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# Supporting Parallel Legal Systems as a Means of Improving Access to Justice in Guatemala

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**Supporting Parallel Legal Systems as a Means of Improving  
Access to Justice in Guatemala**

by Julie Endy

## **Introduction**

Parallel legal systems can and do exist within a single sovereign nation, and rural Guatemala offers one example.<sup>1</sup> Such parallel systems are generally viewed as failures of legal penetration which compromise the rule of law.<sup>2</sup> The question I address in this paper is whether the *de facto* existence of parallel systems in Guatemala benefits the indigenous population, or whether the ultimate goal of attaining access to justice requires a complete overhaul of the official legal system. Ultimately, I conclude that while the official justice system needs a lot of work in order to expand access to justice, especially for the rural poor, the existence of a parallel legal system can be a vehicle for, rather than a hindrance to, expanding such access. By filling in the gaps where the official justice sector lags, the existence of a parallel legal system creates an opportunity to expand and develop alternative methods of dispute resolution. It may also encourage indigenous claimants to be proactive in adjudicating their disputes, instead of allowing problems within the community to fester, creating tensions which can sometimes rise to a dangerously high level.

In many of Guatemala's remote communities, basic municipal services are frequently lacking. This is even more true of law enforcement services. Often, there is not even a police station within a traversable distance, let alone a district courthouse, effectively denying the rural indigenous population access to Guatemala's official justice system. Many of these small communities, however, have their own informal, customary law systems which have been in place in one form or another for hundreds of years. Several USAID affiliates began in the late 1990's to attempt to build on this tradition of informal dispute resolution by fostering the growth of more formal institutions and practices through the creation Community ADR Centers (or CAC's), with the goal that they eventually be recognized by the official

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<sup>1</sup> I became interested in this topic while studying and traveling in Guatemala in 2004, where I volunteered for a USAID-funded pilot project. The project was intended to foster new methods of alternative dispute resolution in rural areas of Guatemala where the formal legal system had failed to penetrate.

<sup>2</sup> JOHN H. MERRYMAN, ET AL., *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA AND EAST ASIA* 667-68 (1994).

justice sector. In this paper, my goal is to assess whether the USAID pilot program, by promoting alternative dispute resolution in rural Guatemala, was able to expand access to justice while at the same time assuring protection of fundamental legal rights embodied by the formal judicial system.

### **Methodology**

I evaluate the model used by USAID to expand access to justice in rural Guatemala by reference to the precepts of international human rights law and Guatemalan law, as well as by comparing it with the U.S. model of dealing with its own indigenous population. Surprisingly, the way the U.S. government has historically treated Native Americans as outsiders, has ironically led to a relatively large measure of political and legal autonomy for persisting tribes and has fostered a distinct court system which incorporates aspects of both customary and American law.<sup>3</sup>

Two key primary sources on this question are the Guatemalan Constitution and one of the Peace Accords signed between the government of Guatemala and the URNG (an association of indigenous political groups) in 1995, which together set the legal standard against which Guatemala's experiment in multicultural statehood can be judged.<sup>4</sup> While I found that in many cases the formal doctrine differs greatly from the reality, these documents at least provided some insight into the goals of the country as a whole with respect to universalized access to justice. Other key sources include two reports published by USAID which chronicle the access to justice initiatives in Guatemala from 1997 through 2004. I also rely on law review articles and other publications on indigenous legal issues. Finally, I occasionally draw upon my own observations from traveling and working with legal justice groups in Guatemala in 2004.

### **The Failure of Legal Penetration in Guatemala**

The problem of parallel legal systems is frequently discussed as a failure of the formal (i.e., colonial) legal framework of a nation to fully penetrate the indigenous population who already have their

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<sup>3</sup> See generally Robert D. Cooter, et al., *Indian Common Law: The Role of Custom in American Indian Tribal Courts (Part I of II)*, 46 AM. J. COMP. L. 287 (1998) (arguing that indigenous customary law still plays an important role in the substantive and procedural law of Native American tribal courts).

<sup>4</sup> GUAT. CONST., available at <http://www.constitution.org/cons/guatemala.htm>; ACCORD ON THE IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES, MEXICO, D.F. (March 31, 1995), available at <http://www.worldlii.org/catalog/52111.html> [hereinafter Peace Accord].

own legal customs, enforced by village and community leaders.<sup>5</sup> In Latin America, this has occurred particularly in countries where the indigenous population remains in high numbers, including Colombia, Ecuador, Peru and Bolivia, which all enacted constitutional provisions recognizing the legal traditions of indigenous peoples and allowing them to administer justice in their regions during the 1990's.<sup>6</sup>

The failure of the official legal system to fully penetrate Guatemala is a product of many different factors. The combination of an under-funded court system, poverty, lack of infrastructure and the geographical isolation of rural communities means that the nearest courthouse is simply not physically accessible to the majority of the rural, indigenous population.<sup>7</sup> Moreover, language barriers and the cultural gap between local customs and western legal traditions are also very real impediments to indigenous communities making use of the official legal system. Guatemala is over fifty percent indigenous and encompasses at least twenty-one distinct Mayan languages. Customary law, which was the main organizational thread of indigenous life for hundreds of years, generally focuses on the principles of harmony, consensus and conciliation, whereas western law is adversarial by nature.<sup>8</sup> While the latter focuses on narrowing down the facts in dispute, categorizing levels of responsibility and assigning guilt, the former focuses on finding a resolution that will maintain community harmony and sorting out the root cause of a problem, sometimes going beyond the individual litigants involved.<sup>9</sup> For this reason community-based justice is often seen as more effective at resolving certain kinds of disputes than the official legal system, because it represents the values of the people who are using it.

Finally, distrust of government has been a substantial obstacle to indigenous communities' faith in the formal justice system.<sup>10</sup> Thirty years of civil war and "scorched earth" campaigns conducted by the army to rout out rebels from the countryside caused massive displacement of indigenous communities

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<sup>5</sup> MERRYMAN, *supra* note 2, at 667–68.

<sup>6</sup> MARK UNGAR, *ELUSIVE REFORM: DEMOCRACY AND THE RULE OF LAW IN LATIN AMERICA* 213 (2002).

<sup>7</sup> See Maria Luisa Beltranena De Padilla, *Civil Justice Reform in the Americas: Lessons from Guatemala*, 16 *FLA. J. INT'L L.* 37, 41 (2004); Nathanael Heasley, et al., *Impunity in Guatemala: The State's Failure to Provide Justice in the Massacre Cases*, 16 *AM. U. INT'L L. REV.* 1115, 1164–66 (2001).

<sup>8</sup> See UNGAR, *supra* note 6, at 213–14; Cooter, *supra* note 3, at 324.

<sup>9</sup> See UNGAR, *supra* note 6, at 215–16.

<sup>10</sup> See Beltranena De Padilla, *supra* note 7, at 38.

from tribal lands.<sup>11</sup> The government's failure to date to prosecute human rights violations during the civil war period has not exactly increased trust in the efficacy of the judicial system.<sup>12</sup> It has also been suggested that there are those in the government who do not wish to see a stronger judiciary in Guatemala because it would expose government officials to prosecution for their own war crimes.<sup>13</sup>

### **Autonomy vs. Equality: Evaluating the Status of Indigenous Peoples**

It is important to note that by virtue of the failure of penetration, customary law exists *de facto* in Guatemala; the only question is whether this practice should be recognized *de jure* and brought under the umbrella of the national legal framework, as it has in other countries, most notably the United States.<sup>14</sup> Since the sixteenth century, scholars have debated three alternative schools of thought with respect to the legal status of indigenous peoples: complete autonomy, forced assimilation, or some sort of limited autonomy.<sup>15</sup> The Miquirucama case, involving an indigenous Colombian man accused of murder, illustrates the two extremes of this debate.<sup>16</sup> The paternalistic view of the nineteenth century was still held by a majority of justices on the Colombian Supreme Court in 1970. This view stopped short of advocating for complete autonomy, but held that indigenous people should not be held to western legal standards. According to this view, indigenous people were considered the legal equivalent of children, because at their present stage of "evolution" they were incapable of assimilating to western culture.<sup>17</sup> In his article entitled "Witchcraft and Legal Pluralism," David S. Clark suggests that this attitude may have reflected a feeling that it was somehow inappropriate to hold indigenous people, under the influence of "primitive superstition," accountable under the harsh Spanish legal system.<sup>18</sup> The modern concepts of guilt and innocence were seen as not widely understood by indigenous people because, as the Court reasoned in the Miquirucama case, "although the two coexist in time within the ambit of nationality, they

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<sup>11</sup> See MICHAEL HOLLEY, *Guatemala*, in INDIGENOUS PEOPLES, THE ENVIRONMENT AND LAW: AN ANTHOLOGY 213, 220–23 (Lawrence Watters ed., 2004).

<sup>12</sup> See Heasley, *supra* note 7, at 1119–20.

<sup>13</sup> See *id.* at 1165.

<sup>14</sup> See James S. Anaya, *International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State*. 21 ARIZ. J. INT'L & COMP. L. 13, 49 (2004).

<sup>15</sup> MERRYMAN, *supra* note 2, at 382.

<sup>16</sup> See generally *id.* at 658–67 (describing the Miquirucama case).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 664–65.

do not live together culturally and are governed by different rules.”<sup>19</sup> In many indigenous cultures, however, complex customary law institutions involving severe punishments for social transgressions can be traced back to pre-colonial times. With respect to the largest indigenous group in Guatemala, there is evidence that traditional Mayan law was equally if not more concerned with maintaining social control than Spanish criminal law.<sup>20</sup>

By contrast, the twentieth century view, and that of the Colombian court’s dissent, was that everyone should be held to the same (national) legal standard.<sup>21</sup> This idea of “legal equality” is also paternalistic in its way, in that it implies that indigenous communities cannot be trusted to govern themselves in an acceptable manner. On the opposite extreme from complete unaccountability, it assumes that there will be full assimilation into western legal culture and that the formal system will be adequate for addressing all indigenous legal concerns. The long history of colonization in Guatemala, over thirty years of civil war, and recent attempts at development and law reform have proven that theory wrong. During the colonial period, for example, property law was manipulated by the Spanish *conquistadores* to methodically take land away from indigenous people. The doctrine of discovery was used as legal justification for seizing land traditionally occupied by indigenous peoples which was later rewarded by the Spanish crown through a grant of legal title to the conquerors. Property law underwent a dramatic conversion from traditional notions of collective occupation with individual rights of use to western conventions of territorial ownership, private property regimes and the logic of marketplace economics.<sup>22</sup>

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<sup>19</sup> *Id.* at 661.

<sup>20</sup> S. GUILLERMO FLORIS MARGADANT, AN INTRODUCTION TO THE HISTORY OF MEXICAN LAW 12–13 (1983). Under traditional Mayan law, for example, fraud, violations and rape were punishable by death and thieves were marked in the face with a symbol of their felony. *Id.* An offended husband could choose between forgiveness or the death of an instigating adulteress. *Id.* There was no appeal, and punishment was carried out immediately. *Id.* Whole families were also held responsible for the transgressions of one their members. *Id.*

<sup>21</sup> MERRYMAN, *supra* note 2, at 658, 664.

<sup>22</sup> HOLLEY, *supra* note 11, at 218–19, 228–29. The K’iche Maya, for example, placed great spiritual value on their links to land, which transcended Western notions of territorial ownership and management. *Id.* at 219. They believed that “if the land belongs to anyone it belongs to the ancestors” and that “the living must care for the earth as the dead did before them.” *Id.* at 219.

During the later colonial period, some indigenous communities, such as those in Totonicapán, would put their land under the protection of the municipality to avoid dispossession.<sup>23</sup> At the time these actions were taken, the municipalities still represented the interests of the indigenous peoples.<sup>24</sup> This is a good example of how indigenous people not only became acculturated to the Spanish legal system, but tried to use it to their advantage to protect their own interests in land. With the displacement of the civil war, however, the only claim many groups have to the lands they historically occupied is an ancestral one. In some cases, as demonstrated by Michael Holley’s 2004 article on indigenous land rights in Guatemala, more than one displaced group can lay a valid claim to the same piece of land (or a displaced group and a settler group that has since taken over the land through cooperation with the army during the civil war).<sup>25</sup> Repossession is made all the more difficult today, even though formal law officially recognizes a collective right to land, in that communities must be able to negotiate a complicated legal system in order to claim that right; they must form statutory associations whose forms are proscribed by law and be able to “prove” their ancestral claim above and beyond any other group’s ancestral claim. In most land registration offices, the difficulty of this is demonstrated by the fact that the majority of Guatemala’s communal lands still appear registered to the municipalities—institutions which now represent the interests of the state and manage the lands as if they belonged to the government or its representatives rather than to the indigenous communities.<sup>26</sup> This shows that the formal legal system has yet to make significant headway in realizing the indigenous right to land or implementing a system by which to effectively adjudicate that right.

### **Legal Pluralism and the “Two Republics” Model**

The question therefore becomes how to balance the need to respect indigenous customary legal practices, which are “essential to both the existence and definition of the land and resource rights of

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<sup>23</sup> Romeo Tiu López, *Mayan Spirituality and Lands in Guatemala*, 21 ARIZ. J. INT’L & COMP. L. 223, 235–36 (2004).

<sup>24</sup> *Id.*

<sup>25</sup> See HOLLEY, *supra* note 11, at 213–15, 221–23.

<sup>26</sup> López, *supra* note 23, at 236–37.

indigenous peoples,”<sup>27</sup> without casting indigenous communities outside the rule of law and the official protections of the Guatemalan constitution. One alternative view is that of legal pluralism, which is in ascendancy today.<sup>28</sup> Legal pluralism is closest to the “two republics” model of limited autonomy, but differs from that espoused by Jerónimo de Mendieta in the sixteenth century in that rather than trying to keep the two communities apart, the members of the indigenous community are free to move back and forth between the two systems—the local/customary and the national/formal—as they find it necessary.<sup>29</sup>

The idea is that parallel legal systems can coexist within a single sovereign state as long as there is a dominant national legal system to govern how they interact and to create mechanisms for dealing with the points where they conflict.<sup>30</sup> This model seeks to maintain indigenous groups’ autonomy while at the same time addressing rule of law concerns by providing some oversight at the national level.

International human rights law now embraces this notion of legal pluralism as an outgrowth of the right of self-determination. It has uniformly accepted the idea that this should include the right of indigenous peoples to maintain their own legal customs and juridical institutions where they exist.<sup>31</sup>

The Guatemalan Constitution also now recognizes the state’s duty to guarantee justice to all people, including free and equal access to tribunals and a guarantee of special protection for communal lands.<sup>32</sup> In 1995, the government of Guatemala signed an agreement on the rights of indigenous peoples as part of the peace accords which ended the civil war. The accord specifically promised to allow indigenous peoples to promote and develop their own legal norms and manage their own “internal affairs” in accordance with customary practices, as long as they did not conflict with human rights law.<sup>33</sup> With the signing of the accords, Guatemala also adopted ILO Convention No. 169 (1989) which articulated this

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<sup>27</sup> Anaya, *supra* note 14, at 48.

<sup>28</sup> MERRYMAN, *supra* note 2, at 656.

<sup>29</sup> *See id.* at 382–83.

<sup>30</sup> *See id.* at 656, 667.

<sup>31</sup> *See* Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 5, 26, 34, 40 U.N. Doc. A/RES/61/295 (Oct. 2, 2007), available at <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>; Anaya, *supra* note 14, at 50.

<sup>32</sup> *See* GUAT. CONST. art. 2, 29, 67.

<sup>33</sup> Peace Accord, *supra* note 4, art. IV(E)(3).

right, and more recently voted in favor of the U.N. Declaration on the Rights of Indigenous Peoples, which inserts the same caveat that those customs not conflict with international human rights standards.<sup>34</sup>

My research suggests that this is very similar to the type and level of autonomy given to Native American tribes in the United States, but without the strict territorial boundaries that give the U.S. tribal courts their distinctive judicial sovereignty. The U.S. model is one of the best examples of the principle of legal pluralism applied in practice. The founding fathers implicitly embraced the concept of legal pluralism in the U.S. Constitution by recognizing the distinct legal status of persisting Indian tribes.<sup>35</sup> Under U.S. law, tribes are “sovereign” yet at the same time legally dependent on the federal government.<sup>36</sup> In some ways similar to the status of U.S. states, tribes are in other ways even more independent than states—most importantly, perhaps, they are not bound by the U.S. Constitution.<sup>37</sup> In 1968, congress invoked its “plenary power” to pass the Indian Civil Rights Act, whose purpose was to ensure American Indians would be afforded the same broad constitutional guarantees secured to other Americans.<sup>38</sup> This illustrates that although sovereign with respect to their own internal affairs, tribes are still beholden to the U.S. government as a sort of beneficent conqueror. The Act, however, addressed concerns over wanting to make sure the legal norms being applied in tribal courts did not violate basic individual and civil rights. While this paradox of “sovereign yet dependent” undoubtedly creates troubling legal questions, the largely independent status of tribal nations in the U.S. is sharply distinguished from the complete dependence of persisting indigenous communities in Guatemala on the Guatemalan government. This is the default position that seems to be articulated by the Guatemalan Constitution, which does not see the diverse makeup of the nation as a substantial obstacle to its government, and assumes all territories are within its jurisdiction.<sup>39</sup>

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<sup>34</sup> Declaration on the Rights of Indigenous Peoples, *supra* note 31, art. 34; Human Rights Council Resolution 2006/2 (June 29, 2006), available at <http://www2.ohchr.org/english/issues/indigenous/docs/declaration.doc>; Peace Accord, *supra* note 4, art. II(C)(3).

<sup>35</sup> See Cooter, *supra* note 3, at 295.

<sup>36</sup> *Id.* at 292–93.

<sup>37</sup> *Id.* at 307.

<sup>38</sup> *Id.* at 308.

<sup>39</sup> See GUAT. CONST., art. 66.

Most Native American tribal courts in the U.S. are modern courts set up in conjunction with the Indian Reorganization Act of 1934, which shifted responsibility for the administration of tribal affairs from outside officials to the tribes themselves.<sup>40</sup> Native Americans who live within reservations are subject to both tribal and (to a limited extent) federal law. States cannot legislate over tribal affairs without the express permission of congress. Tribal courts have limited jurisdiction over criminal matters (which varies from state to state) and expansive jurisdiction over civil matters, including over outsiders whose activities affect a substantial tribal interest. Generally speaking, this includes legal process, application and development of legal norms and judge-made common law, civil law, family law, regulations and some minor crimes. Areas over which tribes typically do *not* have jurisdiction include major crimes, gaming and gambling, domestic violence, child abuse and child welfare.<sup>41</sup>

Tribal courts are free to apply customary law and some tribal constitutions explicitly incorporate customary law in assigning jurisdiction to their courts. Some provide specific processes for its application—for example, allowing judges to request the advice of a counselor familiar with local customs and usages, typically an older person (or council of elders) who grew up on the reservation. Informal methods of dispute resolution do persist, however, which constitute a sort of “unwritten” customary law. These practices are typically aimed at repairing relationships rather than assigning blame, thereby resolving conflicts before they ever reach the courts. Even when cases do end up in court, application of precedent is inconsistent at best. Much of decision-making occurs through the application of inchoate social norms, characterized by flexibility and responsiveness to contemporary social needs rather than by bounded and predictable legal rules.<sup>42</sup>

### **Access to Justice Initiatives in Guatemala**

The concept of legal pluralism has also been applied in Guatemala through various “access to justice” initiatives in areas where the problem of legal penetration is most severe. In 1997, for example, in response to the peace accords’ promise of incorporating indigenous legal norms into the penal system,

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<sup>40</sup> See Cooter, *supra* note 3, at 299–302.

<sup>41</sup> See *id.* at 305, 309.

<sup>42</sup> See *id.* at 323–24, 326–30.

the legislature reformed the Criminal Procedure Code to create five new “community courts” which had the authority to resolve criminal cases with a penalty in the formal system of five years or less. These courts also had the authority to use local law or practice, including indigenous law, to resolve conflicts. The courts’ main function was to ratify agreements between local litigants so long as those agreements did not violate the Constitution, national law or international human rights law. If the litigants were unable to reach an agreement, they could always resort to the formal legal system. While the purpose of these reforms was to advance dispute settlement among indigenous people using local law, its application was very limited in practice to instances where there was no national law on point. If local and national law conflicted, the decision risked being set aside on appeal.<sup>43</sup>

More headway has been made, however, toward incorporating the use of indigenous, or customary, law practices among indigenous groups into a national framework, through the creation of USAID-funded Community ADR Centers (or CAC’s). The CAC’s advance mediation as an alternative means of conflict resolution. This makes their model more flexible with respect to the ability to apply customary law, since the process of mediation is not bound by strict rules.<sup>44</sup> These centers, completely outside the formal legal system, are thus able to resolve civil disputes at the local level using *primarily* customary law. Based in part on the Nicaraguan model of using mediation and other conflict resolution techniques to repair post-war relationships, the program’s goals were to strengthen and expand non-formal conflict resolution mechanisms in indigenous areas while building linkages between the formal system and non-formal channels of administration of justice.<sup>45</sup> This has also had the effect of decongesting the institutions of the formal justice sector, decentralizing the administration of justice,

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<sup>43</sup> Steven E. Hendrix, *Innovation in Criminal Procedure in Latin America: Guatemala’s Conversion to the Adversarial System*, 5 SW. J.L. & TRADE AM. 365, 402–04 (1998) [hereinafter Hendrix I].

<sup>44</sup> Strengthening Non-Formal Channels of Administration of Justice: A Component of the Justice Sector Reform Support Project, USAID/Guatemala: Final Report Covering Period from July 1997 to June 1999, USAID Project No. 520-0407, 9 (August 30, 1999) [hereinafter USAID 1999].

<sup>45</sup> *Id.* at 3–4.

putting more power in the hands of individuals and local civic leaders, and saving people the time and expense of having to go to court.<sup>46</sup>

Since the inception of the program, USAID has trained at least 257 mediators (there is some discrepancy between the two reports), who were self-selected by local communities, in wide-ranging topics having to do with the formal justice system, mediation techniques, customary law practices, and legal and human rights.<sup>47</sup> With the cooperation of their Guatemalan affiliates, they have opened a total of sixteen centers in eight different departments, with a total beneficiary population of approximately 100,000 persons. They have also assembled a database of over 3,000 cases mediated (as of 2004) from which a new study could be made of the effectiveness of the resolutions.<sup>48</sup> Preliminary results have shown that about eighty percent of cases have been resolved and of those, eighty percent of the agreements have been enforced to some degree.<sup>49</sup> Unfortunately, as the program funding came to an end in 2004, the Guatemalan partners were still working to get the centers officially registered with the Guatemalan Supreme Court, thereby making them eligible for state funds.<sup>50</sup> The incorporation of all the centers into the national court system is not only important to the sustainability of the centers, but it also has the potential to make the decisions of the CAC's legally binding, as opposed to requiring litigants to be proactive in having their decisions validated at the local courts.<sup>51</sup> This in turn would make the CAC's more self-sufficient and legally independent, closer to the model of the U.S. tribal courts. It would also create linkages between the community mediators and local justice sector officials, while providing an avenue for some oversight apart from the training of mediators—for example, the ability to appeal a

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<sup>46</sup> Steven E. Hendrix, *Guatemalan "Justice Centers": The Centerpiece for Advancing Transparency, Efficiency, Due Process, and Access to Justice*, 15 Am. U. Int'l L. Rev. 813, 851 (2000) [hereinafter Hendrix II].

<sup>47</sup> Guatemala Justice Program (1999-2004): Final Report Submitted to Office of Democratic Initiatives, USAID/G-CAP, USAID Contract No. 520-C-00-99-00046-00, 30 (Dec. 15, 2004) available at [http://pdf.usaid.gov/pdf\\_docs/PDACD072.pdf](http://pdf.usaid.gov/pdf_docs/PDACD072.pdf) [hereinafter USAID 2004]; USAID 1999, *supra* note 44, at 15.

<sup>48</sup> USAID 2004, *supra* note 47, at 29–30.

<sup>49</sup> *Id.* at 30.

<sup>50</sup> *Id.* at 31.

<sup>51</sup> See Hendrix II, *supra* note 46, at 853.

decision directly to court.<sup>52</sup> This would ensure that the constitutional rights of indigenous people are not being violated simply by virtue of their choosing an alternative system.

### **Conclusion**

Through this research, I have concluded that the USAID justice reform program in Guatemala, which incorporates both customary law and human rights values into local dispute resolution practices, addresses the problems of the failure of legal penetration by replacing an idealized, yet non-functional, judicial system with a potentially workable alternative. There are still questions regarding the extent to which this alternative system protects due process and the substantive individual rights of the people who use it.<sup>53</sup> However, my research suggests that far from further dividing the nation, allowing indigenous peoples to use and develop their own systems of justice can be an effective means of healing for Guatemala, counterbalancing a violent history and distrust of government with a greater sense of self-determination and empowerment for indigenous communities. Ultimately, increased participation in the local judicial process may even foment a greater awareness of the official legal system and a better understanding of both collective and individual rights.

This conclusion is reinforced by comparison to the U.S. tribal court system, which shows that supporting and strengthening parallel legal systems can lead to greater access to justice for economically, geographically and culturally marginalized communities. Supporting independent legal systems preserves the autonomy of indigenous groups, while at the same time legitimizing their own dispute resolution mechanisms. It will also, hopefully, bring some uniformity to the process in keeping with the basic tenets of international human rights.

This analysis could be further developed by a more extensive comparison between customary and formal law in Guatemala. A comprehensive study would necessarily involve extensive field work, as well as source materials difficult to obtain outside of Guatemala. One approach would be to examine the land issue—the problem of displacement, the indigenous right to property and the evolution of customary

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<sup>52</sup> See USAID 2004, *supra* note 47, at 31; USAID 1999, *supra* note 44, at 20.

<sup>53</sup> UNGAR, *supra* note 6, at 216.

land tenure systems—as a focal point for comparison. This could provide fruitful grounds for examining the differences in how local land conflicts are dealt with by indigenous law and formal law, how the two conflict, and how each could inform the other. I believe the USAID model for expanding alternative dispute resolution is a promising area for exploration, insofar as it tries both to honor indigenous cultural norms, and preserve the constitutional guarantees of a fragile judicial system. It is tempting to wonder whether this system, with its hybrid of customary and formal legal concerns, could also be used to resolve the contentious issue of the indigenous right to land and the elusive promise of the now ten-year-old peace accords.