

Democracy Support through the United Nations

Report 10/2010 - Evaluation

Guatemala Case Report

COUNTRY CASE STUDY REPORTS

This country case study is one of several such reports that are part of an assessment of Norwegian support to democratic development through the United Nations system.

These case reports are not independent evaluations of the programmes or projects discussed, but rather studies of both the decisions taken by Norway and the UN to support the particular democratic development process, and the key factors that may explain the results. These studies should thus be seen as working documents for the general evaluation of the Norwegian support.

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Abbreviations and Acronyms

| | |
|-----------|--|
| CEH | Commission for Historical Clarification |
| CICIG | International Commission against Impunity in Guatemala |
| CODISRA | Presidential Commission against Discrimination and Racism |
| CONAPREVI | National Coordination for prevention of domestic violence and violence against women |
| COPREDEH | Presidential Coordinating Commission on Human Rights |
| CS | Civil Society |
| DEX | Direct execution (UNDP's program management modality) |
| DEMI | <i>Defensoría de La Mujer Indígena</i> (Defence of Indigenous Women) |
| IDPP | <i>Instituto de la Defensa Pública Penal</i> (Penal Public Defence Institute) |
| MINUGUA | The United Nations Verification Mission in Guatemala |
| MP | <i>Ministerio Público</i> (Prosecutor General's Office) |
| NEX | National execution (UNDP's program management modality) |
| OJ | <i>Organismo Judicial</i> (Judiciary) |
| PA | Peace Accords |
| PROFED | Strengthening of the Rule of Law |
| PASOC | Civil Society Participation |
| PNC | National Civil Police |
| SEPREM | <i>Secretaría Presidencial de la Mujer</i> (Presidential Secretariat for Women) |
| SEGEPLAN | <i>Secretaría de Planificación y Programación de la Presidencia</i> (Planning and Programming Secretariat, President's Office) |

1 Background and Introduction

Scanteam, in partnership with the Overseas Development Institute of the UK, the Stockholm Policy Group of Sweden, and Nord/Sør Konsulentene of Norway, were contracted by Norad's Evaluation Department to carry out the "Evaluation of Norwegian Support to Democratic Development through the United Nations", covering the period 1999-2009. This country case report is one of the foreseen results of this task.

Norway has provided about NOK 2 billion through the United Nations to the areas covered by the concept of Democratic Development. This is to be understood largely in terms of the UN usage: *increased possibilities to participate in the society and in decision-making processes that have impacts on citizens' lives*. The *Objectives* are:

1. **Document the results** of Norwegian multi-bilateral contributions to democratic development;
2. **Undertake an analysis** of how support to different types of activities (elections/ media, etc) has worked in different contexts (i.e. institutional set-up, socio-political context, degree of conflict and level of economic development);
3. **Assess how decisions are made** in relation to allocations and disbursements through the multi-bilateral channel and how this influences development results;
4. **Assess strengths and weaknesses** of different UN organisations and programmes in different contexts; and
5. Provide **recommendations** for future programming for democracy support and for Norwegian positions in relation to the relevant multilateral organisations.

1.1 The Guatemala Case Report

In Guatemala, the team reviewed two multi-phased programmes: support to civil society (PROFED-PASOC) and the support to IDPP (access to justice) programmes managed by UNDP. PROFED-PASOC had three phases implemented from 2000-2009. Norway contributed 68% of the USD 16.1 million total budget of PROFED-PASOC. The support to IDPP was implemented in two phases from 2001-2008, with a total budget of NOK 16.7 million. Norway was the only donor of the IDPP programme. PROFED-PASOC was managed by UNDP as a direct execution or DEX programme, whilst IDPP was managed as a NEX, or national execution programme.

This study is based largely on a review of available documentation (see Attachment B) complemented by interviews of relevant stakeholders in the field and at head office level (see Attachment A). Because the evaluation attempts to understand achievements in light of those factors that are considered critical to project results, some attention has been paid to the results frameworks that have been produced, and studies that might throw some light on identifying the relevant factors, as explained in this report.

2 Country Context

A divided and unequal country. Guatemala remains a country with great socio-demographic asymmetries. Although it is considered to be a middle income country, there are dramatic differences in income distribution. Its Gini coefficient remains at 0.562 which denotes a highly unequal distributive system. Rural areas differ significantly from urban areas, 80% of Guatemala's wealth is concentrated in urban centres. The rural areas maintain a high dependence on sustainable agriculture and also vulnerable to degraded land and natural disasters. The Human Development Index has increased from 0.531 in 1980 to 0.704 in 2007, but it remains the third lowest in the Latin America and Caribbean region, after Haiti and Nicaragua. As a matter of fact, Guatemala remains the third lowest in all Human Development Indicators, such as Gini relative to gender (0.696), Health Index (0.752), Education Index (0.723), and Income Index (0.638) (PNUD 2010).

Guatemala is the most populous country in Central America with a projected population of 14 361 666 as of June 2010 (INE 2010), compared to the population of Nicaragua (est. 6 million) and Costa Rica (4.5 million). According to UNFPA's Office in Guatemala, the rapid increase in population (rate of ca. 2.5%) is another factor of development that is often neglected. In addition, Guatemala is a multicultural, multiethnic and multilingual country, with a substantive indigenous population (the statistics by ethnic group of the 2002 Census showed that 41.03% are indigenous population, and 58.97% are non indigenous). Beside the large Maya and mestizo or ladino populations, there are Xinka and Garifuna minority populations. Twenty four languages, including Spanish, are spoken in the country.

The Peace Process (1987–1996). The Guatemalan peace process put an end to the 36 year long internal armed conflict (1960-1996). The latter period was characterized by a large number of human rights violations, corruption, systematic exclusion of disenfranchised populations, and undemocratically elected military administrations (Booth 2000). During the Civil War, the country was militarized in all aspects of its socio-political life, including the existing institutions because they were created under counterinsurgency logic. Efforts to promote democratic development were crushed during the country's decades of military rule.

The Peace Process and the resulting ten political agreements, collectively known as the Peace Accords, recommended changes to military control and to the role of the armed forces. Reforms aimed at taking the Army "back to the barracks" were successful. Intelligence was brought back to civilian control, the army was downsized (from approximately 46 000 to 15 000 soldiers), the ministry of interior became independent from the armed forces, etc. (Pape: 1996).

The failed Constitutional Referendum of 1999. From 1997, based on the letter and recommendations of the signed Peace Accords, Guatemala formally initiated the reform of different governmental sectors by way of a negotiation with organized civil society and the private sector. Sector Dialogue initiatives and working commissions were created in order to provide for the necessary political backing for these reforms. The commissions presented proposals in order to modify the Guatemalan Constitution. These proposals were gathered into a "package" of constitutional reforms. The Supreme Electoral Tribunal called for a National Referendum on Constitutional reforms. Citizens were asked to vote "yes" or "no"

on the entire package of reforms. In 1999, with a low turnout of 18.5% of registered voters, the majority of those who voted said 'No' to Constitutional reform. The fact that constitutional reform was not adopted meant that many accords lacked the necessary legal support to be implemented.

Other important events during the 1990s in Guatemala were: (i) the peaceful and democratic transfer of power between two democratically elected administrations, after the general elections of 1995; (ii) the publication in 1998 of the Recovery of Historical Memory (REMHI) project's report (*Guatemala: Nunca Más*) of the Archbishop's Office of Human Rights, on human rights violations during the war; and (iii) the publication in 1999 of the Commission for Historical Clarification's (CEH) report.¹ Both reports demanded clear reforms to be implemented on democratic security issues and prosecution of human rights violations, in order to change the justice system in the country.

The legacy of the Peace Accords. Since 1996, various aspects of the Peace Accords were adopted and transformed into public policy. Several governmental institutions were transformed or reengineered. Many other institutions were created anew. New laws were drafted. However, the Accord on Identity and Rights of Indigenous People and the Accord on Social and Economic Issues remained mostly unimplemented. The key socioeconomic and political factors, considered to be the structural causes of Guatemala's social and armed conflicts, were left basically untouched and unmodified (Aguilera Peralta 1996; Flores Alvarado: 2003).

When assessing the impact of the Peace Accords in relation to Democratic Development and, specifically, to the two key dimensions examined in Guatemala – Justice Sector and Civil Society Participation – there is clearly an important legacy. There are now new institutionalized channels for civil society participation, and many of the institutions created during the implementation period of the Peace Accords are still in place. Institutions such as the Peace Secretariat (SEPAZ), the Presidential Commission on Human Rights (COPREDEH), the Indigenous Women Defense Office (DEMI), The Public Defense Institution (IDPP), the National Civil Police (PNC), the Secretariat for Administrative and Security Issues (SAAS), and the National Commission for the Prevention of Family Violence and Violence Against Women are currently in place and have been fully integrated into Guatemala's national budget.

2.1 Key Challenges within other DemDev Dimensions

Electoral Processes and Electoral Institutions. Free and democratic elections have taken place since Guatemala's return to democracy in 1985, but with the encroachment of organized crime and lack of political will, institutions like the Supreme Electoral Tribunal

¹ The CEH's report stated that "...the number of persons killed or disappeared as a result of the fratricidal confrontation reached a total of over 200,000." It also concluded that, during the period 1962-1996, 93% of the human rights violations and acts of violence, including a high percentage of arbitrary executions and forced disappearances, were committed by state forces and paramilitary groups. The insurgent groups were responsible for 3% of the human rights violations and acts of violence, including 5% of arbitrary executions and 2% of forced disappearances (CEH 1999).

(TSE) have been weakened. One event that showed the TSE's weakness and the encroachment of private/ political interests occurred during the 2003 election campaign when Efraín Ríos Montt, the former Guatemalan dictator (1982-1983), was not permitted to run for President on constitutional law grounds. Ríos Montt's followers, violently, took over part of Guatemala city demanding that Ríos Montt be allowed to run in the election. In a controversial decision, the TSE, under pressure, allowed him to run.

The weakening of the TSE is compounded by the fact that Guatemala's political party system remains weak. There is a low level of institutionalization of political parties in the country. Parties are organized for electoral campaigns and disbanded soon after. There are only a few parties which remain relevant after each electoral process. There is also the fact that parties are deemed to be dominated by the *caudillo* syndrome. They are organized under the leadership of one person and remain highly undemocratic internally.

Women's rights and Empowerment. Women's issues have been of foremost importance to democratic development in the country. Clearly, there have been advances on many of these issues, such as the creation of important institutions such as the Presidential Secretariat for Women (SEPREM), the Indigenous Women Defence Directorate (DEMI), and the Commission against Domestic and Women Violence (CONAPREVI). There is also legal advancement with the creation of the Femicide Law. However, women and women's issues remain underrepresented in Guatemalan public policy. Only 12% (19 members/deputies) of Congress representatives are female, only 6 mayors are women out of 334 municipalities, and there is only one female minister in the current administration. Indigenous women remain largely marginalized from political life. One of the main challenges is the fact that violence against women and gender based violence has increased in recent years to alarming levels and with 98% impunity (Zaunbrecher 2010). In six years, between 2001 and 2006, the number of femicides doubled from 303 to 603, the last figure representing 10.3% of all homicides in 2006 (PNUD Guatemala 2007).

Human Rights and Public Watchdogs. There have been advances in Human Rights' issues with the strengthening of the Ombudsman's Office (PDH) and the creation of the Presidential Commission on Human Rights (COPREDEH) and the NGO Human Rights Commission. However, with the increase in violence, human rights activists have suffered greatly. The respect and protection of human rights –in the midst of a high rate of violence and impunity in the country- will continue to be a challenge for many years to come.

2.2 Main International Actors in Democratic Governance

The international donor community in the country has been involved in financing democratic governance in the country since at least 1996. Donors, organized under the Dialogue Group or G-13, have provided support to national programs. The United Nations system has been of key importance during these processes since it has been the central administrator of international funds. The institutional reforms for the entire justice and security sector (MP, OJ, the National Police and IDPP) have been channelled through the United Nations Development Program.

The European Union is the largest donor in the country on justice and security sectors, with an investment of approximately twenty million Euros. It has funded a large transitional justice program in Guatemala which lasted four years and ended in 2009. The Support to

Justice Reform (PARJ) is one of the largest justice related programs in the country (10 million Euros). The Support to the Security and Justice Sector (SEJUS), which starts in 2010, is the largest internationally funded program in the country with a budget of 20 million Euros. Spain, Sweden and USAID remain the largest donors in relation to all Democratic Development sectors.

On the strengthening of civil society participation, there are important actors. The most relevant actors are USAID, Norway, Sweden, The Netherlands, Spain, Canada and Denmark. Civil society strengthening programs such as PASOC, Oxlajuj Tzi'kin, and The Maya Program, aim at strengthening civil society's capacity in areas such as national reconciliation, access to justice and justice reform, transparency and social accountability, anti-discrimination, human rights, and anti-racism. The Organization of American States (OAS) has been involved in technical assistance to electoral and political party reform. OAS has played an important role in providing technical assistance to the implementation of the new National Elections Law and in providing technical assistance to political parties.

2.3 Current Challenges in Democratic Governance

The single most important challenge to democratic development in the country today is *security*. The rampant violence in the country, and the inability of the State to effectively respond to it, is undermining its credibility. Organized crime has infiltrated key institutions within the Guatemalan Government (Robles Montoya 2002). This has produced a profound weakening of the State, and unbearable levels of impunity and corruption.

Although clear advances have taken place during the fourteen years after the peace process ended in Guatemala, there is still a perception of Guatemala as a weak state. Some even argue that Guatemala is a failed state. These two perspectives are evident from the interviews collected during the fieldwork phase of the present evaluation. Moreover, this perception is also becoming a strongly held opinion within some academic and policy oriented sectors. This is clearly the position presented by Elizabeth Dickinson (2010) in a recent publication by the *Foreign Policy* journal. In it, Dickinson declared Guatemala in danger of becoming a failed state.

Increasing pressures from transnational organized crime organizations and corruption scandals have weakened the capacity of the State to respond to security issues. Violence is becoming endemic to Guatemalan daily life and the Guatemalan state is unable to provide a coherent policy in order to respond to such violence. The alarming homicide rates (5 975 murders in 2009) coupled with the involvement of high level members of the national civil police have brought the country to an institutional crisis. Justice and security institutions are unable to respond effectively to the country's needs. The court system, the National Civil Police (PNC), and the Prosecutor General's Office (MP) are criticized for their perceived and factual incapacity, incompetence and corruption scandals. As mentioned by many of the interviewees, the lack of security and justice, and as consequence the high level of impunity, constitute the main challenge to the continuation of political development in the country.

In addition, there are also unresolved structural issues that still need to be addressed in order to promote democratic governance. Land tenure issues are unresolved. An increase in mining and petroleum explorations by foreign companies have brought new pressures on the already precarious land tenure system. New social conflicts have arisen from these

mining endeavours. Areas such as Huehuetenango, San Marcos, Petén and Sacatepequez, have suffered violence in relation to mining.

Social conflicts continue to increase due to the levels of structural poverty in the country. Social indicators such as income differentials between rural and urban areas, malnutrition, lack of legal certainty in land tenure, and labour laws' violations, are a recipe for conflict. The State's inability to produce a rural development policy has produced pressures from the rural areas in order to influence the development and approval of such policies. Nevertheless, security issues are seen as more pressing right now than poverty related ones. Even so, frequent actions taken by rural populations, such as road blockades and widespread protests, constitute evidence that poverty related issues remain just as important for the overall political and democratic development of the country.

3 PROFED-PASOC: Program Description

During the Civil War (1960-1996), Civil Society was weakened by the State's counterintelligence policies. After the end of the Civil War in 1996, new social movements and non-governmental organizations were created and flourished. However, civil society organizations lacked an institutionalized mechanism to interact with the State. In 2002 three laws were passed by Congress in order to institutionalize such a mechanism: the Municipal Code, the Urban and Rural Development Councils' Law, and Decentralization Law. In 2003, this legal triad was complemented by the Law on Non-Profit Organizations which regulates NGOs' financial practices. These laws provide a legal and institutional framework for the interaction between organized civil society and the State.

The PROFED-PASOC programme, managed by UNDP, went through three phases: PROFED (2000-2003), PASOC I (2004-2006), and PASOC II (2007-2009). A precursor phase of PROFED, started in 1998 at UNDP with the PROFED programme (*Strengthening of the Rule of Law*) supported by Sweden. Coincidentally, in 2000 Norway decided to end its bilateral cooperation with individual CSO in Guatemala, and adopt a more coherent approach to support CSO in the country. A program called "*Enhancing Civil Society Participation in National Reconciliation, Human Rights and Justice in Guatemala*", 2000-2003, (GTM-2648) was presented to UNDP by the Norwegian Embassy. This was accepted and added to the existing PROFED programme due to compatibility of objectives and thematic areas. Norway's contribution was for three years. Norway and Sweden were the two donors.

The three separate agreements for PROFED-PASOC, signed between Norad/ NMFA and UNDP, should be seen as a consistent effort from Norway as donor, and UNDP as manager/facilitator, to contribute to the long term objective of strengthening the capacity of CSO and facilitate their effective participation in the democratization process in Guatemala. Sweden and Denmark were also key donors to this programme.

Table 3.1 provides an overview of the three phases of PROFED-PASOC, including the names of each program, period, total budget and each donor's contribution, number of projects and geographic area, and thematic areas covered by each phase. Norway's total contribution for the three phases (2000-2009) was **NOK 76.5 million**. Norway's share of the grand total budget of PROFED-PASOC was **67.8%**, more than two thirds of the **USD 16.1+ million**.

Table 3.1: Phases of PROFED-PASOC, 2000-2009

| PROFED – PASOC | | | | |
|---|--------------------------|--|--|--|
| Name/ Phase | Period | Budget | No. of projects | Thematic areas |
| PROFED <i>Strengthening of the Rule of Law-CSO</i> | 2000 – 2003 (3 years) | Norway: USD 2,871,444 Sweden: USD 1,082,160 Total: USD 3,953,604 Executed: USD 3,936,224 (99.55%) | -27 projects by 27 CSO (17 in Justice/HR, 10 in Reconciliation) - Geographic area: National (10 projects implemented in Guatemala city, and 17 in several provinces) | <ul style="list-style-type: none"> • National and local reconciliation • Protection and promotion of human rights • Justice sector reform |
| <i>“Civil Society participation in national reconciliation, human rights and justice”, 2000-2003 - GTM 2648</i> | | <i>Note:</i> Norad's agreement with UNDP, signed 05.10.2000, was for a maximum contribution of NOK 24,000,000 | | |

| | | | | | |
|--|--------------------------|---|--|--|--|
| PASOC I “Civil Society Participation” 2004 – 2006 GTM-2648, 03/212 | 2004 – 2006 (3 years) | Norway: USD 4,091,446 Sweden: USD 1,208,550 Denmark: USD 778,000 -Adjustments: (exch.rate) Norway: USD 232,284 Sweden: USD 749,675 Total: USD 7,059,955 | -38 projects, implemented by 30 CSO -Geographic area: National (Guatemala city and several provinces of the country) | <ul style="list-style-type: none"> • National reconciliation • Equal access to justice • Transparency in public administration | |
| | | <i>Note:</i> The Agreement signed between Norad and UNDP, 15.12.2003, was for a maximum contribution of NOK 30,000,000 | | | |
| PASOC II “Alliances with the Civil Society” GTM 2648 – 06/014 | 2007 – 2009 (3 years) | Norway: USD 3,731,250 Denmark: USD 1,372,829 Total: USD 5,104,078.95 | -44 projects: 27 were long term, panel selected projects. In addition, 17 short term projects were financed through the Immediate Response Fund - <i>Fondo de Respuesta Inmediata (FRI)</i> - Geographic area: National, but with a geographic focus on the provinces of <i>Sololá, San Marcos, Huehuetenango, Alta Verapaz, Chiquimula</i> | <ul style="list-style-type: none"> • Elimination of racism and discrimination • Access to justice for indigenous people • Social audit and transparency | |
| | | <i>Note:</i> period was extended to June 2010 with remaining Danish funds | <i>Note:</i> The agreement signed 08.05.2007 between NMFA and UNDP was for NOK 22,500,000 , for the period 1 April 2007 – 31 December 2009 (almost 3 years) | | |
| | | -Total Norwegian contribution, 3 phases: NOK 76,5 million | | | |
| Total budget PROFED-PASOC, 2000-2009 (Norway, Sweden, Denmark): USD 16,117,638 (Norway’s share = 67,8%) | | | | | |

Source: Signed agreements Norad/ MFA-UNDP; UNDP narrative and financial reports; external evaluation and audit reports.

UN Policies and Decisions

As far as PROFED, as explained before, Norway took the decision to offer the management of a program to strengthen CSO to UNDP. Strengthening CSO was also a corporate priority for UNDP-Guatemala.

Regarding PASOC I and II, it was UNDP that took the initiative to design the programs and then received the support of Norway, Sweden and Denmark, as it coincided with their priorities to strengthen CSO in Guatemala. Sweden did not participate in PASOC II.

All donors and UNDP staff, in addition to government officials represented by SEGEPLAN, were members of a Selection Committee which, based on agreed criteria, chose CSO and projects to be financed after the reception of many proposals received through a public “call for proposals” process.

Norwegian Policies and Decisions

Norway had a long and consistent involvement in the Guatemalan peace process from 1987 to 1996. The Peace Accords were signed in December 1996. Therefore, the political decision to support a program to strengthen civil society organization through a multilateral channel was primarily based on the implementation of Peace Accords. It was also based on the

history of bilateral agreements with CSO prior to 2000. The specific peace agreements on which Norway based its decision were:

- *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society;*
- *Comprehensive Agreement on Human Rights;*
- *Agreement on Identity and Rights of Indigenous Peoples;*
- *Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer.*
- *Agreement on Social and Economic Aspects and Agrarian Situation*

In addition, the decision to support the PROFED-PASOC program, through UNDP, was based on (i) the country strategy prepared by Norad which placed emphasis on Norway's contribution to the implementation of the Peace Accords and increased democratic governance; and (ii) the view that UNDP was a reliable and efficient fund administrator/ program facilitator, and recognized as a neutral institution with access to government structures, and with the ability to create spaces for dialogue between CSOs and state institutions/ government; iii) the innovative elements of the PASOC design, especially regarding the selection of projects based on a public call for proposals process and defined thematic areas; iv) the participation of two other like-minded Scandinavian countries as co-contributors was probably another factor to support the three phases of the program.

3.1 Program Objectives

The *Goal* of the GTM-2648 PROFED programme was: "To support Guatemalan civil society organizations (CSO) to increase the quality and impact of their participation in national and local *reconciliation*, as well as in the *protection and promotion of human rights* and *reform of the Justice Sector*."

The second phase, PASOC I programme, was initiated/ designed by UNDP and offered to Norway as a second phase of PROFED for the period 2004-2006 (3 years). The program was called "*Civil Society Participation*" 2004-2006 (GTM-2648, 03/212). Norway was the largest contributor. Sweden and Denmark were also financial co-contributors.

The **Strategic Objective** of PASOC I was to "Contribute to the process of change for the construction of peace in Guatemala. The **Development Objective** was to: "Develop civil society contributions for construction of participative democracy with a human rights focus."

The third phase, PASOC II programme, called "*Alliances with the Civil Society, PASOC Phase 2*" (GTM-2648), 2007-2009, was a continuation of PASOC I with some changes in thematic orientation and geographic area. The Norwegian contribution was for three years (2007-2009) in a cost-sharing agreement with UNDP in which Norway was the largest contributor. Denmark was the other financial co-contributor.

The **Goal** of PASOC II was "To promote *democratic governance*". The **Objective** was "To contribute to the *elimination of all forms of discrimination against indigenous peoples, women and other vulnerable and disadvantaged groups*, through the promotion of *inclusive public policies, human rights*, their fulfilment and a culture based on *tolerance and the respect for diversity*."

Planning framework

PROFED (2000-2003) was planned to be managed by objectives/ outputs. The way the results for each objective are worded indicate that the monitoring of results was done by outputs. The indicators presented are in correspondence with the results (outputs) planned. The planning framework of PROFED did not reach the level of outcomes (intermediate results or effects). No risk factors are identified.

The planning framework of PASOC I is not very clear or coherent, particularly in respect to the outputs to be achieved by the program. The results (which can be interpreted as the outputs) only appear in the work plan (five results corresponding to each of the 'immediate objectives'). The stated indicators, however, seem to suggest that more outputs for each objective will be produced during the course of the program than the number of results presented in the work plan. This lack of clarity and coherence in the planning probably created obstacles for the monitoring of results and performance of the program. In addition, the risk factors are only presented as 'positive' assumptions in favour of the program.

PASOC II made an improvement in the planning and results framework compared to PROFED and PASOC I. The main objective of PASOC II is clear and the three strategic results are clear and coherent with the stated objective and goal. It is clear that PASOC II benefited from the organizational changes within the UNDP and UN system that resulted in the adoption of planning and managing by results and the use of a programmatic approach. The connection to the goals and effects of UNDAF are also clear. The indicators corresponding to each result are clear and well formulated. In addition, five major risk factors to the implementation of the program are presented; these are clear, well worded, and mitigation measures to the challenges are suggested. (Please see Attachment A, for detail on the Results Matrix for each phase of the PROFED-PASOC programme.)

3.2 Organization of the Program

The PROFED-PASOC programs have been managed as direct execution (DEX) programs by UNDP from 2000 to 2010. Civil society organizations have been both partners and beneficiaries of the program. National authorities and institutions have also been involved in the programs, as well as three Scandinavian donor countries.

UNDP

UNDP has been the UN organization in charge of the PROFED-PASOC programs from the beginning. Coordination teams within UNDP have been in charge of management, facilitation, technical assistance and monitoring of the three phases of the program. The three programs have been under at least two different organizational structures within UNDP Guatemala. The last internal UNDP-Guatemala reorganization took place in 2007 when PASOC II was starting. PASOC II was part of the programmatic area "Democratic Governance" of UNDP Guatemala. It was under the supervision of the Country Director and the Assistant Country Director. The staff was composed of a program coordinator, a program officer, two field coordinators and one administrative assistant.

National Authorities

PROFED-PASOC, in its three phases, was implemented during four governments from four different political parties or political alliances (PAN/ Arzú, 1999-2000 (last year of presidency); FRG/Portillo, 2000-2004; GANA/Berger, 2004-2008; UNE/Colom, 2008-2010 (first two and half years of current presidency). The changes in government and national authorities affected the programs both positively and negatively. The nature and goal of PASOC II created much more contact, communication and alliances between CSO and State institutions, but also some obstacles to program implementation.

Other National Stakeholders

Some 80 civil society organizations implemented a similar number of projects through the three phases of PASOC. They were both long-established and professional CSO, based in Guatemala city, as well as small and rural NGO from several provinces other than Guatemala. Some of these organizations participated in the three phases of PROFED-PASOC, therefore the actual number of CSO counterparts is smaller than the amount of projects.

Norway and other Donors

Norway was the main contributor to the three phases of PROFED-PASOC. Sweden contributed to PROFED and PASOC I, and Denmark to PASOC I and II. Sweden also contributed to the precursor of PROFED when it was only called PROFED from 1997.

3.3 Program Theory and Linked-in DemDev Dimensions

The theory of the PROFED-PASOC programs was based on the implementation of the Peace Accords signed by the URNG and the Government of Guatemala in December 1996, and the potential role of civil society in it based on the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society. The early experience of PROFED program (Strengthening of the Rule of Law) initiated by UNDP-MINUGUA with financial support from Sweden was a first step in 1997 towards the inclusion of CSO in the implementation of the Peace Accords. The recommendations of the Commission for Historical Clarification's report (made public in 1999) were another point of departure for the program, particularly on the theme of reconciliation. The Comprehensive agreement on Human Rights and the Agreement on Identity and Rights of Indigenous Peoples, part of the Peace Accords, were two other basis for the programs.

The implementation of Peace Accords and implementation of the Commission for Historical Clarification (CEH)'s recommendations were the basis of the PROFED program, as reflected in the core themes of reconciliation, promotion of human rights, justice reform. However, as the political influence of the Peace Accords began to fade (particularly after the rejection of constitutional reforms in the referendum of 1999), and other national issues/ problems became dominant from 2000: Corruption and lack of transparency in state institutions at all levels and branches; increased level of violent deaths, including violence against women; penetration of organized crime in government institutions and operation of clandestine parallel groups; and inefficiency and corruption of the judicial system, in addition to entrenched racism and discrimination. The influence of the new reality was reflected in the

selection of equal access to justice and transparency in public administration as themes for PASOC I and the strategic inclusion of elimination of racism and discrimination as a new theme, and maintaining access to justice for indigenous peoples, and transparency and social audit, as themes for PASOC II.

Given the inclusion of gender equality and indigenous peoples issues as both transversal and strategic issues, in particular as part of PASOC I and II, there are clear linkages of PROFED-PASOC to other DemDev dimensions of the larger evaluation:

- *Human rights*: PROFED had an emphasis on promotion and protection of human rights and on reconciliation, including reparation to victims of the State's violations of human rights committed by State armed forces during the civil war.
- *Access to justice/ judicial reform*: PROFED emphasized participation of CSO in judicial reform, whereas both PASOC I and II had an emphasis on access to justice in general and access to justice for indigenous peoples in particular. PASOC II supported high profile cases on access to justice by relatives of victims of forced disappearances during the civil war.
- *Access to information and media*: Both PASOC I and II had transparency and social audit as one of the key themes. CSOs implemented projects to monitor transparency and promote access to information in state budgets, particularly for defence, and dissemination of this information in the media, in addition to social auditing at municipal level. Also, one of the projects trained Maya women communicators in the province of Sololá through the NUTZIJ Association. One of the highest results was the technical assistance for the law initiative process for the Access to Information Law, approved in 2008.
- *Women's organizations and empowerment*: Both PASOC I and particularly PASOC II have strengthened and supported Women CSO to implement projects related to social auditing in public budgeting with a gender focus, women at risk, fighting violence and discrimination against women, and advocating the creation of Women's Offices within local and municipal councils.
- *Parliaments and public watchdogs*: One PASOC II CSO participant partnered with the Ombudsman of Human Rights (PDH) to help relatives of victims of a specific case of human rights violations during the civil war in a village of the province of Chiquimula, and successfully assisted the prosecutor and witnesses during the long trial. As result, for the first time after the civil war, a high ranking military officer, and three ex-military commissioners, were sentenced in 2009 by a court of law for the forced disappearance of eight persons in 1981.

4 PROFED-PASOC: Documenting Program Results

4.1 Monitoring and Evaluation Framework and Key Results

PROFED. No clear monitoring and evaluation framework for this programme could be found in the documentation reviewed. Therefore the follow up of all 27 projects implemented was not consistent. UNDP's 2003 report admits that *"it was not possible to establish a coherent system of monitoring and evaluation."*

PASOC I. Based on the UNDP reports of 2005/06 and the evaluation of 2005, there was no clear monitoring and evaluation framework in PASOC I. The fact that there were 38 projects implemented by 30 organizations dispersed in several provinces of the country, gives an idea of the challenge of monitoring for the PASOC team. Many monitoring activities are reported as done, but they do not relate to a clear M&E plan. The intermediate evaluation of 2005 points to this weakness of the program and to the geographic dispersion of the projects. It was probably a combination of lack of capacity in the team and lack of a clear M&E plan at the onset of the program.

PASOC II. Although the logical framework presented in the UNDP program document (03/2006) and in "Annex I Agreed Programme Summary" of the Cost-Sharing agreement between NMFA and UNDP" (05/2007) is clear regarding the goal, objective, results and corresponding indicators of the programme, the Monitoring and Evaluation system is not very clear. The UNDP narrative report presents a summary of the monitoring results based on an existing "process of monitoring and communication", but the graphics presented are not clear or self-explanatory. The intermediate evaluation of 2009 (CEDIM:2009) concluded that *"the programme has not been able to develop a monitoring and evaluation system that is agile and effective."* There is a lack, according to this evaluation, of a clear baseline and qualitative indicators in order to measure results that have to do with program effects.

The final evaluation of PASOC II (ARS Progetti 2010), despite having a clear focus and mandate on analysis of final results of PASOC II, fails to mention in its report whether the program had an appropriate system for monitoring and evaluating project performance. It is clear to the case study team, however, based on review and analysis of documentation received from UNDP, that PASOC II had some type of follow up plan (based on UNDP's M&E guidelines) comprised of field visits, regional workshops, the use of consultants to advise CSO on planning issues and development of project indicators, and with the assistance of two provincial/ regional coordinators. The products of the follow up plan, however, focused on reporting actual outputs compared to planned outputs and corresponding indicators. The reporting of intermediate effects, on the other hand, for lack of planned outcomes and indicators, were probably based on CSO self assessment of results in progress reports, beneficiaries' opinions, or own assessment of PASOC's program team.

4.2 Documented Programme Results

PROFED was the first phase of the programme. Table 4.1 below presents some of the most significant results (outputs and outcomes) of the PROFED GTM 2648 programme. This

summary of key results is based on UNDP's narrative reports and the programme's review of 2002.

Table 4.1: Key Results of PROFED (2000-2003)

| Goal: Support Guatemalan civil society organizations (CSO) to increase the quality and impact of their participation in national and local reconciliation, as well as in the protection and promotion of human rights and reform of the Justice Sector. | |
|---|--|
| Justice and Human Rights | Reconciliation |
| <ul style="list-style-type: none"> • <i>Myrna Mack Foundation</i>, together with <i>Acción Ciudadana</i>, developed instruments to evaluate the professional qualifications of judges, magistrates, etc. They also promoted transparency in the election of the Ombudsman of Human Rights, attorney general, controller general, and reduction of corruption opportunities in judicial system; • <i>FUNDAJU</i>—Foundation for Youth, promoted the passing of the <i>Civic Service Law</i> (as called for by Peace Accords), approved by Congress in 2003; • <i>ADEGMAYA, ADP, ASEM, AEPDI</i> from the Q'eqchi area promoted access to justice for indigenous peoples via booklets, radio, translation in Maya languages in courts in application of ILO 169 Agreement; • <i>Consejo de Espiritualidad Maya, Defensoría Indígena, Defensoría Maya</i>: Provided legal assistance to indigenous populations; promoted the application of customary law in K'iche and Kaqchikel areas; • <i>CALAS</i>: Promotion of customary law (<i>derecho consuetudinario</i>) and rights over natural resources <p>Comment: Recommendations of National Commission for Strengthening of Justice and the Modernization Plan of Judiciary 1997-2002 were important for the actions of CSO in this sector, in addition to the Peace Accords.</p> | <ul style="list-style-type: none"> • <i>Instancia Multisectorial por la Paz y la Concordia</i>: Proposal to the government for the creation of a National Reparation Program for relatives of victims of civil war. After much negotiation and reluctance from government a National Program for Compensation was established. • A National Commission for the Search of Missing Children (during war) was proposed, was created and at least a hundred cases solved. • <i>Conadehgua</i>: successfully implemented a project to monitor the state budget, in particular military/defence budget. Collaboration with congressmen and investigative journalists. Result: higher transparency and publicity on subject • <i>CIRMA</i>: National campaign called <i>Why are we the way we are?</i> in order to fight roots of intolerance and conflicts in the country • <i>CALDH</i>: legal assistance to relatives of victims of massacres; training of prosecutors in international law on human rights violations, genocide, etc. • <i>COIMCH, ONEGUA, ASOMUGAGUA</i>: Aid in development councils at local level; promotion of rights of Maya and Garifuna peoples. |

A review of PROFED/GTM 2648 was conducted in 2002. The review team concluded that there are mixed results regarding *effectiveness* (e.g., “substantial achievements” regarding implementation of projects, but limited results regarding the strengthening of technical and institutional capacities of CSO, which they assessed as a “major weakness” of the program since it lacked a clear strategy of capacity development. The lack of a strategic approach, therefore, affected the ability of the review team to assess how relevant, sustainable or impactful the programme had been. They recommended: (i) to develop a clear strategic focus “a need to clarify the strategy and focus of the program”; (ii) a vision on civil society building and a PROFED strategy on CSO organizational strengthening: “...focus the attention on the capability of the CSO to act strategically in the thematic areas of concern to the program.”; (iii) strategic flexibility: “PROFED needs to be more proactive in their strategy to promote the quality and impact of CSO action” (PROFED/GTM 2648 Review, 2002).

Assessment of Results (PROFED)

As the 2002 review's report clearly pointed out, PROFED did not address the main goal effectively (“*Strengthening the technical and institutional capacities of CSO*”), focusing instead on strengthening the administrative and project implementation capacities of CSO. In

addition, the programme lacked strategic focus and a clear vision of civil society and its role. As consequence, the most significant results at the end of the program were not found in the increased capacity of CSO to act strategically, individually or in alliance with other CSO, but in project implementation results of individual CSO in the areas of *reconciliation, access to justice and human rights*, and in some changes in the interaction between CSO and national/local authorities.

Although PROFED had some documented results, such as participating in the creation of the National Programme of Compensation (for victims of the civil war), monitoring of state budget with focus on the military budget, access to justice for indigenous peoples and transparency in the justice sector, it is difficult to assess a direct correlation of these effects to the planned objectives and results of the program since there were no outcomes and corresponding indicators planned. Being part of a UNDP executed programme, on the other hand, made the work of counterpart CSO more visible and influential, and the interaction with national and local authorities, mediated by UNDP, more credible.

Documented Results (PASOC I)

As a follow up phase to PROFED, PASOC I benefited from the lessons learned of PROFED and the recommendations of the 2002 review. Norway and Sweden continued supporting the program in its second phase, now called *Civil Society Participation*, or PASOC I. Later, Denmark joined PASOC I as a third donor. The addition of Denmark meant that the project had more resources to invest in CSO and in total 30 civil society organizations were supported and 38 projects implemented.

PASOC I had many results, both intended and unintended, related to the themes of *Reconciliation, Access to justice, and Transparency in public administration*, in addition to the objective of Strengthening the political impact of CSO. Table 4.2 below presents the most important outputs and outcomes of PASOC I, as identified in the documents reviewed, especially the *Systematization of Experiences and Lessons Learned PASOC* (UNDP:2007), the intermediate evaluation of PASOC (Fundación SARES 2005), and from the interviews done in Guatemala.

Assessment of Results (PASOC I)

The second phase, PASOC or PASOC I (*Civil Society Participation*), benefited from the lessons learned and recommendations of the 2002 review. PASOC I kept the thematic areas of *access to justice* and *reconciliation* from PROFED and added the area of *transparency in public administration*. Regarding *Reconciliation*, the intermediate evaluation of 2005 recognized the value of inclusion of the theme of *Reconciliation* and related projects because if followed both the Peace Accords and the recommendations of the CEH to “recover the trust between the citizens and the State”. Although the evaluation team acknowledged that PASOC “*complied satisfactorily with Immediate Objective 1*”, allowing visibility and positioning of CSO in this area due to good selection of counterparts, it also suggests that there is a “*lack of precision in objectives and actions*”, and that some of these actions should be implemented by the state and not by CSO. It also pointed out that the financial need in the area of reconciliation is large and that PASOC cannot provide that. It recommends to “*better define the intervention in order to make it operative...*” and that “*future projects should concentrate in a particular geographic area*”

and should include the gender issue as an important aspect of the reconciliation processes. (Fundación SARES 2005). Therefore, the results in this area were limited.

Table 4.2: Key Results of PASOC I (2004-2006)

| Goal: Develop civil society contributions for construction of participative democracy with a HR focus. | | |
|---|--|--|
| Access to Justice | Reconciliation | Transparency in Public Administration |
| <ul style="list-style-type: none"> • Promotion of community management of natural resources, especially in indigenous communities, in coordination with the National Council of Protected Areas and the National Forestry Institute • Introduction of strategic litigation for collective rights of indigenous communities; 200 justice operators trained in five provinces in indigenous law, ILO 169 Agreement; many conflict cases resolved through the application of Maya justice in 3 provinces with majority of Maya population. • 4 books produced on own law of indigenous communities; provision of tech assistance to access the courts and related services. • Outcomes: Some recognition of Maya law practice and its role in solving cases and alleviate the load of state courts; practice of lynching decreased in Maya communities where projects have operated; openness on the side of the Judiciary to the application of own law in indigenous communities; new generation of leaders promoted. | <ul style="list-style-type: none"> • Projects implemented by local CSO through local development councils on reparation for victims and judicial processes to seek justice for crimes during the civil war • Maya spiritual guides, midwives recovered sacred places or community recognition to use traditional medicine and methods for health treatment • Recovery of dignity on the side of victims of the war, and the inclusion of children and youth to learn to understand the past conflict and become tolerant of others. | <ul style="list-style-type: none"> • Improvements in the Prosecutor General’s office, Anti-Corruption Unit as result of the work of one CSO and international advisors • Promotion of the institutionalization of the Organic Law of the Controller General’s Office • Successful monitoring of the state budget, specifically the military budget, in collaboration with some congressmen and journalists, making congress change parameters for state budget based on commitments of the peace accords • Consensus from variety of CSO on the working concept of social auditing. • Outcomes: Creation of some level of trust between CSO and state institutions; better control of military budget and development of a useful instrument to monitor the whole national budget. |

Regarding *Access to Justice*, the 2005 evaluation team indicated that, given the serious situation of deficiencies in the justice system and the high levels of impunity, PASOC’s definition of access to justice is restrictive, in the sense that it focuses on mechanisms to apply indigenous law as a complement to state law at local level, but that in doing so, it misses the opportunity to have more impact at national level to promote access to justice. Given the plurality of efforts and thematic fragmentation and focus on local projects, and the fact that only one CSO implements a project with potential national impact, the evaluation team concluded that the achievements are more technical (good identification of projects and organizations) and locally-based, rather than strategic and national. They recommended to “decisively support systematic efforts on the side of civil society to conduct monitoring and generate public policy proposals regarding the State obligation to provide Access to Justice” (Fundación SARES 2005). The current situation of marked increase in violent crime and high level of impunity in the country compared to 2005, points to the limitation of implementing a few good projects on access to justice, in the face of overwhelming and endemic problems (corrupt and weak institutions, insufficient budget, penetration of organized crime, etc) in the justice sector that require strong political will and integral planning by the state, in addition to massive investment, capacity development, and strong citizen participation.

The area of *Transparency in Public Administration* was assessed by the evaluation team of 2005 as the *most effective and successful* of PASOC I, and that Immediate objective 3 “*was being achieved satisfactorily, even beyond the expectations.*” (Fundación SARES 2005). This is confirmed by other documentation reviewed, interviews and field visits conducted. One of the main reasons for success was the high capacity and experience of the CSO selected in this area who combined actions at the local with other actions at national level. Another factor was the efforts to strengthen the capacity of local organizations at the community level to perform social auditing in a proper way. The projects managed by experienced CSOs have contributed to actual changes in access to information and monitoring mechanisms within the Controller General’s office, the Prosecutor General, and the development of effective instruments to monitor the state budget, and social auditing at municipal level. CSOs efforts have effectively contributed, for example, to the law initiative process that culminated with the approval and passing by Congress of the *Access to Public Information Law (Decree 57-2008)*.

Documented Results (PASOC II)

The last phase of PROFED-PASOC, PASOC II, benefited from the systematization of lessons learned of PASOC I. One of the key changes was the strategic thematic and geographic focus of PASOC II. It introduced the theme of *Elimination of Discrimination and Racism*, and focused on five provinces plus the capital of the country. However, one of the problems in assessing the results PASOC II is that the original results framework, although an improvement compared to PASOC I, was formulated in terms of higher level Outputs (the corresponding indicators are also worded as specific outputs) and thus it lacks clear expected Outcomes and corresponding indicators for each thematic area. Even with the recognition that it is always difficult to assess and measure intermediate changes in a highly volatile political context like Guatemala, the inclusion of clear outcomes with corresponding indicators would have helped PASOC’s technical team in order to measure actual effects (intended and unintended) against planned outcomes and indicators. In spite of these limitations, both the intermediate evaluation of 2009 and the final evaluation of 2010 recognize, document and list the various results and intermediate effects of PASOC II.

The PASOC II’s final evaluation (2010), however, presents a very good summary of final outputs (processes, mechanisms and instruments) related to the three main planned results and relevant indicators (p. 20-23), as well as a positive assessment of the intermediate results of PASOC II in relation to the intended impacts and effects stated in national-level plans of UNDP (PRODOC; CPAP, *direct effect 5*), and UNDAF (*direct effect 2*).

Table 4.3 below presents key results (outputs and outcomes) of PASOC II based on UNDP’s progress reports, intermediate evaluation of 2009, final evaluation of 2010, and interviews with counterparts and beneficiaries.

Table 4.3: Key Results from PASOC II (2007-2009)

| Goal: To contribute to the elimination of all forms of discrimination against indigenous peoples, women and other vulnerable and disadvantaged groups, through the promotion of inclusive public policies, human rights, their fulfilment and a culture based on tolerance and the respect for diversity. | | |
|---|--|--|
| Access to Justice for Indigenous Peoples | Transparency and Social Audit | Combating Racism and Discrimination |
| <ul style="list-style-type: none"> • Promotion of Judicial pluralism and application of Maya law and conflict resolution in some Maya communities; • Access to justice in cases deriving from the internal armed conflict: paradigmatic case of El Jute village, Chiquimula where the CSO GAM in collaboration/ alliance with PDH followed the case of the forced disappearance of 8 persons from this Maya Chorti village in 1981. The case resulted in the first sentence of a high ranking military officer for crimes committed during the civil war. | <ul style="list-style-type: none"> • Promotion of awareness, knowledge and practice of social audit and transparency methods by CSO counterparts in the five provinces; participation in social auditing of local governments; • Monitoring of the Prosecutor General's Office (MP): <i>Myrna Mack Foundation</i> implemented "The management of cases of violent death of men and women in the Department of Guatemala", published a report where they show the high level of inefficiency and inefficacy of the MP, which contributes to high level of impunity in the country, with specific recommendations for improvement. This project was considered of effect and impact in a key institution of the justice sector. • Access to Information: <i>Accion Ciudadana</i>, one of the most recognized CSO in the area of transparency and anti-corruption, assisted members of congress to draft the law initiative of the Access to Public Information Law, approved by Congress in Sep 2008. | <ul style="list-style-type: none"> • Promotion of 11 Municipal Women's Offices in the province of Chiquimula through local municipalities and also working with local development councils • Network against racism and discrimination in the province of Huehuetenango and in alliance with CODISRA (Presidential Commission against Discrimination and Racism); prevention of racism and discrimination through training and information dissemination; • Strengthening of Maya Women's Social Communicators organization in Sololá • Strengthening of intercultural bilingual education (EBI) • Denouncements against racism and awareness training of justice operators |
| <p>Cross-cutting: Gender and Indigenous Peoples</p> <p>All projects were to integrate the cross-cutting dimensions in plans and implementation. The ones in rural areas and provinces, particularly indigenous and women's CSO, were more successful at this than ones in the cities. During field visits the team saw that local women organizations were trained in social auditing and monitored the work of municipal councils and promoted the inclusion and participation of women in development councils, had got municipal councils to create Women's Offices and programs on the problem of violence against women. They had also strengthened their capacity and recognition as CSO advocates of individuals or groups of citizens.</p> | | |

Assessment of Results (PASOC II)

The overall positive assessment and highly valued contribution of PASOC II to *elimination of discrimination and racism, access to justice for indigenous peoples, and transparency and social auditing*, shared by the 2009 intermediate evaluation and the 2010 final evaluation, and conclusions of the final report of the UNDP/ PASOC II coordination team, is also shared by this case evaluation team. Even with some limitation in the results framework and in the monitoring system, and the obstacles faced, not least of all the deteriorated security situation of the country during the period 2007-2010, PASOC II had significant results and even some lasting effects that are a step forward in the ongoing struggle towards improved rule of law and democratic governance, and the strengthening of the role of civil society organizations, in the country. Based on the evaluations of 2009 and 2010, the progress reports of UNDP, and the interviews and field visits of this case evaluation, a summary of strengths and weaknesses of the last phase of PROFED-PASOC, PASOC II, is presented below.

Strengths of PASOC II:

- The appropriate selection of thematic areas: Two areas continued from PASOC I and the pertinent area of *elimination of discrimination and racism* was added;
- The strategic geographic focus (five provinces and capital selected based on sound criteria);
- The balance in the selection of CSO: Both from the five provinces (including Maya and Women CSO) and from the capital (professional and experienced CSO, both Maya and non Maya)
- The public call for proposals and selection process of organizations and projects using a representative Selection Committee, allow a diverse number of CSOs –small and large—to submit their proposal for consideration;
- PASOC II had a significant level of success in achieving its strategic objective/ result of constructing alliances and networks among CSO, and between individual CSO and specific State institutions, particularly at provincial and municipal levels;
- UNDP’s valued added as a neutral and respected organization, and its role as efficient manager, technical adviser and facilitator of access to state structures and institutions was an important factor for the success of PASOC II.

Weaknesses of PASOC II:

- The large quantity of projects supported (44), which put a strain on the capacity of the coordinating team to appropriately monitor and follow up all counterparts and projects;
- The monitoring and evaluation system used by PASOC II was unclear, and with no clear baseline and performance indicators;
- The process of selecting organizations and projects became cumbersome and inefficient when the Selection Committee grew too large and had difficulties making prompt decisions on a large number of proposals received, thus affecting the signing of agreements with CSO and limiting the timeframe of projects;
- Most PASOC II agreements with CSO were for projects of one to two years, while the establishment of alliances with State institutions requires a long term commitment;
- The risks posed by the security situation of the country, as well as the effects of pre-electoral and post electoral processes, and the start of a new government period with new authorities and policies, were underestimated in the risk assessment of the program.

5 Findings and Conclusions

5.1 Key Factors Explaining Results

The most important factors, internal and external, positive and negative, that explain programme results in the case of PROFED-PASOC are presented in table 5.1 below:

Table 5.1: Key Factors Explaining PROFED-PASOC Results

| | Positive | Constraints |
|---------------------------------|--|---|
| Internal program factors | <ul style="list-style-type: none"> • UNDP as good administrator, facilitator, adviser and bridge between CSO and State institutions • The good selection of thematic areas and CSO counterparts in each phase • The strategic decision to support both urban and rural CSO, indigenous and non indigenous • The continued support to CSO who performed well • The Selection and Follow up Committee's role in choosing pertinent projects | <ul style="list-style-type: none"> • Large amount of projects supported in each phase limited effective project monitoring and strengthening of CSO • Geographic dispersion of projects, except in PASOC II • Monitoring and evaluation was weak in the first two phases (improved in PASOC II) • Serious deficiencies in risk assessment in PROFED and PASOC I (risk analysis in PASOC II was good) • The short timeframe of projects and with unclear follow up • The Selection and Follow up Committee became too large, at some point, slowing significantly the decision making process to select CSO counterparts/ projects |
| External to the program | <ul style="list-style-type: none"> • The experience and capacity of some CSO was key in achieving good results and impact • The creativity and dedication of smaller CSO who worked in rural/ Maya areas • The consistency and coordination of three like-minded donors to support three phases of a program during more than 10 years | <ul style="list-style-type: none"> • The frequent changes in government and of key national and local authorities (four different governments during the course of the program) limited the sustainability of alliances CSO-State institutions • High level of corruption in three branches of government • Increased violence and impunity in the country affected implementation of CSO projects, especially regarding sensitive issues • Penetration of organized crime and parallel criminal structures in all State institutions • Weak national and local leadership |

5.2 Programme factors explaining results

Throughout the three phases of PROFED-PASOC, a large number of projects were implemented in each phase, some by experienced CSOs based in the capital, others by smaller CSO based in rural areas of the country. Some of the projects were successful in achieving their planned outputs and even achieve outcomes at national or municipal level; others not so successful. The following are some programme factors that explain the results achieved.

- The lack of clear results frameworks, particularly beyond outputs, and a lack of strategic focus in the case of the PROFED and PASOC I phases, affected the achievement of results in general. Also, the varying quality and deficiencies of the results frameworks

and the monitoring system in each phase made it difficult for the evaluation team to assess results, particularly at outcome level.

- PROFED-PASOC was started in a post-conflict environment in Guatemala at the time when issues such as justice sector reform, reconciliation, human rights, and civil society participation were high on the agenda, taking as basis the content and recommendations of the signed Peace Accords of 1996, and the recommendations of the Truth Commission (CEH) of 1999. In this context, the PROFED-PASOC programme was *highly relevant* to democratic development of the country because it contributed to strengthening the capacity of CSO in relevant themes such as transparency and social auditing, reconciliation and human rights, access to justice for indigenous peoples, elimination of discrimination and racism, and to the establishment of alliances between CSO and some State institutions. PROFED-PASOC was relevant to the needs of both professional and large CSO from Guatemala city and small and province-based CSO.
- The counterpart CSO benefited from the training and technical assistance, political support, and access to state institutions that UNDP/PASOC provided; it also enhanced the capacity of certain State institutions (such as Congress in the area of transparency, budget monitoring), and of local institutions/ organizations such as municipal councils, local development councils (establishment of women's commissions, social auditing mechanisms, etc.).
- PROFED-PASOC was most *effective* in achieving output and outcomes in the thematic area of Transparency and Social audit. The second most successful area was Access to Justice for Indigenous Peoples. The selection of appropriate themes and projects, and the capacity of the CSOs selected were positive factors in this.
- The duration of the projects was relatively short in each phase; however, the decision by the programme coordination and the follow up committee to continue to select projects from some of the same organizations who were performing well was correct: At least 5 CSO participated in the three phases of the program; and at least 11 CSO were part of both PASOC I and II. The CSOs who were part of the programme for ten years are the ones who showed the most significant results and outcomes achieved;
- Given that PROFED-PASOC pursued the dual long *term goal* of (i) strengthening the capacity of CSO; and (ii) the establishment of alliances between CSO and State institutions, the management and administrative set-up was *efficient*, as UNDP had both the capacity to manage a three-phase program and interact with- and monitor a large number of CSO counterparts and projects, and at the same time use UNDP's neutrality and leverage to facilitate access of CSO to State institutions. The use of UNDP as manager, technical adviser and facilitator of alliances/ dialogue between CSO and state institutions was one of the keys to the efficiency and effectiveness of the programme.
- The selection of counterparts and projects, and the timeframe of projects, however, was affected by an increasingly inefficient project selection process: the selection committee grew too large and the amount of proposals accepted for consideration was also large.

5.3 External (contextual) Factors Explaining Results

During 2000-2010, there were external factors to the PROFED/OSC-PASOC programme that affected the achievement of outputs and outcomes. Some of the most important external factors are:

- *Lack of political will and State policies.* The three changes of government between 2000 and 2008 clearly affected the three phases of the program as new authorities at national and local level came to power with new visions and ideas on how to solve problems of the country or the specific deficiencies of the justice sector. The lack of State policies, for instance a long term policy on justice and security, is one of the most serious development deficiencies of the country. Lack of political will, resistance to change, corruption, and high turnover of public officials in key institutions –national civil police (PNC), prosecutor’s general office (MP), judiciary (OJ), congress, municipal authorities, etc.— were negative factors/ challenges for achievement of results in some projects, particularly in the theme of reconciliation, access to justice for indigenous peoples, and in transparency in public administration.
- *The security situation and penetration of organized crime.* The security situation of the country has worsened during the length of the three phases of the program, and the level of impunity/ ineffectiveness of the justice sector grew to dangerous levels in the last five years, a fact that affected the implementation of the second and third phase of the program, and placed a burden on UNDP and the PASOC programme to protect its own staff and its CSO counterparts. The penetration of organized crime in all spheres of society and government, and the operation of complementary criminal hidden groups within key state institutions of the country, posed a serious challenge to those CSO working on sensitive issues related to anti-corruption, transparency or the follow up of cases related to human rights violations such as forced disappearances and massacres during the civil war. In some cases, counterpart CSO were victims of intimidation and personal threats.
- *The creation of CICIG.* The agreement between the United Nations and the Government of Guatemala in December 2006 to create the *International Commission against Impunity in Guatemala* (CICIG), ratified by Congress on 1 August 2007, was a definite step forward in the fight against impunity and organized crime. Operating since September 2007, the actions and success of CICIG in prosecuting high profile cases has been a positive but indirect external factor for PASOC II. It is worth mentioning that it was a coalition of CSO who, through their persistent advocacy work from 2003 to 2007, contributed to convince public opinion, the President and Congress on the necessity to create such Commission with a unique mandate in the justice sector. (See *Advocates Against Impunity*, WOLA:2008).

5.4 Choice of UNDP as channel for democratic development support

The long involvement of UNDP in democratic governance issues in Guatemala, and its reputation for being neutral and at the same time having proven access to government structures and authorities, and the existence of complementary programs such as DIGAP, made UNDP the right channel for this type of programme supporting civil society

strengthening. The assessment of UNDP as channel for Norwegian assistance to Guatemala (Scanteam 2006) was positive in its overall recommendation to continue using UNDP as channel for Norwegian cooperation with Guatemala, precisely because UNDP offered valued added regarding management and transparency in the use of funds, capacity in provision of technical assistance, and in addition the permanence and capacity to facilitate access by CSO to State structures and institutions.

Donors, overall, were satisfied with the performance of UNDP as manager of PROFED-PASOC. Most CSO counterparts were also satisfied with the administrative and technical performance of UNDP in the three phases. However, they pointed out that efficiency of selection of projects and counterparts could be improved, as well as the project monitoring system, especially in rural areas. Above all, CSOs appreciated the political backing of UNDP, when needed, and the technical and institutional mediation of UNDP when alliances with state institutions, through specific projects, were proposed.

5.5 Conclusions: PROFED-PASOC

1. PROFED-PASOC –even with its limitations in program design and monitoring and evaluation system— has made a positive contribution to democratic development in Guatemala, by: (i) strengthening the capacity of key civil society organizations to become better advocates for the rights of citizens and be proponents of solutions to national and local problems; and (ii) bringing focus/ public attention to crucial democratization issues such as reconciliation, access to justice for indigenous peoples, transparency and social auditing, and to a sensitive and politically charged issue such as elimination of discrimination and racism.
2. The role and permanence of UNDP, during almost ten years, as program manager, facilitator, adviser and political mediator has strengthened the role of CSO in the country, both at national and local level, contributing to documented outcomes and even some impacts related to democratic governance. However, it is also clear that the PROFED-PASOC program was negatively influenced by the evolution of a powerful political and socioeconomic context (characterized by serious deficiencies in the justice sector; an increase in violent deaths, impunity and human insecurity; corruption and penetration of State institutions by organized crime; acute social, ethnic, gender and geographic inequalities) which posed serious obstacles to project implementation, especially during PASOC II, and probably prevented greater achievement of outcomes. These negative external factors were not fully reflected in the risk analyses, as part of program documents submitted by UNDP.
3. Synergies between PROFED-PASOC and similar programmes managed by other donors could have been better, as well as with other UNDP-managed projects. In particular, the evaluation team found no evidence that programmatic synergy existed between PROFED-PASOC and the IDPP project around the theme of *access to justice for indigenous peoples*, which was an important thematic area to both programmes.

6 IDPP: Program Description

Justice sector institutions (and related security institutions) were among the main focus areas for reform in the implementation of the 1996 Peace Accords. The reform strategy, drafted on the basis of relevant sections of the Peace Accords, focused on four central entities in the justice sector: a) the Supreme Court; b) Interior Ministry (specifically civil intelligence and the National Police); c) the Public Ministry (Prosecutor General); and d) the Public Penal Defence Office (*Instituto de la Defensa Publica Penal, IDPP*), that was created in 1997.

One important aspect of the work in the Supreme Court was to provide greater access to justice to those populations historically excluded. The Supreme Court implemented programs such as the “Small Dispute Courts”, and modified the Supreme Court’s internal organization bylaws. Some of the most important overreaching reforms was that of the Penal Code and the introduction of “oral litigation”.

Support to the justice sector has been a central part of Norway’s engagement in Guatemala since the mid-1990s. During the period under evaluation, Norwegian support was channelled through four main UNDP projects, covering the main implementing agents in the Guatemalan criminal justice system:

- 1) Programme of support to the Judiciary Branch in Guatemala (*Organismo Judicial*),
- 2) Programme for support to the Public Prosecutor’s Office in Guatemala (*Ministerio Público, MP*);
- 3) Support to the new civilian police: Strengthen the new National Civilian Police Force (PNC); and
- 4) Strengthening of the Institute for Penal Public Defence (*Instituto de la Defensa Publica Penal, IDPP*).

The evaluation team has chosen the support given to IDPP as the main case study in the justice sector for this evaluation. The selection of this project was motivated by a number of factors. For example, the IDPP-project was the most substantive and longest running of the four projects in the justice sector during the period under review. It was also the project that was most recently concluded, giving the evaluation team a chance to talk to the individuals directly involved in its implementation.

6.1 Background and Context

Justice Sector Reform in Guatemala

As for most international donors, the starting point for Norway’s post-conflict support to Guatemalan justice sector has been the Peace Accords (PA) from 1996. Since the signing of the PA, donors have invested massive amounts of development aid in the Guatemalan justice and security sector. Justice sector support has often been aimed at building national capacity within Guatemalan agencies through training programs and mentoring. While some important steps have been taken in the strengthening of the justice institutions, the general feeling of security in society has deteriorated over this period.

Important momentum for legal and constitutional reform was lost in the referendum of May 1999. As noted above, the reform package that was drafted as a way of implementing some of the central agreements reached in the Peace Accords, was voted down. This was a serious blow to reform efforts and to the implementation of the Peace Accords.

The statistics that was quoted to the evaluation team over and over again are truly startling. Human insecurity is commonly perceived to be worse than during the civil war, with crime and extortion related killings hitting randomly in public places, on buses and along main roads, affecting every aspect of life for most urban Guatemalans. A culture of violence has penetrated society, and levels of violence unrelated to organized crime and narco-trafficking are also high. Some 6 000 violent deaths were reported in 2009 in a country with a population of just over 13 million. By the time the evaluation team left Guatemala in the end of July, 3 434 murders had already been committed in 2010.² The impunity level for violent crime is quoted at 98%, demonstrating a total breakdown of central functions in the justice system (Zaunbrecher, 2010). Only a small percentage of violent crimes ever get investigated (*Fundación Myrna Mack – Study on the Effectiveness of the MP*). Corruption, both related to organized crime and to a general culture of impunity, is rampant. The discussion among commentators today is not whether or not Guatemala is a fragile, or failing, state – the question is whether or not it is already failed.

In recent years, the international community has been forced to seriously rethink its support to the Guatemalan justice and security sector. It is not that the programs implemented since the PA in 1996 have necessarily been ill conceived or poorly implemented. Many projects have done quite well in achieving the stated goals. However, the negative security and political developments in Guatemala – i.e. contextual/external factors – have been so powerful that most positive effects of individual projects seem to have been consumed by the overall negative development. The fundamental problems in Guatemala must be addressed at a different level.

In the face of the developments presented above, the International Commission against Impunity in Guatemala (or *Comisión Internacional Contra la Impunidad en Guatemala, CICIG*) was created in 2007 (the agreement between the United Nations and the Government of Guatemala was signed in December 2006). Donors, the United Nations and other Cooperation Agencies, in dialogue with the Guatemalan Government, had come to the conclusion that the justice sector was in need of more robust support than the projects that had been funded so far. CICIG is funded through the UNDP. CICIG's mandate, as outlined in the agreement between the UN and the Government of Guatemala, is comprised of three main objectives:

- *“First, CICIG shall investigate the existence of illicit security forces and clandestine security organizations that commit crimes that affect the fundamental human rights of the citizens of Guatemala, and identify the illegal group structures (including links between State officials and organized crime), activities, modes of operation and sources of financing.*
- *Second, CICIG's professional personnel shall support the work of Guatemalan institutions, principally the Attorney General in his work to investigate and prosecute the individuals*

² The US Overseas Security Advisory Council - www.osac.gov

involved in the illegal groups. Additionally, CICIG will make recommendations to the Government for the adoption of new public policies mechanisms and procedures directed at the eradication of these groups and will strengthen the State's capacity to protect the basic human rights of its citizens.

- *Third, the Commission shall provide technical assistance to Justice Sector institutions in order to leave the Public Prosecutors Office and National Civilian Police better equipped to fight organized crime even after the conclusion of CICIG's mandate.”³*

CICIG has shown some important results and brought a few high profile cases to the courts. Some commentators argue that the Commission has given back a sense to Guatemalans that change is possible. Others criticize CICIG for only taking on the cases that the powerful elites in the country approve. The view expressed by the UNDP management and CICIG officials, as well as a number of other informants, is that CICIG represents the best hope for change that the country has seen in a long time. The evaluation team agrees with that view. The Commission's mandate runs out in 2011, and it is currently uncertain what will be put in its place. It is clear, however, that it will not be possible to integrate the progress made by CICIG into existing justice sector institutions.

The Indigenous (Maya) Justice System

The Norwegian funded IDPP-project has been innovative and unique in its approach to build on indigenous (primarily Mayan) legal traditions, and link indigenous authorities and communities with state agencies in the justice sector.

Mayan legal tradition is closely linked to the so called Mayan Cosmvision and the idea that everything in the universe is connected and part of an integrated order. The primary purpose of the law is to maintain communal harmony and not, as in Western legal traditions, to guarantee individual rights and entitlements (Hessbruegge and Garcia, *Mayan Law in Post-Conflict Guatemala*, 2004).

The concept of indigenous – or Maya – law, is highly contentious, but highly relevant for the project under review. Even the terminology is contested. Guatemalan Statutes consistently use the terms “*customs and practices*” (“*usos y costumbres*”) rather than “*law*”, implicitly stating that indigenous custom is to be seen as subordinate to state law. The notion of an indigenous legal system separate from the Guatemalan state law is based on the pre-civil war situation where the state was not present in the lives of rural indigenous Guatemalans. Indigenous communities were largely left to organize themselves along their traditional social patterns (Hessbruegge and Garcia, 2004).

The picture is further complicated by the fact that “*Mayan law is preserved through oral tradition and its validity is continuously reaffirmed through practical application*” (Hessbruegge and Garcia, 2004). In most places, this tradition was broken during the nearly four decades of civil war and heavy repression of indigenous identity and culture. The modern Maya movement was born in the early days of the peace process in the 1990s. The movement strives to affirm a common Maya identity based on overarching characteristics of the Maya

³ <http://cicig.org/index.php?page=mandate>

communities. One important part of this development is the reformulation of Maya law. The Mayan law of today is based on attempts to recreate the pre-war practices. However, since legal traditions have not been homogenous across the 21 Mayan linguistic community lines, there are varying views as to what is the “true” interpretation of Maya law.

The Agreement on Indigenous Peoples, the Agreement on the Strengthening of Civil Society and the Agreement on Constitutional Reform, all part of the PA 1996, were important steps forward for proponents of legal plurality in Guatemala. In these accords, the indigenous justice system was recognized as one of the pillars of the Guatemalan justice system. However, as a result of the referendum in 1999, the necessary constitutional reforms have not been approved. The PA also obliged the State to accede the ILO Convention 169, according to which States Parties are to respect the indigenous people’s methods to deal with offences committed by their members as long as these methods are compatible with the national legal system and internationally recognized human rights. Article 9, of the ILO Convention 169 reads:

“1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.”

Guatemala acceded to the ILO Convention 169 in 1997.

The IDPP-project

Project Background

The *Instituto de la Defensa Público Penal* (IDPP) is mandated to provide public criminal defence services and facilitate access to state justice in Guatemala. In 1998, as one of many institutional reforms following the Peace Accords, the institution was reformed into an independent institution of the Guatemalan state.

As has been described in the chapters outlining the Guatemalan context, indigenous populations have been and are still subject to massive discrimination and exclusion from public life. In the judicial system, cultural and language differences pose additional barriers. In 2001, the United Nations Verification Mission in Guatemala (MINUGUA) stated that: *“the obstacles that hinder or prevent access by the indigenous peoples to State Justice are basically cultural, beginning with the language barrier. Legal processes are carried out in Spanish, few operators (judges, magistrates, defenders, policemen, penitentiary staff, employees of different justice system institutions) know any other language and the number and linguistic diversity of the interpreters is still very limited. In spite of the fact that it is ordered by law, as a general rule, records of the proceedings are not translated into the indigenous languages and judicial terminology glossaries in the users’ language are not used. In the second place, the operators are generally not capable of comprehending the cultural thought processes and behaviour of the persons that do not belong to their own ethnic group or culture. (...) In the third place, the cultural obstacle of the indigenous population’s access to the administration of justice is shown by their lack of knowledge of their rights, the proceedings and regulations, of which they are only informed in rare instances and then only in Spanish”* (MINUGUA, *“The indigenous peoples of Guatemala: Overcoming discrimination within the framework of the Peace Accords”*, September 2001).

The statement provides a picture of the background to the Norwegian funded IDPP-project and its focus on strengthening the access to justice of the indigenous populations of Guatemala. The project was initially funded by Spain in the late 1990s. After the successful pilot phase, Norway showed interest in continuing the project while Spain decided to withdraw. Norway came to fund two project phases– phase one between 2001-2004 and the second phase in 2004-2008.

UN Policies

The UN has come a long way in its understanding of the inter-linkages of peace-processes, development of strong state institutions and the promotion of rule of law. It has significant and broad experience with the justice sector, including both reform programs for judicial institutions, reform of legal frameworks and constitutions securing due process and human rights. Increasing attention is being given to access to justice, particularly the mobilization capacity of justice users through legal empowerment and support to legal aid. There is also support to human rights commissions and alternative dispute resolution mechanisms.

Access to justice has also become a vital part of UNDP's mandate to reduce poverty and strengthen democratic governance. The UNDP Practice Note on Access to Justice, published in 2004, is introduced by a quote by then Secretary-General Kofi Annan:

“The United Nations has learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without a credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied, and that justice is a handmaiden of true peace. We must take a comprehensive approach to justice and the Rule of Law. It should encompass the entire criminal justice chain, not only police, but lawyers, prosecutors, judges and prison officers, as well as many issues beyond the criminal justice system. But a “one-size-fits-all” does not work. Local actors must be involved from the start. The aim must be to leave behind strong local institutions when we depart.”

Since the signing of the Peace Accords, the United Nations in Guatemala, as well as the international community at large, has been focused on supporting the national priorities set out in the 11 agreements. One of the prioritized areas in the justice sector was to enhance the access to justice of indigenous peoples of Guatemala and integrate traditional indigenous legal practices into the fabric of the formal Guatemalan justice system. The Spanish-funded pilot project to open field offices of the IDPP specialized in indigenous languages and cultural awareness grew from this priority.

During the period under review, the UN in Guatemala has been criticized for not having a programmatic approach to its support to the justice sector. While the UNDP has had projects aimed at various parts of the justice sector, these have not been well coordinated with each other and potential synergies have been missed. This could also be said for many donor countries active in Guatemala at the time. In the last years, the UNDP has worked hard to achieve a more programmatic approach with coordinated projects in different parts of the justice sector. This effort has naturally been heavily influenced by the overall UN reform process and the *Delivering as One* initiative. It has also coincided with a larger reconsideration of the way in which the international community supports the development

of the Guatemalan justice system. Support is now more directly aimed at fighting corruption and bringing important cases before the courts. CICIG is the primary example of this development.

Norwegian Policies

Support to the justice sector has been a central part of Norway's engagement in Guatemala since the mid 1990s. As other donors, Norway aligned with what was perceived as the national agenda after the Peace Accords in 1996, along the lines described above.

During the period under evaluation, Norwegian support was channelled through four main projects in the justice sector in Guatemala. The decision to support the project within the IDPP should be seen against the background of Norway's efforts to have a programmatic approach to the justice sector. Norway was already supporting the Prosecutor-General's office, the Judiciary and the National Police, and with the IDPP-project, Norwegian support covered four of the major implementing state agencies in the Guatemalan justice sector (see list above).

The IDDP-project, supporting the protection of indigenous rights and the establishment of *Defensorías Indígenas*, was meant to be mutually reinforcing with the other three main justice sector projects. As it turned out, the IDPP project was the most substantive of the four projects, with the most significant results.

The project was concluded after the second phase in 2008. IDPP had submitted an application for a third phase, but this application was not approved. The Embassy has expressed concerns over the manner in which the second phase of the project was implemented, particularly by the UNDP. However, the main reason for the decision not to fund a third phase was the general shift in the Norwegian policy for development cooperation in Guatemala.

6.2 Project Objectives

The two projects under primary review in this study are: 1) "Strengthening of the Institute for Penal Public Defence" (*Fortalecimiento del Instituto de la Defensa Pública Penal*), 2001-2004; and 2) "Strengthening of the Institute for Penal Public Defence, *Defensorías Indígenas*, Phase II" (*Fortalecimiento del Instituto de la Defensa Pública Penal, Defensorías Indígenas, Fase II*), 2004-2008. The overall goal of the projects was to "promote the peace process and strengthen the rule of law in Guatemala through improved access to justice services provided within a framework that respects the multilingual and multicultural nature of the country."

The first project phase (2001-2004) was based on a Spanish pilot project and aimed at establishing legal defence offices in indigenous communities, capable of providing legal services in local languages and with sensitivity and awareness to indigenous customs and social order; increasing the number of indigenous lawyers and lawyers with knowledge of indigenous languages and customs; improve the coverage of, and strengthen, IDPP and other justice services in indigenous communities, and develop coordination mechanisms between state law and the exercise of traditional law in indigenous communities. The total budget for the first phase was 7 500 000 NOK. An additional 730 000 NOK was disbursed in 2004 after an application from the UNDP.

The second project phase (2004-2008), building on the results of the first phase, continued to multiply and develop the *Defensorías Indígenas*. At the same time, and after a close dialogue with Norwegian Embassy, the second phase of the project also aimed at mainstreaming the indigenous issues within IDPP as an organization. The first of three expected results outlined in the project document was to strengthen the IDPP through an institutional policy and a strategy for legal support with socio-cultural relevance. The second expected result in phase two was the development of mechanisms for recognition and respect of Indigenous law systematized and validated. A third result outlined in the project document was the development of public policy guidelines for the relation between indigenous peoples' own juridical system and the official system. The total disbursed amount for the second phase of the project was NOK 9.2 million.

6.3 Organization of Project

The IDPP project differs from the PROFED and PASOC programs in previous chapters in that it was a so called Nationally Executed Project (NEX). This means that while UNDP has been receiving funds from Norway, the national partner, in this case the *Instituto de la Defensa Publica Penal* (IDPP), has been the actual implementing agent and its Director has served as the National Coordinator of the project.

UNDP's role as Development Partner has been to support the project administratively, for example with direct payments to the staff hired within the project and through participation in project formulation, monitoring and evaluation. UNDP has also been an active partner in planning and formulating the project documents.

The Norwegian Embassy appears to have been active in project formulation process through a close dialogue with UNDP and in some cases also with IDPP directly, especially in the second phase. The project document for phase two was revised during the first six months of 2006, after close consultation with Norway. There was a discussion with the new management of IDPP on whether the project was to focus on mainstreaming issues of indigenous rights within IDPP, or continue with the "affirmative action" approach of developing specific indigenous defence offices. It was important to Norway that the development of the *Defensorías* be continued. In the end the second phase came to focus on both mainstreaming indigenous rights issues throughout IDPP, and continuing the development of *Defensorías Indígenas*. The redrafting of the project document, together with circulation of project staff at IDPP, resulted in a delay of the second phase.

With the exception of the funding provided by Spain for the initial pilot project, Norway has been the only donor involved in the IDPP projects. This is not to say that other donors have not been involved in justice sector projects or projects aimed at strengthening access to justice for indigenous peoples. It could rather be seen as an example of lacking coordination in this field among donors and the absence of a programmatic approach in the justice sector by the UNDP in Guatemala⁴.

⁴ Ref to interview statements on the lacking coordination in justice sector support.

Within IDPP a project group has been responsible for the day-to-day coordination and implementation of the project – recruiting staff for field offices, coordinating cultural expert studies for court cases (“*peritajes culturales*”) and liaising with other government institutions and CSOs, etc. This project group is now a regular department within IDPP with two permanent staff.

6.4 Linkages to other DemDev Dimensions

Access to justice is a key element of democracy. Increased access to the state justice system for indigenous populations is therefore closely related to overall efforts to promote democratic development in Guatemala. There are also some more direct linkages to other democratic development dimensions under review in the present evaluation.

Civil society voice and accountability – IDPP has close informal links and a working relationship with organizations working to promote the status of indigenous authorities and the indigenous customary legal system.

Human Rights – The project is based on the human right to access to justice, as well as on the indigenous people’s rights as expressed in international conventions such as the ILO convention 169.

Access to information and media – No direct linkage between the IDPP project and this dimension of democratic development.

Women’s organization and empowerment – The project has components dealing with the status and rights of indigenous women and their role in indigenous communities.

Parliaments and public watchdogs – In its role to promote access to justice for indigenous peoples, documenting and working to prevent direct and indirect discrimination against indigenous peoples in the justice sector.

Electoral processes and institutions – No direct linkage between the IDPP project and this dimension of democratic development.

7 IDPP: Documenting Project Results

7.1 Monitoring and Evaluation Framework (M&E)

The Monitoring and Evaluation frameworks have varied in structure between the two project phases. Log-frame matrixes were developed for both phases. For phase one, the LFA contained Immediate Objectives, Planned Outcomes and Inputs and Indicators, while the LFA for phase two consisted of Results, Activities and Indicators. The frameworks have lacked a clear link between the overall theory of change and the project interventions and expected results. Reporting has tended to be quantitative rather than qualitative in nature. Documentation and reporting has also only loosely followed the logic in the M&E framework, which has made it difficult to track progress. In the chapter documenting results below, reported achievements are compared with suggested indicators.

The Norwegian Embassy and UNDP has monitored the project through annual tripartite meetings between IDPP, UNDP and the Norwegian Embassy. Ahead of these meetings annual reports on project performance have been prepared by IDPP. External mid-term reviews were to be conducted in both phases. However, due to delays these reviews were both conducted in the last year of each project phase (Bain and Svendsen, May 2004; and Ekern and Leifsen, April 2008).

As will be discussed further under Findings and Conclusions, the evaluation team is of the view that the project objectives relating to the strengthening of indigenous authorities and the status of the indigenous legal system are quite political in their nature. The issue of indigenous law is very complex and contentious in Guatemala. The evaluation team would argue that this type of project requires a more careful analysis and closer monitoring of project implementation by the donor, and a continuous assessment of the values and policies supported through the project.

As noted above, the project documents vary slightly in structure between the two phases. While the log-frame for phase one contains immediate objectives, inputs, planned outcomes and suggested indicators, the matrix for phase two goes straight to the planned results, indicators and activities. Reporting in both phases has tended to be focusing on quantitative rather than qualitative indicators. The structure of the log-frame matrixes has only been loosely followed in reporting and reviews of the projects. Results matrixes are included in attachment.

7.2 IDPP Phase I

The first phase of the project was concluded already in 2004. Since then, many of the processes that were initiated have continued in the second phase.

Documented results

The first immediate objective of the project was to design and implement two Indigenous Legal Defence Offices in order to provide public legal defence services in indigenous languages. In the project period, two *defensorías* were created in Huehuetenango and Sololá as foreseen. In addition to these two, *defensorías* were also created Quiché, Totonicapán,

Chimaltenango, Cobán, Baja Verapáz and Petén by 2004. In total 10 *Defensorías Indígenas* had been established by the end of the first phase of the project in 2004 (of which 2 were established during the Spanish pilot). A total of 10 indigenous defenders were hired and deployed, one in each *Defensoría Indígena*. Further, bilingual dictionaries were created in 22 Mayan languages by 2004. Knowledge gathered during the preparation of the dictionaries was disseminated among justice operators.

The second immediate objective was to increase the number of indigenous lawyers to contribute in providing legal justice services in the peoples own language. Efforts were to a large degree directed towards law students and the universities. Scholarship program in university law schools and courses were offered to indigenous students to help them graduate. 75 courses on language and indigenous customs were implemented with university students. Teachers have stated to previous reviews of the program that these courses were successful – but no survey has been made of students’ perception. 825 law students and active lawyers speaking Maya and Garífuna were identified and placed in a human resource bank. It is not clear to the evaluation team what practical importance this resource bank has had.

The third immediate objective related to improving the coverage of IDPP’s services and other justice institutions in indigenous communities. The objective related both to the supply and the demand side – i.e. both increasing availability and sensitizing communities about their rights and opportunities to access state defence and other justice services. The *Defensorías Indígenas* established in relevant communities have been reported to fill the function of intercultural bridges the official judicial system and the traditional authorities applying indigenous law in communities. The *Defensorías* have also been reported to have established and maintained contacts with Civil Society Organizations and served as a platform for dialogue. Radio and television shows as well as written media, conferences and round-tables have been used to disseminate information regarding indigenous rights and the work of the IDPP. Defenders from the IDPP were reported to have been included into the Sub-commission on Access to Justice and the National Commission for the Strengthening of the Justice Sector, and other institutionalized justice commissions.

Immediate objective four was to develop coordination mechanisms between state law and the law practiced by the traditional authorities of the indigenous peoples. To achieve this objective, four consultants were reported to have been hired to identify the main existing obstacles in applying indigenous customary law in situations where it is compatible with national Guatemalan legislation and with international Human Rights. A dialogue had then been initiated between indigenous leaders and state authorities.

The IDDP has also used so called *Paradigmatic Cases* – i.e. cases where conflict mediation was conducted in communities using traditional methods – to sensitize courts and other institutions about indigenous conflict resolution traditions. The validity of such cases has on a number of occasions been accepted in the official system, which has helped establish jurisprudence. The IDPP has documented opinions given by the Constitutional Court and the Supreme Court of Justice regarding the legitimacy of indigenous law. The IDDP itself has also actively brought cases and motions of appeals to the Supreme Court to develop formal jurisprudence – often using so called *peritajes culturales* – i.e. culturally based defence. Training courses were held with Supreme Court of Justice, School of Judicial Studies, and indigenous authorities.

Project review – May 2004

The project review of May 2008 concluded that the IDPP project was relevant and that it generally had been implemented in an efficient and effective manner, fulfilling its objectives. The review team could verify that the IDPP had been strengthened by the project and that it had contributed to improving access to justice for its beneficiaries. The review team argued that the project had created a momentum that was important to maintain.

The review noted that the UNDP technical adviser had played an important role in the coordination of the project. However, the team recommended that direct funding to IDPP, without going through the UNDP, be considered. If the cooperation with UNDP were to be maintained, the team recommended that its role be more clearly defined.

The review team also argued that the project could be expanded to include the other three main agencies in the justice sector (OJ, MP, and PNC).

The review team could observe that the *Defensorías* had gained confidence in communities and had assumed the function of intercultural bridges the official judicial system and the traditional indigenous practices. A weak point that was observed in the review was that the project had not yet managed to increase the number of Mayan speaking lawyers.

7.3 IDPP Phase II

Main reported contributions

A number of positive direct effects of the project were reported by the IDPP in its final narrative report. The project was reported to have allowed an increase in the coverage and service quality of the IDPP in relation to indigenous populations. Training activities are reported to have raised awareness of all staff, both administrative and legal. There has been a change in perceptions, affecting the vision, prejudices and beliefs as well as expectations of the staff of IDPP. The training activities had covered 90% of IDPP legal staff. It was reported that the training was actually reflected in the presentation of culturally relevant cases before the courts of justice.

The work of the IDPP on indigenous rights and cultural awareness in trying cases of cultural awareness is strengthened day-by-day, using the tools that were provided to the institution through the project – such as the use of cultural expertise (*peritajes culturales*), professional interpretation and legal translation, case analysis and comparison between indigenous law and state law, coordination mechanisms between the two systems, etc. The diagnosis of the conditions and situation of indigenous women could be used to justify that the IDPP should play a new role in the legal protection of women, especially victims of domestic violence.

The main contribution of the IDPP project in the strengthening of indigenous authorities and indigenous law was reported to have been promoting the recognition and acceptance by courts and other Guatemalan state institutions of the existence of an indigenous cultural identity and legal system. This was considered to be a significant contribution to building a truly multicultural system of justice and citizen participation.

Documented results

The project document for phase two identified three expected results (R.1-R.3), each of which had a set of suggested indicators to measure the progress. Below is a list of reported results, based on proposed indicators. The information is derived from the IDPP final narrative report, confirmed through interviews with key informants.

The first expected result (R.1) related to the strengthening of IDPP through an institutional policy and a legal assistance strategy. An institutional policy was developed and adopted during the project period. This was reported as a significant step in the institutionalization of a culturally relevant defence within IDPP (*Agreement 8-2006 of the Council of the Public Defender*). The decision was based on the provisions in the Guatemalan Constitution guaranteeing the inviolable right to a legal defence – and on the international human rights principle of access to justice.

The IDPP also developed a manual for indigenous advocacy, defining the functions, mandate and responsibilities of indigenous defenders, assistants and interpreters in accordance with the indigenous advocacy model. The manual also provided guidelines for undertaking cultural surveys, socio-economic studies, and dealing with conflicts in a culturally relevant manner.

In addition to the manual for indigenous advocacy, guidelines were developed for litigating cases with cultural relevance in the official legal system. The guidelines provide public defenders with a tool to analyze cases with cultural relevance, both in the official system of justice and the indigenous system. The IDPP also reported to have developed a teaching-guide for approaching cases with cultural relevance. Similarly, the IDPP has developed pedagogical modules on “the Rights of Indigenous Peoples” and “Cultural Strategic Litigation”, which are now used nationwide. According to the final project report (2008), 320 persons, both administrative and operational staff of the institution, had been trained in intercultural skills. Sensitization covered 90% of legal staff at IDPP. This was reported to have significantly strengthened the intercultural character of the institution.

Under R.1, the project document also outlined the incorporation of the perspective of indigenous women in the formulation of defence strategies as a priority. A diagnostic study of indigenous women in social, cultural and political life of their communities was conducted in the project period. Consistent with the results of the study a mechanism for coordination between the *Defensorías Indígenas* and the units specialized in gender issues and victims of domestic violence.

The second expected result related to mechanisms for the recognition and respect of indigenous law and the strengthening of indigenous authorities. Seven meetings of Indigenous Authorities and Mayors were organized in the North West region, covering Chichicastenango, Santa Cruz del Quiché, Totonicapán, Solola, Huehuetenango; and in the southern part of the country, covering the southern basin of Lake Atitlán, Mazatenango and Retalhuleu. The meetings allowed the exchange of views and experiences and discussion on the coordination between indigenous communities.

In addition, three workshops were held with civil society organizations, indigenous authorities and IDPP representatives, to discuss the creation of an organization to monitor and support efforts to promote legal pluralism and acceptance and respect for cultural

diversity in the formal system. 19 organizations were represented throughout the whole process, as were indigenous authorities from a number of Guatemalan regions.

In order to systematize and validate practices of indigenous law, the IDPP has worked to reconstruct the social fabric in indigenous communities and raising awareness on indigenous people's rights. Training and information activities for indigenous authorities and leaders was reported to have reached more than 5 700 individuals. 35 teams were organized in the North East region, made up of volunteer community facilitators. According to IDPP's own reports, the teams were able to reach 125 communities. The process was reported to have promoted the strengthening of traditional practices as well as increased awareness regarding rights set out in national legislation and international conventions. However, the evaluation team is not aware of any study into the actual effects of these activities.

The third expected result was to provide inputs for a public policy for the relation between customary legal practices and the official justice system. Through participatory workshops directly executed by the staff IDPP Project Coordination, and by a specified field research, the IDPP reported that it had constructed a theoretical framework called the "Strategic Study", providing a basis for a comprehensive intercultural approach in the justice system.

However, at the tripartite meeting in July 2008, it was mutually agreed by the IDPP, UNDP and the Embassy of Norway, to discontinue the efforts. Other institutions in the justice sector were already working on such a public policy and it was therefore considered inappropriate that IDPP continued its work in that regard at that time. The study that had already been made, however, was used by the IDPP to strengthen its internal work multiculturalism.

Project review – April 2008

The review team conducting a review of the IDPP-project in 2008 concluded that the project had shown significant achievements, and recommended the continuation of the project. The team considered that working with the indigenous authorities was essential for establishing a better balance between indigenous and official law. The team also identified a need to continue the mainstreaming of the project results within the IDPP, in order to achieve sustainability. It was recommended that the project be included in any future project portfolio for supporting the indigenous peoples of Guatemala.

Result three – establishing a framework for a public policy – was a notable exception where progress was lacking.

For any continuation of the project, the review team of 2008 recommended that the coordination agreements between IDPP and UNDP be analyzed and reconsidered.

7.4 IDPP: Assessment of Results (Phases I and II)

Looking at the two phases of the IDPP project in conjunction, significant progress has been made, particularly relating to the objective to enhance access to state justice in indigenous communities. Monitoring and reporting has often been quantitative rather than qualitative in nature. It has therefore been difficult for the evaluation team to assess the quality of some of the implemented activities, particularly relating to outreach activities and trainings at

community level. From what we have been able to observe during the two-week field visit, however, a number of conclusions can be drawn.

A majority of the planned outputs have been produced. In the cases where expectations have not been met, credible explanations have often been given. A number of important outcome-level results can also be identified, although the qualitative aspects of such results have often been difficult to determine.

The 15 Indigenous Defence Offices that are now in operation have been integrated into the regular budget of the IDPP. The mere existence of these offices, after the project funding has ended, is an important indication of sustainability of the project results. In the areas where these offices have been established, there is no doubt that steps have been taken to enhance access to justice for indigenous populations.

The IDPP has been criticized for using expensive and not very efficient external consultants. This is a criticism in which the IDPP management now acknowledges and agrees with. They claim to have learned a lesson from the project and now use mainly local cultural experts at a very low cost.

Community representatives that the team spoke of the importance of the *Defensorías Indígenas* and the provision of free legal support adapted to the needs of their communities. They also pointed to the partnership with IDPP relating to training, sensitization and workshops on indigenous identity and rights, indigenous authorities and legal systems. There was a clear worry in communities that many activities and processes promised by IDPP were stopped when the project was not continued.

An important result of the project is the awareness around multiculturalism that has been achieved in Guatemalan courts through the use of cultural experts. There are also a number of precedents where formal courts have accepted the validity of indigenous legal processes and decisions – for example on the basis of the principle *ne bis in idem*, meaning that a person cannot be tried twice for the same offence. IDPP has played an important part in arguing these cases. While opinions on the matter of indigenous law varied, the interview that the evaluation team had with a group of Supreme Court Justices, clearly demonstrated a high degree of awareness of the issues.

In relation to the objective to promote a balance between indigenous customary legal practices and the formal justice system, the evaluation team would like to make an observation. The team agrees that the ambition to promote a better balance between the two parallel systems is a valid and relevant objective, given the context in which the project is implemented. The strategy of achieving this through strengthening the authority of indigenous leaders may also be well founded. However, this requires a clear and agreed national agenda – or at least a broad unity around a common goal among indigenous groups. Such a broad agreement existed with the Peace Accords. However, after 14 years, the necessary legal and constitutional reforms are not in place and the reform package was voted down in the referendum of 1999. The Constitution and the PA itself only loosely indicates legal jurisdictions, for example through the concepts of indigenous territory and authority, leaving considerable room for interpretation and conflict. There is a need for a sustainable definition of jurisdictions and authority, securing respect for indigenous rights and heritage, as well as for universal human rights and gender equality.

The impression is that indigenous leaders and communities are still far from a commonly agreed agenda. There is considerable disagreement even on the content of indigenous law, and there is no agreed process for how it is established or revised (see section on indigenous justice above). It is also difficult to determine the degree to which the process of recreating traditional legal practices is rooted in and popularly supported in indigenous communities. The focus on distilling a common indigenous agenda and promoting cooperation between indigenous communities during phase two of the project has therefore been positive.

It is beyond the scope of this evaluation to assess the merits of a parallel indigenous legal system in Guatemala. An important observation with validity for this evaluation, however, is that because of the uncertainties surrounding the concept and status of indigenous authority and law, the project objectives dealing with the strengthening of indigenous authorities and the development of indigenous law are fundamentally political in nature. This places a large responsibility on the donor, to base its strategy and decisions on a careful analysis of the context and the interests of key actors and stakeholders. The project implementation must also be subject to close monitoring and a continuous assessment of the values and policies supported through the project. Continuous monitoring and evaluation – and flexibility to changing contextual factors – is particularly important in fragile states and post conflict situations, where the environment in which projects are implemented can change dramatically over the course of a project period.

The decision to fund the project does not seem to have been based on such an independent Norwegian analysis of the development of indigenous justice in Guatemala – beyond references to the PA and international conventions. Neither do the complexities of the issue of indigenous law seem to be reflected in the monitoring and evaluation framework.

8 Findings and Conclusions

8.1 Key Factors Explaining Results

The key factors explaining IDPP results are given in table E.6 below:

Table 8.1: Key Factors Explaining IDPP Results

| | Positive | Constraints |
|-----------------------------------|--|---|
| Internal programme factors | <ul style="list-style-type: none"> • Relevant and well defined project plan to enhance access to justice • Provision of legal assistance in indigenous languages with cultural sensitivity • Innovative approach of promoting access to justice for indigenous peoples and advocacy for indigenous rights within a government institution | <ul style="list-style-type: none"> • Insufficient consideration of the complex nature of the more political components of the project sometimes caused confusion • Under-utilized potential synergies with other ongoing justice sector projects (primarily with the OJ and MP), and weak donor coordination |
| External to the programme | <ul style="list-style-type: none"> • Close coordination with indigenous authorities in communities where Defensorías were established • The management of IDPP integrated the Defensorías Indígenas into the regular budget of the institution, securing sustainability of results | <ul style="list-style-type: none"> • The absence of legal and constitutional reforms clarifying the jurisdiction and authority indigenous leaders and the status of indigenous legal practices • Breakdown of state security and justice services in indigenous communities resulting in serious mistrust and vigilante justice • Insufficient efforts (in society at large) to promote reconciliation and to rebuild trust and to rebuild a social contract |

8.2 Project Factors Explaining Results

The evaluation team would like to highlight the following project internal factors, explaining the results of the project.

- The evaluation team agrees with previous project reviews that the project has been highly relevant in relation to access to justice for indigenous populations in Guatemala. The project was an important contribution to the protection of indigenous rights as well as the right of the indigenous to a legal defence in their own language and with due consideration of their customs and cultural identity.
- A key to securing the sustainability of the project has been the successful work of integrating the *Defensorías Indígenas*, and the staff of the offices into the regular budget of the IDPP, ensuring sustainability of the results achieved.
- The fact that a government institution, rather than an NGO, is implementing the project is likely to have facilitated the process of getting recognition from other government agencies.
- The project has been implemented in parallel to other justice sector projects in for example the *Organismo Judicial* and the *Ministerio Público*. Against this background, and considering that the UNDP has been coordinating partner in all of these projects, synergies should have been utilized better. The lack of coordination between these different projects is an illustration of the absence of a programmatic approach to

justice sector support within UNDP during the period under review. In the last few years, there has been a development within UNDP Guatemala towards a more programmatic approach to the justice sector as well as other thematic areas of intervention.

- Insufficient consideration of the complex nature of some parts of the project has sometimes caused confusion. A case in point is an anecdote that was told to the evaluation team on a number of occasions during interviews. A DVD was produced within the framework of the project, to be used as training material and as a basis for debate on indigenous law. The DVD showed an indigenous criminal trial, including among other things the practice of corporal punishment. Even though corporal punishment is quite common in indigenous justice processes, the DVD was deemed so controversial and sensitive that IDPP and UNDP management, in dialogue with the Norwegian Embassy, stopped it from further use.

8.3 External (Contextual) Factors Explaining Results

Some very powerful contextual factors have also influenced the implementation of the project:

- The missed opportunity to secure the necessary constitutional reforms in the referendum of May 1999, to help the process of clarifying the division of jurisdiction and authority between the state institution and indigenous communities.
- Political uncertainties and lacking political will to deal with issues at the core of the relationship between state institutions and indigenous communities. Progress that has been made has happened largely as a result of non-political processes in courts and in dialogue between agencies.
- The penetration of organized crime in all spheres of society and government has further inhibited necessary political reforms to enhance security and take further steps towards implementing the Peace Accords.
- Continued polarization between indigenous and non-indigenous communities (i. e. continuous and systematic violation of indigenous rights), insufficient efforts to promote reconciliation and rebuild the social contract after the civil war, has resulted in high levels of mistrust in society.
- High levels of crime and violence, and the breakdown of state security and justice services in rural communities, resulting in low confidence in state institutions and resort to vigilante justice, including lynching. This has made it more difficult to have a constructive dialogue and political discussion on issues of justice in indigenous communities.

8.4 Choice of UNDP as a Channel for Support

Norway does not have an agreement with the Government of Guatemala, allowing direct cooperation with Guatemalan state institutions and agencies. In the case of the IDPP-project, it was therefore necessary to go through a non-state partner in order to channel funding to IDPP.

Overall the cooperation with UNDP has been satisfactory. However, the model has both strengths and weaknesses. The UNDP was chosen as a partner on the basis of its long involvement in democratic governance issues in Guatemala, its reputation of being neutral and its well-established access to government structures and authorities. While UNDP provides the Norwegian Embassy with a valuable partner with which to discuss the project from a donor perspective, the role of the UNDP is not always clear. It has been explained to the evaluation team that direct contacts between IDPP and the Norwegian Embassy sometimes undermined the role of UNDP program officers. The model thus risks allowing the national counterpart to play the donor and the UN against each other.

The UNDP technical advisor seems to have been valuable and appreciated during the first phase of the project. However, IDPP has argued from the start that it would be better to cooperate directly with them. UNDP has been criticized for being too bureaucratic and thereby stalling project implementation. UNDP has also been criticized for not being able to provide sufficient technical and political support, and that its main function is to channel funds. The Norwegian Embassy has also reported that they did not feel that the UNDP was active enough during the second phase and that reports and outputs were significantly delayed as a result. From the UNDP (program officer) perspective, it has been argued that it would be possible to provide more technical support if donors would be willing to pay for the extra staff. This is a contention that the Embassy, after the experiences from the second project phase, does not agree with.

Technically, the project funds could be channelled to IDPP through any international or national non-governmental organization. The evaluation team agrees that the ideal partner would perhaps be an organization specialized in access to justice and judicial reform. However, the team has not been presented with any concrete and viable alternative to the UNDP.

8.5 Conclusions: IDPP

1. The access to defence attorneys in indigenous languages, who are schooled in indigenous culture, customs and traditions, is an important step towards enhanced access to justice in the communities where the *Defensorías* have been established.
2. As has been discussed at length in the assessment of project results, it is the assessment of the evaluation team that the project has been relevant in relation to the needs of enhanced access to justice in indigenous communities and the need to coordinate the formal and the traditional systems of justice in Guatemala. However, there are also aspects of the project that would have benefited from a more thorough analysis of the political implications of project objectives – specifically relating to the strengthening of indigenous authorities and the development of the indigenous justice system.
3. As shown above, the evaluation team believes that the IDPP-project was fairly effective in achieving its planned results at the output level. A number of important outcomes have also been noted, e.g. the use and acceptance of *peritajes culturales* in Guatemalan courts, the utilization in communities of the free legal advice provided by the *Defensorías*, and the established relationships between the IDPP and indigenous authorities. However the qualitative aspects of such results have been difficult to determine.

4. Some indications of impact can also be identified, such as an increased access to justice in indigenous communities and increased awareness around multiculturalism in Guatemalan courts and agencies. However, to confirm this, a more thorough study into the qualitative aspects of the changes that can be identified would be needed.
5. All 15 *Defensorías* were created through the project, but are now operating under the regular budget of IDPP. There seems to be a deep understanding within IDPP of the importance of continuing the development of specific support aimed at indigenous communities. This is an important indication of sustainability of the project. The project has also helped create a greater awareness around multiculturalism in Guatemalan Courts, for example through the use of cultural expert witnesses;
6. Given that Norway, with the exception of the pilot project funded by Spain, has been the only donor to the project, it is fair to say that this level of enhanced access to justice can be attributable to Norwegian funding;
7. Results relating to the balancing of indigenous customary legal practices and the state justice system are less convincing. Such a balance, however, in the view of the evaluation team, would require a fundamental political settlement and definition of jurisdictions.
8. A powerful political and socioeconomic context has also profoundly affected the way in which the results of the IDPP project can be viewed. The country's problems are so much bigger than any individual project. Indigenous peoples have been and are discriminated against in the criminal justice system, and the provision of linguistically and culturally relevant legal services to them helps alleviate this problem. However, the justice system as a whole is broken, with a near absolute impunity. The project took some steps towards creating awareness and acceptance for indigenous conflict resolution practices in Guatemalan courts, but the issue will ultimately need to be settled through a sustainable legal reform process.

Attachment A: Persons Interviewed

Government Officials

Mr. Pedro Ixchiu, Director of Indigenous Peoples Program, IDPP

Ms. Blanca Aida Stalling, Interim Director, IDPP

Mr. Mario Rivera, Finance director, IDPP

Mr. Miguel Sulugui de León, IDPP office, Sololá

Mr. Alvaro Oswaldo Buenafé, IDPP office, Quiché

Mr. Hernán Filemón Villatoro, IDPP office, Quiché

Ms. Teresa Zapeta, Former leader of DEMI (Indigenous Women Defender), UNIFEM

3 Judges of Sentence Court, City of Chiquimula, El Jute Case

Ms. Giovanna Lemus, National Coordination for the prevention of domestic violence and violence against women

Mr. Luis Archila, President, Civil Chamber, Supreme Court Magistrate

Mr. Gabriel Medrano, Member, Civil Chamber, Supreme Court Magistrate

Mr. Gabriel Gomez, Member Civil Chamber, Supreme Court Magistrate

Mr. Rogelio Zarceño, Member Civil Chamber, Supreme Court Magistrate

Mr. César Barrientos, President Penal Chamber, Supreme Court Magistrate

Mr. Francisco Jiménez, Security Advisor and former Minister of the Interior (Gobernación)

Mr. Carlos Quintana, SICOMP, Prosecutor General's Office (MP)

Norwegian Government Officials

Ms. Hilde Salvesen, Former Norwegian Embassy Secretary Guatemala, Dept. Of Humanitarian Affairs, MFA, Oslo

Ms. Guri Rusten, Former Norwegian Embassy Secretary Guatemala, Minister Counsellor, MFA, Norwegian Embassy in Poland

Donor Representatives

Mr. Oscar Chavarría Quan, USAID, Manager, Justice programs

Ms. Sofía Villatoro, Coordination Assistant, Transparency and Justice Regional Program, Danish Cooperation, Embassy of Denmark

Mr. Antonio del Borgo, European Union

Mr. Lars Vaagen, ambassador, Norwegian Embassy

Ms. Kristin Svendsen, Advisor, Norwegian Embassy in Guatemala, (on leave in Norway)

Mr. Teunis Kamper, Ambassador of the Netherlands to Guatemala

UN and UNDP staff

Mr. René Mauricio Valdés, Resident Representative
Mr. Xavier Michon, Country Director, UNDP
Ms. Chisa Mikami, Deputy Director, UNDP
Ms. Claudia Saravia, Program officer, UNDP
Ms. Nely Herrera, Monitoring and Evaluation officer, UNDP
Mr. Edelberto Torres Rivas, Adviser/Consultant, UNDP
Ms. Claudia Maselli, Former UNDP national program officer, Justice and Security
Ms. Ana María Mendez, Former UNDP national program officer, Justice and Security
Ms. Wendy Cuellar, Former UNDP national program officer, Justice Program
Mr. Sergio Pivaral, Director, PASOC II program
Ms. Feliciano Mendoza, Deputy Director PASOC program
Mr. Fernando Masaya, Program Officer, Civil Society
Ms. Christina Elich, Program officer, Justice program
Mr. Miguel Angel Balcarcel, Program director, Democratic Strengthening of the Police System
Mr. Daniel Saquec, Director, Maya program
Ms. Ana Luisa Rivas, Deputy Representative, UNFPA
Mr. Alejandro Silva, Program officer, Sexual and Reproductive Health, UNFPA

Other Informants

Ms. Ana Garita, Chief of Staff, International Commission against Impunity in Guatemala)

CSO Counterparts/ Beneficiaries

Ms. Walda Barrios, UNAMG, Counterpart in PASOC I and II
Mr. Ricardo Cajas, COMG, Maya Organizations Council
Ms. Helen Mack & Ms. Mayra Alarcón, Fundación Myrna Mack, PASOC counterpart
Ms. Aracely Ramírez, Presidenta, plus five members of Board, REDMUCH, Red de Mujeres, Chiquimula
Mr. Saúl Suquino (manager), ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula
Ms. Delfina Pu, Coordinadora MARS, ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula
Ms. Carol Duque, técnica de apoyo MARS, ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula
Ms. Marta Elena García, Técnica de apoyo psicosocial MARS, ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula

Ms. Flor de María Flores (beneficiary), ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula

Ms. María Consuelo Madrid (beneficiary), ASEDECHI - Asociación de Servicios y Desarrollo Socioeconómico de Chiquimula

Mr. Alvaro Pop, NALEB (PASOC II)

Mr. Eduardo Sacayón, Director, Interethnic Studies Institute, IDEI, University of San Carlos

Mr. Alejandro Urizar, Acción Ciudadana (Guatemala Chapter Transparency International)

Mr. Mynor Alvarado, Coordinator Law Unit, GAM; PASOC counterpart, El Jute Case

Group of 6-8 people (approx.), Peasants from El Jute Village, Chiquimula; El Jute judicial case – forced disappearances dating back to 1981; PASOC II

Attachment B: Documents Consulted

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Attachment C: Results Frameworks

Results Matrix: PROFED (2000-2003)

| | |
|---|--|
| Program Name: PROFED (GTM-2648) Period: 2000-2003 (3 years) | INPUTS: NOK 24,000,000 Norway: USD 2,871,444 Sweden: USD 1,082,160 Total: USD 3,953,604 |
| Project objective | Contribute to the <i>strengthening of Guatemalan civil society institutions</i> with the purpose of increasing the quality of their participation in reconciliation efforts on local and national level, the protection and promotion of human rights, and the reforms in the justice sector |
| Specific objective 1 | Insert <i>reconciliation</i> as a discussion and work topic on national and local level |
| Result 1.1. (output) | The visions and perspectives of the key actors in the process of reconciliation are documented. <u>Indicators:</u> Document elaborated on different views and perspectives of the civil society organisations and state entities |
| Specific Objective 2 | <i>Strengthen the technical and institutional capacities of the civil society organisations</i> in order to create and strengthen the room for common dialogue and construction with the state, in the promotion of transparency of the judicial reforms, promotion of human rights, and reconciliation |
| Result 2.1 (output) | Civil society organisations and work units have been trained in the topics of judicial reform, human rights and national reconciliation, as well as in strategy formulation, project formulation, monitoring and evaluations, and financial management. <u>Indicators:</u> Number of organisations and persons trained, topics dealt with, reports and evaluations of activities, documents produced |
| Result 2.2 (output) | An information system on judicial reforms, human rights and national reconciliation has been created and made available to civil society organisations, work units and state entities, as support in their activities around these topics. <u>Indicators:</u> Information systems have been created and function efficiently in support of the involved organisations |
| Specific objective 3 | Contribute to <i>reconciliation, promotion of human rights and to transparency</i> in the judicial reforms by means of <i>projects implemented by the civil society</i> , as well as the implementation of an agenda of reconciliation convened by work units of civil society and state entities |
| Result 3.1 (output) | Projects in support of reconciliation, human rights and justice have been executed or are under execution. <u>Indicators:</u> Number of projects of civil society organisations, topics covered, achieved objectives and impact by means of the projects |
| Result 3.2 (output) | Pilot actions in support of reconciliation have been convened and implemented. <u>Indicators:</u> Numbers of pilot actions and activities implemented, reports and minutes from group meetings which confirm the implementation, topics covered and objectives achieved by means of the pilot actions |

Results Matrix: PASOC I (2004-2006)

| | |
|--|---|
| PASOC I <i>“Civil Society Participation” 2004 – 2006 (3 years)</i> GTM-2648, 03/212 | INPUTS: NOK 30,000,000 Norway: USD 4,091,446 Sweden: USD 1,208,550 Denmark: USD 778,000 -Adjustments: (due to favourable exchange rate) Norway: USD 232,284 Sweden: USD 749,675 Total: USD 7,059,955 |
| <i>Strategic framework objective</i> | Contribute to the process of change for the construction of peace in Guatemala |
| <i>Development objective</i> | Promote civil society contributions for construction of participative democracy with a human rights focus |
| <i>Immediate objective 1</i> | <i>Accompany the process of reconciliation based on CEH's recommendations</i> (6 indicators are presented next to the objective that may correspond to non-stated outputs; plus two positive external assumptions: (i) interest of CSO, and ii) supposition that there are state institutions and CSO interested in constructive dialogue) |
| Result 1.1 | Reconciliation process based on CEH's recommendations followed up (in work plan, followed by key activities) |
| <i>Immediate objective 2</i> | <i>Promote equal access to justice</i> (6 indicators are presented next to the objective that may be related to non-stated outputs; plus two positive external assumptions: i) existence of proposals based on the recommendations of the national commission for justice strengthening; ii) openness in OJ (judiciary) and Congress towards civil society initiatives) |
| Result 2.1 | Equal access to justice promoted (in work plan, followed by key activities) |
| <i>Immediate Objective 3</i> | <i>Promote transparency in public administration</i> (Again, 5 indicators presented next to the objective that may correspond to non-stated outputs; plus three external assumptions identified: i) concern from the population about the theme of corruption and transparency; ii) there are CSO interested in this theme; iii) there are agreed upon concepts of social audit) |
| Result 3.1 | Transparency in public administration promoted (in work plan, followed by key activities) |
| <i>Immediate objective 4</i> | <i>Strengthen the political impact (incidence) of civil society organizations (CSO)</i> (6 indicators corresponding to non-stated outputs are presented next to the objective, plus three external positive assumptions: i) there is political will and positive climate that favours dialogue and the initiatives of civil society; ii) national commissions formed as result of implementation of Peace Accords continue their work; iii) there is demand for workshops, seminars and exchanges) |
| Result 4.1 | Political impact (incidence) of CSO strengthened (in work plan, followed by key activities) |
| <i>Immediate objective 5</i> | <i>Efficient and effective program coordination</i> (6 indicators that may correspond to non-stated outputs are presented here next to this objective, in addition to three external assumptions: i) the flow of donor disbursements happens as planned; ii) there are sufficient and appropriate offers for the program; iii) there is an efficient and pertinent administrative backup from UNDP to the program) |
| Result 5.1 | Program coordination is efficient and effective (in work plan with 5 key activities) |

Results Matrix: PASOC II (2007-2009)

| | |
|--|--|
| PASOC II <i>“Alliances with the Civil Society”</i> GTM 2648 – 06/014 (2007-2009) 3 years | INPUTS: NOK 22,500,000 Norway: USD 3,684,487.67 Denmark: USD 1,315,512.32 Total: USD 5,000,000 (Plus non financial inputs clearly stated) |
| Goal | <i>To promote democratic governance</i> |
| The Objective | <i>To contribute to the elimination of all forms of discrimination against indigenous peoples, women and other vulnerable and disadvantaged groups, through the promotion of inclusive public policies, human rights, their fulfilment and a culture based on tolerance and the respect for diversity.</i> |
| Result 1 | Strengthened capacities of the local and national civil society organizations, in the construction of strategic alliances with state institutions concerning the three thematic issues: 1) elimination of racism and discrimination, 2) access to justice for the indigenous peoples and 3) social auditing and transparency |
| Indicators | 1.1 A mapping of civil society organizations relevant to the programme has been carried out at a national level and in Alta Verapaz, Chiquimula, Huehuetenango, San Marcos and Solola. 1.2 Agreements exist between UNDP and strategic state institutions to launch the programme based on alliances with the civil society. 1.3 Alliances between civil society organizations and state institutions on the three subjects have been established. 1.4 Systematic training programmes for civil society organization members as well as state institutions on the three programme subjects. 1.5 The existence of proposals and processes initiated by civil society in the three programme subjects oriented toward public policies. |
| Result 2 | Instruments and mechanisms for implementation of public policies on the elimination of racism and discrimination, access to justice for indigenous peoples, and social auditing and transparency, have been elaborated, reinforced and implemented. |
| Indicators | 2.1 Specific instruments and political implementation mechanisms have been generated in the form of proposals in the three programme subjects. 2.2 Proposed mechanisms and instruments institutionalized by civil society and state institutions. 2.3 Delivery of instruments to authorities responsible for approval, sanction and/or implementation documented. 2.4 Appropriate instruments and mechanisms for the effective and adequate initiation of public policies on the three programme subjects. |
| Result 3 | Viable actions and institutional work plans for promoting policies on combating racism and discrimination, access to justice for the indigenous peoples, and the development of social auditing in five main regions (Alta Verapaz, Chiquimula, Huehuetenango, San Marcos and Sololá). |
| Indicators | 3.1 Regional agendas agreed upon between SEGEPLAN at a regional level, Development Councils and civil society organizations for the fight against racism and discrimination, access to justice for indigenous peoples, and social audit development and transparency. 3.2 Social networks integrated at local level, activated for the implementation of departmental agendas. 3.3 Social organizations have been institutionally strengthened in their capacities to develop and implement public policies. 3.4 Strategies at regional level have been established to facilitate the advocacy of the civil society in dynamic institutional and social processes. 3.5 Advocacy achieved by the civil society organizations in public policies to fight racism and discrimination, access to justice for indigenous peoples and social audit and transparency. |
| Major risk factors | <ul style="list-style-type: none"> • The institutional weakness of various state entities can result in achieved agreements not being honoured in the case of changes within the state entities or when the new government takes office in 2008. However, it is foreseen that the agreements are documented and that they are accepted as institutional policies. If an agreement cannot be upheld, each case must be made known to the Consultative Council, which will then identify which measures to apply, among which could be changes related to state partners. • The search for coordination with state entities can generate the understanding by civil |

society organizations that the participation criteria within the programme are defined by the State. This requires a careful information process on the part of UNDP, to make it clear that the programme will respect the participating organizations' autonomy.

- The fact that the programme's first year coincides with the pre-electoral and electoral period, and the nature of the tasks to be developed, could make the programme subject to political manipulation. To avoid this, precautions will be taken so that the applicable thematic strategies, particularly in the field, are well defined in relation to the programme's objectives, that the partner agreements clearly forbid this kind of activities, and that regular monitoring is undertaken of the work in progress.
- The possibility that local organizations that comply with the programme's participation criteria may not be found in the pre-selected provinces, could make it necessary to expand the institutional strengthening of the most qualified organizations.
- The political situation during the implementation of the programme could produce sentiments and actions adverse to the objectives of the same, but in order to reduce this risk, the programme should establish a process of social and local information on the objectives of the programme.

Results Matrix: IDPP (2000-2004)

| Immediate Objective | Planned Outcome | Indicators |
|--|--|--|
| 1. Design and implement two Indigenous Legal Defence Offices (Huehuetenango and Sololá) in order to provide public legal defence services in the Quiché, Awakateko, Akateko, Jakalteco, Q'anjobal, Mam, Chuj, Tz'utujil and Kaqchike languages. | 1.1 . The Indigenous Legal Defense Offices, installed and operating in Huehuetenango and Sololá and the offices that the IDPP has in those Departments. | <i>i) Number of persons hired; ii) Number of indigenous users assisted by the new indigenous legal defenders; iii) Number of persons trained; iv) Percentage of users receiving assistance with a perception of satisfactory services; v) Consulting events implemented with State Institutions, Civil Society Organizations and Research Centres;</i> |
| | 1.2. Judicial terminology glossary formulated in the Quiché, Awakateko, Akateko, Jakalteco, Q'anjobal, Mam, Chuj, Tz'utujil and Kaqchikel languages in coordination with the advances made by State Institutions, NGOs, Investigation Centres and International Cooperation Organizations. | <i>i) Preparation of glossaries.</i> |
| 2. Increase the number of indigenous lawyers to contribute in providing legal justice services in the peoples own language. | 2.1 . Indigenous persons with a law degree that can chose to become Public Defenders in the Indigenous Legal Defense Offices or other jobs in the justice system or national and international NGOs (i.e. the IDPP has graduated lawyers that speak indigenous languages). | <i>i) Percentage of law degrees obtained and persons that have complemented their studies; ii) Percentage of official interpreters that have complemented their studies; and iii) Number of jobs created at IDPP for indigenous defence lawyers.</i> |
| 3. Improve the coverage of IDPP's services and other justice institutions in the communities of Alta Verapaz, Quiché, Huehuetenango, Quetzaltenango and Sololá in coordination with the Justice Centres. | 3.1 . Established communication and joint work between community leaders IDPP and other justice institutions represented in Alta Verapaz, Quiché, Huehuetenango, Quetzaltenango and Sololá through the Indigenous Legal Defense Offices. | <i>i) Number of multiplying agents; ii) Number of trained justice operators and indigenous authorities; iii) Percentage of persons that understood the training; and iv) Percentage of sensitized justice operators and indigenous authorities.</i> |
| | 3.2. Informed and sensitized communities on the justice services that are provided in their region. | |
| 4. To develop coordination mechanisms between the state law and the law practiced by the traditional authorities of the indigenous peoples by identifying the obstacles that prevent the indigenous population from using the resources of their own law in a compatible measure with the legal provisions of Guatemala that are in force. | 4.1. Training units developed for community leaders and public officials of the state system on coordination mechanisms between the state law and the law practiced by the traditional authorities or the indigenous peoples. | <i>i) Proposal of consensus and coordination document between the state law and the indigenous law; ii) Number of trained persons; iii) Number of persons that understood the training; and iv) Percentage of trained persons with positive attitudes and practices.</i> |

Results Matrix: IDPP (Phase II 2005-2008)

| Expected Result | Indicators |
|--|---|
| R.1. IDPP is strengthened through an institutional policy and a legal assistance strategy with socio-cultural relevance. | <p>R.1.1. There is an institutional policy for the intercultural approach applied to the formulation of defence strategy with intercultural relevance</p> <p>R.1.2. Management model designed, developed and implemented in all the <i>Defensorías Indígenas</i>.</p> <p>R.1.3. There is an institutional policy that incorporates the perspective of indigenous women in the formulation of defence strategies.</p> <p>R.1.4. Curriculum of the training process and training of advocates incorporating an intercultural approach in the formulation of defence strategies.</p> <p>R.1.4. Curriculum of the training process and training of advocates incorporating an intercultural approach in the formulation of defence strategies.</p> <p>R.1.5. Public defenders know and apply an intercultural approach in formulating defence strategies.</p> |
| R.2. Mechanisms for recognition and respect of Indigenous law systematized and validated. | <p>R.2.1. There is a development strategy agreed among indigenous authorities and operators of local justice, in each of the areas where Defensorías have been established.</p> <p>R.2.2. A network, of organizations and actors working in the field of indigenous people's rights, is established.</p> <p>R.2.3. The experiences of coordination and dialogue are systematized and validated locally and regionally.</p> |
| R.3. Public policy guidelines established for the relation between indigenous peoples' customary legal system and the official justice system. | <p>R.3.1. Proposed guidelines for public policy consensus and validated at the institutional level.</p> <p>R.3.2. A Plan of Action presented and communicated with other actors within the justice system aimed at the formulation of public policy towards indigenous issues.</p> |