Putting Guatemala's Justice System on Trial

Criminal investigation and regulations for awarding promotions within the police force are among the justice issues being addressed through research in Guatemala. (CIDA Photo: Brian Atkinson)

2004-12-03

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Two years ago, Isabel's husband killed their maid. He was drunk, and often violent when drunk. He confessed in the morning, but the police had already accused his wife. An Indigenous woman from a small town in northern Guatemala, who mostly communicates in her native language, she did not understand much of what was said by the police, or later, by the judges. Her lawyer advised her to say nothing. She spent 13 months in jail waiting for the trial.

At the trial, she wanted to make a statement to reveal that her husband had committed the murder in a drunken stupor, but she was not allowed to speak. Nor was her husband. Isabel was sentenced to 25 years. Her lawyer preferred not to appeal in fear that the sentence would be increased.

This is one of the cases that has been documented by researchers from the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG — Institute for the Comparative Study of Criminal Law in Guatemala) who serve as catalysts for civil society monitoring of Guatemala's justice sector. With support from the International Development Research Centre (IDRC), researchers are bringing together justice officials — judges, defence lawyers, and prosecutors —, human rights defenders, and experts from other Latin American countries to monitor Guatemala's criminal justice system. The country’s legal system underwent a radical reform a decade ago. [See related sidebar: Justice Old and New in Guatemala] Their work is undertaken in the context of an IDRC-supported research project known as the Justice Observatory.

Research to identify bottlenecks

“The role of the ICCPG — collecting hard data in a scientific manner — is to demonstrate the gap between what should be happening and what is happening,” says ICCPG Director Claudia Paz y Paz. “Then we can say, look, here we are moving forward; here we are not moving forward.”

Grounded in a methodology developed by the Justice Studies Centre of the Americas, researchers produce reports on specific technical problems in the legal system. These are then shared with justice sector and civil society representatives. Research is also used to support civil society
proposals for legal, regulatory, and institutional change. In addition, researchers share information with El Salvador and Nicaragua — neighbouring countries that are undergoing similar criminal code reforms.

“All the work at ICCPG begins with research,” she continues. “We identify a problem. We investigate it. We analyze it, asking if the problem is a legal one? Is it procedural? Is it cultural? And then we work on [developing] policy, regulations, or training.”

For instance, five ICCPG researchers went to court last year. They spent two months observing the machinations of 33 trials in 11 courtrooms in the capital city. From their notebooks emerged the first real glimpses of the problems facing Guatemala's court system.

One bottleneck relates to physical space. There are 33 trial judges in the capital but only 11 courtrooms, and only 7 of these have been designed to hold trials. Though the criminal code changed from the old Spanish colonial judge-led inquisitorial system to the judge-directed prosecutorial system 10 years ago, the 15-story court building was never reconfigured to accommodate this change.

Bureaucracy is another bottleneck. It takes more than a year from the time a crime is committed to set a trial date. The court still depends heavily on written documents and hand-delivered notices. It takes three weeks before a witness — or the accused — can be moved from the jail, located on the outskirts of the city, to the courthouse. A reliable system is needed for notifying witnesses when they are required to appear: almost half the trials are postponed because witnesses do not show up.

**The need for alternative measures**

A further obstacle is the absence of measures to ensure that only significant cases with sufficient evidence actually get to court. Of 250,000 cases filed last year, only 3% were diverted to other means of redress although the “vast majority of cases might have been,” says Marco Antonio Canteo, an ICCPG legal expert.

For example, many of the trials monitored by the ICCPG could have been more effectively dealt with in other ways. Researchers observed trials for the following crimes: using false identification; stealing two pairs of trousers; stealing a saxophone; causing a traffic accident; and brawling — in this case two women fighting over a man.

“There is a wealth of regulations to divert cases that could be resolved with reparations or conciliation or community work,” Canteo said. “But the judges are not using them. They should be making sure that real investigation resources are used for high-profile cases.”

**The impact of research results**

The resulting report on trial procedures, released in April last year, created an uproar in justice circles, especially among trial judges. However, after sitting down with ICCPG researchers in three separate workshops, judges saw that the data was solid. They began to work toward solutions. For example, as a result of ICCPG’s report, an administrative centre for criminal court management was created. It is taking over some of the administrative tasks previously assigned to the judges.

ICCPG works in collaboration with other institutions, particularly civil society organizations, by providing them with data that can be used to promote changes in regulations and laws. ICCPG reports have addressed issues such as criminal investigation, regulations for awarding promotions within the police force, and career regulations for the judiciary. Policymakers used research results
to create the National Civilian Police Disciplinary regulation, the Judicial Career law, and the Judicial Civil Service law. Research has also been used to develop bills to create a professional forensic criminal investigation team and to establish career regulations for the Public Prosecutor's Office.

**Toward a Latin American judicial observatory network**

As part of its work to nurture a judicial observatory network in Latin America, ICCPG hosted an international forum on justice reform in July 2004. The event brought together experts from across Latin America to debate advances in criminal reform.

“Ten years after the legal reform of the Criminal Code [in Guatemala], we need a cultural reform,” Argentinean legal expert and guest speaker at the forum, Alberto Binder, told a roomful of prosecutors and justices of the peace.

“There is not enough strategic information available, and what is available is unsatisfactory,” said Binder. “No one doubts that economists need data. Why should officials in the justice sector not also require data?”

Guatemalans now hope that under the recently elected government of Oscar Berger, there will be sufficient political will to buoy up support for institutional change of the justice system. The new Attorney-General Juan Luis Florido, who attended July's seminar, noted the “absolute necessity and [Government] priority to develop a criminal policy” to deliver on citizens’ expectations.

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**Sidebar**

**Justice Old and New in Guatemala**

Guatemala's criminal justice system is based on the Spanish adaptation of the Roman-Germanic criminal justice model followed in most Western countries today. The significant difference in the Spanish “inquisitorial” model is that the judge(s) presiding over a case act as investigators as well as arbiters. They receive all evidence — and all evidence is written evidence; there is no physical evidence in this system — read it, ask questions of those involved, and judge the case.

Guatemala’s new system follows the more standard European “prosecutorial” model in which the State — in the form of a public prosecutor’s office — undertakes to investigate charges, and lays
evidence before a judge in an open, public court. The judge then comes to a decision based on evidence presented and debated by defence and prosecuting attorneys.

In 1994, after decades of authoritarian regimes and civil conflict, Guatemala was one of the first Latin American countries to radically reform its Criminal Code.