Project on justice strengthening. (Country Representatives only work 75% of their time with the Project.) However, no other coordination is currently underway with Trust.

As a result of the country representative meeting in June it was decided to continue, without IAP or further country representative sharing with Trust. Should opportunities arise in the future they will be reviewed on a case by case basis. In the meantime Project country representatives have been charged with the formation of the IAPs without taking into account Trust needs.