



MEDIATION IN Guatemala

**AN ANALYSIS OF INSTITUTIONAL
AND TRADITIONAL EXPERIENCES**

Report by the
Instituto de Transformación de Conflictos para la Construcción de la Paz, Guatemala

For the
Center for Civil Society and Governance
Academy for Educational Development
Washington, DC



This report was prepared with funds provided by the Academy for Educational Development with financing from the United States Government through the U.S. Agency for International Development (USAID) under Associate Award No. 520-A-00-03-00185-00 Leader with Associates Award AED-A-00-01-0004-00 for the “The Guatemala Conflict Prevention and Resolution Activity”. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development.

MEDIATION IN Guatemala

AN ANALYSIS OF INSTITUTIONAL
AND TRADITIONAL EXPERIENCES



Report by the

Instituto de Transformación de Conflictos para la Construcción de la Paz, Guatemala

For the

Center for Civil Society and Governance
Academy for Educational Development
Washington DC

Funding provided by the

US Agency for International Development
under Associate Award No. 520-A-00-03-00185-00
Leader with Associates Award AED-A-00-01-0004-00

October 2004

Authors and INTRAPAZ Research Team:

Iván Monzón, Coordinator of Research, INTRAPAZ
Factor Méndez D, Team Coordinator

Researchers:

Rodolfo Rubio
Sintia Ramírez
Wellinton Tello
Craig Powers
Claudia Villagrán

Local Assistance:

Víctor Hugo Hernández Estrada (Quetzaltenango)
Cecilia Mérida Villatoro (Huehuetenango)
Aura Libertad Cifuentes (San Marcos)
Silvestre Guanché Lajuj (Ixcán, Quiché)
José Ramón Velázquez Choc (Petén)
Juan Antonio de León Delgado (Alta Verapaz)
Alfredo Cacao Ical (Izabal)

INTRAPAZ, Universidad Rafael Landívar of Guatemala, Political and Social Sciences School. Vista Hermosa III, zona 16. Campus Central. Guatemala.

Translation from the Spanish: Sidney Evans

Editor (English version): Stephanie McNulty

Administrators of Rafael Landívar University

Gonzalo de Villa, S.J., President
Guillermina Herrera Peña, General Vice President
René Poitevin Dardón Ph.d., Academic Vice President
Carlos Haeussler Córdón, Administrative Vice President
Luis Estuardo Quan Mack, General Secretary

Administrators of the School of Political and Social Sciences

Renzo Rosal, Dean
Yan Yanin López, Vice Dean
Carmen Ortiz, Secretary
María del Carmen Aguilar, General Coordinator of INTRAPAZ
Iván Monzón, INTRAPAZ Research Coordinator

Contents

| | |
|---|-----------|
| Preface | i |
| Executive Summary | 1 |
| Conceptual Framework | 4 |
| The Historical Context of Guatemala | 10 |
| Methodology | 13 |
| Inventory of Mediation Practices | 18 |
| Institutional Mediation Methods | 28 |
| Traditional Practices in Third-Party Intervention | 40 |
| Ensuring Quality Mediation and Identifying Best Practices | 47 |
| Conclusions and Recommendations | 61 |
| Annex 1: Bibliography | 65 |
| Annex 2: The Paradigm of Mediation | 67 |
| Annex 3: List of interviewed institutions and persons | 68 |

Preface

This study of the methods and practices of mediation in Guatemala was conducted by the Rafael Landívar University's School of Political and Social Sciences, through the *Instituto de Análisis y Transformación de Conflictos para la Construcción de la Paz* (INTRAPAZ or Institute for the Analysis and Transformation of Conflicts for Peacebuilding).

INTRAPAZ's various educational and training activities have helped develop the study and adoption of mediation throughout Guatemala. The publication of this research—which identifies local Guatemalan mediation experiences that are instructive, both from institutional and traditional perspectives—advances this work. Going beyond concepts and methods, this research also emphasizes the practical aspects of using mediation. Furthermore, it includes a chapter on how third parties use Mayan law to help mediate conflicts in indigenous communities. The study concludes by presenting outstanding practices, as well as a discussion of the criteria that helped us to identify them.

We thank the US Agency for International Development and the Academy for Educational Development for making this study possible. With this important contribution, the Rafael Landívar University demonstrates that mediation practices are extremely important for countries like Guatemala.

Renzo Rosal

Dean of the School of Political and Social Sciences,
Rafael Landívar University
and
Director of INTRAPAZ

Executive Summary

This study documents mediation in both the institutional and traditional (indigenous) contexts in light of various factors, including the mediator's or third party's profile and functions, the conditions under which a case is selected, the rules that govern the process, how communication is managed, confidence building, steps taken, managing disagreement, the process of development agreements, and the logistical and physical conditions.

Mediation is an alternative dispute resolution mechanism often used to resolve conflicts. It is called "alternative" because it provides a dispute resolution process outside of the court system. Mediation is a type of assisted negotiation characterized by parties who come together voluntarily, and which results in a situation in which there are no winners or losers—rather all parties must benefit to some extent from the final agreements. Further, the parties remain in control of the final agreement, because the mediator delegates decision-making authority to the parties in conflict.

While mediation is not appropriate in all conflict situations, when used correctly it offers several advantages. It can:

- Foster dialogue
- Identify solutions
- Prevent costly court and legal fees
- Reduce violence
- Contribute to empowering each party
- Improve the social relationship between the parties
- Improve quality of life.

Guatemala is a country in which there are high levels of social conflict due to unresolved structural issues. A 36-year armed conflict shattered the country's social fabric. Seven years after signed peace agreements, Guatemala remains in a postwar situation wherein persisting social, political, and economic characteristics continue to lead to deep social conflicts. Several organizations in Guatemala are working to resolve differences through the use of mediation.

EXECUTIVE SUMMARY

This study identifies several types of organizations around the country that currently are using mediation. These organizations include:

- State institutions, such as the Human Rights Ombudsman and the Alternative Dispute Resolution Unit of the Judicial branch
- Federal institutions that fall under the Executive branch, such as the Ministry of Labor and the Land Conflict Office
- Municipal authorities
- Indigenous government officials
- Legal clinics
- Religious organizations, non-governmental organizations (NGOs), community centers, departmental roundtables, and other civil society organizations.

This report also develops a framework for identifying best practices. In Guatemala, some (but not all) characteristics of the outstanding practices have several characteristics in common, including:

- The general population is educated about mediation, and those with the greatest need for these services are aware of their existence
- There are clear criteria for taking on new cases
- The role of the mediator is explained at the outset
- Clear rules are established at the beginning
- Trust is built by listening to all parties
- The mediator is aware of his or her limitations as well as the limitations of the process
- Emotions are managed constructively
- Agreements come from the parties themselves
- Follow-up plans are developed when the mediation is closed.

The study concludes that:

- Building stronger mediation capacities goes beyond the technical aspects. It also requires changing conditions in the judicial, political, social, and cultural spheres, which up until now have yet to be adequately addressed.
- Mediators are not only better accepted when they are impartial, but also when they can demonstrate a commitment to service in their community and an outstanding reputation as ethical and just. This latter aspect often carries greater weight than mediators' perceived impartiality.
- In all practices surveyed, the final decision about agreements was made by the parties. However, some mediators play a more active role in building proposals.
- Managing emotions is an important aspect in all mediations. Often, strong feelings can block the entire agreement-building process. Some practices tend to

defuse emotions using psychological techniques, while other practices constructively tap into them, rather than avoid them.

- There is no public policy aimed to promote mediation as a practice for transforming and resolving conflicts. In Guatemala, the legislation to support and regulate the practice of mediation is insufficient. There is a need for new bills to regulate its use, disseminate information about its use, and promote it as a method to settle disputes.
- With few exceptions, most of those interviewed do not have strong theoretical backgrounds in mediation. These practitioners acknowledge that their methods and understanding are grounded in daily practice, dynamics, and common sense - not in academic study or theory.
- There is a general demand for more information and training in mediation across the country.
- Traditional practice is the oldest form of third-party intervention in conflicts in Guatemala. Third-party interventions based in communities' traditions and customs can include characteristics of mediation, conciliation, and arbitration, depending on the nature of the problem. Trust in the mediator is based upon his leadership, moral authority, and recognition. In many cases, their third-party interventions are radically different from Western ideas of mediation.

Based on the study's findings, the report offers several recommendations for fostering the use of mediation in Guatemala:

- Strengthen quality in mediation practices by creating permanent scholarly spaces for training, updating, and improving the professional techniques of mediators. This could take the form of university programs or more support to institutions and organizations through training and the systematization of experiences.
- Disseminate to the populace more information about mediation as an alternative dispute resolution process, particularly to those who are most vulnerable and most affected by conflicts in the country. This will generate a better understanding of and more demand for services.
- Build a community or network of institutions working on mediation whose objectives are discussing and sharing different experiences and validating relevant methodologies that have worked nationwide.
- Prepare, discuss, and approve a set of regulations for mediation in the judiciary as well as legislation to regulate mediation in Guatemala.
- More profound research and discussion about the cultural, ethnic, and linguistic aspects of mediation and about third-party intervention in the Guatemalan social context is needed. We need to capture the experiences that are based on indigenous laws and traditional community practices. This will help generate an institutional climate of respect for the diversity of beliefs and values in our country.

Conceptual Framework

Mediation is an alternative dispute resolution mechanism often used to resolve conflicts. It is called “alternative” because it provides a dispute resolution option outside of litigation through the court system. This section first outlines the basic concepts of mediation to provide a framework for better understanding of its use in Guatemala, especially for readers who are not experts in this field. The second part of this section briefly discusses some factors that are unique to the Guatemalan context.

What is Mediation?

Mediation is “the intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute” (Moore1989).¹

Mediation represents a major difference from the culture of litigation, as it offers a culture of agreement. Mediation encourages taking a leading role in the solution of our own problems and taking the reins of our lives into our own hands. It entails moving from an adversarial role to one of cooperation with the other parties in an effort to solve a conflict without having to engage a tribunal. Mediation is a non-confrontational process for peaceful conflict resolution that builds bridges between the conflicting parties and allows them to reach fast, cost-effective solutions. Such outcomes are hard to reach in the more traditional judicial process.

¹ There is an extensive literature on mediation that we do not have space to explore in this report. For more on the various histories of mediation, such as the ‘history of satisfaction’, social justice, oppression, and transformation, see Robert Baruch and Joseph Folger. Several authors describe exhaustively the *History of satisfaction*, including Fisher and Ury (1981); Fisher and Brown (1989); and Susskind and Cruickshank (1987). Community-based mediation was pioneered by Paul Wahrhaftig (1982), followed by Ray Shonholtz (1987) and more recently by Margaret Herrman (1993) and Carl Moore (1994). Critics of the mediation movement include Richard Abel (1982); Christine Harrington (1985); Richard Delgado (1985); and feminist critics like Marta Fineman (1988). More generally, many of these authors regard the mediation movement as a serious threat to vulnerable and disadvantaged social groups. (See Fiss 1984; and Nader 1979). Exponents of the mediation movement who understood it as a “history of transformation” includes Albie Davis (1989); Leonard Riskin (1982-1984); Carnie Menkel-Meadow (1991); Dukes (1993); Folger and Baruch (1994) and Baruch (1989).

Mediation contributes to changing human relations and behavior. Mediation protects personal relations from the decline or destruction that result from onerous time-consuming court proceedings and other inconveniences. And mediation can improve quality of life because reducing conflict often improves mental health, prevents the deterioration of interpersonal relationships, and, above all, promotes social peace.

There are two guiding principals of mediation to keep in mind:

1. The participation of the interested parties is **voluntary**, as they seek a quick solution to their dispute. Their primary objective is to overcome conflict and reach an agreement without litigation or going to court. Although mediation provides an alternative to the traditional judicial process, not all mediation has the sole objective of working outside of the tribunal process.
2. Mediation should result in a situation in which there are neither **winners nor losers**; rather all the parties should benefit from the agreements that are reached.

Options for Conflict Prevention and Resolution

Mediation is only one of many processes to reduce or resolve conflict. Below are some other processes described more broadly to show how mediation differs from other closely related methods.

Negotiation

In negotiation, two or more conflicting parties communicate with each other to find a solution that meets their interests and needs. Negotiation techniques and skills can be learned and practiced, but it is important to understand their underlying principles. A formal negotiation between two parties must be planned in advance. It requires a framework for organized thinking, which in turn requires taking into account not only one's own objectives but also the other party's. Only once the individual interests of the parties have been clearly understood is it possible to determine in what areas and to what extent the parties may make some mutual concessions. Consequently, it involves designing a clear strategy.

Negotiation is generally divided into two broad categories, depending on the level of autonomy of the parties: direct and assisted.²

Direct negotiation

Direct negotiations take place among the parties without third-party assistance or facilitation. It is a voluntary dispute resolution process through which the parties

² For additional reading on negotiation, see: *Winning is all* (H. Cohen); *Win-Lose, Negotiate, Don't yield* (R. Fisher and W. Ury); *Effective Negotiation* (D. Seltz and A. Modica); *Eight Phase Model* (G. Kennedy; J. Benson and J. McMillan); *Win-win* (F. Jandt and P. Gillette); *Effective Negotiation* (Huthwaite Research Group); *Negotiations for mutual satisfaction* (H. Cohen); *Cooperative model* (G. Nierenberg); *Systemic negotiation* (M. Schilling). The above list taken from *Diccionario Mediación* (2004) is by no means exhaustive.

CONCEPTUAL FRAMEWORK

reach a mutually acceptable agreement. Direct negotiation is a process that emphasizes the ability of the parties to represent their own interests and to propose alternatives in a private context. Mutual cooperation aims at finding solutions that meet both parties' interests.

Assisted negotiation

Assisted negotiation is simply another way of finding a solution to a conflict through the support of third parties who are considered outsiders. There are several ways to assist a negotiation:

- **Conciliation:** Conciliation is a mechanism through which the conflicting parties, through their own initiative and assisted by an impartial third party, try to find a solution to their dispute. It is different from mediation because it is possible to reach an agreement through which the parties waive their reciprocal rights. Conciliation is generally seen as an earlier stage of negotiation, when the parties find themselves in an openly hostile situation. It helps make communication possible, build a relationship of trust, improve the relationship between the individuals, and bring the parties closer together. Although it can be considered a preparatory stage for all other types of negotiation, it can also be a process in itself. It helps when dealing in-depth with the emotional and psychological sides of the issues, without necessarily tackling the substantive components.
- **Mediation:** Mediation is a “technique consisting of the intervention of a third party (either an individual or a team) to facilitate reaching agreement over a conflict” (Lederach 1996). The third party (or mediator) must build a relationship with the parties, gain an understanding of the problem, listen, analyze, understand, and create a framework for addressing the conflict. In all mediations there must be direct contact between the involved parties. Once there is a clear perception of the situation, the mediator must position him or herself to gain a deeper understanding of the exact nature of the conflict. In mediation, the parties remain in control and do not delegate decision-making to the mediator. Whatever the result, it originates from the will of the parties.
- **Arbitration:** Arbitration is a private trial where the third party remains in control. Although the parties must negotiate to reach the arbitration stage and decide on the arbitrator, the latter will make the decision on who is right and the parties are bound by the decision, as in a regular lawsuit (Ormachea 1998). Unlike mediation, the result comes from the arbitrator, who makes a decision based on rules that apply to each specific case. In this method, a third-party gives a verdict and the process may result in “winners” and “losers”.

Crisis Intervention

Another practice often confused with mediation is crisis intervention. Crisis interventions also have third-party interveners, usually experts in a particular field (human rights, security, medicine, law, or religion) in situations that threaten the life or integrity of one or more parties involved in a conflict. An example is the case of

the National Police in El Quiché, where interveners acted more like negotiators than mediators in a lynching situation. Although actors in these types of situations frequently call themselves mediators, they are not technically mediating. (For more information, see UNS 2003).

What are the Advantages of Mediation?

Mediation is a useful and effective way to prevent and resolve conflicts and thereby contribute to social peace. Although mediation is not appropriate in all conflict situations, when used correctly it offers several advantages. One of the important benefits is that mediation provides empowerment, that is, it is a process that gives parties ownership of and responsibility for a negotiation and develops in them the ability to make an independent contribution to a conflict's solution. In addition, mediation can:

- Foster dialogue
- Identify solutions
- Prevent costly court and legal fees
- Reduce violence
- Improve the social relationship between the parties
- Improve quality of life.

Not only does the use of mediation bring benefits to the community but it also has the following advantages over court proceedings:

- It is faster
- It is more cost-effective
- It is private and confidential
- It evolves in the appropriate context and environment to address the conflict
- It gives participants the chance to create their own agreement
- It is effective, voluntary, and neutral (because mediators do not take sides).

To the above list we would also reiterate that mediation has the potential to significantly reduce the high economic cost of protracted and often eventually unsuccessful litigation processes in the justice system. Consequently, the parties' economic burden is dramatically reduced when compared to a court trial.

What Is 'Good' Mediation?

Identifying "best practices" in the field of mediation can help contribute to effective communication that leads to the satisfaction and empowerment of the parties involved in the negotiation process. One of the purposes of this study is to discuss best practices in the Guatemalan context. For this study, we used a tool called the 'satisfaction triangle' to evaluate parties' satisfaction with the results of the process.

CONCEPTUAL FRAMEWORK

The “triangle” looks at three parameters for determining the quality of mediation:

- **Substantive aspects:** What is the main issue that lies at the origin of the problem, and how is it being treated? For instance, the root causes of a conflict between heirs to a plot of land.
- **Psychological aspects:** What are the parties’ subjective understanding of the process; their emotions, attitudes, and perceptions; and their mutual relationship?
- **Procedural aspects:** How satisfied are the parties about the solutions and the convenience of the process. These aspects include the methodological and procedural components of the intervention.

These three aspects are closely interrelated. When one is not given due attention in a mediation or negotiation, it may hinder progress in all other aspects. A successful mediation must address each aspect satisfactorily for all parties.

Who Mediates?

Christopher Moore (1989) identifies five categories of mediators, based on their origin and relationship with the conflicting parties:

- **Independent:** This type of mediator is neutral or impartial with regard to the outcomes and the relationships. This person may be a professional mediator who is free from coercion and does not have authority to compel observance of the agreement (although he or she still may be involved in it).
- **Social network:** These mediators seek to create long-term relationships with the parties and their associates because, at the end of the conflict, they will continue to have a relationship with them. They use their influence to promote commitment to the agreement and might even become involved in its implementation. Although not impartial, this type of mediator is perceived by the parties as just.
- **Stakeholder:** These mediators have a present or expected relationship with the parties and have a strong interest in the conflict's outcome. Consequently, they will look for a solution that meets their interests or those of the favored party. These mediators are usually more dedicated to seeking a solution and reaching agreements, and have a special interest in assisting in compliance with the agreements.
- **Benevolent-authoritative:** Although they will have authority over the parties, these mediators are impartial towards the outcome and seek the best possible solution.
- **Administrative-authoritative:** These are mediators with authority over the parties who look for a solution within certain fixed parameters. They have the authority to advise, suggest, decide, and also to assist with or implement the agreements.

Where Does Mediation Take Place?

Mediation can take place in different locations and at different levels. It can take place in different geographical or territorial spaces. In some cases, the conflicting parties meet in designated mediation centers, while in others, the mediator travels to the place where the events take place to mediate on site.

Mediation can take place at different societal levels:

- **Local:** Mediation may be practiced to prevent or address conflicts within a community. Mediators are usually municipal and indigenous mayors and/or their assistants.
- **National:** State, government, religious, and civil society organizations may mediate conflicts or disputes (either public or private) that are national or regional scope.
- **International:** Bilateral or multilateral state organizations may mediate the internal conflicts of a third country or solve controversies between two or more countries. (*See Annex 2 for an example of international mediation.*)

This study focuses on mediation at the local and national levels in Guatemala.

The Historical Context of Guatemala

Guatemala is a country in which there are high levels of social conflict due to unresolved structural issues, including: land use, possession and ownership; little respect for ethnic and cultural diversity and the habits, customs and traditions of indigenous peoples; and racism, discrimination, exclusion and illiteracy. Furthermore, most of the nation's political life has been characterized by less-than-democratic administrations that created a culture of terror, fear, silence, and violence with very high social costs. This way of doing business privileged the use of force, violence and the systematic abuse and violation of human rights.

In the early 1960s, this difficult and complex national situation resulted in an internal armed conflict that lasted for 36 years. In December 1996, the Guatemalan government and the insurgent groups signed the Peace Accords.

The social cost of the conflict further deteriorated Guatemalans' living conditions. The State's counter-insurgent policy created new social phenomena, including the forced displacement of entire populations, mass migration abroad, increased extrajudicial executions forced and involuntary disappearances, the use of torture, cruel and inhuman treatment, and racism and discrimination. After 36 years of armed conflict, the country's social fabric was shattered. Housing, food, health, employment and education were all insufficient. These problems coexisted with acute street and organized crime, drug trafficking, corruption, and social violence. The Guatemalan people live in a culture of violence. Worse still, Guatemala lacks appropriate structures to tackle these problems.

It is worth mentioning that the exacerbated violence that characterizes this post-conflict period is epitomized in acts like the lynching of criminal suspects. From 1996 to 2000, The United Nations Verification Mission in Guatemala (MINUGUA) recorded 337 lynchings, resulting in 185 deaths and 448 injured. According to this UN mission, the departments with the highest incidence of lynching are Quiché, Petén, San Marcos, Guatemala, Sololá, Alta Verapaz, Huehuetenango, Chimaltenango, Totonicapán, and Quetzaltenango. Not coincidentally, these departments are also the areas of the most intense armed conflict. Counter

insurgency was most widespread and powerful in these areas, which also exhibit the lowest human development indicators and the highest social exclusion indexes.

MINUGUA also has identified the most common reasons for conflicts and ranked them as follows: land: 26%; municipal: 18%; deficient public services or social policies: 10%; environmental: 9%; labor: 8%; other: 29% (MINUGUA 2001).

Mediation in Guatemala

Against such a background it is of utmost importance to change the culture of violence into one of dialogue, negotiation, and conciliation as a way to prevent and reject violence.

Mediation is currently practiced by numerous governmental and non-governmental organizations in Guatemala. This study places special attention on the institutional practices of mediation and the use of third parties in mediating disputes. This study analyzes the **practice** of mediation in Guatemala, that is, 1) the use of mediation as a way to resolve social conflict, and 2) mediation as part of the policy of an actual entity or organization—whether it be the State, the government, NGOs, religious groups, civil society (peasant, labor, trade, ethnic or women’s organizations), professional associations, academic groups, international organizations, and/or community officials.

Although our paper focuses on institutional practices, we do pay special attention to mediation practices that are part of the indigenous custom. Many Guatemalan organizations involved in third-party conflict intervention carry out their practice based on principles of indigenous law, in particular Mayan law. Their practice therefore may not be strictly considered mediation. However, the nationwide importance of these customs warrants including them in the scope of this analysis.

Obstacles to Success

As mentioned earlier, mediation may be extremely advantageous and useful when used to solve social conflicts. Nevertheless, mediation is not well understood and/or scarcely practiced in countries despite the effectiveness of its outcomes. Not only is it scarcely known and used, but some governments have failed to incorporate it into public policy.

Such is the case in Guatemala. While mediation has been used for peaceful conflict resolution in many countries—and has even become public policy in some, such as in Argentina—countries like Guatemala have relied on violence, the excessive use of force, systematic human right abuses, or court proceedings when dealing with conflict. Because the exercise and use of mediation is seen as an **alternative** method, its practice is delegated to a secondary position instead of being regarded as the option of choice.

Current Legal Framework

Some Latin American countries that have prioritized the development of a legal, educational and institutional policy to foster mediation include Argentina, Colombia, El Salvador, and Costa Rica. Meanwhile, the legal framework for mediation in Guatemala is still quite weak. Most importantly, it lacks specificity with regard to regulating mediation practices. While there is no law that grants mediation legal recognition or status as a recognized alternative to a court trial, some legislation does exist.

Articles 25 and 25-quater of the existing Penal Code (see Decree 51-92) contain the only relevant mention to mediation in criminal cases. This legislation is based on the criterion of convenience, which grants prosecutors the authority to decide not to file criminal charges when the crime is not likely to pose a threat to the public interest or citizen security. The prosecutor may refrain from pressing criminal charges when:

- No prison sentence is involved
- The charges may be filed by private individuals
- Public crimes with sanctions not exceeding five years (excepting crimes included in the Drug Trafficking Law) are involved
- The defendant's responsibility for the crime is negligible
- The defendant was directly and severely affected by the consequences of a crime and the sanction is incommensurate with the crime.

To pursue mediation, it is necessary to obtain the victim's consent and a court order issued by the *Jueces de Primera Instancia* (First Instance Courts), which are the first level of courts that hear a trial. Article 25 also lists the crimes excluded from mediation, including "crimes by civil officials or workers in the exercise of their functions."

Article 25-quater of the aforementioned code allows prosecutors or municipal officials to bring criminal cases to mediation centers that are registered with the Supreme Court through the respective courts. In these cases the code stipulates that the offender must repair damages, or the victim and the offender must reach an agreement that includes the necessary guarantees to enforce it (CPP 2004).

The Peace Accords, the agreement that sets out means to strengthen civilian power and limits the Army for a democratic society (III.16: f), are another significant source that provides guidance on the use of alternative conflict resolution methods in Guatemala.

However, the use of mediation has arisen outside of this legal framework. Some civil society organizations are adopting mediation practices when working in their communities. Indigenous customs rely on mediation techniques as well. Thus, this study attempts to document the use of mediation in Guatemala in order to allow for a better understanding of how and when it is used and provide recommendations for policies that ensure quality practices.

Methodology

The goal of this study is to explore the cultural, political, and socio-demographic characteristics of mediation in Guatemala. The study attempts to provide an overview of the use of mediation in Guatemala through two means: a general discussion of interview results and the analysis of a few sample cases. This is, therefore, a preliminary study of mediation practices, and not an evaluation of the mediating institutions. It is important to note that the practice of mediation is a comprehensive and interrelated process and not just a set of isolated procedures.

As mentioned by one of the survey respondents, mediation is not a silver bullet. Instead, it is one alternative that has been built and assessed over time by several different actors. Our survey begins with this assumption. In addition, our survey is:

- **Qualitative:** Not only because of the type of data analyzed but also because of the way we interpret the data.
- **Synchronistic:** While we are aware of the long history of mediation practices that can be studied in the light of the theory of mediation, this study focuses on the present.
- **Value-driven:** To identify the best mediation practices, the researchers faced the challenge of recovering the valuable aspects of mediation in various scenarios, assisted by both theory and the survey respondents' references.
- **Criteria-based:** Highlighting these aspects allowed us to determine criteria to assess quality mediation practices.
- **Balanced:** A final characteristic of our research methodology is its search for a balance between recognizing diversity and identifying commonalities in all processes.

Research Variables

Mediation is a process that must be interpreted as a whole. For this reason, the classification of units of analysis or research variables constitutes a purely methodological exercise to organize, analyze, and understand the various components of mediation. While thinking in terms of variables is useful, we must not lose sight of the way in which these components evolve and inter-relate in practice. For the research team, this implied reformulating questions such as “**what**

M E T H O D O L O G Y

norms are used?” to look at other dimensions, such as **“how are those norms created?”** This allowed us to look beyond the most formalistic aspects of the method.

Technically speaking, issues of form serve as research variables, while the analysis of the dynamics and tendencies that we observed can be better understood as **continuous processes** or tendencies that are defined by the way in which a variable evolves dynamically. The aspects that we consider in terms of processes are:

- Mediator profile and functions
- Conditions for case acceptance
- Managing communication
- Building confidence
- Steps in mediating
- Managing disagreement
- Managing the resulting agreements
- Logistical and physical conditions.

We document the use of mediation in light of institutional or organizational practices. The variables that we consider when exploring mediation include the organizations’:

- Community
- Coverage
- Years of experience
- Staffing
- Cases served
- Work protocols

Taking into account the cultural and social characteristics of Guatemala, researchers also analyzed third-party interventions that, while linked to formal mediation, cannot be easily classified as such. These are the particular practices that take place in indigenous communities, which we refer to as ‘traditional practices’.

Research Phases

The research process took place in four major phases:

1. Planning

During this phase, the team developed and validated the methodology in collaboration with the project’s principal partners: INTRAPAZ, the Academy for Educational Development, and the U.S. Agency for International Development. As part of this phase, we selected 11 departments in which we would conduct fieldwork. In the end, research took place in two additional departments that were not included in the original research profile, including:

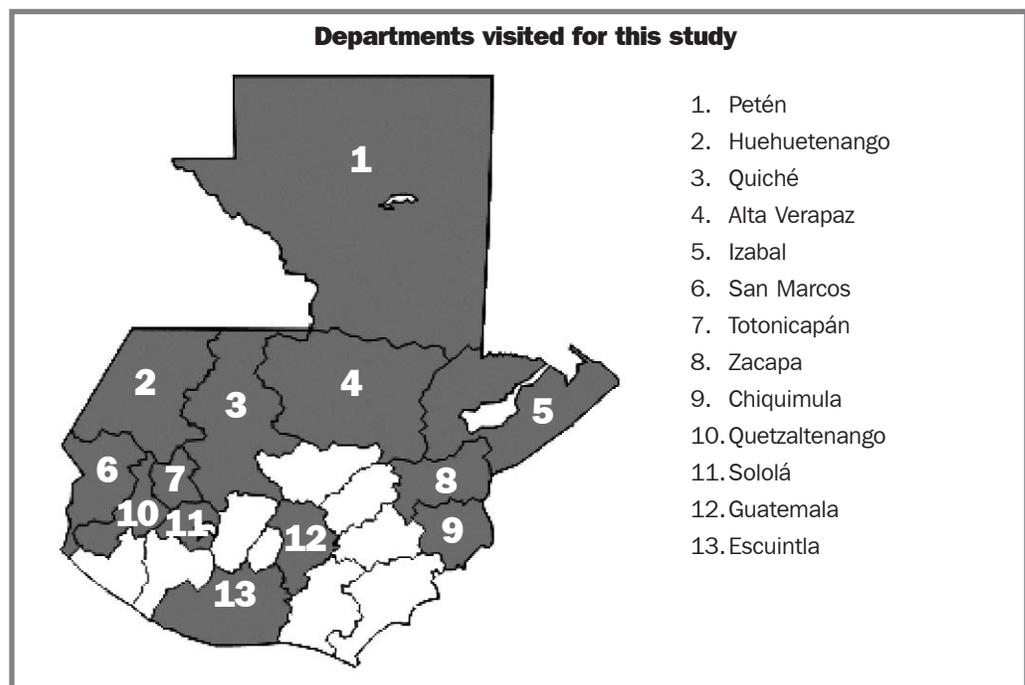
- **Chiquimula:** We found that most organizations that work in Zacapa are regional organizations with headquarters in Chiquimula. Thus, it became necessary to visit that department as well.
- **Sololá:** Due to the importance of traditional practices for this study, we visited this department to explore this issue.

Although this study does not cover all Guatemalan mediation organizations, it does include the majority of them, especially those that are most active. We found that several organizations have headquarters or regional offices and their many local offices operate under the same parameters, thereby facilitating data analysis.

How did we select the departments in which we conducted fieldwork? Three fundamental criteria were used:

1. The presence of conflict, based on reports like the conflict map prepared by MINUGUA and others
2. The likelihood of uncovering significant or instructive practices, based on information from interviews and consultations
3. The most important regions in the country were covered.

Once we selected the regions, we needed to select the organizations and practices that we would study. From each organization’s headquarters (mostly located in the capital city) we identified the geographic coverage of local offices in selected departments. This led to a series of consultations to determine whether mediation was actually practiced or not.



METHODOLOGY

The organizations under study then went through an initial evaluation using preliminary surveys either by telephone or through direct interviews at their headquarters. Other practices were examined on site in each department and evaluated by the researcher or research assistant.

As a result, practices were verified through over 280 consultations with organizations and institutions to screen out practices where no mediation was involved.

After selecting a sample of departments and organizations, we prepared a list of eligible organizations. Then we designed a research protocol to visit those organizations and the respective community leaders.

2. Data Collection

A team of researchers and assistants carried out the first round of interviews, then some additional follow-up interviews. Altogether, the research team completed 169 interviews in 13 departments and 55 municipalities (*see Annex 3*).

A challenge inherent in this process was managing the enormous amount of data that we gathered. To ensure quality, we set up the following data management system:

- Interviews were recorded using an interview reporting guide
- Data then were incorporated into tabular format, with information about each of the main variables listed by organization
- Using the results for each organization, the research team prepared department reports
- A specific questionnaire was used to obtain data on the processes and methodological aspects for each organization or traditional practice.

3. Data Analysis

Next, department reports were reviewed and consolidated into a national report, including a qualitative reading of constants. This reading cut across the research to discriminate between institutional and traditional practices.

Based on our analysis of the concept of mediation, both from theoretical and organizational viewpoints, we prepared a general list of the characteristics of mediation. In addition, we identified the elements included in the satisfaction triangle, that is, the psychological, substantive, and procedural components of mediation. These two conceptual products were evaluated against a set of criteria that were mentioned by respondents. Next, the selection criteria were used to help identify a final list of best practices. Finally, the research team obtained a number of statements by the respondents that reflect the lessons or reflections that they have drawn about mediation. These statements were organized by each aspect of the process.

This report summarizes the results of this study. The following sections provide details of each area of study:

■ **Inventory of Mediation Practices in Guatemala**

■ **Mediation methods used in Guatemala:** This information is divided into two sections: 1) institutional mediation and 2) traditional practices by third parties. Although not strictly mediation practices, the latter provide valuable information about the cultural peculiarities that must be taken into account when undertaking mediation in Guatemala.

■ **Ensuring quality and identifying best practices:** This section includes an analysis of the specific criteria that help us ensure quality practices and an assessment of the best mediation processes in Guatemala practiced by the organizations under review.

■ **Lessons learned and obstacles faced:** Some experiences, lessons, and obstacles were identified by the interviewees in their own words and are included as additional reflections on mediation.

The report ends with a section on conclusions and recommendations. These were revised and validated during workshops with key stakeholders.

Inventory of Mediation Practices

Most of the institutional experiences with mediation in Guatemala are carried out by entities working with and developing alternative methods for conflict resolution as part of their own area of interest. Several types of institutions are undertaking these efforts, such as government and State agencies, NGOs, private entities and businesses, church organizations, and some international organizations operating in Guatemala. For the purposes of this study, we differentiate State institutions—that is, those that do not report to the executive branch—from those governmental agencies that directly depend on the executive.

In the various departments we visited, the practice of mediation is clearly new. Few organizations have a methodological framework to support their practice, nor do they systematically document their experiences. Most of the information that exists about mediation corresponds to a post-Peace Accords era. On average, institutional experience in mediation is less than 10 years old in the organizations under review.

Table 1 shows the number of cases that were served and reported by the responding institutions in 2003, according to interviewees.

This table only includes cases that are registered as served. Being served, however, does not mean that they were resolved or completed. Also, we know that a larger number of additional cases exist in the various departments. Due to problems with registries and difficulties in documenting cases, we can assume that the table does not reflect exact totals. We assume that the numbers are actually higher than the data reflect.

TABLE 1
Number of cases served and reported, by department, 2003

| Department | No. of cases |
|-------------------|--------------|
| Petén | 1,367 |
| Alta Verapaz | 1,556 |
| Zacapa-Chiquimula | 344 |
| Izabal | 1,415 |
| Guatemala | 1,616 |
| Escuintla | 800 |
| San Marcos | 1,509 |
| Quiché | 2,175 |
| Totonicapán | 736 |
| Huehuetenango | 2,132 |
| Quetzaltenango | 1,453 |
| Sololá | N/A |

State Institutions

Table 2 summarizes the respective mandates and jurisdictions for each State institution. Each is described further below.

Procuraduría de Derechos Humanos (PDH, Human Rights Ombudsman)

The PDH is the most important State institution for the defense, oversight, and protection of human rights for all residents or visitors in Guatemala. This organization was created by the 1985 Constitution (which is still in force). PDH is the equivalent to an ombudsman. In Guatemala, the PDH is appointed by Congress and is charged with constitutionally defending human rights.

TABLE 2
State Institutions and type of case served

| State institutions | Type of cases |
|--------------------|---|
| PDH | Individual and collective human rights abuses |
| U-RAC | Family, Civil, Criminal, Trade, Labor |
| DEMI | Indigenous women's human rights abuses |

The PDH mediates in conflict resolution on its own initiative, at the request of the parties, or in cases referred by other official organizations, including the *Ministerio Público* (Public Ministry) or the *Policía Nacional Civil* (National Police).

Unidad de Resolución Alternativa de Conflictos (U-RAC, Alternative Dispute Resolution Unit of the Judicial Branch)

U-RAC is charged with coordinating a country-wide network of mediation centers (CM/OJs) and promoting programs that support alternative dispute resolution mechanisms. This unit was instituted by law through Government Agreement No. 11-001, dated April 18, 2001. The unit officially started operating on February 25, 2002. These mediation centers form part of the inter-institutional alliance that has developed the Justice Administration Centers, which are described in the next section.

The U-RAC is a relatively new program, which was organized after the U-RAC was created. It has been operational for only two years and aims to reduce the number of trials and assist in building peace and justice. The U-RAC has defined mediation as “a voluntary method for conflict resolution whereby a mediator assists the people through dialogue and cooperation so they will independently find the best solution to their discrepancies to the satisfaction of all, thus preventing the need for court trials” (U-RAC n/d). The principles of this institution lie in the belief that the peaceful solution of conflicts within communities contributes to the building of a culture of peace. Mediation is also understood as fostering social harmony, cross-cultural understanding, and the preservation of multiple languages. It is a basic pillar for judicial efforts to create peace and provide ready access to justice.

INVENTORY OF MEDIATION PRACTICES

The mediation centers tend to become involved in issues concerning alimony, debt repayment, separations, rentals, property boundaries, civil redress and damages, conflict among neighbors, labor issues and those other cases that are not forbidden by law. CM/OJs mediate in private, civil, criminal, labor, and trade issues. Most cases are civil in nature. Between January and September 2003, they served 5,078 cases, of which more than half (64%) were instigated on a voluntary basis while the others were derived or referred cases (U-RAC/OJ 2003).

Out of 34 mediators serving 24 centers, 52.94% are women and 47.06% are men. In addition to Spanish, 11 mediators speak Mayan languages. Officials are planning to open 13 new centers as part of the Justices of the Peace (*Juzgados de Paz*) in Guatemala City and another 35 in the interior of the country. Mediators usually receive training at short workshops and through regular courses (U-RAC 2003).

Of all institutions reviewed, only this one hires specialized mediators who speak the languages of the ethnic communities. Furthermore, it is the only organization that enforces a gender equity policy and hires professional mediators who are regularly trained to provide the widest possible coverage.

Centros de Administración de Justicia (CAJ, Justice Administration Centers)

CAJs are promoted by the Judiciary's Coordination Office and are made up of a cross-agency alliance between Justices of the Peace and First Instance Courts, a representative from the Public Ministry, the Criminal Public Defense Institute (*Instituto de la Defensa Pública Penal*) and the San Carlos and Rafael Landívar University's legal clinics. They perform an inter-institutional coordination function and have led to improved communication among agencies and better services for users.

Five CAJ are presently operational in Playa Grande, Ixcán and Santa María Nebaj, El Quiché; Ixchiguán, San Marcos; Santiago Atitlán, Sololá; and Poptún, Petén.

Defensoría de la Mujer Indígena (DEMI, Indigenous Women Defense Council)

DEMI was organized in 1999 as a result of the Peace Accords' "Agreement on the Identity and Rights of the Indigenous People". DEMI is an organization that continues to develop on a small operational budget, although it does receive some international funds.

Its institutional goals include: protecting indigenous women; promoting and developing initiatives for the prevention, defense against and eradication of all types of violence and discrimination against indigenous women; identifying violations against their rights; and proposing programs and initiatives for the defense and full exercise of indigenous women's rights. Its social unit addresses issues related to conflict resolution and mediation. It primarily looks into sexual harassment and family

violence cases. If mediation fails, cases are referred to the respective courts of justice. DEMI covers 320 municipalities throughout Guatemala and operates five regional offices in Cobán, Huehuetenango, Quetzaltenango, El Quiché and Suchitepéquez.

Governmental Organizations

Table 3 presents the different types of conflicts that are mediated by governmental institutions.

TABLE 3
Government institutions and type of case served

| Gov't institutions | Type of cases |
|--------------------|---|
| COPREDEH | Claims and litigation concerning human rights abuses by the State. COPREDEH's Huehuetenango office practices mediation through its role in the peace roundtables |
| CONTIERRA | Conflicts relating to the use, tenure, occupancy, and ownership of land. |
| Ministry of Labor | Labor and some agricultural conflicts. |

Comisión Presidencial Asesora en Derechos Humanos (COPREDEH, President's Advisory Commission for Human Rights)

COPREDEH is charged with advising the President of the Republic about human rights issues. Its scope is limited to human rights cases that meet one of several criteria: the responsibility for the violation lies

in the State or its agents (both individually or collectively); the jurisdiction is regional or international, such as those cases that go before the Inter-American Human Rights Court, specialized task forces, and/or commissions and sub-commissions within the United Nations; and those resulting from commitments and responsibilities outlined in regional and international instruments signed by Guatemala.

COPREDEH's Huehuetenango delegation is the one that intervenes as mediator as part of its role in the roundtables, or mesas, that were organized as part of the implementation of the Peace Accords. It is through this mechanism that COPREDEH mediates social conflicts when so requested.

Oficina De Conflictos De Tierra (CONTIERRA, Land Conflict Office)

CONTIERRA falls under the Secretariat of Agricultural Affairs and is charged with intervening in land use, occupancy, possession and ownership conflicts that almost exclusively result from differences between land owners and groups of peasant households. More often than not, these are collective conflicts. Governmental Agreement 472-97 governs its functions.

INVENTORY OF MEDIATION PRACTICES

This agency started operating in June 1997 and has been undertaking mediation for over six years in seven regional offices and one subregional branch in Poptún, Petén. Its seven regions are the North (headquartered in Alta Verapaz), the West (in Huehuetenango), El Petén, Zacapa, Quiché, Quetzaltenango, and Escuintla. The regional headquarters are located in the main city of the above departments, with the exception of El Petén, where a municipal branch operates out of Poptún. This agency covers the departments with the most historically severe land conflicts. The types of conflicts usually served include: land ownership disputes; boundary conflicts; land occupancy; regularization of land titles with FONTIERRA; and access to land. Regional coordinators charged with mediation are all male and some are bilingual in both Spanish and another Mayan language.

Its institutional experience is particularly noteworthy because this organization mediates conflicts that involve disputes between peasant sectors and land owners, and between these actors and the State. Its efforts are particularly valuable when we take into account the sensitivity surrounding land issues that have historically remained unsolved.

Ministry of Labor

The Ministry of Labor has been recognized for its frequent mediation practices nationwide. The Ministry, through its Inspector General, mediates labor issues to comply with its mandate to protect workers rights from arbitrary actions, as well as prevent labor code violations by employers. It has also taken part in agricultural conflicts, such as conflicts on the banana plantations in Izabal.

Mediation tasks in labor conflicts are performed by the General Work Inspector (*Inspección General del Trabajo*). This area has inspectors who are charged with looking into conflicts that arise in private companies and listening to the workers' labor demands. Its scope is national.

When the parties cannot reach an independent agreement, labor inspectors undertake negotiations as a requisite before parties can go to court.

Most labor inspectors are male and do not speak Mayan languages. They have been trained in alternative conflict resolution methods, but they admit their need for more training.

Municipalities

At this level, a municipal authority will often use mediation in matters within its jurisdiction, such as conflicts over public services, boundaries, the environment, neighborhood, or the community. They often turn to independent actors. This study identified mayors as the officials who most frequently mediate in the issues mentioned above. Mayors guide their assistants' efforts as they take the first steps in mediating community conflicts. Our respondents indicated that when assistants fail

to solve the conflicts, the mayor then attempts mediation in order to find a solution to the dispute. If the mayor is unable to come to an agreement, the case is then referred to authorities with jurisdiction in those issues. Indigenous community officials and their assistants tend to undertake a similar procedure.

Religious Organizations

Catholic, Evangelical, and Mennonite church programs include the practice of mediation due to the nature of the services they perform. Mediators that stand out are the *Oficina de Deberos Humanos del Arzobispado* (ODHAG), pastorals, bishops, and pastors. Within the Catholic Church, the lay staff in their pastoral offices also perform social work. The Land Pastoral (*Pastoral de la Tierra*), which assists poor peasants in pursuing their demands for land, is an example of pastoral work within specific social sectors.

ODHAG has also gained valuable experience in mediation. It mediates in agricultural, labor, municipal, community, public services, housing, education and environmental conflicts. Mediators are usually lay staff (without formal theological training) working for the office. They work principally in Guatemala City.

The Church acknowledges that its position as a mediator is controversial because of its association with and assistance to Guatemala's social movements and its role as a powerful player. The Church is permanently trying to strike a balance and not usurp the State's role to mediate conflicts. It also wants to avoid its own institutional erosion as a consequence of backing the serious claims that result in peasant mobilization and resistance in the fight for land (ODHAG 1998 b).

Non-governmental Organizations

This study identified three types of NGOs working in mediation:

- NGOs that work in the area of human rights
- NGOs that undertake social development projects, such as water and sanitation, infrastructure, and agricultural production
- NGOs that support community initiatives, such as stimulating participation and involvement at the grassroots level, lobbying, capacity building, community strengthening, and human rights' monitoring and protection.

Of the 13 departments and 55 municipalities visited, the team conducted interviews with 14 NGOs whose members reported involvement in mediation efforts. (See Table 4.)

INVENTORY OF MEDIATION PRACTICES

TABLE 4
NGOs by department

| Department | NGO |
|----------------|---|
| Guatemala | <i>Centro de Acción Legal en Derechos Humanos</i> <i>Fundación PROPAZ</i> <i>Centro de Acción Legal Ambiental y Social de Guatemala</i> |
| Quetzaltenango | <i>Asociación Nuevos Horizontes</i> <i>Asociación de Justicia y Multiculturalidad</i> |
| Totonicapán | <i>Centro para el desarrollo Rural de Occidente</i> |
| El Quiché | <i>Asociación Derechos Humanos del Ixcán</i> <i>Centro De Apoyo por la Justicia Penal y Resolución de Conflictos</i> <i>Comisión Solidaridad y Derechos Humanos: Puente de Paz</i> <i>Red de Derechos Humanos "Mártires de la Resistencia" de la primavera del Ixcán</i> |
| Huehuetenango | <i>Grupo de Apoyo Mutuo</i> <i>Asociación para la Educación y el Desarrollo</i> |
| Izabal | <i>Organización de Negros de Guatemala</i> |
| Alta Verapaz | Mercy Corps |

Most NGOs do not document or systematize their mediation experiences, thus hampering our efforts to identify best practices. All the abovementioned NGOs enjoy social recognition in their respective fields, both locally, regionally, and nationwide. In some cases, they have even received international recognition. They fulfill an important role in civil society as social actors promoting participation and building democracy and a culture of peace.

Legal Clinics

The lawyers who work in the legal clinics set up by two universities (San Carlos and Rafael Landívar) mediate in cases either at a clients' request or via referral. They mediate civil, family, labor, trade, and criminal cases. Mediation is part of their professional practice and aims to avoiding cumbersome and expensive court proceedings. These services are provided free of charge, particularly to the poor.

Local Indigenous Governments (*Alcaldías Indígenas*)

Indigenous officials are the rural areas' community authorities who are designated in compliance with Mayan tradition and culture. Their functions and rules are recognized and legitimized by their communities. They perform their public service as volunteers. They are called to intervene in all conflicts between neighbors or families, and they generally reach peaceful and positive solutions, thus preventing both violence and the need to engage official channels. The application of this form

of justice is governed by Mayan Law and international provisions included in the International Labor Organization’s (ILO) Agreement 169 (which provides for the rights of indigenous and tribal peoples). The types of cases they mediate are family, civil, boundary, labor and, to a lesser degree, criminal issues.

Community Centers for Conflict Resolution

These are community organizations that seek to promote the culture of peace and the intervention of third parties to resolve conflicts in communities. Sixteen such centers operate in municipalities and villages in the departments of Sololá, Escuintla, Alta Verapaz, Suchitepéquez, Quetzaltenango, Totonicapán, Chimaltenango, and Huehuetenango. The centers are staffed by community members who are recognized for their hard work, good behavior, and sense of responsibility.

These community members have all been trained as part of the USAID’s Administration of Justice program in Guatemala and were subsequently appointed by their communities’ assemblies, or by the Council of Elders for a given period of time (USAID n/d). They have proven to be effective in preventing and solving community and neighborhood conflicts.

Other Organizations

Several of the practices that we studied take place in organizations that call themselves trade, ethnic, gender, environmental, or social development organizations. They generally—although not exclusively—resort to mediation either internally or outside the organization as part of their “official” programs or as a cross-cutting component of their conflict management initiatives.

Some of these organizations clearly identify themselves with the interest or right of one of the parties, such as *Coordinadora Nacional de Organizaciones Campesinas* (CNOC, National Coordinator of Campesino Organizations) or *Coordinadora Nacional Indígena y Campesina* (CONIC, National Coordinator of the Indigenous and Campesinos) and the Mayan and Indigenous Defense Councils. Although their practices cannot strictly be called mediation, the respondents that we interviewed maintain that they are mediators because they intervene in social conflicts that concern the social sectors they represent (peasants, indigenous peoples, and women).

Departmental Roundtables

Although all departmental roundtables, or *‘mesas’*, are commendable for their efforts, the Alta Verapaz Land Conflict Roundtable stands out for its high level of credibility and trust among its members (both state and non-state) and the population at large (both within and outside the department of Alta Verapaz). It is a network of civil society and State institutions that are currently operating in Alta and Baja Verapaz. It is a fine example of service, transparency, impartiality, inclusiveness, tolerance, and solidarity.

INVENTORY OF MEDIATION PRACTICES

The roundtable's aim is to reduce conflict in the department through concrete actions to resolve land and labor conflicts and prevent evictions. Established in 1996, it has made several valuable contributions by helping to solve various types of conflicts—with an emphasis on land issues—through mediation. In doing so, it has prevented future acts of violence. It defines mediation as the “opportunity to find a solution to a conflict without the need to involve the courts.”

The basic functions of this roundtable are:

- Informing and advising the public about procedures to find solutions to land conflicts
- Educating the public and the *mesa's* member institutions about the topics of negotiation and land issues in the country
- Serving as the link between peasants, land owners, and the governmental and civil society sectors
- Providing follow-up and verification of the cases for which their services are used
- Facilitating and mediating in coordination with the Land Conflict Office at the request of the parties.

Among the multiple cases served and solved by this roundtable, the Sacoyou dispute regarding labor liabilities and land ownership is worth mentioning. In this particular case, initial charges were brought before a court. When no solution was found, the case was sent to this mesa where proceedings emphasized dialogue and reconciliation among the conflicting parties—and the case was then resolved.

Defensoria Maya (Mayan Defense Council)

This organization's mission is to “promote and defend the rights of the Maya people, the rights of the indigenous people, and the human rights of the Guatemalan people at large, in order to build a new multicultural and multilingual state.” (*Defensoria Maya*, 2001a)

Established in 1993, the *Defensoria Maya* operates as a non-governmental, non-political, non-profit, and non-partisan institution. It provides a political space to bring together representatives from communities of Mayan descent, to discuss issues such as how to design and launch initiatives to become a new state or how to develop practices and policies free of racism and discrimination. It is represented in 13 indigenous regions nationwide. Its practice is supported by Mayan law and inspired by spiritual guides or elders who enforce their community values, cultures, and vision of the world. Its work is characterized by a strong spiritual content.

Defensoria Indígena (Indigenous Defense Council)

This organization describes itself as a “non-profit, non-governmental civil organization made up of a network of community organizations whose principal

INVENTORY OF MEDIATION PRACTICES

aim is to defend the civic, economic, political, cultural and social interest of indigenous peoples by strengthening indigenous authorities, providing human rights and mediation training, regulating, reconciling and preventing private, family and community conflicts, as a contribution to local and national reconciliation and the strengthening of justice that will result in respect, equity, harmony and balance.” (*Defensoría Indígena*, 2003).

Established in 1988, this organization is highly recognized by judicial staff, mayors, community NGOs, and leaders. It works with a participatory methodology in the framework of the Peace Accords and ILO’s Agreement 169. It promotes the creation of a pluralistic judiciary that brings together the Mayan and official juridical systems to fully enforce indigenous peoples’ right to justice.

The *Defensoría Indígena* applies its own guidelines to the transformation of conflict, by promoting dialogue, negotiation, and reconciliation among private individuals, family members, neighbors, workers, organizations from a community, official authorities, and between community and State authorities. Its mediation efforts are conducted on the basis of Mayan philosophy.

Institutional Mediation Methods

Mediation practice in Guatemala reflects the country's ethnic and cultural diversity. However, there are some clear trends and common characteristics. While there are numerous efforts in Guatemala to mediate conflict, one clear finding is that the organizations surveyed in the 13 departments commonly use **third-party** mediation and intervention in conflicts.

For analytical purposes, we classify these trends in two categories: institutional and traditional. As mentioned earlier, many of these practices involve components from both types, which makes it difficult to clearly distinguish between them. However, in general the nature of the practice itself and the social platform on which it takes place has allowed researchers to classify them as predominantly falling within one of the two categories. This section explores the institutional practices, and the next section discusses the latter.

Institutional Practices are carried out by entities that undertake mediation from an institutional perspective. Their organizational strategy includes actual mediation of conflicts as well as systematizing their experiences, providing theoretical and practical training, increasing recognition of mediation, strengthening alliances, and improving organizational capacity in the area of mediation. In addition, their efforts are complemented by the preparation of publications and teaching materials, organizing trainings, and signing agreements to cooperate with similar organizations.

The main institutional efforts that we identified include:

- Publishing and printing teaching aids to facilitate the understanding and use of mediation. The purpose of these activities is to disseminate information and create awareness about mediation.
- The coordination of efforts among civil society and community organizations.
- Strengthening ties with community organizations and assisting them in resolving community conflicts and providing mediation services.
- Providing training for grassroots groups and other civil society organizations on alternative dispute resolution methods.

The researchers identified several components in the mediation methods used by most institutions that practice mediation in Guatemala: the mediator's profile and functions, the conditions under which a case is selected, the rules that govern the process, how communication is managed, confidence building, the actual steps taken, managing disagreement, managing the process of development agreements, and the logistical and physical conditions that exist.

Mediator Profile

Training

Specialists or formally trained mediators are rare in Guatemala, due to several factors:

- Most Guatemalan organizations are not exclusively devoted to mediation. Consequently, training time in mediation takes away from other institutional tasks.
- Most mediators do not perform this function full-time.
- There is no professional accreditation for mediation in Guatemala.

Generally, there are two types of trained mediators: 1) predominantly legal or other mediation-related training and education (social workers, psychologists, sociologists, educators, administrators, theologians or religious leaders); or 2) specialized mediation knowledge is favored even in the absence of university-level professional training. Most mediators in the latter category lack systematic training in mediation. They have attended mediation workshops or seminars, or at best specialized short courses. Consequently, formally trained mediators with some sort of degree in the topic are extremely scarce. Indeed, our survey recorded a low percentage of university professionals who are mediators. In some organizations mediators have no formal training in either of the two categories mentioned above.

Main sources of specialized training among survey respondents

- INTRAPAZ–Universidad Rafael Landívar
- OEA-PROPAZ (Fundación Propaz)
- MINUGUA y PNUD
- ODHAG
- Asociación del Desarrollo por la Paz (ADP)
- Centro de Mediación Internacional
- Defensoría Indígena
- Defensoría Maya
- ALD
- Contierra
- Fundación Libra
- Organización Internacional del Trabajo
- WOLA (Washington)
- Instituto Cooperativo Interamericano (ICI), Panama
- Pastorales Sociales
- Instituto Centroamericano de Administración de Empresas
- Universidad para la Paz
- Unidad de capacitación en mediación del Ministerio de Trabajo y Previsión Social

Mediator background

Two major trends were identified in terms of the background of mediators and their relationship to the parties. Some practices value the mediators' impartiality toward the

INSTITUTIONAL MEDIATION METHODS

parties in conflict. Conversely, others value the mediators' commitment to and involvement in society.

Of course, there are practices such as Judiciary's Alternative Dispute Resolution Unit and the Catholic Church, which aim to strike a balance between both, based on the assumption that the mediator's familiarity with an issue will make the parties more open to building relations of trust. However, closeness to the issue must be avoided if it might become a procedural impediment. Consequently, the Catholic Church has adopted a policy of refraining from mediation when one of the parties to the conflict is the Church itself.³

Many mediators hold a vested interest in the outcome of the process or are identified with a specific social network. Among them are human rights organizations, such as the Human Rights Ombudsman, the Social and Land Pastorals, the President's Advisory Commission for Human Rights, the Legal Action Center for Human Rights, as well as other organizations whose specific goals are determined by the nature of their mission (such as the Land Conflict Office and the National Coordinator of Campesino Organizations). Most mediators operating from an organizational platform also belong to that particular community.

In all instances, it is important that the mediator have institutional and community support and credibility, either as a point of reference or because the mediator is a recognized community member. Nevertheless, not all mediators live in the particular community. For instance, in cases when collective conflict arises among community groups, some respondents favored the intervention of a third party from outside the community.

Ethnic and gender considerations

Gender and ethnic considerations are important not only in terms of quotas or percentages of men to women, or indigenous to mixed race mediators. They also demonstrate the mediators' respect for diversity and equality of values and rights. In this respect, most organizations—mainly NGOs, the Catholic Church, civil society organizations, and State agencies—emphasize respect for diversity and equity. However, it is not an indispensable requirement to be trained or educated in human rights, gender, or cross-cultural issues, except in those organizations that deal with issues of this nature.

Nonetheless, the relative proportions of different types of mediators may indicate some important trends, particularly in terms of gender equity in hiring. Although information is incomplete, men conduct most mediation. Furthermore, it is generally more appropriate for mediation to be conducted by mediators from the community's

³ An interesting criteria used at U-RAC when choosing mediators is that, to the extent possible, neither lawyers nor notaries are acceptable candidates because their legal focus may narrow their view of the negotiation process.

ethnic group, though this principle is not enforced in all organizations that practice mediation.

As mentioned earlier, indigenous, human rights, and women's organizations as well as the Judiciary have all defined clear policies with respect to gender and ethnic equity. Within the Alternative Dispute Resolution Unit in particular, male and female mediators are found in equal numbers. Others work with people of different ethnic origin, such as the Land Conflict Office, although the institutions lack explicit guidelines that prescribe the mediator's ethnic background.

Mediator functions

Although in all cases respondents agreed that the decision to mediate must be adopted by the parties, there are two different thoughts about the mediator's role or degree of involvement.

On the one hand, we find practices where the mediator's role is non-directive, that is, the mediator analyzes the issue, facilitates, summarizes, paraphrases, supports, informs, organizes ideas, and provides questions, with the purpose of facilitating the process and promoting constructive communication.

Compulsory mediation often offers mediators with authority recognized as "benevolent". In these cases, practitioners will not favor either party in particular. Such is the case of the Judiciary's Alternative Dispute Resolution Unit and the USAID Justice Administration Centers.

We find "administrative" mediators primarily in cases of internal mediation within networks or organizations themselves. This is true in cases of corporate management and organizational directors and in the Evangelical Church.

In other practices, mediators, to the best of their ability, play a much more directive role. Using the techniques mentioned above, the mediator promotes agreed upon options, builds scenarios and even deliberately proposes new options, even if the final decision is left to the parties. This style usually is used in organizations where the mediator's functions are clearly understood as being directive, and to assist in identifying options together with the parties.⁴

Technically speaking, this practice may be criticized. This study was unable to determine the extent to which mediation in Guatemala is directive, and at which point in the process. However, it appears to happen rather frequently and particularly when the mediator is not a specialist and the conditions for the conflict require or allow the mediator to adopt a more directive role.

⁴ For example, *Unión de Trabajadores de Quetzaltenango, Ministerio de Gobernación.*

Rules of Mediation

The rules governing mediation are very similar in all the practices reviewed, though the way they are enforced varies depending on the nature of the organization, the goals it pursues, as well as the nature, degree, and type of conflict at hand.

The first rules that are applied are the case admission criteria, determined by individual organizations and described below. Generally, basic attitudes that are required for mediation are friendliness, commitment to non-violence, ability to listen to others, respect for the agreements, and the mediator's impartial stance during the process.

Other organizations explicitly require that all information be verified. At the San Marcos Social Pastoral, some cases require that the security of the parties and the mediator be guaranteed. The Association of Petén Forest Communities analyzes the conflict as a function of a “conflict scale” as an instrument to determine priorities and intervene in specific cases.

How are rules created? Most rules stem from universal mediation principles. Others are specific to institutions and generally refer to work procedures and management of particular situations. However, interviewees repeatedly mentioned the need to design and validate rules together with the involved parties. The Ministry of Labor, the Alternative Dispute Resolution Unit, and the Escuintla Conflict Resolution Center have evolved highly specific rules.⁵

Most organizations will not change their rules to accommodate ethnic diversity, with the exception of the Alternative Dispute Resolution Unit and *Oxlab'uj Tz'ujul Taq'a Maya Q'eqchi'*. In fact, changing the rules to accommodate ethnic diversity may be understood as a type of inequality. This is, for instance, the position of the Mesas, CNOG, and the Association of Displaced Persons from Petén. However, our interviewees repeatedly alluded to efforts to respect local culture.

Conditions for Accepting Cases

Selection Criteria

A fundamental component of the various mediation methods is the way in which cases are accepted and services are provided. Most of the organizations under review have set certain minimum acceptance and service selection criteria.

Cases are admitted in basically three ways:

1. At the initiative of one or all of the parties. In most cases, a request by all the involved parties is preferred. However, in cases brought before the Human

⁵ For instance, U-RAC fixes a limit for the number of times a party can to appear for mediation. If the parties do not appear after three chances, the case is closed.

Rights Program at the San Marcos Archbishopric, a request by one of the parties suffices.

2. By referral.
3. By delegation or directly derived from a prior process. This is a channel that is most common in the Judiciary's Alternative Dispute Resolution Unit.

Some institutions conform to established official state policies when deciding whether to accept or admit a case, such as the case for the Judiciary, the Public Ministry, the Ministry of Labor, the Land Conflict Office, and the Human Rights Ombudsman, among others. In cases requiring internal mediation by and for members of an organization, the parties must belong to the organization, as in Evangelical churches and National Coordinator of Campesino Organizations.

Other organizations have relatively clear criteria that they enforce with flexibility, depending on issues such as convenience and whether it is possible to manage a case. In these situations, it is especially important to determine whether the cases fall in the organization's area of interest. For example, *the Centro de Acción Legal Ambiental y Social*, which deals exclusively with environmental conflicts, considers whether the conflict is "mature", that is, the conflict must be current, and the parties must express their need for a solution. This organization also performs a cost-effectiveness study of the mediation request to determine if it has the financial conditions and resources required to intervene.

Finally, some practices stand out as not discriminating among topics and consequently cover a wider range of conflicts. In this respect, the President's Advisory Commission for Human Rights delegation in Huehuetenango has managed the greatest diversity of topics.

All mediation criteria agree on the need for the parties to willingly participate in an assisted negotiation or mediation process. Although all our interviewees agreed to the importance of these criteria, in some cases (such as those seen by the Ministry of Labor or the Judiciary), the parties may be compelled to appear. In these cases, mediators underscore the importance of the parties' willingness to solve the problem during the process.

Another crucial aspect that is considered is the organizations' ability to determine whether the case will be admitted or not. Two distinct examples exist in the area of land-related conflicts. On the one hand, the Land Conflict Office's mandate allows it to accept all cases meeting the conditions established for its jurisdiction. On the other hand, the Alta Verapaz roundtable will submit each case to a session wherein members vote on the case's eligibility.

INSTITUTIONAL MEDIATION METHODS

Despite these general trends, each organization also enforces its own criteria for accepting cases. (See Table 5.)

TABLE 5

Conditions for admission of mediation cases by State and government organizations

| Organization | Conditions |
|---|---|
| U-RAC (Judiciary's Alternative Dispute Resolution Unit) | <ul style="list-style-type: none"> ■ Offense subject to mediation pursuant to Articles 25 and 25-qater of the CCP ■ Ability to attend mediation sessions; signing of confidentiality agreement between the parties; no firm criminal sentence |
| Ministry of Labor | <ul style="list-style-type: none"> ■ Labor conflict between worker and company ■ Direct channels exhausted (negotiations within the company or organization) ■ This step is a requisite before filing charges |
| CONTIERRA (Land Conflict Office) | <ul style="list-style-type: none"> ■ Only for land conflicts, request by one of the parties ■ CONTIERRA obliged to provide service ■ Limited geographic reach |
| PDH (Human Rights Ombudsman) | <ul style="list-style-type: none"> ■ Human rights abuse or threat thereof ■ Collective conflicts involving the State given priority |

Commitment by the Parties

One of the most important aspects of mediation is to have clear commitments signed by the parties at the beginning of a process to create a climate of security and trust towards the mediator and the process itself.

The initial commitment may be stated as the willingness to support the search for results that benefit the parties in conflict. However, this commitment is neither consistently established nor understood in the same way by the parties. One of the mediators interviewed described the importance of “not expecting that the conflict will be solved immediately”, reflecting the danger that lies in creating false or non-viable expectations or ensuring certain results.

Other practices seek to create a willingness to facilitate dialogue, provide support and guidance, and manage information confidentially (or at least, refrain from unnecessarily disseminating information). Others commit to provide support through research and walk the parties through the agreement implementation process.

Other mediators expressed the spiritual guidance that may bring parties together. At an Evangelical Church in Quetzaltenango, the mediator acknowledged mediating conflicts among members of its congregation. He added that in all cases, the most important commitment in solving the conflict is the desire to “please the Lord” based on what seems appropriate to do or not to do from the church’s doctrinal stance.

Likewise, the Huehuetenango Social Pastoral uses both juridical information and the Bible as sources of reference. If the cases so merit, the mediator will try to respect the various religious beliefs, since occasionally the parties to the conflict may consider Nahuales (spirits protecting the individual) and the Mayan calendar to be important references.

As mentioned in the theoretical framework, a major component of mediation is a commitment to **impartiality** by the mediator. However, in the practices under review, such impartiality is clearly limited and has curious implications.

Most respondents value impartiality though they do not all believe in “disinterested” mediation. This is, for instance, the case of human rights, indigenous, women, and peasant organizations where institutional interests clearly tip the scale toward the defense of the rights of one of the parties. During the mediation practice itself, however, they try to adopt an objective position to the greatest possible extent when assessing the situation and facilitating mediation and aim to make both parties winners.

Referrals

According to our data, in almost every case, if a case is rejected because it does not meet the organization’s requirements or is not appropriate, almost all of the institutions refer the case to other organizations. In these cases, some organizations such as the Judiciary and the Ministry of Labor refer the case directly; in other cases where no direct link exists between the institutions, the parties are told where to take their case for assistance.

Initial Guarantees

Confidentiality: It is generally accepted that a mediator should never divulge information used during a mediation. This principle is followed in mediation practice in Guatemala. The reasons for this guarantee may vary but the principle remains the same. Some argue that this guarantee inspires respect for the process itself and therefore not abiding by it would amount to betraying the process.

Some organizations, including the Attorney General’s Office, require mediators to give the parties their unconditional guarantee that information will not be disclosed publicly but leave it to the parties to decide what information they want to disclose. Others go further and require that each party give this assurance to each other as well. At U-RAC/OJ the parties sign an initial mandatory confidentiality agreement, although in particular instances (as in Sololá) the agreement may be signed at the end of the process if this is established at the onset.⁶

⁶ Often, parties refuse to sign any initial documents. However, the confidentiality agreement is a requisite and is part of the case documentation.

Explaining the benefits of mediation: Once the parties are involved in mediation, several factors may foster their continued participation. First, several interviewees said that parties are more likely to continue mediation when the significance of mediation is made clear from the beginning of the process. In most cases examined in this study, it was considered necessary to educate the parties about mediation throughout the process. Paradoxically, another factor that tends to keep parties at the table is the knowledge that the process may be interrupted at any time if they so decide. Even when mediation is mandatory (the Alternative Dispute Resolution Unit, Ministry of Labor), the parties may reject the process and accept the legal decision. Another factor that can ensure the commitment of the parties is appealing to a sense of respect for the mediator's work and function. This is particularly true in the case of church leaders, especially in the Catholic Church.

Steps in Mediation

The organizations surveyed identified two sets of steps that are followed during a mediation process, varying by the organization's flexibility. Although not exhaustive, the following list details some of the steps followed by the most flexible organizations as they begin to address a case. These steps are generally followed by the Human Rights Ombudsman; the Ministry of Labor, the community centers; the Government; the legal clinics; civil society; the Social, Justice and Land Pastorals; the Judiciary's Mediation Centers; *Fundación PROPAZ*; the *Centro de Acción Legal en Derechos Humanos* (the Center for Legal Action for Human Rights), and the *Oficina de Derechos Humanos del Arzobispado* (the Archbishop's Office for Human Rights).

- Overall appraisal of the conflict
- Call to a joint session with the parties
- Introduction of the mediator, the parties, and information about and acceptance of rules of procedure
- Mediation to guide the parties to develop their own solution
- Dialogue and alternative versions are heard
- Mediator brings the parties closer together
- Parties propose alternative solutions
- Parties reach agreements
- Mediator prepares session minutes and a formal agreement is written in a session report, document, or book. Agreements are not always recorded in writing; in some cases, the procedure concludes with a verbal commitment linked to personal honor and dignity.
- Closing of mediation, mediator reminds the parties of their commitment to enforce the agreement and offers follow-up assistance.

For regular cases, the process requires one to three sessions. In exceptional circumstances, given the magnitude and dimension (and normally the collective

nature) of the cases, they may last several months or even years and require significant financial and time outlays.

Some organizations follow a less flexible approach and try to run shorter mediations, such as *Parcialidad Herrera*, some community centers, the Sololá Indigenous Municipality, the *Centro para el Desarrollo Rural de Occidente* (Center for Western Rural Development), and *Coordinadora Nacional de Organizaciones Campesinas* (National Coordinator for Campesino Organizations). These organizations follow the steps listed below:

1. A call for each party to present their version of the conflict and their position
2. Parties propose acceptable solutions for both
3. Mediator discusses them with each party separately
4. Mediator guides the parties as they examine other perspectives
5. Parties create agreements
6. Mediator documents agreements in writing.

Managing Communication

Most organizations recognize that using local languages is fundamental for better communication, and therefore great importance is given to local language skills. Some organizations—like the *Centro de Acción Legal en Derechos Humanos* and *Fundación PROPAZ*, departmental governments, and trade associations—recruit interpreters and translators. Other organizations are staffed by bilingual mediators in both Spanish and the local language. They are aware of the importance of communication for the parties and that speaking their language increases trust. This is true for the Alternative Dispute Resolution Unit, community centers, ethnic associations, and the Catholic Church. Other institutions like the Human Rights Ombudsman and the Ministry of Labor reported hiring interpreter services only when one of the parties cannot negotiate in Spanish.

Another important component in mediation communication is how emotions that result from the conflict are managed, as they may result in violence between the parties. Some techniques emphasize channeling emotions into building proposals. Other techniques seek to neutralize expressions of violence.

The first group of techniques emphasizes respect and the value of active listening in all circumstances. These include: active listening among mediators and the parties; managing sessions constructively to channel ideas and prevent direct confrontation; catharsis; and a special technique described by the Alternative Dispute Resolution Unit that requires all parties to organize their ideas in writing before they express them verbally. At the end of the mediation process, the parties may destroy their notes as a sign that they have resolved their conflict.

INSTITUTIONAL MEDIATION METHODS

Techniques directed at neutralizing emotions seek to calm the parties down and help them move on to a new stage. The techniques include calls for attention, “time outs” (or suspending the exercise for a few minutes before trying again), suspending sessions and scheduling a new meeting, the expressed request to change a given attitude, and even religious encouragement and prayer.

When asked about ways to build trust between the mediator and the parties, we received a range of responses, including a spiritual component in the religious context, such as group prayer or quoting the Bible. Another way to build trust is by approaching the parties independently, appealing to their sense of harmony, and inviting them to find acceptable solutions to the situation by themselves. Confidence in the mediator is very important for the mediation process itself. Confidence between the parties is built throughout the process and with the help of a mediator who should be neutral and impartial and continuously appeal to the goodwill of the parties. Some argue trust is also built when mediators report other similar successful cases, as was mentioned by the Quetzaltenango Workers Union.

Managing Disagreement

If at some point during the mediation process discord between the parties jeopardizes the reaching of an agreement, the mediator may call for a reflection by both parties, and propose a recess so each party can take “time out.” If when the session resumes the differences persist, the mediator will suggest suspending the session and call the parties to another meeting in an attempt to help the parties organize their arguments, hoping that the conflict will be solved later.

Managing Agreements

In general, responses signaled that agreements are respected and executed by the parties according to each one’s share of responsibility. Some of the organizations surveyed—like the Social Pastors, *Mesas*, the Ministry of Labor—have a policy to monitor compliance with the agreements through consultation with the parties, assistance, and verification. In cases mediated by the *Centro de Acción Legal Ambiental y Social*, the agreements are presented at a public meeting in the community, and local authorities and leaders formally approve them. All interviewees agreed that in most cases, commitments by the parties are fully enforced without requiring a new process or involving new institutions.

Logistics and Physical Conditions

Mediation usually requires a private room, well lit and ventilated, that includes tables for meetings, paper and supplies, and basic equipment. Other necessities are toilets, telephone, and other resources directly related to the job at hand. (For instance, for land conflicts, geographic positioning systems and land surveying are important investigative tools.) Not all organizations surveyed have appropriate facilities for undertaking mediation, especially when we consider the need for adequate space,

lighting, ventilation, furniture (a round table and chairs), basic services (restrooms, drinking water, coffee), and communication facilities, all of which create a better environment for dialogue and understanding between the conflicting parties. For instance, the Judiciary's Mediation Centers try to create appropriate working conditions, although the space provided in mobile courts is sometimes restricted and uncomfortable. Some NGOs and religious organizations provide better conditions for mediation.

Not only do most organizations lack these basic facilities, sometimes mediation has to take place on site in remote rural areas or other difficult locations, such as in an open field or in squatter settlements.

Documenting Progress and Systematizing Cases

There are three major ways that organizations record case progress. First, some organizations draft minutes for each session whether agreements are reached or not (as in the Ministry of Labor). In some instances, as in the *Asociación de Mujeres Ishquik* (Association of Ishquik Women) minutes are usually signed. Second, while other organizations do not draft minutes, they keep a record of cases and related data. These documents are not always signed by the parties until an agreement is reached. Third, various Catholic and Evangelical church organizations do not view it as necessary to sign written session minutes.

Although most organizations record case data, very few institutions systematize information. Documentation kept by the Land Conflict Office, the Human Rights Ombudsman, the Judiciary's Alternative Dispute Resolution Unit, and the Alta Verapaz roundtable stand out in this respect.

Traditional Practices in Third-Party Intervention

Traditional practices based in Mayan law and used for third-party intervention and negotiation are those efforts that are promoted by individuals, authorities, and community organizations for the resolution of conflicts within indigenous communities. These practices find their inspiration in the customs, habits, and traditions of the Mayan cultures to which they belong. These initiatives include:

- Coordinating with municipal authorities to promote the respect and enforcement of Mayan Law, with the support of the Defensoría Indígena (Indigenous Defense Council)
- Training local officials and other recognized authorities to perform mediation tasks within their communities
- Publishing and printing materials dealing with the concepts of Mayan justice and the relationship between Mayan law and positive law
- Coordinating with the justice system to recognize and comply with Mayan law
- Coordinating the activities of indigenous organizations and State agencies to promote the training of community and judicial staff. For instance, the *Defensoría Maya* (Mayan Defense Council) has signed agreements with the judiciary to inform the public about Mayan law.
- Training indigenous organizations and community groups on mediation and its benefits
- Lobbying authorities to use and recognize Mayan law
- Lobbying State authorities for the recognition of and respect for Mayan Law.

Characteristics of “Traditional” Interventions

Discussing traditional ways of third-party conflict intervention in Guatemala requires using an essentially different terminology from the Western concepts, despite some similarities. To begin with, the theoretical boundaries between mediation, conciliation, and arbitration are not defined in the same way. Generally, leaders from each community can use any of the three practices and in many cases their practice includes elements from all of the three categories, or they may move from one category to another at different stages of each process.

TRADITIONAL PRACTICES IN THIRD-PARTY INTERVENTION

The spirit of these approaches is captured by the leaders who put them into practice. However, some local leaders who were surveyed include a number of mediation tools that they learned or acquired in training as part of their technique. In this sense, traditional and western concepts are merged, and, although some “imported” tools are used, the essential nature of each group’s philosophy is preserved. As a result, in many of the cases studied, when these techniques are put into practice they are easily mistaken as lacking theoretical cohesion. This might be superficially attributed to the absence of formal training when in fact exactly the opposite occurs: there is a clear philosophy driving the process that is simply incompatible with the Western scheme.

These practices reflect a different vision of mediation that in Guatemala’s case is characterized by the following components:

The use of Mayan philosophy and values as ideology: Although strictly speaking there is no theoretical framework for conflict intervention, indigenous community leaders build on a system of philosophical principles concerning life, the universe, as well as a set of governing universal laws and principles. These principles are applied to all spheres of life, including problems in the community.

This vision sees conflict in a different light than Western theory. When thinking about conflict, it is important to note that there are distinct types of conflict (see for example Lederach 1996). For instance, in some contexts conflict is understood as violent confrontation between the parties, that is, conflict becomes synonymous with war or violence, and all other situations are simply called problems. Yet a different concept of conflict may be those situations that create an imbalance in the natural order. In this case, conflict is understood as synonymous with what the theory calls a “crisis”. In Guatemala, there are different cultural ways of envisioning conflict, as well.

From this standpoint, the main function of the third party should be finding a peaceful solution that satisfies the interest of the community. Accomplishment of this goal is therefore more important than the method chosen. It also implies a conciliatory function. In this respect, the search for harmony between the parties and compensation for damages stand out in an intervention process based on Mayan philosophy.

The use of Mayan law as a regulatory framework: The appointment and recognition of community authorities in indigenous communities who are allowed to intervene in conflicts is based on Mayan legal principles for each ethnic and language group. This law is not built on the foundation of constituent written prescriptions, as law imposed on the people, but rather on principles that are transmitted and validated orally and which are recognized by the community. No Mayan juridical system distinguishes between mediation, conciliation, and arbitration in a formal

TRADITIONAL PRACTICES IN THIRD-PARTY INTERVENTION

manner. Rather, they give authorities or leaders the ability to determine the most appropriate ways to find a solution to their problems.

Legitimizing a code of ethics: Third-party interventions in indigenous communities are provided not only with a different juridical and philosophical framework, but also with an implicit code of ethics that values and assesses conflict as a function of principles legitimized by the community and local authorities.

Spirituality as a reference point: Third-party practices within an indigenous community are also built on ladders that link them to the spiritual realm. Anything that disturbs the natural balance of life also disturbs the people's internal peace and their relationship with others and the Supreme. Likewise, the Mayan calendar, the *Nabuales*, and Mayan spiritual and ceremonial practices may foster or hamper a conflict solution process.

Below we present how some of these features appear in an intervention process.

Third-Party Profile

Most interviewees said that their main source of training was their Mayan spirituality, their cross-generational education, and their training in Mayan law. However some have also received training from INTRAPAZ, *Fundación PROPAZ*, USAID's Justice Centers, and *Defensoría de la Mujer*.

In all of the cases reviewed for this study, the mediators closely linked to the parties or the community. Instead, a hierarchical order exists within the communities (except in the service rendered to non-indigenous persons in Zacualpa). In these practices, more so than in institutional practice, the third party's social commitment seems more important than his or her impartiality. Generally, the third party is not a fulltime mediator but also a local tradesman, farmer, or local government employee. The fact that they are active members of their communities is precisely the source of their credibility.

Although no statistics were compiled, services are generally provided free of charge. However, some leaders are given gifts, in particular at the end of the process. In addition, in many localities it is customary to organize a ceremony on an appropriate day according to the Mayan calendar. The expenses are taken care of by the parties and costs fluctuate depending on the patron saint, the place, and the holiday calendar.

Most if not all mediators are men, as in the *Defensoría Indígena K'ché*, indigenous mayors, and the *Defensoría Maya*. In *Parcialidad Herrera*, for instance, women lack the right to participate because men are the sole land owners.

Third-Party Functions

Despite many differences, interviewees agreed that the final decision in the mediation process is made by the parties. At *Defensoría de la Mujer*, agreements are subsequently reported to the judicial branch. Traditional practice is usually more directive than institutional mediation. It provides guidance, assistance in creating the right conditions, and also can pose leading questions. The third party is understood as a catalyst of the parties' feelings and therefore becomes more leading than in most institutional practices. In Totonicapán for instance, the parties usually listen to their guide first and only then will they give their opinion. This is not understood as bad. Instead, it serves to guide the parties from the onset.

With regards to managing ethnic diversity, respondents assured the team that belonging to a given ethnic group makes no difference because all parties are treated with respect regardless of their ethnic origin. What matters are not ethnic differences, rather the problem that the parties seek to resolve.

Conditions for Accepting Cases

Third-party intervention may or may not be compulsory depending on the seriousness of the issue and the decision of local authorities. However, in a certain way, asking the advice of the elder and local authorities also implies a duty and responsibility, even when the request is made voluntarily. Most practices under review are only offered to community members. However, in the Zacualpa indigenous municipality even the mixed-blood population may tap into the services of the local indigenous officials.

When the parties arrive, the leader or third party jointly commits to impartially manage the affair and assist the parties in finding a solution to the problem. When third-party services are not appropriate for dealing with the issue, each conflict will be addressed on a case by case basis. In some cases, the group will decide where to go, while in others the third party will send the parties directly to the appropriate court. Overlapping competencies is sometimes an issue. However, organizations generally try to coordinate with local leaders to mutually refer cases and avoid competition among themselves.

Initial Guarantees

Discretion is an important guarantee in these processes, though it is generally an implicit one. In the same sense, records of negotiations and agreements are generally a formality rather than a way to force the parties into compliance. Written commitments are not an indispensable condition among Mayans. What counts is what is said, one's word.

A spiritual guide mentioned that in individual cases information was confidential. However in non-individual cases, the whole community is informed of the events.

TRADITIONAL PRACTICES IN THIRD-PARTY INTERVENTION

In collective conflicts, transparency and access to information is a way to guarantee the credibility of the process. Another interesting practice is the use of witnesses who are present when agreements are reached—a custom that was not singled out as part of institutional practices.

The permanence of the parties within the process is not cause for much concern especially when the parties come to the process voluntarily or if the elders decided they should attend. Respect for spiritual leaders is particularly influential to the process. Leaving the process after having sought their assistance would imply disrespect for the leaders.

Rules of Negotiation

Only minimal rules are enforced in traditional practice. They include: respect and friendliness, ability to listen, and a commitment to devoting time to the issue. In several cases, the power to investigate and compile information about the case is also important.

Traditional practices can occasionally conflict with the national legal system, particularly when dealing with petty crimes. However, traditional rules are set in a collaborative fashion by the community, elder councils, and leaders and in most cases they are a legacy of past generations. In the cases of *Parcialidades* and other spiritual guides, an elder council determines the rules that govern each case.

Steps in the Process

To start the process, the Mayan calendar is consulted to choose the most appropriate day for successful negotiation. The parties are then invited to attend. On the appointed day, after the greetings and welcome, attendants are asked to reflect using Mayan philosophy as a foundation, and the process is situated in the principles of balance and harmony. The parties are invited to seek peace for their feelings and words. Next they are listened to and asked what solutions exist (both separately and together). They are guided as they solve the conflict by themselves. The parties decide if their eventual agreement is written down.

In some cases, like *Defensoría de la Mujer*, all information is written down, together with an account of the events, a risk assessment, and the emotional and physical condition of the parties. Then parties are explained how the process will evolve and are told they can talk freely and listen to one another. At this point, they are asked what may be the possible alternatives to the solution. At the *Coordinadora Nacional de Organizaciones Campesinas*, a technical and legal investigation supports the mediator's work.

Managing Communication

To the extent that third parties are community members, they use the local language in their practice. In general terms, therefore, communication is not hampered by the

TRADITIONAL PRACTICES IN THIRD-PARTY INTERVENTION

inability of any of the parties to understand the local language. However, in the Zacualpa district, only one of the staff members speaks Spanish. This is a problem when one of the parties is of mixed heritage and speaks only Spanish. A similar situation is found in Defensoría de la Mujer because not all third parties there speak the communities' languages.

Many times the sheer presence of a community or spiritual leader on the site of events will suffice to calm down the conflicting parties because generally there is more trust toward them than toward "official" authorities. Third parties usually try to keep people calm and to create respect among the parties by calling for reflection and peace. Techniques like paraphrasing, decontamination, and writing ideas are seldom used. Instead, reaching agreement by interpreting events, focusing arguments on the issue at hand, and reaching solutions are emphasized.

A spiritual leader in Momostenango, when talking about the importance of correctly managing emotions and not just addressing the problem, said: "Because we look for the best options for the parties as well as the community, it is important to allow enough time so everybody expresses their feelings and not just their problems, and to say not only what they think but also what they have in their hearts."

In terms of building trust, it is generally thought that reaching out to the organization, entity, or individual with the desire to find a solution is in and of itself a sign of trust that stems from the third party's leadership, recognition of his wisdom, the services that he has rendered to the community, and his moral authority.

To create a climate of trust among the parties, the third party will initiate a reflection about the problem, which serves to get parties thinking about the importance of talking and the mechanisms that allow for dialogue. They also stress that seeking to solve the conflict is a way to reach peace and calm. Spiritual leaders said that they invoke the Lord and tell Mayan stories that bear some relation to the issue, explaining how the conflict was solved for the good of the parties and the community.

Managing Disagreement

When the parties fail to reach an agreement, they are asked to try again, to think about the problem and return some other day. When they come back, discussions resume. If there is no agreement, the community is asked about possible ways to resolve the conflict or somebody else is asked to assist in reaching a solution, usually an elder. In some instances when no agreement is reached, the third party will refer the parties to other institutions, including but not limited to the Land Conflict Office or the Judiciary.

TRADITIONAL PRACTICES IN THIRD-PARTY INTERVENTION

Managing Agreement

Agreements resulting from the process must be respected and complied with. The agreements are reached verbally because the committed word is fully legitimate. In some instances, the agreements are written down in a log to create a paper record.

Logistics and Physical Conditions

In only three of the organizations that we reviewed did we find physical infrastructure for interventions. Third parties most often worked in makeshift facilities, in any free room, usually a small one that is scantily furnished (with just a table and a few chairs), that fail to meet the minimum required conditions for the mediation process. In some cases, practice takes place in sacred Mayan sites, or in the third party's house. In six out of the organizations surveyed, the third party is not expected to travel to the site of events to mediate. The other organizations provide travel if so requested, when the lives of the people are at risk, or to solve land conflicts.

Ensuring Quality Mediation and Identifying Best Practices

In order to evaluate the practices that we studied, we have taken into account several criteria that were identified by the interviewees themselves. These were then compared with and analyzed in light of the ‘triangle of satisfaction’ (described earlier). Combined, this exercise allowed us to develop several criteria that might be used to identify best practices as well as determine what those practices are in Guatemala.

Which Criteria Identify Best Practices?

To identify best practices we took into account factors that stem from theory as well as the opinions that were offered during interviews.

Substantive Aspects

Although substance is of critical importance to all negotiation processes, most of our research focuses on the procedural and psychological aspects that are managed by the third party or mediator. Here we present some of the aspects related to substance. The mediator should:

- **Define the problem:** A good mediation starts by establishing a minimum agreement about the nature of the problem and having it accepted by the parties.
- **Establish concrete working objectives:** The parties involved in the mediation need to clearly establish their working expectations and goals and their willingness to find viable solutions to the conflict.
- **Reach agreements** based on the interests or needs of both parties.
- **Follow-up or monitor agreements:** Follow up can take place through consultations with the parties, by drafting concrete implementation plans, or even—for mediators with administrative or legal powers over the parties—through the mediator’s role as agreement compliance enforcer.

Psychological Aspects

- **Impartial mediators:** The parties recognize the third parties as credible and impartial to the process.

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

- **Promote sustainable capabilities in the parties:** The process can build the capacity of the parties so that they may continue negotiations should conflict emerge again in the future without having to use mediation or force.
- **Discourage the use of violence:** Both the mediator and the sponsoring organization must demonstrate respect for human rights and value peaceful coexistence above all other types of relationships.
- **Promote the building of trust:** This effort can take many forms, from transparency to establishing guarantees, and even includes the type of relationships built and the mediator's attitudes. At any rate, a fundamental component is the mediator's explicit intention to build confidence, in particular among the parties in conflict.
- **Ensure transparency.**
- **Foster participation.**
- **Promote a climate of respect** for people, rules, procedures, results, and agreements.

Procedural Aspects

- **Stress mediators' role as facilitator:** Mediators must assist in the process by creating conditions for communication that help gain a more clear understanding of the problem, its origin, and the alternatives.
- **Clearly set the rules:** Although the mediator may adopt a democratic attitude and be open to all remarks concerning the mediation process, it is important to establish a number of basic rules known to and accepted by the group. These can then be referred to in a transparent way when they are needed.
- **Communicate without adopting unilateral decisions:** If the mediator adopts one-sided stances, particularly in terms of the substantive aspects of the conflict, he or she is no longer a mediator, rather an arbitrator or an administrative decision-maker.
- **Respect and adjust to cultural variables** such as the ethnic origin, religion, gender, education, and socioeconomic level of the parties.
- **Ensure the parties' explicit willingness** to keep the process going, whether it is compulsory or not.
- **Meet the expectation of finding a quick solution:** This aspect basically has to do with the efficiency of mediation and getting the best results in terms of time and cost.
- **Respect and recognize dissent:** This is not only a key step in building trust but also, at the end of the day, it ensures that the final results fully reflect the interests of the parties.
- **Manage confidentiality,** according to each case. At the least, information should not be unnecessarily disclosed to parties that are not directly involved in the

conflict. When it is necessary to divulge information, it should be disclosed only by mutual agreement between the negotiating parties.

- **Make sure that the necessary facilities are available.**

Best Practices

This study found that the best mediation practices closely match Gernika's 'stages of mediation.' (1999) We organize this section around those stages, which consist of formalizing the process, agreeing to a process, telling the versions, constructing a proposal and agreement, and closing the process.

Phase I: Formalizing Process

The initial phase lays down the foundation for the rest of the process. In this stage we see the following components: a request for mediation, the initial commitments, and the conditions and rules that are required to effectively intervene in the conflict. Some of the best practices identified in this initial stage include the following:

Educate the public about mediation: In order to get to the first phase, it is important to disseminate information about mediation as an alternative dispute resolution method, in particular among people who are most susceptible to being affected by conflicts and who have greater demand for this service.

Establish clear criteria for accepting cases: Another important step toward effective mediation is to clearly understand what cases can be mediated and which ones cannot. The mediators' experiences highlight several criteria that can be used when assessing cases:

- The estimated financial, political, social, and material costs of mediation and if they can be afforded (especially since most mediation organizations in Guatemala provide their services free of charge)
- The conflict's seriousness or degree of polarization
- If the key problem can actually be resolved
- If the key issue truly matches the interests and objectives of the service-rendering organization.

The following statements, made by mediators, reflect the importance of addressing these aspects in the initial phase.

Before starting a mediation process, we must identify uniform criteria to allow mediators and the parties in conflict to do the best possible job. Gaining in-depth knowledge of the case allows one to establish strategies on a case-by-case basis.

— PDH-Escuintla

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

It is important to realize that some problems, disputes, and conflicts can be solved peacefully—without the intervention of judges—through dialogue and negotiation.

Mediation centers are mostly frequently visited by poor people but the well off also come in when they face problems. This demonstrates that problems arise in all social situations and mediation can be used with people and groups from different economic strata as a way to find solutions for all.

– U-RAC Quetzaltenango

Establish criteria when referring cases: A valuable practice is to have a database to support mediators and third parties in referring the parties when they cannot take care of a case.

Provide minimal logistical conditions: Mediation requires certain logistical conditions including a closed, calm, and comfortable space for debates, case recording and documentation devices, means to communicate with the parties and other organizations, transportation for the mediator or the parties, research equipment, and occasionally some resources for personal and health care.

Have a bibliography and other documents on hand: Given the lack of training in mediation in Guatemala, coupled with the lack of professional accreditation, it is also valuable to have a minimum bibliographic package for review and discussion by the organization's technical team. This effort can strengthen the appropriate and efficient use of various mediation methods.

Phase II: Agreeing to a Process

Many mediation practices in Guatemala overlook this aspect either because they have already established their procedures or because they begin to address the substantive issue directly. This pass over is generally due to the fact that many mediations start in crisis situations, and it is necessary to take care of immediate issues (like releasing hostages, clearing land occupants, or establishing a “no violence” agreement between the parties). Once these tasks have been accomplished, the true mediation process starts and it is often assumed that all the parties are aware of the reasons that brought them to that point. However, below we discuss some important examples of the benefits of making this phase explicit.

Explain the nature of the mediator's intervention from the onset: When starting to mediate, it is important for the parties to clearly define and determine what they expect from the mediator because mediation is often misunderstood due to lack of information. It is often not clear to the parties what the difference is between a mediator, an arbitrator, a conciliator, and a third-party intervener. This clarification is especially important in the case of institutional practices.

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

A mediator from the Ixcán community said that mediators must not take sides or make comments about either of the parties as this could lead to misunderstandings and cause the parties to withdraw. He adds that as a mediator, however, he has "learned to listen, to step in the other's shoes, to be understanding, to look for alternatives, and to understand that everybody wants to live in peace."

Trust in mediators is not only built on their professional expertise but also on their social commitment to the parties and the community. In individual conflicts, among small groups, or internally in an organization, the mediator's familiarity and credibility resulting from his or her everyday involvement in community and organizational life is an important factor. The challenge therefore lies in defining appropriate social profiles for mediators and not just focusing on academic training.

Presently, one of the most important features of mediators in Guatemala is their sensitivity toward ethnic diversity and gender equity, in particular when serving geographical areas with a predominantly indigenous population or where conflicts tend to include a strong ethnic or gender component (as in many land conflicts among peoples from different ethnic groups or intra-family conflicts). The best practices in mediation pay careful attention to and have great respect for this dimension in all their processes.

It doesn't help the process when mediators lean on their institutions. We have learned it is best to assume a responsible attitude and bear in mind that getting public recognition or appearing on television or in the newspapers as heroes that promoted dialogue is not the most important thing. Most of the time mediators are anonymous or invisible. I think [what matters] is the conviction to help others even if my role is not recognized. But above all, the most important thing is to let life prevail over violence and to prevent deaths.

– OPDH Tonicapán

Create conditions for the parties to remain in the process: A mediator can promote several conditions that are more likely to ensure that parties stay with the process, such as: clarity, a climate of trust, credibility, the mediator's authority, efficiency, an open dynamic, and confidentiality. In many cases, it helps to create trust when the process is supported by entities representing several interests (as in the Mesas) or through cross-organizational or inter-sectoral networks.

Establish a minimum set of clear and flexible rules: The best practices operate most effectively with just a minimum set of rules. Extremely specific rules limit the parties' behavior, creativity, and flexibility, all of which are ideal characteristics in successful negotiations. In addition, strict rules can create a feeling of constraint that prevents the building of trust.

The main parameters for mediation in Guatemala are really principles and not rules. For instance active involvement, assistance, respect, non-violence, clear

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

communication, commitment, and guarantees were mentioned throughout this survey. However, it has been useful for some organizations to document these parameters and in given cases discuss them with the participants in mediations, in particular during the initial phase.

Phase III: Creating Stories or Versions of the Conflict

From the minute that the parties start to tell their version of events, several practices stand out as outstanding:

Build trust by listening to the parties: The most successful practices we identified start building confidence and trust in the mediator and between the parties from the very beginning, through the following principles:

- Create a comfortable climate during the mediation sessions
- The mediator should have characteristics, appearance, and attitudes that are familiar to the parties (same ethnic origin, use of language, clothes, and no strange or eccentric attitudes)
- Give enough time (within a reasonable timeframe) for the parties to consider, discuss, reflect, and clarify all their doubts and ideas about the negotiation and the options
- Promote and practice active listening when each of the parties tells their initial version of the conflict
- Identify and assess the expectations of the parties as part of the process
- Allow for moments during which more personal contact is encouraged instead of only dealing with the substantive aspects
- Make sure that the parameters that guide the process are compatible with the beliefs and values of the conflicting parties (for example, if they form part of a specific church or political affiliation)
- Despite an impartial image toward the parties, mediators should show genuine interest in the search for a solution to the problem. This is especially important when the versions are just being told.

Limitations on the mediator's attitudes and behaviors: In our survey of mediation practices, we found that mediators are particularly effective at creating the conditions for facilitating dialogue, researching to facilitate a better understanding of the issues at hand, promoting active listening, posing questions, and managing mediation practices efficiently (through punctuality, meeting deadlines, organizing information, efficient analysis and research, efficient logistics). However, mediators should refrain from making value judgments about the parties or the process and from showing negative attitudes in order to pressure the parties into reaching an agreement.

We have to think a lot before saying a single word.

– Chichicastenango indigenous mayor

Once the governor went to a meeting and a participant who acted as mediator, despaired by his inability to solve the conflict, told the parties 'let us not act as animals' thinking that he would thus help them to think positively, but the reaction was one of anger on both sides. This taught us that we must think carefully about what we tell both parties and must use words that do not offend anyone.

– Governor of Escuintla

Phase IV: Identifying the Problem

Don't start with the substantive issues: A characteristic shared by the best mediation practices is that certain conditions are set before directly tackling the problem at the core of the conflict. This process includes:

- Case admission and evaluation
- Case investigation
- Introducing the parties to the mediation process
- Identification and analysis of the various problem components (implications, interests, needs and positions)
- Discussing previous attempts.

“Clearing the playing ground”: One of the greatest challenges in mediation is to get the parties to reach a common understanding of the problem. In this respect, the identification of shared elements and managing emotions help clarify the conditions for mediation before the work objectives and the central issue are defined. “Clearing the playing ground” means clearing all roadblocks to mediation, including all elements that are not central to the key issue, the uncontrolled emotional burdens of the parties, and all extremely defensive and hostile attitudes.

Mediation is not grounded in proof but on the word of the people involved. So it is valuable to listen to the individual stories. The mediator learns to value and assess what people think, and in the end the process does not rely on proof but on each participant's responsibility in expressing coherently and candidly the events that are at the root of the conflict.

– Totonicapán spiritual guide

Over time I have learned to better understand the nature of people and to detect the attitudes with which the people come to a mediation sessions. However, I think I have learned to differentiate where I have to start promoting dialogue depending on the various cases. If it is a couple, I start by asking them to recall how they met, where they went for walks, how their children resemble them, and then I help them discuss the cause of their conflict. After that I assist them in finding a solution that is satisfactory to both.

– Mediator, Ixcán, Quiché, Judiciary

Phase V: Constructing Proposals

When we are in groups, we propose that each group draft a proposed agreement and, once they have all been presented, we ask them to start drafting a list of commonalities and then what each is asking of the other.

– Mediator, Aguacatán, Huehuetenango Community Center

Often in negotiations in Guatemala, the parties start with the most obvious options and avoid those alternatives that could offer a satisfactory solution to the problem. For this reason, it is important to allocate the time needed to analyze all the possible options and proposals identified before negotiating a final proposal.

Recognize the true limits of mediation: Mediation should not be forced by the mediator when the appropriate conditions are not present to resolve the problem or when there is clear resistance by one of the parties to get involved in negotiations. In these cases the mediator must recognize and respect the disagreement. Trouble in reaching an agreement usually originates for the following reasons:

- **Psychological conditions, emotions, or relationships that affect the parties' perceptions:** In these cases the procedures described above for building trust and bringing the parties closer together have proved useful. Some experiences have highlighted the importance of the parties writing everything down to help them organize their ideas, prevent uncontrolled emotions, and make them more objective in the way they put forth their ideas.
- **Unwillingness or resistance** by one of the parties to resolve the conflict because of related advantages that they can derive from the conflict or the risks that are inherent in negotiating. When this is the main cause of dissent, scenario building has proven useful in helping the parties decide if they are truly interested in negotiating.
- **When major outcomes are at stake**—whether economic, moral or structural—that the parties are not willing to give up. Once again, the role of an effective mediator is to create a space for careful analysis of the circumstances so parties gain a deeper understanding of the magnitude of the conflict and the possible consequences of not negotiating, then allow them to make an informed decision.

Manage emotions constructively: Defusing emotions through the various techniques described in our analysis of methods is useful when these emotions get out of control. But it is also important to channel and guide emotions that are within control in an empathic and constructive way so the parties can better control how they perceive the circumstances and the other parties.

Phase VI: Constructing an Agreement

Make sure that agreements come from the parties themselves: It is not advisable for the mediator to be overbearing, pressure the parties to make a decision, keep them

involved against their will, or propose solutions to the problem if the parties have not yet had a chance to give the issue sufficient consideration.

Take the parties' capabilities into account: Not all parties bring the same tools to the table. For example, a mediator at the Ixcán Social Pastoral mentioned that many people who come to the mediation hall cannot read or write. For that reason, they refuse to sign documents because they do not know or do not trust what is written in them. However, if the agreement is not documented or the parties do not put their fingerprint on a paper, the parties may feel like the other is not truly committed to the agreements or assigned tasks.

Phase VII: Closing the Mediation

Organizational experience shows that documenting agreements in writing, particularly if the conflict involves major structural and vested interests, is ideal except in cases where the parties themselves feel a verbal understanding or having a witness will suffice. From the standpoint of organizations, written agreements can serve not only to secure compliance but also to document the cases. Several mediators concurred on the importance of the parties signing the agreements.

In collective processes it is important to have a way to document each phase of mediation because these are lengthy and expensive processes requiring considerable investment of energy by the parties involved. Collective cases generate large amounts of documentation and usually there is neither the time nor money for a subsequent reading to draw lessons from them.

– Tonicapán spiritual guide

Create follow-up plans: In Guatemala's experience, it is very helpful when clear follow up and compliance mechanisms are established to ensure compliance of the agreements and thereby prevent future conflicts from recurring or worsening. Alternatively, it could also be useful to create links with other organizations that are better able to perform verification functions if this is not possible. This is particularly true in labor, family, land, and municipal conflicts, or those related to local powers and government.

Systematization: Only a few organizations routinely systematize their mediation and conflict intervention experiences. Although most mediators do record and document their cases, they do not systematize their cases through periodical analysis

Benefits of Mediation: Beyond Agreements

The first and foremost objective of mediation is to jointly build negotiated agreements between parties in conflict that meet their respective interests. However, practicing mediation has showed that this is not the only advantage of mediation. As mentioned in the conceptual framework, mediation offers a number of practical

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

advantages and opportunities that are recognized and expressed by the actors themselves.

Mediation educates the parties: Mediation itself values the peaceful resolution of conflict and hence promotes a culture of peace. A mediator at the Alternative Dispute Resolution Unit in Huehuetenango notes that mediation is increasingly popular. Satisfied participants in mediation usually recommend it to other people who also need this kind of assistance. One of the important experiences at the CM/OJs is the dissemination of the slogan "we all win with mediation". This slogan has increased awareness about a space for dialogue where all the participants feel they win, perhaps not exactly as they had expected, but they do feel that they had at least gained new experience and understanding.

Mediation promotes attitudinal change and permits reconciliation, forgiveness, and compensation: Dialogue and well-directed communication allow many people to express what they have kept inside because they did not have a chance, space, or the appropriate conditions to say what they think and feel. Mediators said that they had participated in processes that had changed attitudes. At the beginning they witness negative attitudes, with hatred and feelings of revenge, and as dialogue developed, all that changes into understanding until finally reconciliation or an agreement is reached. A mediation process is successful if it is also an expression of remorse and forgiveness by both parties, and more importantly, when the offenders accept their own faults and commit to compensate the victims of the offense. This process is often used by spiritual guides, especially those who mediate in conflicts from the Mayan viewpoint.

Mediation is recognized and considered legitimate when applied effectively: Comments confirmed this statement: "The community recognizes the usefulness of mediation and that we are useful for the people who have taken part in a conflict." (CM/OJ Ixchiguán, San Marcos)

Mediation triggers new processes: The use of mediation in organizations has opened spaces and leveraged new knowledge, alliances, and relations.

Reconciliation and peace as outcomes: Interviewees mentioned that mediation can also trigger reconciliation, which is evident in gestures and actions such as the following:

Couples reunite, young people go back home after quarreling with their parents, two people embrace.

– Santa Lucía Cotzumalguapa parish, Escuintla

When we don't use force, dialogue is possible. This is true in the case of the Ixchiguán conflict.

– PNC

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

Attitudes change: We now present a number of direct references from interviewed people that show the role of mediation in constructing new attitudes:

People acknowledge mistakes. They talk and do not go to court to solve problems.

– PDH

In one land conflict we were able to stop negative attitudes and peasants benefited.

– Bishop of San Marcos

Women have participated in greater numbers and they are provided with a stage on which they can start speaking.

– Santa María Nebaj, Quiché, CM/OJ

Both parties are satisfied: One of the mediator's most important tasks is to identify when an agreement satisfies both parties. For some of our respondents, indicators of satisfaction include:

When the conflict comes to an end, neither party leaves with a feeling of having lost and they leave having learned a lot.

– Social Pastoral, Escuintla Dioceses

There was a case in the San Luis community in Escuintla, where a person had been evicted from his property but later got it back. Out of gratefulness, this person donated the house that had been taken away from him.

–CONTIERRA-Escuintla

Being able to achieve consensus between both parties without filing suit.

– PDH, Quiché

The community's principles and values acknowledged: Mediation practices in multicultural, multilingual and multiethnic settings imply specific ways of measuring satisfaction. Some of these are shown in the comments below:

Empowering the Mayan juridical system and applying it independently.

– K'iche Indigenous Defense Council

Having problems with the committee is like having problems with the entire population.

– Quiché Governor

Having established an agreement between authorities and community.

– K'iche Indigenous Defense Council

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

Harness people's potential: Mediation permits learning by all players and especially the mediator, for example:

Community leaders are not necessarily the elderly. They are often 24 year old youth who are community leaders that one might think are not able or smart enough to reach their targets.

– CONTIERRA-Escuintla

We must learn how to listen to the Council of Elders for solutions.

– U-RAC Nebaj, Quiché

Obstacles to Mediation

This section describes the obstacles to mediation that were described by organizations and institutions that we interviewed. In other words, these are the circumstances, facts, persons, entities, authorities, incidents, or limitations that totally or partially hamper the intended outcome. These can also inhibit the agreements attained, the mediation process, the parties' will, and a successful result. Many of the responses were similar; some of the main ones are listed below.

On behalf of the parties:

- Violence between the parties, intolerance, and a refusal to talk
- Ignorance about mediation alternatives
- Poor attitude in either or both of the parties
- Absence of one of the parties.

On behalf of state and governmental organizations and/or employees:

- State and civil servants' negligence in complying with their duties
- Judges' bias toward employers and landowners
- Disrespect, intolerance, and ignorance of Mayan law among judicial authorities, police, and others
- Police brutality and abuse when evicting squatters
- A judicial system that does not favor peasants and criminalizes agricultural issues
- Politicized State and government organizations
- Misunderstanding and rejection of mediation by some judges who belittle its importance.

Social barriers:

- Rivalry among organizations
- Vested interests occasionally impede the appropriate identification of the parties
- Intolerance toward peasant organizations and their claim for land.

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

Structural and infrastructural barriers:

- Long distance travel and difficult communications
- Lack of appropriate physical conditions for developing the process
- Few or no economic resources available.

Institutional barriers:

- Lack of appropriate implementation methods
- Language diversity not addressed with appropriate strategies
- Scarce mediation practice hampers the beginning of the process, which then makes it uncomfortable for parties to talk.

The following example of a conflict between the Barreneché and San Juan Argueta communities illustrates the difficulties that can present themselves and that eventually determined the type of intervention required from a third party.

CONFLICT BETWEEN COMMUNITIES:

THE CASE STUDY OF BARRENECHÉ vs SAN JUAN ARGUETA

The conflict between the Barreneché and San Juan Argueta communities goes back more than 60 years and focuses on a dispute for 39 caballerías of forest lands. Both are Quiche-speaking communities and have close historical family ties. Originally, the land was part of one community that was later split into three parts for administrative reasons and now straddles two different departments: Totonicapán and Sololá. Still unresolved, this conflict is a true challenge for the communities, the state, and Guatemalan society as a whole as they try to restore harmony, peace, forgiveness, and reconciliation.

Dialogue has come to a standstill. Nineteen people are in prison (with sentences of up to 50 years) in the Cantel, Quetzaltenango, farm prison, due to a violent confrontation 11 years ago that resulted in 16 deaths (mostly young people). The San Juan Argueta prisoners' relatives and friends visit them in jail and often collect money to help them and their relatives get shelter, food, security, and, particularly, to show their solidarity.

Dialogue was suspended a couple of years ago and no one has shown interest in resolving the conflict because of the deaths. It has been suggested that the Los Altos Pastoral or the Social Pastoral of Quiché, and even government organizations should get involved.

Although not yet resolved, this case teaches some important lessons and raises challenges worth highlighting:

- Although a very old community conflict, the children and young people in both communities try not to adopt attitudes of hate toward their neighbors and have even come together in sports events and Christmas gift exchanges

ENSURING QUALITY MEDIATION AND IDENTIFYING BEST PRACTICES

- Harmonious and healthy coexistence has been demonstrated in sports events organized by young people of both communities
- Reflection on the issue has shown that although land was at the origin of the dispute, it has negatively affected peace, harmony, and peaceful coexistence
- Both communities want the conflict to end and hope that someday someone will be interested in helping to solve it
- Children and young people expect their elders will reach an agreement.

Conclusions and Recommendations

In sum, this study documents the following findings:

- There is no public policy aimed at promoting and using mediation as a practice to transform and solve conflicts. In Guatemala, the legislation backing up and regulating practice of mediation is deficient. Therefore, it is necessary to prepare bills that regulate its use, disseminate information about its use, and promote it as a method to settle disputes.
- Mediators are not only accepted when they appear as impartial but also when they can demonstrate a commitment to and service in their community and an outstanding reputation as ethical and just. Often this latter aspect carries greater weight than their perceived impartiality.
- With few exceptions, most of the people and teams interviewed do not have strong theoretical backgrounds in mediation. They acknowledge that their methods and understanding are mainly grounded in daily practice, dynamics, and common sense—not in academic study or theory.
- There is a general demand for more information and training in mediation in Guatemala. Actors from the State, government, municipalities, communities, professional associations, religious groups, traditional entities, and individual professionals all expressed this desire.
- In all organizations surveyed, the final decision about agreements was made by the parties. However, some mediators, while respecting this, play a more active role in building proposals, while others are less directive.
- Managing emotions is an important aspect in all mediations. Many times emotions can block the whole agreement-building process. Some practices tend to defuse emotions using psychological techniques, while other practices constructively tap into rather than prevent them.

CONCLUSIONS AND RECOMMENDATIONS

- **Traditional practice**—which dates back hundreds of years—is the oldest form of third-party intervention in conflicts in Guatemala, such as the indigenous mayors of Sololá. Therefore, in many cases their perception is radically different from Western ideas of mediation.
- Third-party interventions based in communities’ traditions and customs can include characteristics of mediation, conciliation, and arbitration, depending on the nature of the problem.
- In the case of traditional practices, trust in the mediator is based upon his leadership, moral authority and recognition. To build this trust, the third party invites reflection, invokes God’s name, or tells Mayan tales. When beginning a mediation process, traditional practice takes into account aspects of its own culture, such as the Mayan calendar, the principles of balance and harmony, and an invitation to the parties to bring peace to their feelings and words.

Recommendations

These recommendations are aimed at consolidating the mediation work that is going on in Guatemala and strengthening those spaces that already exist by improving its application and practice. The strategic challenge will be to convince the appropriate actors—from the State, government, and civil society—to support and implement these proposals.

- Prepare, discuss, and approve a set of **regulations** for mediation in the judiciary as well as **legislation** to regulate mediation in Guatemala. Building stronger mediation capacities goes beyond the technical aspects. It also requires changing conditions in the judicial, political, social and cultural spheres which up until now have yet to be adequately addressed.
- Strengthen quality in mediation practices by **creating permanent scholarly spaces** for training, updating, and improving the professional techniques of mediators. This could take the form of university programs or more support to institutions and organizations through training and the systematization of experiences.
- **Disseminate more information** about mediation as an alternative dispute resolution to the population, particularly those who are most vulnerable and most affected by conflicts in the country. This will generate a better understanding of and more demand for services.
- **Build a community** or network of institutions working on mediation, with the objective of discussing and sharing different experiences and validating relevant methodologies that have worked nationwide. Along these same lines, it is

CONCLUSIONS AND RECOMMENDATIONS

important to promote strategic alliances with the Bar and Notaries Association, legal associations, NGOs, churches, municipalities, the *Mesas* set up as part of the Peace Accords, and community and civil society organizations to disseminate more information about alternative dispute resolution tools and especially mediation. It is also recommended that organizations that are undertaking mediation in Guatemala review this study and discuss it. It is necessary to undertake more systematic reflection about methods, techniques, and the theoretical foundation of mediation.

- More profound **research and discussion** about the cultural, ethnic, and linguistic aspects of mediation and about third-party intervention in the Guatemalan social context is needed. We need to capture the experiences that are based on **indigenous laws** and traditional community practices. This will help generate an institutional climate of respect for the diversity of beliefs and values in our country.



Bibliography

- Bush, R. and J. Folger. 1994. *The Promise of Mediation*, San Francisco, Jossey-Bass. Cited in Diez and Tapia.
- Comisión para el Esclarecimiento Histórico-CEH. 1999. "Guatemala: Memoria del silencio". V. Guatemala.
- Código Procesal Penal Oral. 2004. Decree 51-92. Guatemala.
- Defensoría Indígena. 2003. *Una visión global del Sistema Jurídico Maya*. Guatemala.
- Defensoría Maya. 2000. *¿Qué es Defensoría Maya?*. Guatemala.
- Defensoría Maya. 2001a. *Experiencias de aplicación y administración de justicia indígena*. Guatemala.
- Defensoría Maya. 2001b. *Administración de Justicia Maya*. Guatemala.
- Defensoría Maya. 2003. *Construyendo el pluralismo jurídico*. Guatemala.
- Diccionario Mediación. España. Vg. 2004. Consulta Internet.
- Diez, F., and G. Tapia. 2000. *Herramientas para trabajar en Mediación*. Buenos Aires. Paidós. 1ra.
- Fried, D. (ed.). n.d. *Nuevos paradigmas en la resolución de conflictos. Perspectivas y prácticas*. Buenos Aires. Granica.
- Grover, K., J. Grosch, and P. Olczak. 1996. *La mediación y sus contextos de aplicación*. Buenos Aires, Paidós.
- Gernika. 1999. *Caja de Herramientas*. Compilación: Juan Gutierrez. S.p.
- IDEADS-INTRAPAZ-URL. 2002. *Análisis del Conflicto*. Guatemala.
- Lederach, J. 1996. *Mediación*. Centro de Investigación por la Paz "Gernika Gogoratzuz". España.
- Lederach, J. 1994. *Construyendo la Paz*. United Nations University, New York.
- MINUGUA. 2000. *Los linchamientos: un flagelo contra la dignidad humana*. Guatemala.
- MINUGUA. 2001. *Los conflictos en Guatemala: un reto para la sociedad y el Estado*. Guatemala.
- Moore, C. 1989. *Negociación y Mediación*. CDR Associates.
- Oficina de Derechos Humanos del Arzobispado ODHAG. n.d. *Perfil del Mediador*. Guatemala.
- ODHAG. 1998a. *La sociedad civil y la resolución alternativa de conflictos*. Primer Seminario Internacional. Guatemala.
- ODHAG. 1998b. *Cambiar el rumbo. Experiencias de Mediación en conflictos de tierra*. Guatemala.
- ODHAG. 2002. *Los jóvenes de Guatemala mediando y transformando conflictos, para alcanzar la Paz*. Guatemala.
- ODHAG. 2002. *Formas Tradicionales de resolver conflictos del pueblo Maya Tz'utujil de Santiago Atitlán, Sololá*. Guatemala.
- ODHAG. 2001. *Guía sobre la transformación de conflictos*. Guatemala.

BIBLIOGRAPHY

- Ormachea, I. 1998. "Introducción a la resolución alternativa de conflictos". In *La sociedad civil y la resolución alternativa de conflictos*, ODHAG, Guatemala.
- Ortega P., and D. Herbert. 1995. *Guía para el análisis y Mediación en la Resolución de Conflictos*. IRIPAZ-OEA-UPD. Guatemala.
- Palma R., Dario. 2001. *Así somos y así vivimos los Ch'orti*. URL-IIES. Guatemala.
- SNU-OEA. 2003. *Mesa Intersectorial de Dialogo: Cultura de Paz y Reconciliación*. Guatemala.
- Tiú, R. 1998. "Comparación entre Derecho Maya y Derecho Estatal". In *La sociedad Civil y la Resolución Alternativa de Conflictos*. ODHAG.
- Unidad de Resolución Alternativa de Conflictos (U-RAC). 2003. *Estadísticas de los Centros de Mediación. Consolidado de casos. Período Enero-Septiembre 2003*. Organismo Judicial. Guatemala.
- U-RAC/OJ. 2003. *Primer aniversario de la Unidad RAC*. Boletín. Guatemala.
- U-RAC/OJ. N/D. *¿Qué es la Mediación?* Trifoliar. Guatemala
- URL-IIES. 1999. *El sistema jurídico Mam*. Guatemala.
- URL-IIES. 1999. *El sistema jurídico K'iche*. Guatemala.
- URL-INTRAPAZ. 2003. *Espacios nales para la búsqueda del consenso en Guatemala. 1985-2000*. Guatemala.
- UNS. 2003. Humanitarian Charter and Minimum Humanitarian Assistance.
- USAID. n.d. *Programa de Justicia*.

ANNEX
2

The Paradigm of Mediation

This annex summarizes the usefulness of mediation in high-level conflicts. The examples are based on the internal armed conflicts in two Central American countries (Guatemala and El Salvador). In both cases, given the seriousness of the conflict, international presence was required. This in turn made it possible for negotiation roundtables to form that brought together government, insurgent forces, and mediators from the United Nations in Guatemala and the Group of Friendly Nations in El Salvador. This allowed both sets of actors to reach the peace agreements that put an end to the armed conflict in these countries.

Mediating Armed Internal Conflict in Guatemala and El Salvador

| Country | Conciliation | Mediation | Agreements |
|-------------|------------------------------------|--|--|
| Guatemala | National Reconciliation Commission | Call to parties and joint and separate meetings sponsored by UN. | Consensus, acceptance and signing of peace accord between government and the URNG (<i>Unidad Revolucionaria Nacional Guatemalteca</i>). |
| El Salvador | National Conciliation Commission | Call to parties and joint and separate meetings sponsored by UN and Group of Friendly Nations. | Consensus, acceptance and signing of peace accord between government and the FMLN (<i>Frente Farabundo Martí para la Liberación Nacional</i>). |

List of interviewed institutions and persons

| Institution | Interviewed person |
|---|---|
| 1. Independent lawyer in Alta Verapaz | Lic. Edgar Raúl Pacay |
| 2. Auxiliary City Hall in Sonora Village | Israel Paau |
| 3. Auxiliary City Hall in Ixcán, Quiché | José Tobal Alonso, Alcalde Auxiliar, Comunidad Primavera, el Ixcán [Assistant Mayor, Primavera Community, Ixcán] |
| 4. Indigenous City Hall in Quiché | Manuel Caniz, First Mayor |
| 5. Indigenous City Hall in Sololá | Manuel Tuy Cosiguá, Mayor |
| 6. Indigenous City Hall in Zacualpa, Quiché | Manuel Hernández, Secretary, Jesús Valerio Tomín, First Mayor, Isabel Tiño, Second Mayor, José María Coj, First Mayor |
| 7. <i>Asociación de Amigos del Desarrollo de la Paz, Alta Verapaz</i> | Roberto Alvarado |
| 8. <i>Asociación de Comunidades Forestales de Petén</i> | Macedonio Cortave, Executive Director |
| 9. <i>Asociación de Desarraigados de El Petén</i> | Francisco Javier Mateo, Coordinator |
| 10. <i>Asociación de Educadores del Nor Oriente, AEN, el Ixcán, el Quiché</i> | Pedro Morales Sales |
| 11. <i>Asociación de Estudiantes y Profesionales Mayas de las Verapaces, Alta Verapaz</i> | Rodrigo Chú Ical |
| 12. <i>Asociación de Justicia y Multiculturalidad, Quetzaltenango</i> | Jorge Rodríguez, Director |
| 13. <i>Asociación de Mujeres Ixquik, el Petén</i> | Olga Urizar Mejicanos, Coordinator |

LIST OF INTERVIEWED INSTITUTIONS AND PERSONS

| Institution | Interviewed person |
|--|--|
| 14. <i>Asociación Derechos Humanos del Ixcán, el Quiché</i> | José Coc |
| 15. <i>Asociación Estoreña para el Desarrollo Integral AEPDI, el Estor, Izabal</i> | César Téni, Coordinator of the Defender Office |
| 16. <i>Asociación Nuevos Horizontes, Quetzaltenango</i> | Lilian Wug de Batres |
| 17. <i>Asociación para la Educación y el Desarrollo, ASEDE - Huehuetenango</i> | Félix Esteban Martínez, Coordinator |
| 18. <i>Bloque REMHI, San Marcos</i> | Rodolfo Godínez, Coordinator |
| 19. <i>Bufete Popular URL, Quetzaltenango</i> | Licda. Betzabé Chinchilla, Director |
| 20. <i>Bufete Popular URL, Guatemala</i> | Axel Manuel Romero Gerardi, Legal advisor |
| 21. <i>Bufete Popular, CUNOC-USAC</i> | Edgar Oliverio Sierra Coy, Secretary |
| 22. <i>Centro Comunitario de Resolución de Conflictos de Aguacatán, Huehuetenango</i> | Francisco Cifuentes, Coordinator |
| 23. <i>Centro Comunitario de Resolución de Conflictos, Palín, Escuintla</i> | Gregorio Pérez García, Coordinator |
| 24. <i>Centro de Acción Legal Ambiental y Social</i> | Nicolás Pelicó |
| 25. <i>Centro de Acción Legal en Derechos Humanos, CALDH</i> | Mario Minera, Area Coordinator |
| 26. <i>Centro de Apoyo por la Justicia Penal y Resolución de Conflictos, CEDAP</i> | Alejandro Bravo González |
| 27. <i>Centro de Justicia Alta Verapaz</i> | Pamela Spiegler de Lujky |
| 28. <i>Centro de Mediación y Negociación Internacional, Guatemala</i> | Lucrecia de Paniagua |
| 29. <i>Centro para el Desarrollo Rural de Occidente CDRO – Totonicapán</i> | Santos Norato |
| 30. <i>Comisión Solidaridad y Derechos Humanos: Puente de Paz</i> | Eridenia Martínez |
| 31. <i>Comité pro mejoramiento Aldea Vergel</i> | Arnulfo Darío Leal, Secretary |
| 32. <i>Parcialidad Herrera de Totonicapán</i> | Members of the Board of Directors |
| 33. <i>Consejo de Desarrollo Comunitario Chichipate, El Estor, Izabal</i> | Enrique Ical |

LIST OF INTERVIEWED INSTITUTIONS AND PERSONS

| Institution | Interviewed person |
|---|---|
| 34. CONTIERRA | Engineer Jorge Mario Flores, Area Coordinator. In addition, regional interviews |
| 35. <i>Cooperativa Integral de Consumo Mayaland, el Quiché</i> | Julio Juan Miguel, Secretary of the Board of Directors |
| 36. <i>Coordinación para el Desarrollo Maya Chortí, Comach, Chiquimula</i> | Rigoberto Ramírez López, President of the Board |
| 37. <i>Cooperativa Xalbal RL, Ixcán</i> | Marcos Macario Gabriel |
| 38. <i>Coordinadora Nacional de Organizaciones Campesinas, CNOC</i> | Rafael Chanchavac Cux, General Coordinator |
| 39. <i>Coordinadora Nacional Indígena y Campesina, CONIC</i> | Juan Tiney, Coordinator |
| 40. <i>COPREDEH, Guatemala</i> | Lourdes Woolfork and Carlos Sandoval. In addition, regional interviewees. |
| 41. <i>DECOPAZ, Huehuetenango</i> | Eduardo Tercero, Director |
| 42. <i>Defensores de la Naturaleza</i> | Abelardo Caal Ich, Ariel Saucedo |
| 43. <i>Líder Comunitario de Todos Santos Cuchumatanes, Huehuetenango [Community Leader in Todos Santos Cuchumatán, Huehuetenango]</i> | Modesto Mendoza Pablo |
| 44. <i>Defensoría de la Mujer Indígena de Huehuetenango</i> | Adelina Rosario Gutiérrez Martínez, person in charged |
| 45. <i>Defensoría de la Mujer Indígena de Quetzaltenango</i> | Rosa Vicenta Ixcal, Area Coordinator |
| 46. <i>Defensoría de la Mujer Indígena central</i> | Aracely Alonso |
| 47. <i>Defensoría de la Mujer Indígena central</i> | Manuel Guillén, Director |
| 48. <i>Defensoría Indígena Quiché</i> | Juan Tipaz Tiño, Coordinator |
| 49. <i>Defensoría Indígena Sololá</i> | Santos Hernández, Coordinator |
| 50. <i>Defensoría Maya de Huehuetenango</i> | Juan Andrés Bravo |
| 51. <i>Defensoría Maya de el Quiché</i> | Antonia Buch Ben, Coordinator |
| 52. <i>Defensoría Maya de Ixtahuacán</i> | José Maldonado, Coordinator |
| 53. <i>Defensoría Maya de Guatemala</i> | Augusto Taracena, Program Officer |
| 54. FONTIERRA, Izabal | Víctor Hugo Benítez |
| 55. <i>Fundación Centro de Arbitraje y Conciliación CENAC</i> | Silvia Sigúenza |

LIST OF INTERVIEWED INSTITUTIONS AND PERSONS

| Institution | Interviewed person |
|---|---|
| 56. <i>Fundación PROPAZ</i> | Ervin Ortega |
| 57. <i>Gobernación Departamental de el Quiché</i> | Rolando Pacheco |
| 58. <i>Gobernación Departamental de Escuintla</i> | Eduardo Alfredo Marroquín |
| 59. <i>Gobernación Departamental de San Marcos</i> | Gabriela Basegoda |
| 60. <i>Iglesia Evangélica “Beténia”</i> | Sebastián Crisóstomo Catú, General Minister |
| 61. <i>GAM, Huehuetenango</i> | Guillermo Bosque |
| 62. <i>Spiritual Guide in Momostenango</i> | Feliciano Akabal, Guide |
| 63. <i>Iglesia Cristiana Evangélica “Palabra en Acción”, Quetzaltenango</i> | Erik Muñoz, General Minister |
| 64. <i>Iglesia Monte de los Olivos, Xalbal, Ixcán, Quiché</i> | Rigoberto Pérez Sales |
| 65. <i>Justice of the Peace, Morales, Izabal</i> | Reginalda Pantaleón Palencia |
| 66. <i>Justice of the Peace, Livingston</i> | Gilda Lorena Amaya Chiroy |
| 67. <i>Justice of the Peace, Puerto Barrios</i> | Manolo López Girón |
| 68. <i>Community leader, Huehuetenango</i> | Modesto Mendoza Pablo |
| 69. <i>Individual Leaders in Ixcán, Quiché</i> | Cristóbal Choc, Leader in Sonora Village, Fernando Valle Ramos, Community Leader in Virginia Village |
| 70. <i>Mercy Corps, Alta Verapaz</i> | Romeo Euler, Project Manager |
| 71. <i>Mesa de Negociación de Conflictos de Tierra de el Petén</i> | Byron Carvajal, Board Coordinator, Iván Callejas, Representative of Contierra and Carlos Sierra, Board President |
| 72. <i>Mesa de Negociación de Conflictos de Tierra, Izabal</i> | Ana Salguero, Secretary |
| 73. <i>Mesa de Negociación de Conflictos de Alta Verapaz</i> | Carlos Sierra Pereira |
| 74. <i>Ministerio de Trabajo y Previsión Social de Alta Verapaz</i> | Hugo de Jesús Hernández, Regional Director, Álvaro René García, Inspector and Eneida Alicia Reyes Laparra, Inspector and departmental offices |
| 75. <i>Sololá City Hall</i> | Santos Miguel García Brito, City Councilor |

LIST OF INTERVIEWED INSTITUTIONS AND PERSONS

| Institution | Interviewed person |
|--|--|
| 76. Archbishop, San Marcos | Monsignor Álvaro Ramazzini, Bishop |
| 77. ODHAG, Guatemala | Oscar Reyes, Area Coordinator. Luisa Fernanda Nicolau |
| 78. Oficina de Carácter Multiétnico de Alta Verapaz | Oscar Humberto Chub Cao |
| 79. Organización de Negros de Guatemala ONEGUA, Izabal | Menélio Moreira Gamboa |
| 80. Oxlajú Txuul Taq'a Maya Q'echí | Pedro Coy, Board President |
| 81. Parroquia Santa Lucía Cotzumalguapa, Escuintla | Igino de la Cruz, Priest |
| 82. Pastoral de Justicia de Totonicapán | José Santos Sapón, Director |
| 83. Pastoral de la Tierra de San Marcos | Ruth Tánchez |
| 84. Pastoral Social de Alta Verapaz | Rosa Argentina Cuevas |
| 85. Pastoral Social de Escuintla | Fernando Gamalero, Priest |
| 86. Pastoral Social de Huehuetenango | Max Cabrera, Trainer |
| 87. Policía Nacional Civil, el Quiché | Josué Véliz Meoño, Police sub Captain, Quiché |
| 88. Procuraduría de Derechos Humanos | Marco Tulio Álvarez, Area Coordinator, and more than 11 interviews in the departmental offices |
| 89. Pastoral Social de el Ixcán, Quiché | Agustín Tejax Armira |
| 90. Programa de Derechos Humanos del Obispado de San Marcos | Marvin Gilberto Gerónimo, Coordinator |
| 91. Red de Derechos Humanos "Mártires de la Resistencia" de la Primavera del Ixcán, Quiché | Luis Antonio Velázquez López, Mateo Baltazar |
| 92. Unidad de Resolución Alternativa de Conflictos del Organismo Judicial U-RAC | Carlos Castillo, General Coordinator and Departmental and Municipal Offices |
| 93. Unión de Trabajadores de Quetzaltenango | Oswaldo Saquich, Coordinator |

Note: The institutions with regional, departmental, and municipal offices such as U-RAC, the Labor Ministry, COPREDEH, CONTIERRA and PDH are registered as one institution but around 10 or 15 interviews occurred in each one of them. The Community Conflict Resolution Centers, indigenous governments, and Peace Courts also have several local offices that were interviewed.

Names and titles of organizations are listed in Spanish.

Funding provided by the
US Agency for International Development
under
Associate Award No. 520-A-00-03-00185-00
Leader with Associates Award AED-A-00-01-0004-00

October 2004