

March 2004

Civil Justice Reform in the Americas: Lessons from Guatemala

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Recommended Citation

Beltranena de Padilla, Maria Luisa (2004) "Civil Justice Reform in the Americas: Lessons from Guatemala," *Florida Journal of International Law*: Vol. 16: Iss. 1, Article 7.
Available at: <https://scholarship.law.ufl.edu/fjil/vol16/iss1/7>

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*Maria Luisa Beltranena de Padilla**

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I. INTRODUCTION

I am here to speak on the civil justice system in Guatemala. The structure of our judicial branch is clearly established by our political constitution and entrusted with the duty and the authority to render justice independently. The Judicial Branch Act states that, in exercising the sovereign power delegated to them by the people of Guatemala, the judicial branch must impart justice in accordance with the text of the political constitution. The mission is to restore and maintain social peace and harmony by ensuring that Guatemalans have access to a satisfactory system that operates according to the fundamental principles of impartiality, promptness, simplicity, responsibility, efficiency, and economy, so as to ensure that the ideals of justice, truth, and equity become, someday, a reality in Guatemala.

The vision and expectation has always been to have a judicial branch that is fully independent, capable of providing the Guatemalan society with high quality, efficient, and responsible service, free from corruption; a branch that is composed of judges who are equally independent and who inspire confidence among the population. This mission and vision is our

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eventual goal, but first we must overcome the numerous breakdowns in the Guatemalan justice system. These breakdowns occur in the civil justice system, as well as in the criminal, the administrative, and the labor systems. Let me point out some of the most crucial problems that the civil justice system in Guatemala is suffering and try to identify their nature.

One of the most important preoccupations of the Guatemalan people is justice. Most of them do not believe in the system, do not like how it is functioning, and are especially opposed to the problems which accompany every trial. As a nation that suffered internal conflicts between the army and guerillas for thirty years, Guatemala is seeking to consolidate “*estado de derecho*” (rule of law), and a democratic political system. A judicial system based on the rule of law has become our goal, in order to be able to efficiently resolve inequity, the social conflict, and especially to control the use and abuse of power by the government.

The overall situation of the justice system in Guatemala is a result of a long-term emptiness of its institutions. The government, during the last fifty years, has abandoned or changed our institutions and made them into instruments of war against the guerillas. We have been trying, during all this time, to make a diagnostic assessment of the judicial system in Guatemala, mainly since September 1996, after the Peace Accords urged the strengthening of civil force or civil power and diminished power for the army to achieve a truly democratic society system. In 1998, *A New Justice For Peace* was published; this was a proposal that offered a basic analysis of the different problems we were having and still have at the present time.¹

II. IDENTIFICATION OF THE BREAKDOWNS OF THE CIVIL JUSTICE SYSTEM

Some of the breakdowns of the civil justice system in Guatemala include: the qualifications for judges to take judicial positions; the qualifications of the clerks; the written system versus the oral system; the quality of legal education; the lack of a bar examination; the number of courts in the capital city and in the whole country, versus a growing number of citizens; inadequate compensation; the lack of respect for careers in the judiciary; the amount of laundered money that moves throughout the country; and corruption — it is a well-known fact that the

1. See generally COMISIÓN DE FORTAL ECIMIENIO DE LA JUSTICIA, UNA NUEVA JUSTICIA PARA LA PAZ (1998).

justice system can be made to move if you grease the palm of the clerk or the judge.

So we have to ask ourselves, what is wrong? The system per se? The inadequate pay that the clerks and the judges receive? Accepting as normal, and as a part of the salary, the bribes and gratuities? The laundered money that runs particularly throughout the criminal justice system?

III. THE JUDGES AND THE CLERKS

When a judge is elected to office, which is one of the responsibilities of the Supreme Court of Justice, the selection has to be made from a list of new graduates of the law school, with no experience whatsoever. The only possible opportunity for practical experience is if the candidate has been a clerk for many years; in such circumstances, he or she would have been a full-time worker and a part-time student, working during the daytime and studying during the evening.

IV. THE WRITTEN SYSTEM VERSUS THE ORAL SYSTEM

It is well known that corruption can be better controlled in an oral system. Also, the written system does not permit promptness or simplicity in most cases, which in turn, makes the system more costly.

V. THE QUALITY OF LEGAL EDUCATION

All of our universities in Guatemala depend on the curriculum of studies which is aimed toward forming and preparing lawyers, counselors, and advocates. None of the law schools has a program to graduate judges or give some preparation to clerks. Students graduate and become associates, if they have the right connections, in a very big law firm. If not, they will search for a judicial position without any special academic preparation. There is no bar examination. The universities are in charge of giving the titles of lawyers and public notaries to each of their graduates, which enables the attorney to work in all fields, as a lawyer, as a judge, as a counselor, or as a public officer.

These are just some of the many problems in the judicial system. Guatemalans have been suffering from a lack of work for the last ten years, and unemployment remains very high. So taking a judicial position is not an option but a necessity for most lawyers, although they know that

they will be inadequately paid. We have so many cases in each courtroom that they know that their work will be exhausting if they perform their duties fully and attend to them all. Our judges will have to be more attentive to the form of the trial than to the substance, though they will have to resolve them legally without sacrificing justice or equity.

But do not let me leave you with the impression that no reforms have been undertaken, because that is not true. There have been a number of measures, including substantial changes in the administration of justice in Guatemala. We have approved and started to implement a five-year modernization plan. The plan was designed using diagnostic tools, and has set five strategic goals: a) improving the way courts operate; b) strengthening access to justice; c) fighting corruption; d) strengthening institutional management; and e) improving social communication and public relations.

The first one, improving the way courts function, has involved improving the quality and training of personnel. We have established an Institutional Training Unit providing special programs for judges and magistrates, in which the universities of Guatemala, along with universities from other countries, have been playing a major role.

Universidad Francisco Marroquin Law School, which I represent, offers a six-month program in commercial, civil, tax, and family law every year. These programs, paid by the Universidad Francisco Marroquin, are for the attendance of the judges and magistrates as part of the requirement to stay in their position, or achieve a better position, in the judicial career.

Another objective which Guatemalans are trying to pursue is the quality and geographical coverage of judicial service. Right now, there are only a total of 554 courts in the whole country; 22 courts of appeal; 17 tribunals in the city; 51 courts in capital city; and the remaining 450 in the other cities or counties around the country.

We have heard from our colleagues from Brazil and Mexico that they have the same problems; these facts indicate the burden of work for a judge, with more than seven thousand cases to resolve each year. I have heard that a statistic is a very elegant way of lying, but the numbers Professor Vargas provided are exact, and so too are our Guatemalan statistics. This has to be promptly resolved by creating more courts throughout the country. When I graduated, thirty-five years ago, there were the same number of courts in Guatemala. It is also imperative to ensure that the judicial service meets the cultural and ethnic mixture of the community served. In Guatemala, the population forms a multiethnic, multicultural, and multilingual society.

We have also been working on alternative dispute resolution mechanisms, setting up interpreter services, encouraging the provision of

free legal services, and facilitating access to legal information. In July 2003 we will see the beginning of a new system of traveling circuit judges to give access to justice to the rural populations who live far away from any court. Although this law was passed last year, it was supposed to be in force in January. The reason for this delay is that the court was not provided with the necessary funds. We will have to wait until July in order to have the money to start all these new programs.

VI. EXPECTED RESULTS FOR 2004

The first and most important expected result of these reforms I have discussed is the implementation of the judicial career and completion of the Civil Service Act. This will give us: a) highly motivated, high quality service-oriented personnel operating in a stable work environment; b) judges with complete independence in their adjudicative functions; and c) oral hearing and oral proceedings. Also we are awaiting the General Procedure Code to be enforced next year, which will provide: d) a modern, trustworthy and efficient information network; e) implementation of a new organizational model; f) improvement of judicial infrastructure; g) diversity according to need; h) minimization of corruption through newly implemented control and audit mechanisms; i) improvement of the public image of the judicial branch; j) better internal and external communication; and k) significant and concrete progress toward a modernized judicial sector.

This entire modernization plan is not only a theory. Most of the funding is coming from diverse sources, and this modernization has to be done. There cannot be a democracy without a judicial branch that responds satisfactorily to ensure that the ideals of justice, truth, and equity become, for the first time, a reality in Guatemala. If we delay the incorporation of this new order, we can forget about democracy.

