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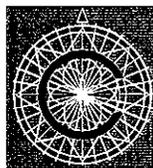
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El Salvador Legal Education Training, Public Information Dissemination,  
Alternative Dispute Resolution, Technical Support for Justice Sector Plans,  
and Contract Management

**Component III: Alternative Dispute Resolution  
Final Report**

Submitted to:  
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Submitted by:



**CHEMONICS INTERNATIONAL INC.**



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# **El Salvador: Legal Education Training, Public Information Dissemination, and Alternative Dispute Resolution**

## **I. Introduction**

Chemonics International Inc., in collaboration with the Unidad Técnica Ejecutiva (UTE) and the Judicial Training School, administered the 1999-2000 Conciliation Project. The leadership provided by UTE and the support of the Judicial Training School made it possible to assemble a talented and dedicated group of individuals to advise and support this project. These included representatives of the judiciary, legal education, the bar and various other professions including psychology, social work, and education. Through the multidisciplinary and interorganizational collaboration of those involved, many successes were realized and invaluable lessons learned.

This report provides an overview of the project activities, including the initial needs assessment, the project design, conciliator selection and training, judge and attorney orientation, development of a training module and training materials, and pilot program operations. The report concludes with recommendations for potential conciliation initiatives in the future. These recommendations incorporate 1) general observations of the pilot experience; 2) client survey information; 3) views expressed by judges, multidisciplinary team members, prosecutors, public defenders, and other project participants; and 4) the consultants' perspectives on topics addressed.

## **II. Project Context and Objectives**

In recent years, Salvadoran judicial reform initiatives have been designed to increase access to justice, improve the efficiency and effectiveness of judicial processes, and to include greater oral participation in court processes. This project was designed and implemented in the context of broader judicial reform in the country.

During the initial design phase, the primary objective identified was that of resolving family, juvenile, and adult criminal matters extrajudicially by institutionalizing the efficient use of conciliation in the Salvadoran justice system. This, in turn, was intended to decrease demand on judicial resources and enable the judicial system to provide more effective and efficient services in cases requiring adjudication. Project goals included 1) enhancing the conciliation skills of judges and other judicial personnel; and 2) educating lawyers about conciliation and negotiation.

## **III. Summary of Project Activities**

### **A. Focus Group Process**

In February 1999, two project consultants visited each of the four pilot jurisdictions (Sonsonate, Soyapango, Cojutepeque, and Usulután) selected by USAID prior to project implementation. In each jurisdiction, they met with prosecutors, public defenders, family and juvenile judges, *jueces de paz*, instruction judges, sentencing judges, and members of the juvenile and family multidisciplinary teams.

Through these meetings, referred to as "focus groups," preliminary assessments were made in the following areas:

- 1) The practice of conciliation by judges in the adjudication process
- 2) Conciliation policies and procedures in the pilot jurisdictions
- 3) Perceptions of parties and the public at large regarding conciliation
- 4) The need for conciliation services

During these meetings, spokespersons for the prosecutors' office, the public defender's office, and the judiciary, indicated that defendants and victims appeared to be abusing the court's conciliation process in many cases. Specifically, defendants used the process to negotiate their way out of paying the price for violating the law. And victims used conciliation as a form of extortion.

A summary of the focus group findings is included in Attachment B, Focus Group Feedback.

## **B. Working Group**

### **B1. Planning Process**

In April 1999, a Working Group whose members were selected by UTE, was convened. Members included judges, lawyers, and representatives of key judicial and legal institutions, including UTE and the Judicial Training School. The first meeting of the Working Group, a three-day session, was held in May 1999. During that meeting, the Working Group identified objectives and drafted policy and procedural recommendations for the duration of the project. The Working Group's recommendations were designed to advance the agreed upon objectives, which included the following:

- To move from adversarial conflict resolution to a more peaceful dialogue by increasing party participation in resolving cases
- To reduce the number of cases referred to judges for adjudication and thereby save judicial resources
- To teach juveniles to take responsibility for their actions
- To strengthen family ties

The outcome of the Working Group's first session was a draft document containing policy and procedural recommendations on a range of issues including case and party eligibility, conciliator selection, case processing, and other related topics.

In July 1999, a second meeting of the Working Group was convened to review and revise the draft document. Subsequently, the Working Group's final recommendations were submitted for review and approval to the Executive Commission of the Justice Sector (herein referred to as "Commission"). The Working Group's policy and procedure document, as modified and

approved by the Commission, is included in Attachment A, Pilot Program Policies and Procedures. A summary of the key policies and procedures follows:

## **B2. Recommendations**

### **Conciliator Selection**

The Working Group recommended that nonjudicial personnel serve as conciliators in all cases. This was intended to preserve the integrity of the conciliator's role as a third-party neutral, and to keep the conciliation process confidential. However, due to fiscal restraints in the adult criminal area, *jueces de paz* were ultimately appointed to serve as conciliators of criminal matters during the pilot period. Members of family and juvenile multidisciplinary teams, each comprised of at least one psychologist, social worker and educator, were charged with conciliating family and juvenile cases.

The Working Group also recommended that conciliators serve in only one capacity in each case, either as a judge or as a conciliator in adult criminal cases, and either as an advisor or conciliator in family and juvenile cases. To this end, the Working Group developed case swapping mechanisms whereby conciliators would refer completed cases to judges for review and approval of conciliated agreements (referred to as "*homologación*"), or for the continuation of the adjudication process where no agreement was reached.

### **Case and Party Eligibility for Conciliation**

Several factors were taken into consideration in terms of criminal and juvenile case eligibility including the nature and seriousness of the offense, the availability of both parties for conciliation, recidivism, and others.

The Working Group recommended that all family matters be eligible for conciliation, except those in which there was a history of violence, a single serious incident of violence, or where the issues in dispute were strictly legal. However, prior to implementing the pilot programs, the Commission determined that no family matters could be conciliated through the pilot programs. As interpreted by the Commission, the Family Code permitted only family judges to serve as conciliators of cases on their dockets. Referral to outside conciliators was not considered permissible. For this reason, the family pilot programs were not implemented.

### **Case Processing**

*Timing of Conciliation.* Guidelines were established to encourage early resolution of matters through conciliation, both for speedy resolution itself and also to guard against duplication or misuse of judicial and conciliation services.

*Voluntary Participation in Conciliation.* It was recommended that participation of all parties in conciliation be voluntary.

*Admission of Responsibility for Crime.* In adult criminal and juvenile matters, a defendant's admission of guilt was not a prerequisite for participation in conciliation.

*Confidentiality.* Safeguards were recommended to ensure the confidentiality of the conciliation process. One of these safeguards was the recommendation that conciliators not serve as judges or advisors in cases they conciliate. Another was a requirement that conciliators refrain from sharing any information regarding their conciliation sessions with colleagues or others.

*Homologación.* Enforceability required judicial review and approval (*homologación*) of conciliated agreements.

### **C. Conciliator Training**

Prior to implementing pilot program operations, all appointed conciliators participated in training sessions. Topics addressed during the training included the theories and techniques of conciliation and pilot program policies and procedures.

Eleven *jueces de paz*, 24 family multidisciplinary team members, and 12 juvenile multidisciplinary team members attended these training sessions. Conciliators of Usulután and Cojutepeque attended the first training session (September 1999) and conciliators of Soyapango and Sonsonate attended the second (November 1999).

Several staff members of the Salvadoran Justice Department's Mediation Center participated in each of these training sessions. Their participation during plenary discussions, and as leaders of small group role-play sessions, contributed significantly to the quality of the overall training experience.

### **D. Judge and Attorney Orientation Sessions**

All instruction and sentencing judges of the four pilot jurisdictions attended one-day orientation sessions. These sessions were combined with the first day of conciliator training mentioned above. They were designed to familiarize the judges with basic conciliation concepts and with conciliation policies and procedures for referral and *homologación* purposes. Eight judges attended these sessions.

In November 1999, two orientation sessions were held for all public defenders and prosecutors of the four pilot jurisdictions. During each of these one-day sessions, participants were introduced to three topics including negotiation, conciliation and advocacy in conciliation. Total attendance at these sessions was approximately 180.

Although the judicial and attorney orientation sessions were relatively brief, they achieved the key goals of familiarizing the bench and the bar with conciliation concepts and providing opportunities to raise questions and concerns about conciliation policies and procedures. During each of these sessions, a representative of UTE outlined policies and procedures and addressed issues raised by the audience.

### **E. Pilot Programs**

To test the viability of conciliation as an alternative dispute resolution tool in criminal and juvenile matters, pilot conciliation programs were established in Soyapango, Cojutepeque, Usulután and Sonsonate. Pilot program operations in Usulután and Cojutepeque began in November 1999, and in Sonsonate and Soyapango in December 1999. The pilot experience served as a useful and cost-effective tool to assess the viability of conciliation in El Salvador through practice.

Detailed information regarding the pilot experiences is reported below.

### **F. Post Pilot Monitoring and Evaluation Session**

In March 1999, a three-day meeting was convened for the dual purposes of evaluating the pilot program experiences and developing recommendations for potential conciliation initiatives in the future. Those who attended the session included prosecutors, judges, members of the juvenile multidisciplinary teams of the four pilot jurisdictions, and representatives of the Judicial Training School and UTE. Total attendance at these sessions was 33.<sup>1</sup>

During this meeting, participants met in small groups by professional area and/or institutional affiliation. Each of the groups provided perspectives, in writing, on select conciliation topics. Group reports are attached (Attachment D).

### **G. Judicial Training Module**

At the request of the Judicial Training School, a Conciliator Training Module was developed for use in the design and execution of future conciliator training programs.

### **H. Train-the-Trainer Manual**

A train-the-trainer manual was developed for use by conciliation trainers in the future. In addition to addressing the content and delivery of conciliation training, the manual also covers conciliation programming issues such as conciliator selection and evaluation.

### **I. Public Education**

A conciliation brochure was designed for publication and distribution in the four pilot jurisdictions. A draft of the brochure is attached. Due to the fact that final authorization for publication and distribution was not received from UTE prior to the end of the project, it was not possible to publish and distribute the document, as originally planned.

## **IV. Assessment of Criminal and Juvenile Pilot Programs**

Due to administrative delays, the pilot programs were in operation for very brief periods, ranging from two to three months. This significantly limited the quantity of conciliation experiences and

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<sup>1</sup> For a variety of personal and professional reasons, not all participants were available to attend the entire three-day event. As a result, the number of final evaluations received was less than the maximum attendance reported.

also had an impact on the programs' overall quality. However, in spite of these limitations, a great deal was learned through the pilot process regarding the viability of conciliation, in general, and the policies and procedures in effect during the pilot experience. The following is a summary of program observations, as they relate to program objectives, policies and procedures.<sup>2</sup>

### A. Judicial Resources

A key objective of the juvenile and adult criminal pilot conciliation programs was to save judicial resources. To assess a conciliation program's effectiveness, in this regard, analysis of various factors is required. One of these factors is the percentage of cases resolved through conciliation processes. Where non-judicial personnel serve as conciliators, a higher agreement rate can be an indicator of judicial savings. Where, however, the conciliators are judicial personnel, either judges or other staff, the assessment of cost must also take into account the amount of judicial time spent conciliating each case; judicial administrative expenses associated with conciliation; the impact on judicial time at subsequent stages of the judicial process; and others. And, to fully assess the impact of the conciliation process on overall cost requires long-term data collection and analysis regarding, among other things, compliance with conciliated agreements and recidivism rates.

In the juvenile pilot programs, the agreement rate was virtually identical during the pre-pilot reporting period and the pilot period (Attachment E). Since juvenile conciliations were conducted by multidisciplinary team members, rather than by juvenile judges, it is likely that the demand on judicial time was decreased and, therefore, that the project objective of saving judicial costs was realized. However, since the amount of data provided was limited and derived from party surveys, no firm conclusions could be drawn. Furthermore, an assessment of impact on judicial cost would also need to take into consideration the amount of time spent by juvenile judges and their staff in assessing case eligibility, referring cases to conciliation, executing the process of *homologación*, and in providing case follow-up.

The agreement rate decreased in criminal cases during the pilot program (Attachment E). Given this decline, and the fact that *jueces de paz* served as conciliators, it is probable that judicial costs rose during the criminal pilot conciliation programs. It should be noted, however, that this data is also based on client surveys and that the number of client survey responses in criminal cases was even smaller than the number of juvenile surveys. Therefore, no conclusions can be drawn with respect to judicial costs in the conciliation of adult cases.

### B. Party Participation

A second objective of the pilot programs was to increase party participation in the peaceful resolution of conflict. To make an assessment in this area, victims and defendants were asked 1) why they chose to participate in conciliation; 2) what led to the outcome in their case (agreement or no agreement); and 3) how they experienced the standard and pilot conciliation processes.

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<sup>2</sup> These objectives, identified by the Working Group, are described in greater detail in the Policy and Procedure document. This document was approved by the Executive Commission of the Judicial Sector prior to implementing the pilot programs.

In juvenile cases, victims and defendants were far less likely to participate in conciliation or reach agreements out of a sense of obligation, or due to the influence of others (attorney, conciliator, or other party) during the process than they were previously (Attachment E). This suggests that 1) multidisciplinary team members effectively educated victims and defendants about the voluntary nature of the conciliation process; and 2) victims and defendants were better able to understand and trust the voluntary nature of the conciliation process when meeting with psychologists, social workers, and educators than when appearing before judges.

In criminal cases, differences in these areas were less significant. Roughly the same percentage of victims and a slightly smaller percentage of defendants participated in pilot conciliations out of a sense of obligation than they did previously (Attachment E). In both cases, no more than 26 percent reported feeling pressured to participate in either conciliation process. The percentage of criminal victims and defendants that felt obliged to reach agreements (Attachment E) either increased (victims) or dropped slightly (defendants).<sup>3</sup>

While the number of responses in criminal cases was small, data suggests that most victims and defendants understood the voluntary nature of both the standard and pilot conciliation processes. However, this data also suggests that a significant percentage of victims and defendants felt some obligation to reach agreements through the pilot conciliation process, either due to explicit influence of the judicial conciliator, or their perception of such influence.

Very little data was made available regarding failure to reach agreements (Attachment E). However, data suggests that the primary obstacle to reaching agreements was monetary (determining a fair amount of restitution and/or the ability to pay).

Party responses to questions about their experiences in, and satisfaction with, the conciliation process showed the following:

1. In both juvenile and criminal programs, parties were more likely to engage in dialogue during the pilot conciliation process than they were previously (Attachment E).
2. Overall, parties were more satisfied with the pilot conciliation process than they were with the standard conciliation process (Attachment E). However, victims in criminal cases were more likely to be either highly satisfied or highly dissatisfied with the pilot process than with the standard process (Attachment E).
3. The conciliation process and conciliated agreements were rated as fairer during the juvenile pilot process than they were previously, and about the same during the criminal pilot process as they were previously (Attachment E).

This data suggests that, while party satisfaction and ratings regarding fairness were consistently higher in only juvenile cases, party participation in the resolution of conflict (a key objective of the pilot conciliation program) increased during both the criminal and the juvenile conciliation program.

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<sup>3</sup> While the number of victim responses in criminal cases was very low, these conclusions were supported by general observations during the pilot process.

Comparative data regarding referrals to conciliation and agreement rates was provided by some, but not all, of the pilot programs. The data provided is included in Attachment E.

## **V. Recommendations**

### **A. Adult Criminal and Juvenile Programming Strategy**

Selecting and prioritizing objectives has a dramatic impact on conciliation program design and operations in any sector. It will thus be critical to reach clarity about objectives prior to implementing permanent conciliation programs. Both relevant judicial and social conditions must be assessed, as both will have a direct impact on program success.

While program design is always important, it is perhaps nowhere more important than in the criminal arena where both public and private interests are at stake. Any aspect of a conciliation program that undermines, or is perceived to undermine, the efforts to bring crime under control can erode public confidence in the criminal justice system and, at the same time, encourage criminals to take even greater unlawful liberties in the future. This section compares and contrasts the objectives of the pilot criminal and juvenile conciliation programs with those of other similar programs and draws conclusions about the implications of each.

#### **A1. Objectives of Adult Criminal and Juvenile Conciliation**

The key objectives of adult criminal and juvenile pilot programs, as defined by the Working Group, included saving judicial resources and teaching juveniles to take responsibility for their actions. Victim/offender conciliation programs share these same objectives, however, prioritizing objectives differs from program to program.

Many victim/offender conciliation programs are founded upon principles of compensating individual victims and communities for their losses. The Working Group discussed this objective, but decided against including it as a guiding principle, choosing instead to focus on reducing judicial costs associated with adjudication. Although it was hoped that conciliation would address the needs of victims and communities, this was considered a byproduct of achieving the central goal of saving judicial resources.

Rehabilitating offenders is another common objective of victim/offender conciliation programs. Through face-to-face interaction with those they have harmed, righting their wrongs, and, in some instances, avoiding the negative effects of incarceration, offenders can better understand the impact of their crimes and are often less likely to commit crimes in the future. While identified as an objective of juvenile conciliation, offender rehabilitation was not a named objective of the adult program.

Finally, an objective of many conciliation programs is that of restoring relationships between offenders, victims, and their communities. This was not identified as a direct objective of either the juvenile or the adult pilot program. However, the objective of increasing party participation in conflict resolution could be construed as advancing the same goal since, through dialogue, it is

possible for some victims and offenders to achieve new levels of understanding of one another, and thereby restore relationships.

## A2. Program Design

Significant differences exist in the design of victim offender conciliation programs. Some programs proceed with criminal adjudication, independent of conciliation. Those charged with committing crimes are prosecuted and subjected to standard penalties of the judicial system (incarceration, fines), but are also permitted to participate in conciliation. The conciliation process is intended to compensate victims and to give offenders a chance to accept responsibility for their crimes, ask forgiveness, compensate victims and communities for their losses, and take steps toward rehabilitation.

A similar model is that of proceeding with the adjudication process, even where agreements are reached through conciliation, but taking the agreement into account in the final case determination. In these cases, judges exercise discretion in determining whether an offender's sentence should be lessened where he or she accepts responsibility for committing a crime and takes some action to correct the wrong.

Other conciliation programs divert cases prior to trial. Generally, these programs accept only minor offenses for conciliation. Before beginning the adjudication process, defendants are given opportunities to accept responsibility for committing offenses and to compensate those they have harmed, whether individuals, communities or both. In some programs, judges review and approve pre-trial diversion plans that can include material compensation, behavioral change commitments, service to individual victims or communities, and other components. Others do not provide judicial review. In these programs, noncompliance with conciliated agreements can activate or reactivate initial charges.

Yet another approach to resolving adult criminal and juvenile cases involves plea bargaining. This process is distinct from conciliation and permits defendants to admit to committing a crime in exchange for a lesser conviction and/or sentence than that permissible by law. The prosecutor gains the certainty of conviction and gives up the possibility of the maximum sentence and/or conviction on all counts. The defendant eliminates the risk of the maximum sentence and/or conviction on all counts in exchange for a lesser sentence and/or conviction. In other words, a bargain is struck. Plea bargaining streamlines the criminal judicial process by disposing of many cases before trial.

Plea bargaining is a viable approach to reducing judicial costs. However, it should not be confused with conciliation; indeed, the two are distinct in virtually every respect. The purpose of plea bargaining is to reach legal outcomes in criminal cases with limited investment of judicial resources and with greater certainty than through adjudication. Those principally involved in the plea bargaining process are the attorneys representing the parties (the state and the defendant). In contrast, conciliation focuses on the human and societal, rather than legal, dimensions of a case. Those principally involved in conciliation are the victim and offender. If plea bargaining is pursued, it will be very important to distinguish the two programs.

The Salvadoran pilot program incorporated aspects of each of these approaches, and included dimensions of both conciliation and plea bargaining. A broader spectrum of cases was deemed eligible for conciliation than that typical of pre-trial diversion models. Those who resolved their cases were not subjected to criminal penalties as typical of programs that accept serious cases and proceed with conciliation independent of adjudication. Further, ultimate decision-making authority regarding resolution rested with victims and defendants, not with the court. Judges had no legal basis to proceed with adjudication where qualifying agreements were reached. The court's review of agreements was limited to determining whether the content of each agreement violated existing law. If the agreement passed legal muster, adjudication was terminated without conviction.

### **A3. Implications of Pilot Program Objectives and Design and Recommendations for the Future**

Individuals are not the only victims of crime; indeed, society is victimized by each crime committed. Conciliation of criminal matters must strike a delicate balance between addressing the rights of individual victims and defendants, while ensuring that safeguards are in place to protect against further harming the public interest.

Many participants in pre-pilot focus groups expressed concern that both victims and offenders viewed conciliation as a means to negotiate justice, and in some instances, as a way to manipulate the criminal justice system to their advantage. This adversely affected the system since criminals did not take it seriously and victims used it for purposes of extortion.

Due to the brevity of the pilot programs and the limited amount of data available, no firm conclusions could be drawn concerning the impact of the pilot programs on the overall criminal justice system. However, offenders and victims were free to negotiate the disposition of their cases during the pilot programs. Therefore, it appears that the design of the program did not adequately address problems identified prior to implementing the pilot projects.

It is recommended that future criminal or juvenile conciliation programs be designed using only one of the above described models (conciliation independent of adjudication; conciliation outcome taken into consideration in outcome of adjudication at a judge's discretion; or pre-trial diversion for minor cases).

Since serious crimes have a significant impact not only on individual victims, but on society as well, it is recommended that the conciliation of serious crimes, if permitted at all, be independent of adjudication. If conciliation is offered in such cases, offenders should be required to proceed through the criminal adjudication process and, following conviction, be offered conciliation services. The only exception would be where a judge would either reduce or eliminate criminal penalties when, in his/her discretion, such an action would be in the interest of the offender and the victim, and would not undermine the criminal justice system.

If the pre-trial diversion model is selected, care should be taken to limit case eligibility to minor offenses. This option gives previously law abiding citizens a second chance. The pre-trial diversion process requires substantial investment of resources, not only in the conciliation program itself but also for the extensive oversight of compliance with agreements. Follow-up of

pre-trial agreements is important where a debt is being paid to an individual or to a community through community service. Monitoring is also necessary to ensure that offenders carry out agreed upon plans for rehabilitation, training, counseling, and participation in other programs. Unless adequate resources are made available to provide thorough follow-up, launching pre-trial diversion programs is not advisable.

It is further recommended that only one type of conciliation program be established initially. Implementing more than one from the outset could send mixed messages to victims, offenders, and the public. While, in the long-term, various conciliation program models could be operational simultaneously, it is preferable that one be well established and understood before implementing another.

The program model that is chosen will determine future case eligibility. Therefore, the case matrices developed by the Working Group will need reevaluation and adaptation to the program design. Likewise, eligibility of offenders will require special attention with respect to both repeat criminal behavior and the number of times conciliation is offered to each offender.

Further, it is recommended that the Working Group's policy regarding admission of responsibility be changed. Without an offender's admission of some responsibility for committing the alleged crime, the conciliation process can turn into a mini-trial during which the victim attempts to prove the defendant's guilt and the defendant attempts to prove his/her innocence. This raises the specter of denying defendants due process protection and, at the same time, re-victimizing victims by potentially requiring them to go through two processes to prove guilt (conciliation and adjudication), rather than one.

#### **A4. Clarifying Philosophy and Goals of Family Conciliation**

The Working Group underscored the importance of the family institution in society and identified conciliation as a mechanism to support families in crisis. The conciliation process was intended to give disputing family members an opportunity to talk about issues of concern, in some instances leading to reconciliation and, in others, enabling parties to separate amicably. Where children are involved, the process helps parties design effective co-parenting plans (custody, support, visitation and other issues) following separation or divorce. The Working Group further recommended that all family cases be eligible for conciliation, except those with a history of violence, where one serious incident of violence was reported, or where strictly legal issues were at stake (eligibility for divorce or annulment).

During the assessment and training phases of the project, family judges and members of multidisciplinary family teams participated in discussions regarding conciliation. Through these discussions, it became apparent that family judges have had a history of not only making legal determinations, but also of effectively serving as counselors regarding practical matters such as property division, child custody and support, and others.

While the counseling provided by family judges serves a critical function in many cases, this service is distinct from that provided by a conciliator, a neutral party with no decision-making authority. Conciliation places full responsibility on the parties for resolving their own disputes. Through success in conciliation, the parties are often more capable of independently resolving

disputes that arise between them in the future. In contrast, while counseling is the most effective intervention in some cases, it can perpetuate reliance on others for the resolution of family matters.

Since a cadre of conciliators has already been trained to serve families, and it appears that conciliation would provide added benefits to many families in need, failure to use those services in qualifying cases (those not ineligible for reasons of violence) would likely be a mistake.

Since legal obstacles prevented the implementation of family programs, it is recommended that these difficulties be addressed and, if necessary, legislation be amended or reinterpreted to permit referral of family cases to court authorized conciliators. In particular, legislation authorizing only family judges to conduct family conciliations would need to be amended or reinterpreted.

## **A5. Conciliation Screening Processes**

### **Criminal and Juvenile**

As recommended by the Working Group, participation in conciliation should be voluntary for offenders and victims since requiring participation in conciliation in criminal and juvenile cases, even to a limited degree, could violate the rights of both. In some instances, victims will not want to face those who harmed them. In others, they will choose to meet with offenders for purposes of getting answers to their questions, facing their own fears, receiving compensation, getting assurances that they will not be harmed again, and other reasons. Similarly, some offenders will want to participate in conciliation to tell their stories, clear their conscience, or to learn from their mistakes, while others will choose not to meet with the victims.

To ensure that all parties make informed, voluntary decisions regarding their participation in conciliation, pre-conciliation screening is essential. To this end, it is recommended that individual meetings be held with both defendants and victims prior to scheduling conciliation of any criminal or juvenile matter. These private meetings should include a full explanation of the conciliation process, an opportunity for the defendant and the victim to tell their stories about what occurred, time to ask questions about the process, and a chance to discuss the pros and cons of conciliation in each case. In most cases, it is advisable to hold the screening session with the offender first. Having obtained his/her commitment to participate in conciliation, the conciliator then arranges a screening session with the victim. Some programs, however, obtain the consent of the victim before discussing the conciliation option with the offender.

### **Family**

Family cases should also be carefully screened to determine whether the parties are interested in participating in conciliation and to discover whether the case is eligible for conciliation. It is advisable that separate discussions be held with both parties before scheduling a conciliation session to guard against either party feeling pressured by the other to participate.

In accordance with the Working Group's recommendations, it is advised that all family cases be eligible for conciliation with the following two exceptions: 1) those that involve strictly legal

issues and 2) those involving serious or repetitive violence. In the first instance, strictly legal issues (eligibility for divorce or annulment) require judicial review and, therefore, are better suited to resolution through adjudication. With respect to the second exclusion, a significant power imbalance between abused and abuser exists in cases involving serious or repetitive violence. It is doubtful whether even the most able conciliator could shift the power imbalance to the extent necessary for effective negotiations during conciliation.

If, during screening discussions, a history of violence or single incident of serious violence is detected, further inquiry should be made to determine the nature of the violence and the eligibility of the case for conciliation.

In some family court systems, some level of participation in conciliation is required before participating in the litigation process. In some programs, parties are required to make a good faith effort to reach agreement through conciliation. This might entail that the parties participate in conciliation for a certain period of time (one to two hours). Other programs require parties in family cases to participate in a meeting with the conciliator to learn about the conciliation process. In the future, policy makers may want to consider requiring parties in eligible family cases to participate in a conciliation session. Whether or not participation in family conciliation is a requirement, judges can encourage parties to make an effort to resolve matters through conciliation.

#### **A6. Conciliator Selection**

Conciliator selection has a significant impact on court-annexed conciliation programs, including 1) party perceptions of conciliator neutrality and confidentiality of the conciliation process; 2) nature and quality of conciliation; and 3) judicial cost.<sup>4</sup> The following discussion outlines general issues related to the role of the conciliator and compares and contrasts the criminal and juvenile pilot conciliation models in this regard.

Trust in the conciliator as a third-party neutral, rather than as a decision maker, is a key component of the conciliation process. The role of the conciliator as a neutral puts the burden on the parties of resolving their own disputes and implicitly conveys to them that they are capable of doing so. A related component is an assurance of confidentiality, particularly when legal rights are at stake. Confidentiality gives parties the freedom to express themselves openly and think creatively about options for resolution. Where judicial personnel serve as conciliators, both neutrality and confidentiality can be compromised or can be perceived as compromised.

Since judges served as conciliators in criminal cases during the pilot programs, a case swapping mechanism was developed to address issues confidentiality and neutrality. At the conclusion of each conciliation, the conciliating *juez de paz* referred the case for either *homologación* or adjudication to another judge in the same jurisdiction.

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<sup>4</sup> Long-term, multi-pronged research regarding compliance with conciliated agreements, recidivism rates and other factors, would be required to assess the overall impact of court-annexed conciliation programs on judicial cost. Such comprehensive research was not funded by this project and may be cost prohibitive in the future. Recommendations are based on observations of the pilot programs.

Case swapping among judicial conciliators is a tool that is used effectively in some jurisdictions. However, judges who served as conciliators in the pilot programs reported that parties did not understand how the judges could serve in a neutral role, and then later act in a decision-making role. Some parties also expressed surprise at the shift in the judge's role as conciliator and requested that the conciliating judge make a decision in their cases. While not expressed directly by the parties, it is also assumed that some questioned the confidentiality of the process since legal proceedings are generally recorded. And, as a practical matter, parties were frustrated by the requirement that they appear at follow-up adjudication hearings for approval of their conciliated agreements or continuation of the litigation process.

Confidentiality and neutrality issues also arose in connection with the juvenile pilot programs. During the design process, it was contemplated that case swapping would occur between family and juvenile multidisciplinary teams to ensure that team members would not serve dual roles in any case (as evaluator and conciliator).

However, since the Commission determined that family cases could not be conciliated under existing law, family multidisciplinary team members were not permitted to conciliate in the pilot programs. Thus the case swapping mechanism between the juvenile and family multidisciplinary teams was not implemented. Since each member of the three-person juvenile multidisciplinary teams was required to continue making an assessment regarding one aspect of the case (social, psychological, or educational), those who served as conciliators had to serve in advisory capacities in the cases they conciliated.

Notwithstanding this practical difficulty, parties in juvenile cases appeared to better understand the neutrality of the conciliators and the confidential nature of the conciliation process than parties in criminal cases. This was likely due, at least in part, to the fact that those serving as conciliators were not judges, but psychologists, educators, and social workers. Since conciliation sessions were held in the offices of the multidisciplinary team members, rather than in judges' chambers, parties felt that the conciliation process was separate from adjudication.

Another issue related to conciliator selection pertains to judicial cost. When cases are settled early in the adjudication process, subsequent procedures become unnecessary and judicial savings can be realized. These savings, however, are offset by any direct investment of judicial time, either in administering the conciliation process or in conciliating cases. Therefore, to save judicial resources, it is recommended that non-judicial staff serve as conciliators.

Finally, the quality of conciliation depends, in large part, on the skills and orientations of conciliators. Based on observations of conciliator performance during training sessions, it appeared that most multidisciplinary team members were naturally suited to serving as conciliators. While many judges exhibited strong conciliation skills, most had at least some difficulty shifting from the role of decision maker to third-party neutral.

Judges are trained to find and organize factual information and to apply legal principles to the facts in each case. To do this effectively, they focus on the past and limit their inquiries to legally significant issues. In contrast, while psychologists, social workers, educators and members of other social professions are trained to analyze the past, their emphasis is on helping individuals

make changes for the future. And the scope of their inquiry extends to all issues of relevance, not just those with legal significance. Since the scope of discussion in conciliation is as broad as the parties choose and the focus of the process is forward-looking, multidisciplinary team members did not need to make as great a professional shift as did judges when managing the conciliation process.

In addition, previous experiences with conciliation in the adjudication process likely influenced the judges who served as conciliators during the pilot program. Prior to the start of the pilot program, conciliation in the adjudication process generally consisted of pausing adjudication to determine whether an agreement had been reached between the parties. If so, and the agreement passed legal muster, it was recorded and the case was closed. If no agreement was reached, litigation proceeded. Judges and parties considered conciliation an outcome — a synonym for agreement.

Conciliation, as contemplated by the Working Group, is a process rather than an outcome. It consists of a multi-stage dialogue facilitated by a neutral third party that focuses on the future — how things can change for the better to the satisfaction of all parties involved. Shifting from an “outcome” to “process” conciliation model appeared to be challenging to most judges.

For reasons of party perception, judicial cost, and professional orientation, it is recommended that non-judicial staff serve as conciliators in at least initial conciliation programs. Further, to preserve the integrity of the conciliator’s role and the conciliation process, it is recommended that any future conciliation programs provide adequate human resources to ensure that conciliators do not function in both conciliation and decision-making or advisory capacities in any single case. All candidates for positions as conciliators should be evaluated on the basis of predetermined criteria. Lists of recommended characteristics and professional backgrounds for future conciliators were prepared during the final planning session. These are included in Attachment C.

#### **A7. Terminology**

Parties and staff of the judicial system were confused by the terminology used during the pilot process. While, on the one hand, judges continued to conciliate cases using the standard conciliation process (pausing to determine whether agreement was reached during litigation), the pilot conciliation process simultaneously offered a very different conciliation option. Use of the same term for both processes contributed to the confusion.

If judges will continue to conduct standard conciliations in the future, as part of the adjudication process, it is critical that non-judicial conciliations be identified by a separate term. One option, and perhaps the best option, would be “mediation.” This term is gaining recognition in El Salvador through the work of the Mediation Center. Usage of this term would, however, require that applicable codes be amended to permit judges to refer cases to mediation.

#### **A8. Confidentiality**

The guarantee of confidentiality enables parties to discuss issues openly and creatively. Therefore, it is recommended that confidentiality rules be formally adopted prior to

implementing future conciliation programs. Among other things, the rules should 1) specify conciliators' responsibilities regarding confidentiality; 2) outline their immunity from being subpoenaed in post-conciliation legal proceedings; and 3) should identify exceptions to confidentiality (where credible threats of physical harm are made during a conciliation session).

#### **A9. Homologación**

As set forth by the Working Group, *homologación* was necessary to finalize a conciliated agreement. However, in the final planning session, the majority of those who participated recommended that the *homologación* requirement be eliminated. This recommendation was made on two grounds: first, most shared the view that *homologación* was not needed for purposes of enforcing either monetary or non-monetary agreements. Monetary agreements, if broken, were considered enforceable in civil court. And where non-monetary terms of an agreement were broken, it was recommended that prosecution either be initiated or resumed.

Practical difficulties with *homologación* during the pilot process also contributed to the view that the requirement should be lifted. As described previously, the requirement to appear in court twice and the administration of transferring cases from one judge to another was burdensome both for parties and for the court system. Further, some parties reneged on their conciliated agreements during the time that lapsed between the conciliation hearing and the *homologación* hearing.

Whether or not *homologación* remains a requirement in future conciliation programs, it is nonetheless recommended that judicial review be provided as needed to protect the interests of those involved in each case as well as public interests.

#### **A10. Case Processing, Follow-up and Modification of Agreements**

It is recommended that the Salvadoran criminal justice system elect to implement either a pre-trial diversion program or a conciliation program that is independent of the adjudication process. In either model, it is not likely that suspension of case processing will occur. In the first case, pre-trial intervention would take place before adjudication proceedings begin. In the second, conciliation would likely follow adjudication.

In family cases, however, it is recommended that conciliation be offered both prior to adjudication and during the adjudication process. In the latter instance, suspension of case processing is advisable to encourage parties to fully use the conciliation process and reach amicable agreements whenever possible.

Further, it is recommended that all agreements requiring ongoing compliance receive follow-up services. If a conciliated agreement is reached through pre-trial diversion, agreements will require careful monitoring to ensure compliance since noncompliance should result in instituting criminal or juvenile proceedings.

Finally, the Working Group recommended that any necessary alterations to the initial agreement be made by authorization of the presiding judge (Article 53 Criminal Procedures Code) in the presence and with the consent of both parties.

## **A11. Program Administration**

### **Office space**

To facilitate public understanding of conciliation as an extrajudicial process, it is advisable that a separate conciliation office be established. The conciliation office could be located within the physical court structure, for efficient referral purposes, but should be identified as distinct for the court.

### **Size and Scope**

To ensure the long-term success of conciliation programs, it is recommended that initial programs be limited in both scope and size. This will be necessary for purposes of providing adequate staff to 1) train and supervise mediators; 2) conduct thorough case screening; 3) offer comprehensive follow-up whenever needed; and 4) facilitate ongoing communication with representatives of the court regarding program issues.

## **A12. Affiliation and Use of Resources**

To the greatest extent possible, it is recommended that future conciliation programs use the skills, knowledge and resources of those who have been trained as conciliators as well as existing programs, such as the Mediation Center sponsored by the Justice Department.

## **A13. Training**

For the sustainability of conciliation programs, it is recommended that steps be taken to train a cadre of Salvadoran conciliation trainers. To this end, the Judicial Training Module and the Train the Trainer manual, both prepared as components of this project, can be used.

Further, it is recommended that future trainings be coordinated with the Judicial Training School, which has expressed keen interest in supporting conciliation initiatives.

## **A14. Conciliation Program Evaluation**

It will be important to conduct ongoing, comprehensive evaluation of conciliation programs in the future for purposes of determining the impact of conciliation on the judicial system and on society as a whole. Survey information developed during the pilot program related to the conciliation process itself. Future evaluation information should continue to include evaluation of the conciliation process, from the perspectives of the parties, the conciliator, the representatives, and judges. It will be important also to track compliance with conciliated agreements and recidivism following conciliation.

As described in the Train the Trainer Manual, ongoing evaluation of conciliators is necessary to maintain quality services. This evaluation can be done through direct observation of conciliators, party and advocate surveys, mentoring, and self-evaluation.

### **A15. Development of Ethical Guidelines for Conciliators**

Sample ethical guidelines were included in the conciliator and attorney manuals prepared for the trainings. These documents can be used to identify ethical issues, as they pertain to conciliating family, juvenile and criminal cases, and to develop ethical guidelines for future conciliation projects. It is recommended that a governing body be commissioned by the government to monitor compliance with ethical guidelines and to impose sanctions for noncompliance.

### **A16. Prioritizing Conciliation Programs**

The choice to initiate criminal and juvenile conciliation programs early in the country's development of conciliation, as an alternative dispute resolution tool, was not typical of most experiences in the field. Indeed, El Salvador's pilot experiences in the criminal conciliation arena are among the first in Latin America. Certainly an effective conciliation program could help streamline the criminal adjudication process, enabling the judicial system to devote its limited resources to cases requiring adjudication. However, although there were many successes in this area, there were many challenges as well. Concerns about the impact of conciliation on broader efforts to improve the criminal justice system, raised in the preliminary assessment phase of the project, remain as the project comes to an end. Specifically, these concerns related to the potential of sending the message that justice is negotiable and thereby compromising the public interest.

In contrast, conciliation of family and other civil matters does not directly involve the public interest. For this reason, conciliation in these arenas is less complex. With only minor limitations (to protect the interests of children and victims of violence), family members and parties to other civil disputes are free to enter into conciliated agreements as they choose, without affecting the broader interests of society.

With careful planning and significant investment of resources, public interest concerns inherent in criminal conciliation might be adequately addressed. However, it is important to give careful thought to whether the extra investment required in the criminal sector is practical, and whether criminal conciliation is an appropriate place to begin the development of conciliation in El Salvador.

## **VI. Conclusion**

Prior to implementing this conciliation project, interest in conciliation as an alternative dispute resolution tool was already significant in El Salvador. Through the various planning and program activities, this interest became even more galvanized in the pilot regions and among national policy makers who were involved in the project. It is hoped that this heightened interest and the lessons learned through the pilot experiences will help to propel and guide the development of future conciliation initiatives in El Salvador.

## ATTACHMENT A

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### **Pilot Program Policies and Procedures**

#### **A. Objectives of the Conciliation Process**

The shared and unique objectives of conciliation in family, juvenile and adult criminal cases include:

##### **A1. Shared Objectives**

- » To move from adversarial conflict resolution to a more peaceful dialogue by increasing parties' participation in resolving cases
- » To reduce the number of cases referred to judges

##### **A2. Unique Objectives**

###### **Adult Criminal**

- » To save justice system resources. Although this objective is related to reducing the number of cases referred to judges, the Group emphasized the importance of relieving the overburdened judicial system as a whole.

###### **Juvenile**

- » To educate minors about responsibility. In keeping with the intent of juvenile law, the Group concluded that conciliation should further the goal of instilling responsibility in young people. In particular, conciliation should be used as a vehicle for helping young people to take responsibility for the crimes they commit.

###### **Family**

- » To strengthen family ties. Insofar as "the family" is a critical societal institution, conciliation should help parties focus on the principles of being family, even when family members choose to maintain separate residences. Although reconciliation will not be a predetermined goal of each family conciliation, the conciliation process will give families a forum within which to discuss and consider reconciliation, whenever appropriate.

#### **B. Conciliators**

*Jueces de paz* will conciliate penal cases and multidisciplinary team members will conciliate juvenile and family cases. To avoid both real and perceived conflict of interest, judges will not adjudicate cases they conciliate. Multidisciplinary team conciliators will either function as investigators or conciliators, but not in both capacities on any given case. Judicial and

multidisciplinary team case-swapping systems will be developed prior to implementation of the pilot programs.

### **C. Voluntary Participation**

Participation in conciliation shall be voluntary for all parties. To ensure that parties are participating voluntarily in the process, attorneys have an affirmative duty to inform their clients of:

- » The conciliation option, in cases deemed conciliable
- » The nature of the conciliation process
- » The fact that participation in conciliation is voluntary

Attorneys will speak privately with their clients about the conciliation process and, during these discussions, invite their clients to express concerns about threats or pressures to conciliate. Further, during the conciliation process, attorneys and conciliators will ensure that their clients are participating in conciliation voluntarily and, in no circumstances, under duress. Finally, judges will inform parties who appear in court of the availability of conciliation in appropriate cases (see case selection matrices below) and discontinue conciliation where coercion or threats are detected.

### **D. Referrals to Conciliation**

To save court resources, there will be no suspension of normal family, penal or juvenile case processing procedures during the conciliation process.

#### **Adult Penal Cases**

The investment of court resources in adjudication mounts as cases proceed through the penal system. By the time of the preliminary hearing, the court's investment has risen to such a substantial level that committing additional resources to conciliation becomes cost-prohibitive. Conciliation will be permitted at any point until the preliminary hearing before the sentencing judge, but not thereafter. Only one conciliation process will be permitted in each case, both to save judicial resources, and to prevent parties from using the conciliation process as a delay tactic. Conciliations that are started but not completed during one session may, however, be continued in follow-up sessions.

The *juez de paz* will offer the conciliation option to the parties in the preliminary hearing and, if all parties are willing to participate, proceed with conciliation. If the parties reach an agreement as an outcome of this pre-judicial conciliation, the agreement will be approved (*homologación*) by the *juez de paz*. If no agreement is reached, the case will be referred to another *juez de paz* for adjudication.

If the parties decline to conciliate and request conciliation after adjudication has begun, the presiding judge (*juez de paz* or instruction judge) will refer the case for conciliation to a *juez de paz* who did not preside as an adjudicator in the case. The outcome of the conciliation (agreement or no agreement) will be submitted to the referring judge for approval

(*homologación*). In all cases conciliation will be concluded or terminated prior to the termination of the preliminary hearing.

### **Juvenile Cases**

The juvenile judge will refer cases to the multidisciplinary team for conciliation in the resolution admitting the case for processing. The team's conciliation coordinator will assign a suitable member of the multidisciplinary team to cases referred for conciliation. The conciliation process will be completed as promptly as possible, and at the latest, before the preliminary hearing.

### **Family Cases**

Conciliation of family cases will be temporarily suspended until legal issues identified by the UTE Commission are resolved. At that time, it is anticipated that the *jueces de paz* and members of the multidisciplinary team will conciliate cases referred to them. Referral to conciliation of eligible family court cases will be made to the conciliation coordinator of the multidisciplinary team by the family judge in the resolution admitting the case for processing. The coordinator will then assign the case to a suitable team member. The conciliation process will be concluded as expeditiously as possible and, in all cases, prior to the preliminary hearing. If an agreement is reached, the judge will finalize it at the preliminary hearing. Otherwise, the case will follow its normal judicial course.

### **E. Confidentiality**

Confidentiality will be preserved throughout the conciliation process. When no agreement is reached between the parties, conciliators will refer matters to those having jurisdiction of each case (judges and/or multidisciplinary team members), and will refrain from commenting about the discussions during conciliation. When a written agreement is reached, the document will be sent to the judge and entered into the court record. All other documentation prepared by conciliators will be destroyed. Where a serious threat of harm is made during the conciliation process, the conciliator will have an affirmative duty to inform the proper authorities in the interest of protecting those at risk.

### **F. Conciliated Agreements**

Judicial review of conciliated agreements will be limited to an assessment of legal validity. Except in cases where the content of the agreement is legally inadequate, judges will not reopen conciliated matters for further discussion or recommend changes to the conciliated agreement.

Follow-up is an important component of the conciliation process and will be provided, as needed, to ensure compliance with conciliated agreements. Further study is required to determine 1) the types of agreements that require monitoring; 2) which court personnel shall be assigned monitoring functions; and 3) the most effective monitoring procedures.

When failure to comply with a conciliated agreement is for good cause, alterations to the initial agreement may be made with the consent of both parties and the authorization of the presiding

judge (Article 53 Criminal Procedures Code). However, to make such alterations, the presence of both parties at a hearing will be required.

## **G. Case Eligibility**

### **G1. Adult Penal Cases**

#### **Identifiable Victim**

Since one of the key objectives of conciliation is to engage parties in resolving their own conflicts, the process will be made available in criminal cases only where there is an identifiable, individual victim who can engage in the conciliation process. The only exception to this exclusion pertains to negligent homicide. These matters will be conciliable in both juvenile and adult criminal cases since, by law, surviving family members are deemed parties for purposes of conciliation.

#### **Seriousness of Crime**

Crimes involving violence and actions against more than one legal claim will not be conciliated unless, due to extenuating circumstances, the judge deems conciliation appropriate.

#### **Relinquishment of Rights**

Conciliation will not be permitted in cases involving non-relinquishable rights.

#### **Repeat Offenders**

Without limits to the number of times offenders are permitted to conciliate, repeat offenders could conceivably commit crimes, *ad infinitum*. This effect would undermine, rather than strengthen, the criminal judicial system. As such, there will be limits to the number of times repeat offenders are permitted to conciliate.

At present, legislation is pending to address this issue. While the legislation provides that conciliation will be authorized only once for each offender in the span of five years, some interpret the law as permitting repeat conciliations for the same offender where different crimes are committed (once for minor threat, once for theft). A narrower interpretation of the law was recommended. During the pilot program, conciliation will be authorized for each offender only once during each five-year period, irrespective of the nature of the crimes committed. The only exception to this rule will be for negligent crimes. In such cases, there will be no limit to the number of conciliations permitted during any given period.

#### **Admissions of Guilt**

An offender's full or partial admission of culpability will not be a prerequisite for participation in conciliation. However, where an offender insists on having no responsibility for the crime during the conciliation process, the conciliation will be terminated to resume the adjudication process.

## Case Types

The following matrix outlines the case categories considered appropriate and inappropriate for conciliation of adult criminal matters.

Eligible	Ineligible
» Threat	» Homicide (intentional)
» Theft	» Serious injury
» Minor injury, intentional	» Kidnapping
» Minor injury, negligent	» Robbery
» Libel and slander	» Rape or sexual assault
» Homicide (negligent)	» Aggravated threat
	» Possession of arms
	» Fraud (public official)
	» Noncompliance with court order

## G2. Juvenile Cases

### Cases Selected for Conciliation

Under current legislation, all juvenile matters are deemed conciliable, except in cases involving *intereses difusos* (indeterminate rights). Notwithstanding this broad definition, eligibility for juvenile conciliation during the pilot program will be based on many of the same factors taken into account in adult criminal cases, including 1) the willingness of the victim and offender to conciliate; 2) the seriousness of the alleged crime; 3) the presence or absence of criminal intent; and 4) the relinquishment of rights.

### Identifiable Victim

Since one of the key objectives of conciliation is to engage parties in resolving their own conflicts, the process will be made available in juvenile cases only where there is an identifiable, individual victim who can engage in the conciliation process. The only exception to this exclusion pertains to negligent homicide. As recommended in adult criminal cases, these matters will be conciliable in juvenile cases as well since, by law, surviving family members are deemed parties for purposes of conciliation.

### Seriousness of Crime

To preserve the effectiveness and integrity of the criminal justice system, crimes involving violence and those that violate more than one legal right, will not be conciliated unless the judge finds this exclusion would be contrary to the interests of the juvenile. By giving juvenile judges discretion to authorize conciliation in any case deemed appropriate, the courts will be able to fully use the conciliation process to teach youth lessons about taking responsibility for their actions.

### Repeat Offenders

There will be no predetermined limit to the number of times juvenile offenders are permitted to conciliate. While such limitations are recommended in adult criminal matters, juvenile judges

will be permitted to determine, on a case-by-case basis, whether adjudication or conciliation would best further the goal of teaching juveniles responsibility.

**Relinquishment of Rights**

Cases involving non-relinquishable rights will not be conciliated.

**Admissions of guilt**

A juvenile’s full or partial admission of culpability will not be a prerequisite for conciliation. However, as in adult penal cases, conciliation will be terminated and the adjudication process resumed where the juvenile insists on bearing no responsibility for the crime.

**Case Types**

The following matrix outlines the case categories considered appropriate and inappropriate for conciliation of juvenile matters. While similar, distinctions between adult criminal and juvenile cases arise in connection with the fundamental purpose of juvenile justice, namely to teach responsibility to young people. Since conciliation is a tool that can be used to further that purpose, a slightly broader spectrum of cases will be eligible for conciliation in juvenile matters than in adult criminal matters.

Eligible	Ineligible
» Theft	» Homicide (intentional)
» Threat	» Serious injury
» Aggravated threat	» Kidnapping
» Minor injury, intentional	» Rape or sexual assault
» Minor injury, negligent	» Possession of arms
» Libel and slander	» Noncompliance with court order
» Homicide (negligent)	
» Minor injury, intentional	
» Robbery	

**G3. Family Cases**

**Cases Selected for Conciliation**

Conciliation will be offered to resolve all family disputes except where one or more of the following factors is present: 1) party unwillingness to participate; 2) repetitive or excessive domestic violence; 3) strict legality of the issue(s), such as establishing paternity where paternity is denied; and 4) violation of a court order.

**Domestic Violence**

Family cases involving violence will be conciliated only under certain circumstances. Where violence is a factor, judges will determine the history and gravity of the violence by applying the standards set forth in Article 200 of the Penal Code. When, under the Code, the alleged violence constitutes a criminal offense, the matter will be referred to the prosecutor’s office for criminal processing. Such cases will not be conciliated. However, when the alleged violence does not rise

to the level of a criminal offense, and the case is otherwise eligible for conciliation, the matter will be referred to conciliation.

### Case Types

The following matrix outlines the case categories deemed appropriate and inappropriate for family conciliation.

Eligible	Ineligible
Effective parent-minor relationships	Denial of paternity
Guardianship/other parenting issues	Repeat violence <sup>5</sup>
Divorce and separation/other related issues	Noncompliance with court order
Voluntary acknowledgment of paternity	
First incident of violence <sup>6</sup>	

<sup>5</sup> Conciliation will be permitted only once for cases involving violence.

<sup>6</sup> Cases involving violence will be screened to determine the gravity of the violence

## ATTACHMENT B

### Focus Group Feedback

Conciliation in the pilot jurisdictions	<ul style="list-style-type: none"> <li>• High percentage of criminal, juvenile and family cases are being conciliated (parties reach agreement). However, parties meet on their own and arrive at agreements without assistance by a "neutral third-party conciliator" facilitating the discussions.</li> </ul>
Legal interpretation regarding case eligibility	<ul style="list-style-type: none"> <li>• Lack of clarity exists about what cases can be and/or should be conciliated.</li> <li>• The literal application of conciliation law has unintended effects. For example, aggravated assault cannot be conciliated, but aggravated assault when combined with robbery is conciliable.</li> <li>• Concerns exist regarding victims' "absolute right" to conciliate regardless of extenuating circumstances or other public interest considerations.</li> </ul>
Role of judge	<ul style="list-style-type: none"> <li>• Opinions vary about whether judges can serve as neutral conciliators and decision makers for the same case.</li> <li>• Questions exist about whether or not judges have discretion to disallow conciliation and/or to substantively alter conciliated agreements.</li> </ul>
Role of lawyers Public defenders and prosecutors	<ul style="list-style-type: none"> <li>• Opinions vary about whether attorneys can or should serve as conciliators.</li> <li>• A perceived conflict of interest exists between the role of prosecutor as conciliator and as advocate for the public interest (and/or the victim).</li> <li>• A perceived conflict of interest exists between the role of defense attorney as conciliator and as advocate for the accused.</li> <li>• Procedures regarding conciliation seem to vary between jurisdictions.</li> </ul>
Rights of the accused	<ul style="list-style-type: none"> <li>• It is perceived that victims use the conciliation process to extort money from the accused and that safeguards for the accused are lacking.</li> </ul>
Rights of victims	<ul style="list-style-type: none"> <li>• It is perceived that victims participate in conciliation and settle cases because of threats by the accused ("settle this case or I will harm you or your family").</li> </ul>
Public Interest	<ul style="list-style-type: none"> <li>• Concerns exist regarding the perceived absolute right of victims to conciliate such a broad category of criminal matters.</li> <li>• Concerns exist about conciliation involving repeat offenders and public safety issues.</li> <li>• Concerns exist about whether or not victim-driven conciliation agreements result in inconsistent standards/punishment for similar crimes.</li> <li>• Concerns exist whether crime is being perpetuated through conciliation (Are the accused engaging in subsequent crimes in order to comply with conciliation agreements?)</li> </ul>

### A. Practical Problems

- Lack of time for judges to conduct/facilitate formal conciliation sessions
- Lack of clarity regarding distribution of conciliation responsibilities between *jueces de paz*, judges of instruction, and sentencing judges
- Lack of resources to manage conciliation cases
- Lack of resources to provide adequate follow-up
- Lack of facilities in which to hold conciliation sessions
- Notification, attendance, and rescheduling for non-appearance of parties at conciliation or related court appearances

### B. Training

- Judges and lawyers expressed willingness to participate in the conciliation process, but have not received adequate training
- Conciliation training is needed for judges. Negotiation training is needed for attorneys.

## ATTACHMENT C

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### Post Pilot Planning Session — March 2000

#### Group #1

Representatives of the Prosecutor's Office

- Lic. José Ovidio Portillo – Jefe de Subregional de Soyapango
- Lic. Buenaventura Cruz Meza – Jefe de Subregional de Usulután
- Lic. Israel Zavala Cubías – Jefe de Subregional de Cojutepeque
- Lic. Héctor Gustavo Villatoro – Jefe de Subregional de Sonsonate

#### Group #2

Representatives of the Public Defender's Office

- Lic. Patricia de Membreño – Repres. de Subregional de Soyapango
- Lic. Erick Daniel Abrego – Repres. de Subregional de Cojutepeque
- Lic. Antonio Wilfredo Orellana – Jefe de Subregional de Sonsonate

#### Group #3

Representatives of the Judicial Training School

- Lic. Berta Rosario Diaz Zelaya – Deputy Director
- Lic. Levia Italmir Orellana – Trainer
- Lic. Ramon Iván García – Trainer
- Lic. Luis Edgardo Larrama – Trainer

#### Group #4

*Jueces de Paz*

- Lic. Maria Isabel Cabañas Hurtado – First *Jueza de Paz* of Soyapango
- Lic. Lesvia Alvarenga – Fourth *Jueza de Paz* of Soyapango
- Lic. Sayde Benitez – Second *Jueza de Paz* of Usulután
- Lic. Juan Barquero Trejo – First *Juez de Paz* of Cojutepeque
- Lic. Astrid Yanira Pineda – First *Jueza de Paz* of Sonsonate

#### Group #5

*Jueces de Paz*

- Lic. Ana Ruth González Navarro – Second *Jueza de Paz* of Cojutepeque
- Lic. Ana Aracely Ayala Velásquez – Third *Jueza de Paz* of Usulután
- Lic. Kathya María Castro Sandoval – Second *Jueza de Paz* of Sonsonate
- Lic. Manuel Antonio Rosales – Third *Juez de Paz* of Soyapango
- Lic. Carlos Osmin Rivera Amaya – Second *Juez de Paz* of Soyapango

#### Group #6

Juvenile Judges

- Lic. Carlos Antonio Romero – Juvenile Judge of Usulután
- Lic. Flor de María Ortiz – Juvenile Judge of Cojutepeque
- Lic. Agustina Yanira de Ramirez – Juvenile Judge of Sonsonate

Group #7

Members of the Juvenile Multidisciplinary Teams

- Lic. Roberto Arévalo – Social Worker (Soyapango)
- Lic. Romeo Arturo Ayala – Psychologist (Usulután)
- Lic. Aleyda Yanira Peña – Psychologist (Cojutepeque)
- Lic. Doris Serrano de Lovo – Social Worker (Cojutepeque)
- Lic. Ana Haydeé Ascencio – Psychologist (Sonsonate)

Group #8

Members of Juvenile Multidisciplinary Teams

- Lic. Antinoael Lozano – Psychologist (Usulután)
- Lic. Rudy Mauricio Ramos – Educator (Cojutepeque)
- Lic. Morena Yanira Martínez – Social Worker (Sonsonate)
- Lic. Dilia Adai Lima – Educator (Sonsonate)

**1. What should be the objectives of conciliation in the criminal arena? In the penal arena?**

#1

- Pass from a conflictive situation to a peaceful dialogue so that those involved can offer their own solutions.
- Decrease the number of cases that are presented to the judges.
- Limit the investment of resources (human, material, economic) in the resolution of conflict.

#2

We are in agreement with the common objectives as outlined in the document. As we discussed, we would amend the objective from “more efficient administration of justice” to read: “Offer the parties the conciliation alternative for purposes of resolving disputes more efficiently.”

With respect to the unique objectives:

- Penal: In agreement with that specified in the document.
- Juvenile: We would add: “To educate juveniles and their family groups in terms of the responsibilities for and consequences of crime.”

We would add a common objective: Give parties the opportunity to choose their own resolution of conflict.

#3

*Common Objectives*

- Pass from a conflictive situation to a peaceful dialogue, for purposes of increasing the participation of parties in the resolution of their own cases.
- Satisfy the needs of the victims, particularly those directly involved in committing crimes.

*Unique objectives*

- Adult criminal: Ration the resources of the judicial system.
- Juvenile: Educate minors and their families in terms of the responsibilities resulting from criminal behavior.

#4

*Common objectives*

- Pass from conflictive resolution of conflict to more peaceful dialogue, so that there can be increased participation of parties in the solution of their cases, based on the necessity and capacity of the same, for purposes of effective conciliation.
- Same as in the project
- Achieve speedy resolution of conflict

Unique objective: Lighten the burden on the judicial system and its *conjunto*.

#5

- Efficient administration of justice.
- Providing equity and fairness in the agreements.

#6

We are in agreement with those specified in the document.

#7

*Objectives of conciliation*

- Educate minors about responsibility, social and family.
- Efficiency of judicial process.
- Save material, economic and human resources of the judicial system.

#8

- a) Seek alternatives to immediate resolution of conflict through peaceful dialogue between victim and offender, for the purpose of limiting or terminating the motives that caused the incident.
- b) Limit the number of cases that are filed in court.
- c) Educate juveniles about assuming responsibility, particularly those involved in conflict.

**2. Who should be the conciliators?**

#1

*Jueces de paz* or ideal persons who are not connected to the judicial system.

- Older than 30 years of age.
- Professionals in the social sciences and humanities.
- Possess a high level of objectivity.

#2

- a) People from the Conciliation Center appointed by the Attorney General's Office (for people with limited resources)
- b) Notary publics in private practice (reforming the law pertaining to the exercise of the role of notary public in the voluntary jurisdiction, annexing the necessary articles). For those who choose to and can opt to secure such services.

Their characteristics:

- a) Knowledge as lawyer or notary, trained in mediation and conciliation.
- b) Should possess the following skills and aptitudes:
  - Strong ethics
  - Communication skills
  - Self-assuredness
  - High level of tolerance
  - Flexibility
  - Trustworthiness and ability to trust others
  - Objectivity
  - Impartiality
  - Capacity for empathy
  - Ability to command respect or authority
  - Reserved

#3

Those persons with technical knowledge, legal basis to address the conflict.

For example:

- Notaries in practice
- Members of multidisciplinary teams
- *Jueces de paz* or instruction judges
- Lawyers involved in the system (NGOs, university legal services)
- Mediation centers created for this purpose
- Professionals in the social sciences (humanities) related to the judicial system

The above persons should meet the minimum requirements:

- Ideal professional training
- Capacity for negotiation and analysis
- Ability to listen
- Tolerance
- Calmness
- Willingness to try
- Empathetic (ability to step into the other's shoe)
- Confidentiality

- Impartiality

#4

An ideal person who is not within the judicial system, named and authorized to carry out these functions.

Characteristics:

- Impartiality
- Focused and diligent
- Ability to listen and understand problems
- Understanding of interpersonal relationships (technical)
- An honorable person both in the public and private arenas

#5

A judge with a multidisciplinary team.

Characteristics:

- Aptitude
- Ethical
- Communication skills
- Self-assuredness
- High level of tolerance
- Flexibility
- Trustworthiness
- Objectivity
- Impartiality
- Reserved
- Analytical
- Humanistic
- Responsible

Team should include:

- Psychologist
- Sociologist
- Social worker
- Educator

The same characteristics, as those listed above, apply to the team.

#6

Any professional in the humanities, with training.

Characteristics:

- Impartiality
- Facilitator of dialogue
- Tolerant

#7

Professionals in any of the humanities:

- Educators
- Social workers
- Psychologists
- Sociologists
- Lawyers

Characteristics:

- Special training in conciliation
- Self-assuredness and confidence in oneself
- Ability to summarize
- Ability to empathize
- Understanding of basic legal issues
- Ability to listen
- Vocation in the area
- Ability to manage groups
- Impartiality

#8

Professionals in the humanities such as:

- Psychologists
- Social workers
- Sociologists
- Educators
- Anthropologists
- Philosophers

Characteristics:

- Flexibility
- Empathy
- Communication skills
- Ability to listen
- Ability to manage groups
- Kindness
- Patience
- Capacity to analyze and synthesize
- Discretion
- Honesty
- Good mental health
- Impartiality
- Objectivity
- Availability

**3. What should be the nature of the participation of the parties, both formal (legal representatives) and material (the parties themselves)?**

#1

The material parties should be actively involved and "*propositiva*," while their representatives should limit their involvement to legal review of agreements.

#2

The material parties should participate absolutely voluntarily and with clear understanding of their alternatives (conciliation or routine criminal process).

The formal parties, meaning the mediator or conciliator, should be active only as facilitator of agreement.

#3

Interactive participation and voluntary negotiation.

#4

The material parties should participate in the conciliation process voluntarily, personally, and actively. It should be up to the parties whether they want to seek counsel prior to conciliation but the representatives should not intervene directly in the conciliation process.

#5

Formal:

- No participation
- If needed, they should serve as guarantors

Material:

Voluntary participation, with interest in conciliating, and having a balance of power.

#6

Voluntary, as in the document.

#7

The material parties should decide whether they want the prosecutor and public defender present.

#8

The prosecutor and public defender can participate if the victim and juvenile ask for their participation. Their participation would be passive during the conciliation session unless any of the rights of their clients are being infringed upon.

The offender or minor should be actively involved in the resolution of the conflict.

**4. Should conciliation be prior to the initiation of the legal process?**

#1

Yes, for purposes of achieving the proposed objectives.

#2

Yes, for both adults and juveniles.

#3

It should be before and during the process (not later than the preliminary hearing).

#4

Yes, with respect to the common objectives mentioned above (not overburdening the system).

#5

It should occur prior to initiation of the judicial process, given the fact that conciliation precedes judicial investigation.

#6

Yes, it should be prior to the initiation of the process.

#7

Conciliation should be applicable during the process, until prior to the final resolution.

#8

It is considered best if conciliation should begin from the time the case enters the system.

**5. What should the effects of conciliation be on the judicial process already initiated? Should the legal process be suspended? Until when should conciliation be permitted?**

#1

It should extinguish the legal action or, in cases requiring compliance over a period of time, it should suspend the legal action.

Conciliation should be permitted until the preliminary hearing (*audiencia preliminar*).

#2

The normal criminal and juvenile processes should be suspended. In adult criminal processes, conciliation should be permitted until sentencing, prior to finalizing arguments.

#3

Depending on the type of agreement:

a) If the agreement requires immediate compliance, compliance should be subject to Articles 31 No. 2 and 303 No. 4 Pr. Pn. (terminating the penal action and dropping charges).

b) If the agreement is in stages and the conditions are monetary, noncompliance with the agreement will be subject to Article. 32 inc. 5o Pr. Pn. (requiring resubmission to the civil

jurisdiction) and the matter should be closed. If the conditions are not monetary and the agreement is in stages, the proceedings should be suspended for the period of the agreement according to Article 31s No. 13 and 309, 310 Pr. Pn.

#4

By exception, conciliation could be permitted during the standard procedures, already permitted by the Penal Code.

- a) Procedures would be suspended for conciliated stage-agreements pending compliance, but would not be *Pasar de lo Señalado para ll Sobreseimiento* provisional. 1 year (*año*)
- b) In accordance with Article 32, inc. 3o. Pr. Pn., before the conclusion of arguments in the public hearing.

#5

- 1) If an agreement is reached between the parties, the case should be filed.
- 2) If an agreement is not reached, the judicial process is initiated.
- 3) If the conflict is partially resolved with a compliance condition, the conciliation will be permitted before the initial hearing and, if it is within the process, it will be permitted until the close of arguments.

#6

Effects of conciliation:

- a) Compliance with agreements terminates the action.
- b) Pending agreements suspends proceedings.
- c) Conciliation should be permitted until the preparatory hearing.

#7

- Finalization is anticipated through the process.
- It saves time and material and human resources.
- It makes the process less judicial.

#8

In terms of whether legal proceedings should be suspended, two views were given:

- That conciliation should occur before the prosecutor initiates legal action.
- Until prior to the *vista de la causa*.

**6. Is *homologación* necessary for purposes of recognizing the legal validity of a conciliated agreement?**

#1

*Homologación* is not necessary since its validity is established by relevant laws.

#2

No, since the agreements reached in the Public Defender's Office would have full effect and noncompliance therewith would cause the prosecutor's office to initiate the legal process. In cases conciliated by notaries, the notarized agreement would have legal effect and in case of noncompliance, the interested party could submit a complaint to the prosecutor's office.

#3

Yes, when the conciliated agreement was not made before a judge.

#4

Until such time as there is legal reform (giving clear legal right), agreements between the parties shall have legal effect so that they are enforceable by law. For example, administrative agreements that are made by the Public Defender's Office.

#5

No, given the fact that the conciliator will be a judge with jurisdiction of the matter.

#6

*Homologación* is not necessary for enforceability.

#7

Yes, it is necessary to ensure that there is compliance with the law.

#8

Yes, it is necessary and it should occur immediately.

**7. Is it necessary to guarantee the confidentiality of the conciliation process? Should there be exceptions to confidentiality?**

#1

Confidentiality is fundamental in alternative dispute resolution.  
An exception to confidentiality should be made where a crime or other act is committed during the conciliation and the authorities need to be advised of such.

#2

Yes, for purpose of inspiring trust in the parties.  
Exceptions should be permitted only in the event that the parties authorize the exception.

#3

Yes, as it pertains to the conciliation process but not with respect to the agreement itself (for purposes of compliance).  
For reasons of fairness, there should be no exceptions to confidentiality, except as outlined in Article 232 No. 1 Pr. Pn. and on constitutional grounds. Article 241 Cn.

#4

Referring to page 10 of the document, adding the following clause: "The record should include only the agreements made between the parties."

#5

Yes, it is an essential characteristic of conciliation.  
There should be no exceptions.

#6

As it appears in the document.

#7

Yes, it is necessary to consider confidentiality, although there should be exceptions for cases in which there are incidents or threats.

#8

Yes

#### **8. How should follow-up of conciliated agreements be provided?**

#1

The involved parties have responsibility for follow-up; and in the case of noncompliance, they are in the best position to advise the responsible authority of the noncompliance.

#2

In the case of the Public Defender's office, follow-up would be provided by the multidisciplinary teams.

In cases conciliated by notaries, follow-up would be the responsibility of the parties themselves.

#3

In juvenile cases, as described in the document and in criminal cases, by special hearing. Article 153 Pr. Pn.

#4

Follow-up of objective, monetary agreements occurs through compliance itself.

Follow-up of subjective agreements, or those in which compliance is less easy to determine, it is recommended that the parties be heard in a special hearing, in the event of noncompliance.

#5

- a) Through the multidisciplinary teams.
- b) By request of the parties.

#6

As is specified by the office of conciliation.

#7

The burden is on victims to inform in the event of noncompliance with monetary agreements.

Multidisciplinary teams should provide follow-up for agreements that are non monetary.

#8

It should be the responsibility of the office that carried out the conciliation and should be in accordance with established criteria.

### **9. What adult criminal cases should be eligible for conciliation?**

#1

Those established in the Criminal Procedures Code, Article 32, and included with these should be aggravated threats, and other violations that do not affect *intereses difusos*. In terms of juvenile conciliation, eligible cases should be those set forth in the "*normativa penal común*."

#2

Those established by legislation in Article 32 of the Criminal Procedure Code. In juvenile cases, all those contemplated in the Juvenile Law.

#3

In accordance with Alternative Dispute Resolution theory, all those of Article 32 Pr. Pn., except those that fall in the following categories:

- a) Complex crimes
- b) Crimes that imply an imbalance in power between victim and defendant (violent crimes)
- c) Crimes that protect the *intereses difusos*

#4

In this regard, Article 32. Pr. Pn. should apply.

#5

Those that are mentioned in Article 26 in numbers 1, 2, 3, 5, 6, 7, 8, 9, 10, and Article 32, numbers 1, 2, 3, 4, 5, with the exception of crimes against public administration; with other exceptions in cases of disobedience under Article 338 y 338A. Pn.

#6

Those permitted by reform.

#7

- Threats
- Minor injury
- Robbery
- Theft
- Negligent homicide

#8

All crimes, except the following:

- Serious injury
- Rape
- Homicide
- Of character "*difuso*"

ANEXO D

**Group Reports**

**Participant Questionnaire  
19 March 2000  
(Juvenile)**

On a scale of one to five, please evaluate the effectiveness of each component of this conference:

	Completely Ineffective		Moderately Effective		Very Effective	Averages and # of responses
1. Information presented during the opening plenary sessions (Friday) regarding the models and practices of the pilot programs, as an informational base for the planning sessions.	1	2	3 18%	4 27%	5 55% <sup>1</sup>	4.4 (#11)
2. Informal opportunities to share information with your colleagues for purposes of broadening your understanding of the various experiences of the pilot programs.	1	2	3	4 42%	5 58%	4.6 (#12)
3. Analysis of the practices utilized during the pilot program (separate sessions, Saturday)	1	2	3 8%	4 33%	5 58%	4.5 (#12)
4. Development of policies and procedures for the possible implementation of conciliation programs in the future (separate sessions, Saturday)	1	2	3 17%	4 25%	5 58%	4.4 (#12)
5. Presentations of analysis and recommendations by small groups (plenary session, Sunday)	1	2	3	4 42%	5 58%	4.6 (#12)
6. Opportunity to refresh the theory and practice of conciliation through role-play simulations (separate sessions, Saturday)	1	2	3 8%	4 25%	5 67%	4.6 (#12)
7. Opportunity to observe different conciliator styles and techniques (separate sessions, Saturday)	1	2	3 8%	4 42%	5 50%	4.4 (#12)

<sup>1</sup> Total percentages may not equal 100 due to rounding.

**Participant Questionnaire**  
**19 March 2000**  
**(Juvenile)**

On a scale of one to five, please indicate your level of support for the implementation of conciliation programs in the future (by area):

	Very Low		Moderate		Very High	Averages and number of responses
Penal	1	2	3	4	5	
Juvenile	1	2	3	4 33%	5 67%	4.7 (#12)
Family	1	2	3	4	5	
Other _____ (specify)	1	2	3	4	5	

**Participant Questionnaire**  
**19 March 2000**  
**(Penal)**

On a scale of one to five, please evaluate the effectiveness of each component of this conference:

	Completely Ineffective		Moderately Effective		Very Effective	Averages and # of responses
1. Information presented during the opening plenary sessions (Friday) regarding the models and practices of the pilot programs, as an informational base for the planning sessions.	1	2	3 12%	4 24%	5 65% <sup>2</sup>	4.5 (#17)
2. Informal opportunities to share information with your colleagues for purposes of broadening your understanding of the various experiences of the pilot programs.	1	2	3 6%	4 35%	5 59%	4.5 (#17)
3. Analysis of the practices utilized during the pilot program (separate sessions, Saturday)	1	2	3	4 41%	5 59%	4.6 (#12)
4. Development of policies and procedures for the possible implementation of conciliation programs in the future (separate sessions, Saturday)	1	2	3	4 29%	5 71%	4.4 (#17)
5. Presentations of analysis and recommendations by small groups (plenary session, Sunday)	1	2	3	4 18%	5 82%	4.7 (#17)
6. Opportunity to refresh the theory and practice of conciliation through role-play simulations (separate sessions, Saturday)	1	2	3	4 35%	5 65%	4.8 (#17)
7. Opportunity to observe different conciliator styles and techniques (separate sessions, Saturday)	1	2	3 6%	4 47%	5 47%	4.4 (#17)

<sup>2</sup> Total percentages may not equal 100 due to rounding.

**Participant Questionnaire**  
**19 March 2000**  
**(Penal)**

On a scale of one to five, please indicate your level of support for the implementation of conciliation programs in the future (by area):

	Very Low		Moderate		Very High	Averages and number of responses
Penal	1	2	3	4 24%	5 76%	4.8 (#11)
Juvenile	1	2	3 27%	4 9%	5 64%	3.8 (#7)
Family	1	2	3 10%	4	5 90%	4.8 (#10)
Other (specify)	1	2	3	4	5 100%	5 (#3) 2 civil 1 labor; others not specified

**Participant Questionnaire**  
**19 March 2000**  
**(Prosecutors &/or Members of the Judicial Training School)**

**On a scale of one to five, please evaluate the effectiveness of each component of this conference:**

	Completely Ineffective		Moderately Effective		Very Effective	Averages and # of responses
1. Information presented during the opening plenary sessions (Friday) regarding the models and practices of the pilot programs, as an informational base for the planning sessions.	1	2	3	4	5 100% <sup>3</sup>	5 (#3)
2. Informal opportunities to share information with your colleagues for purposes of broadening your understanding of the various experiences of the pilot programs.	1	2	3	4	5 100%	5 (#3)
3. Analysis of the practices utilized during the pilot program (separate sessions, Saturday)	1	2	3	4 67%	5 33%	4.3 (#3)
4. Development of policies and procedures for the possible implementation of conciliation programs in the future (separate sessions, Saturday)	1	2	3	4	5 100%	5 (#3)
5. Presentations of analysis and recommendations by small groups (plenary session, Sunday)	1	2	3	4	5 100%	5 (#3)
6. Opportunity to refresh the theory and practice of conciliation through role-play simulations (separate sessions, Saturday)	1	2	3	4 33%	5 67%	4.7 (#3)
7. Opportunity to observe different conciliator styles and techniques (separate sessions, Saturday)	1	2	3	4 67%	5 33%	4.3 (#3)

<sup>3</sup> Total percentage may not equal 100 due to rounding.

**Participant Questionnaire**  
**19 March 2000**  
**(Prosecutors &/or Members of the Judicial Training School)**

**On a scale of one to five, please indicate your level of support for the implementation of conciliation programs in the future (by area):**

	Very Low		Moderate		Very High	Averages and number of responses
Penal	1	2	3	4	5 100%	5 (#)
Juvenile	1	2	3	4	5 100%	5 (#3)
Family	1	2	3	4	5 100%	5 (#3)
Other _____ (specify)	1	2	3	4	5 100%	5 (#3) 1 civil 1 labor other not spec.



**Participant Questionnaire  
19 March 2000  
(Entire Group)**

**On a scale of one to five, please evaluate the effectiveness of each component of this conference:**

	Completely Ineffective		Moderately Effective		Very Effective	Averages and # of responses
1. Information presented during the opening plenary sessions (Friday) regarding the models and practices of the pilot programs, as an informational base for the planning sessions.	1	2	3 13%	4 23%	5 65%	4.5 (#31)
2. Informal opportunities to share information with your colleagues for purposes of broadening your understanding of the various experiences of the pilot programs.	1	2	3 3%	4 34%	5 63%	4.6 (#32)
3. Analysis of the practices utilized during the pilot program (separate sessions, Saturday)	1	2	3 3%	4 67%	5 57%	4.2 (#32)
4. Development of policies and procedures for the possible implementation of conciliation programs in the future (separate sessions, Saturday)	1	2	3 6%	4 25%	5 69%	4.6 (#32)
5. Presentations of analysis and recommendations by small groups (plenary session, Sunday)	1	2	3	4 25%	5 75%	4.8 (#32)
6. Opportunity to refresh the theory and practice of conciliation through role-play simulations (separate sessions, Saturday)	1	2	3 3%	4 31%	5 66%	4.6 (#32)
7. Opportunity to observe different conciliator styles and techniques (separate sessions, Saturday)	1	2	3 3%	4 47%	5 47%	4.4 (#32)

**Participant Questionnaire  
19 March 2000  
(Entire Group)**

On a scale of one to five, please indicate your level of support for the implementation of conciliation programs in the future (by area):

	Very Low		Moderate		Very High	Averages and number of responses
Penal	1	2	3	4 20%	5 80%	4.8 (#20)
Juvenile	1	2	3 12%	4 19%	5 69%	4.3 (#26)
Family	1	2	3 10%	4	5 90%	5 (#10)
Other _____ (specify)	1	2	3	4	5 100%	5 (#3) 2 civil 1 labor other not spec.

ATTACHMENT E

**Pilot Program Data**

**Comparative Data of Juvenile Programs<sup>1</sup>**

Pre-Pilot Program Data (2-3 months)					Pilot Program Data		
Jurisdiction	# of Cases Received	# of Cases Conciliated	# of Agreements		# Cases Received	# of Cases Referred to Pilot Program	# of Conciliated Agreements
Sonsonate	23	No data	0		19	No data	12
Usulután	28	No data	4		16	11	11
Cojutepeque	23	No data	5		19	16	9

<sup>1</sup> The Soyapango juvenile program was not fully implemented due to a staff shortage. For this reason, data regarding the pilot program in that jurisdiction is not included.

**Comparative Data of Criminal Programs  
Second Juez de Paz of Cojutepeque**

**Comparative Data of Conciliation Cases**

Total Number of Cases Received in September	Total Number of Cases Conciliable in September	Total Number of Cases in which Agreement was Reached in September	Total Number of Cases Received in October	Total Number of Cases Conciliable in October	Total Number of Cases in which Agreement was Reached in October
14	6	3	13	7	12

Total number of Cases Received in November in the Court	Total Number of Cases Eligible for Conciliation in November	Total Number of Cases Referred to the Pilot Conciliation Program	Total Number of Cases in which Agreement was Reached Through the Pilot Process in November	Total Number of Cases Referred to the Standard Judicial Process in November	Total Number of Cases in which an Agreement was Reached through the Standard Judicial Process in November	Total Number of Cases which Could Have Been Referred to the Pilot Program but Were Referred to the Standard Process in November
11	8	2	0	6	3	8

Total Number of Cases Received in the Court in December	Total Number of Cases Eligible for Conciliation in December	Total Number of Cases Referred to the Pilot Conciliation Process in December	Total Number of Cases in which an Agreement was Reached through the Pilot Process in December	Total Number of Cases Referred to the Standard Judicial Process in December	Total Number of Cases in which Agreement was Reached through the Standard Process in December	Total Number of Cases that Could Have Been Referred to the Pilot Process, but Were Referred to the Standard Process in December
27	15	9	4	6	16	6

Number of Cases Per Year: 224  
 Number of Cases Eligible for Conciliation: 190 (84.82 percent)  
 Monthly Average of Cases Eligible for Conciliation: 16  
 Total Number of Cases Conciliated: 19

50

**First Juez de Paz of Cojutepeque  
Comparative Data of the Impact of the Pilot Plan**

**Months of July, August, September, and October Compared with the Months of November,  
December, January, and February (During The Pilot Plan)**

Total Number of Cases Received in July	Total Number of Cases Conciliable in July	Total Number of Cases in which Agreement was Reached in July	Total Number of Cases Received in August	Total Number of Cases Conciliable in August	Total Number of Cases in which Agreement was Reached in August
24	17	6	28	23	6

Total Number of Cases Received in September	Total Number of Cases Conciliable September	Total Number of Cases in which Agreement was Reached in September	Total Number of Cases Received in October	Total Number of Cases Conciliable in October	Total Number of Cases in which Agreement was Reached in October
11	10	6	20	19	7

Total Number of Cases Received In the Court In November	Total Number of Cases Eligible for Conciliation in November	Total Number of Cases Referred to the Pilot Conciliation Process in November	Total Number of Cases in which a Agreement was Reached through the Pilot Process in November	Total Number of Cases Referred to the Standard Process in November	Total Number of Cases in which Agreement was Reached through the Standard Process in November	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in November
22	12	1	0	12	4	12
Total Number of Cases Received in the Court in December	Total Number of Cases Eligible for Conciliation in December	Total Number of Cases Referred to the Pilot Conciliation Process in December	Total Number of Cases in which an Agreement was Reached through the Pilot Process in December	Total Number of Cases Referred to the Standard Process in December	Total Number of Cases in which Agreement was Reached through the Standard Process in December	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in December
18	12	3	0	12	6	12

Total Number of Cases Received In the Court in January	Total Number of Cases Eligible for Conciliation in January	Total Number of Cases Referred to the Pilot Conciliation Process in January	Total Number of Cases in which an Agreement was Reached through the Pilot Process in January	Total Number of Cases Referred to the Standard Process in January	Total Number of Cases in which Agreement was Reached through the Standard Process in January	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in January
44	35	4	1	35	9	35
Total Number of Cases Received in the Court in February	Total Number of Cases Eligible for Conciliation in February	Total Number of Cases Referred to the Pilot Conciliation Process in February	Total Number of Cases in which an Agreement was Reached through the Pilot Process in February	Total Number of Cases Referred to the Standard Process in February	Total Number of Cases in which Agreement was Reached through the Standard Process in February	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process In February
23	16	4	2	16	2	16

Total Number of Cases Per Year (1999): 252; Number Of Conciliable Cases: 174 (69.2 percent); Monthly Average: 14.5 percent (Conciliable)

**SONSONATE**  
**FIRST JUEZ DE PAZ**  
**COMPARATIVE CONCILIATION CASE DATA**

Total Number of Cases Received in September	Total Number of Cases Conciliable in September	Total Number of Cases in which Agreement was Reached in September	Total Number of Cases Received In October	Total Number Of Cases Conciliable In October	Total Number Of Cases In Which Agreement Was Reached In October

Total Number of Cases Received in the Court in November	Total Number of Cases Eligible for Conciliation in November	Total Number of Cases Referred to the Pilot Conciliation Process in November	Total Number of Cases in which an Agreement was Reached through the Pilot Process in November	Total Number of Cases Referred to the Standard Process in November	Total Number of Cases in which Agreement was Reached through the Standard Process in November	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in November
Total Number of Cases Received in the Court in December	Total Number of Cases Eligible for Conciliation in December	Total Number of Cases Referred to the Pilot Conciliation Process in December	Total Number of Cases in which an Agreement was Reached through the Pilot Process in December	Total Number of Cases Referred to the Standard Process in December	Total Number of Cases in which Agreement was Reached through the Standard Process in December	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in December
17	1	0	0	0	0	0
Total Number of Cases Received in the Court in January	Total Number of Cases Eligible for Conciliation in January	Total Number of Cases Referred to the Pilot Conciliation Process in January	Total Number of Cases in which an Agreement was Reached through the Pilot Process in January	Total Number of Cases Referred to the Standard Process in January	Total Number of Cases in which Agreement was reached through the Standard Process in January	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in January
22	7	1	1	1	1	7
Total Number of Cases received in the Court in February	Total Number of Cases Eligible for Conciliation in February	Total Number of Cases Referred to the Pilot Conciliation Process in February	Total Number of Cases in which an Agreement was Reached through the Pilot Process in February	Total Number of Cases Referred to the Standard Process in February	Total Number of Cases in which Agreement was Reached through the Standard Process in February	Total Number of Cases that could have been Referred to the Pilot Process but were Referred to the Standard Process in February
28	4	0	0	0	0	4

Number of Cases Per Year: Avg., Number of Cases Conciliable Per Month:

**SONSONATE**  
**SECOND JUEZ DE PAZ**  
**COMPARATIVE DATA OF CONCILIATION CASES**

Total Number of Cases Received in September	Total Number of Cases Conciliable in September	Total Number of Cases in which Agreement was Reached in September	Total Number of Cases Received in October	Total Number of Cases Conciliable in October	Total Number of Cases in which Agreement was Reached in October

Total Number of Cases Received in the Court in November	Total Number of Cases Eligible for Conciliation in November	Total Number of Cases Referred to the Pilot Conciliation Process in November	Total Number of Cases in which an Agreement was Reached through the Pilot Process in November	Total Number of Cases Referred to the Standard Process in November	Total Number of Cases in which Agreement was Reached through the Standard Process in November	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in November
15	4	0	0	15	7	4
Total Number of Cases Received in the Court in December	Total Number of Cases Eligible for Conciliation in December	Total Number of Cases Referred to the Pilot Conciliation Process in December	Total Number of Cases in which an Agreement was Reached through the Pilot Process in December	Total Number of Cases Referred to the Standard Process in December	Total Number of Cases in which Agreement was Reached through the Standard Process in December	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in December
11	1	0	0	11	5	1
Total Number of Cases Received in the Court in January	Total Number of Cases Eligible for Conciliation in January	Total Number of Cases Referred to the Pilot Conciliation Process in January	Total Number of Cases in which an Agreement was Reached through the Pilot Process in January	Total Number of Cases Referred to the Standard Process in January	Total Number of Cases in which Agreement was Reached through the Standard Process in January	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in January
23	4	0	0	23	7	4
Total Number of Cases Received in the Court in February	Total Number of Cases Eligible for Conciliation in February	Total Number of Cases Referred to the Pilot Conciliation Process in February	Total Number of Cases in which an Agreement was Reached through the Pilot Process in February	Total Number of Cases Referred to the Standard Process in February	Total Number of Cases in which Agreement was Reached through the Standard Process in February	Total Number of Cases that could have been Referred to the Pilot Process, but were Referred to the Standard Process in February
26	6	1	0	26	5	6

Number of cases per year

Number of conciliable cases per month :