

## **Civil society's role in combating judicial corruption in Central America<sup>1</sup>**

The justice reform movement in Central America started 20 years ago in response to the prevalence of endemic problems, including corruption, undue influence of politics in the judicial sphere, the lack of human rights protection, judicial uncertainty, non-existent transparency and growing distrust of the justice system. The initial reforms were developed and implemented with the help of the international community within the framework of a transition toward democracy and, in El Salvador and Guatemala, within the framework of the Peace Accords. Civil society was not actively engaged in the early stages of the justice reform movement, except for a few organisations that focused on strategic litigation or campaigns designed to win justice for human rights violations.

A second wave of reforms was directed at two elements vital to strengthening the judiciary and fighting judicial corruption: independence and transparency. Attempts to promote an independent judiciary focused on creating new mechanisms for the selection of Supreme Court justices; strengthening judicial councils with powers to select, evaluate, discipline and administer judges; promoting the stability or tenure of judges; developing educational and ethical standards; and shifting control of judiciary budgets. Efforts aimed at promoting transparency formed part of a wider strategy to reform the region's criminal procedure codes by changing the inquisitorial system into an accusatorial one with oral trials, some open to the public, to provide stronger protection for defendants and to make the process more efficient. More recent efforts to promote transparency have focused on adopting new laws on access to information and the modernization of access to information systems.

In spite of these reforms, there is widespread recognition that the objectives of independence, transparency and efficiency have not fully materialised. The perception of the judiciary as corrupt and politicised in most countries in Central America, with the exception of Costa Rica, has prompted new initiatives from outside government to participate more directly in judicial reform projects. Civil society organisations have promoted a range of initiatives, including: research and diagnostics; forming networks to have a stronger voice in the development of policies and laws; promoting dialogue across society to discuss the elements needed for real reform and how civil society can help; monitoring the implementation of international conventions and standards; engaging in strategic litigation; training judicial officials; and conducting public awareness campaigns. Whereas NGOs had previously concentrated on seeking protection for victims of human rights violations, they now perceived the judiciary as a public service, liable to public scrutiny and pressure to improve its accountability, impartiality and transparency.<sup>1</sup>

More recently civil society has launched a new wave of monitoring and accountability initiatives aimed directly at combating corruption in response to the failure of institutional mechanisms to address unethical behaviour in the judiciary. Below we describe in more detail certain examples of some interesting initiatives we have encountered in the region and their perceived impact.

### **Evaluation of institutional control mechanisms**

The Centro de Documentación de Honduras (CEDOH) recently published a study of the internal review and control mechanisms within the judiciary, the justice ministry and the national police.<sup>2</sup> Using in-depth interviews, analyses of norms and procedures, and focus groups, it was one of the few studies to directly evaluate mechanisms within the justice institutions. Although, as the lead CEDOH investigator admitted, it is a study that still needs amplification, the novelty of a civil society organisation conducting a detailed study of the justice sector was noteworthy. The study offered valuable insights into the elements required for more effective control mechanisms. In

addition, there were some surprising findings such as that the image of the disciplinary body of the Supreme Court was disproportionately more negative within the institution than warranted by its actual defects. Unfortunately, the report's recommendations were not adopted due to governance problems in some institutions and lack of political will in others. The next step is to convince institutions (especially those whose images are highly tarnished) that adopting the recommendations would strengthen controls and be to their ultimate advantage.

Acción Ciudadana, the TI Guatemala chapter currently in formation, has carried out a number of significant analyses of norms and procedures, and also theoretical elements necessary to fight corruption in the justice system.<sup>3</sup> An analysis of the capacities and limitations of the judiciary's disciplinary organ can be found in its 2005 publication, *El Régimen Disciplinario en las Instituciones del Sector Justicia*.<sup>4</sup> A year earlier, Acción Ciudadana published *Sistematización de Análisis de Iniciativas Anti-Corrupción en el Sector Justicia*, the product of a series of workshops with civil society and government representatives to make recommendations regarding three key areas in the fight against judicial corruption: training in anti-corruption issues, social perceptions of judicial corruption, and regimes and mechanisms to prevent and sanction judicial corruption. Though its activities focus chiefly on promoting transparency and civil society participation, Acción Ciudadana's diagnostics, studies, forums, workshops and reports address many issues related to judicial corruption and are useful in understanding how control mechanisms are designed. Although the organisation recognises that overwhelming obstacles to radical change exist—lack of political will being the most important—it continues to work on diagnostics in the hope that persistence and public pressure will bring about reform.

One observation worth making about NGOs' evaluations of institutions is that criticism of internal administrations usually results in them adopting a defensive posture and balking at any recommendations that are made. Strategies for promoting the acceptance of the results of NGO research must be taken into consideration. One possible option is the creation of multi-sectoral coalitions and public campaigns to pressure an institution to adopt change. Where the political will to make changes does exist, NGO evaluation can form part of a technical support agreement with the institution.

### **In-depth review of controversial cases**

One tactic used by civil society groups targeting judicial corruption or unethical behaviour is the 'audit' of individual cases. In Panama, Alianza Ciudadana Pro Justicia (Alianza), a coalition of 16 NGOs, carried out an in-depth review of six judicial decisions issued by the Supreme Court in favour of defendants accused of narco-trafficking, gun trafficking, bribery and illegal funneling of public funds. Alianza's scrutiny came in response to Supreme Court Justice Arnulfo Arjona's denunciation of the decisions and the National Assembly's statement that it could not lift the immunity of three justices concerned for lack of 'probatory evidence'. The review concluded that four of the six decisions were indicative either of serious deficiency in the work of the Supreme Court judges, or undue influence by forces beyond the margins of the law. The other two contained worrisome irregularities.<sup>7</sup>

In response to the pressure created by Alianza's audits and calls by civil society for the resignation of the Supreme Court justices, President Martin Torrijos approved the formation of a Commission for a State of Justice and a Pact for Justice in March 2005 outlining specific reform initiatives aimed at addressing the deficiencies identified in Alianza's reviews. As part of the Pact, a codification commission working with civil society recently finalised a bill aimed at reforming penal procedures. At the time of writing, it remains unclear whether the bill will be approved and whether other initiatives in the Pact, including improved oversight and selection mechanisms for judiciary officials, will actually become a reality. What is clear is that Alianza's

work over the past five years has increased public awareness and pressured institutions into creating a road map toward justice reform.

In Nicaragua, the disappearance of a large sum of money from a Supreme Court bank account resulted in a public outcry and in an in-depth review by Probidad, an organisation that, among other things, trains journalists in anti-corruption work. In April 2004, police had confiscated \$609,240 from a Colombian and four Nicaraguans who were charged with money laundering and falsification of documents. The money was deposited in a Supreme Court account, and the defendants sentenced to three years in prison. While serving their sentences, some US \$606,000 was withdrawn by an individual representing the defendants with signed authorisation from members of the Supreme Court. The defendants' subsequent release generated further public anger. Probidad prepared a detailed review of the case and organised a panel to discuss it. In spite of the media coverage, formal accusations against the judges were stalled by 'procedural obstacles', and the Supreme Court's monopoly over initiating judicial investigations.<sup>8</sup>

Case reviews, however, often produce a negative reaction. Judges view them as undermining their authority, and infringing their independence and impartiality. This is partly due to the sensationalist and biased coverage that such cases often receive in the media. To minimise skewed journalistic coverage, care must be taken to ensure that such studies are unbiased, factually accurate and pertain to issues that affect all citizens. In this way, the justice institutions will be less likely to dismiss or overlook them. Secondly, case studies cannot alone bring about the adoption of reforms. They are important tools that civil society coalitions can use to bring about change, as Alianza did in Panama. Probidad's initiative, though it did not bring about the desired response, was valuable for obtaining and disseminating information about a case of national interest. Probidad's other mandate is to create multi-sectoral networks in El Salvador, Nicaragua and Honduras to identify the sources of problems and promote reforms.

### **Systematic review of guidelines for judicial performance**

The initiatives outlined above describe work done to review one or several controversial decisions. In a recent trend, civil society organisations have started to develop oversight mechanisms and indicators to evaluate in a systematic way the impartiality of judicial decisions and performance. In El Salvador, Protejes designed indicators to evaluate the transparency, independence and performance of Salvadoran judges. The initiative is intended to strengthen the evaluation system of the national judicial council and its findings will be submitted to the legislative branch for revision and approval. Through workshops with judges from different parts of the country, Protejes gathered key information about the best criteria to evaluate their performances. The indicators seek to evaluate the judge as an individual, as a judge—number of decisions per month, attendance record, administrative skills, etc.—and the quality of decision making. Although some also advocate the adoption of indicators specifically designed to detect outside influences on judicial decisions, Protejes has been careful not to interfere with judicial independence. The project is important because it is carried out by an organisation headed by two respected Salvadorans<sup>9</sup> and because it takes into account judges' perspectives in the process of improving the judiciary.

Protejes is also promoting the Alliance for Transparency and Judicial Excellence, a network of universities, judges' associations and civil society groups, with the aim of improving the quality of justice. Among its activities, the Alliance analyses problems involving the judiciary, disseminates its findings and recommendations, and organises educational activities to promote awareness of the role of judges in a democratic society.

### **Judicial observatories**

A related trend is the creation of 'judicial observatories', designed to monitor the administration of justice and implementation of reforms in a comprehensive manner. In Nicaragua, *Ética y Transparencia*, through its project Citizen Participation in the Oversight of the Nicaraguan Judicial System, has created an observatory that follows the progress of important corruption cases; conducted an analysis of constitutional jurisprudence and precedents behind Supreme Court decisions; participated in the development of a Law of Judicial Career; conducted a study of judicial delay; followed the progress in cases of corruption and judicial irregularities that had not yet been resolved; and conducted a study on corruption in public registries. *Ética y Transparencia's* work on judicial monitoring is new so its impact is hard to calculate. According to the US ambassador to Nicaragua, however, such observatories have achieved tangible results in reducing crime in Colombia, including corruption, as well as modernising the criminal justice system.<sup>10</sup>

In Guatemala, the mandate of the Myrna Mack Foundation is to combat impunity and to strengthen the rule of law. Initially, the Foundation aimed only to promote litigation related to Myrna Mack's assassination,<sup>11</sup> but in fighting the case it realised that the obstacles encountered were endemic in Guatemala's judicial system and determined to promote activities toward overcoming them. Through research, analysis, proposals for change, education and the spread of information, the Foundation has become a key participant in any discussion of judicial reform in Guatemala. It is also part of the *Movimiento Pro Justicia*, an umbrella group of civil society organisations that has carried out studies and initiatives to improve the quality of justice since 1999. *Movimiento Pro Justicia* monitors selection processes for judges, designs proposals to reduce the impact of politics on the selection method and suggests 'ideal profiles' for candidates. Its recommendations are widely publicised and the authorities take some of its advice into account.

The Myrna Mack Foundation has published two reports on judicial corruption that discuss its manifestations and the internal systems that facilitate corruption.<sup>12</sup> The Foundation's voice is one of the most influential in Guatemala and Helen Mack, sister of Myrna, founder of the Foundation and its current president, is also a member of the national commission of civil society and government representatives charged with implementing recommendations to improve the justice system under the Peace Accords.

### **Public Surveys**

While lawyers' associations have not generally played a lead role in monitoring judicial corruption, the Bar Association of Costa Rica has been active in promoting judicial reforms in the country. In 2002, members of the board decided that the Bar Association had to act. They launched the Forum on the National Agenda of Reforms of the Judiciary, with support from the Supreme Court, with the aim of identifying the main problems in the justice sector through extensive public surveys and proposing concrete changes to overcome them. To attain this goal, the association made an open call to citizens for their opinions on the judiciary's main problems and the most urgently needed reforms. They also carried out in-depth interviews with lawyers, academics, public servants, journalists, trade unionists, entrepreneurs and civil society representatives.

Although corruption was not among the problems identified by the initiative, there was interest in ascertaining the actual dimensions of the problem. A team composed of a sociologist, a political scientist and two lawyers evaluated the data received from the public surveys and drafted a preliminary report that was validated by three groups of 15 people, drawn from civil society, experts and public officials. Based on the comments received, the team prepared a final

draft that was distributed to authorities, public officials, judges, public officers, universities and participants in the Forum. On 11 December 2003, the president of Costa Rica, the president of the National Assembly and the president of the Supreme Court signed a Pact for Justice through which they made a commitment to promote the reforms approved after the validation meetings. For the first time in Costa Rican history, the three branches of power agreed to work together to implement a plan of judicial reform as a direct result of an initiative by civil society.<sup>13</sup>

## Conclusions

Civil society groups have taken on new monitoring and oversight roles over the judiciary in Central America. Unfortunately, their initiatives often meet strong criticism because they are seen as infringing the role, independence and impartiality of the judiciary. Analysis of specific decisions is problematic because of the perception that cases are being tried in public, or at least outside the established institutional and legal framework. This has led to reluctance on the part of justice institutions to work with civil society in many countries.

The tension created inevitably fuels a more fundamental debate of whether it is possible to find an appropriate balance between respect for judicial independence and the need for judicial accountability. Some of the proposed solutions focus on strengthening institutional control mechanisms; without them monitoring and accountability initiatives by civil society will continue to proliferate. However, any initiative for reform will be more successful when based on serious diagnostics and studies, and is supported by multi-sector coalitions that combine professional associations, universities, business associations, etc. Further, initiatives will display more success when they offer specific proposals, and not just criticism, and are accompanied by projects that allow for deeper collaboration with the justice institutions. Media coverage of any initiative must be carefully calibrated. Civil society groups should adopt a more active role in educating the press about the justice system with a view to promoting more accurate coverage and follow-up of cases, and to move beyond sensationalist reporting. Finally, promoting a deep and coherent discussion within civil society about the scope, causes and impact of judicial corruption, and the exchange of information about initiatives to combat it, will help in the development of new ways for civil society to strengthen faith in the judicial system.

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<sup>1</sup> For further information, see Due Process of Law Foundation, *Sociedad Civil y Reforma Judicial en America Latina* at [www.dplf.org](http://www.dplf.org)

<sup>2</sup> Miroslava Meza, *Controles Democráticos de los Operadores de Justicia* (Tegucigalpa: CEDOH, 2005). Available from [www.cedoh.org](http://www.cedoh.org)

<sup>3</sup> For more information about Acción Ciudadana, see: [www.accionciudadana.org.gt](http://www.accionciudadana.org.gt)

<sup>4</sup> *The Disciplinary System in the Institutions of the Justice Sector*. Acción Ciudadana, Guatemala City, August 2005

<sup>7</sup> The review of the six judicial decisions followed Alianza's detailed review of the Centro Multimodal Industrial y de Servicios case, which involved allegations of corruption but was dismissed by the Supreme Court. The documents can be found at <http://www.alianzaprojusticia.org.pa> in the section in their website dedicated to citizen oversight against corruption (Vigilancia Ciudadana Contra la Corrupción) under "Seguimiento a Fallos".

<sup>8</sup> The report on the case, entitled 'El Retiro de los 609 Mil Dolares de la Cuenta Bancaria de la Corte Suprema de Justicia de Nicaragua', is available at [www.probidad.org](http://www.probidad.org)

<sup>9</sup> They are Francisco Diaz, lawyer and former member of the Consejo Nacional de la Judicatura, and Sidney Blanco, a judge on sabbatical and professor of law at the Universidad Centroamericana in El Salvador.

<sup>10</sup> Palabras del Embajador Paul A. Trivelli durante la ceremonia inaugural del Instituto de Observación Judicial, 23 March 2006. Available at [managua.usembassy.gov/www/trivellispeech23.html](http://managua.usembassy.gov/www/trivellispeech23.html)

<sup>11</sup> Myrna Mack was a Guatemalan anthropologist who conducted research on populations displaced by the Guatemalan civil war. She was assassinated by government agents in 1990.

<sup>12</sup> *Fundación Myrna Mack*, “*Corrupción en la Administración de Justicia*,” Ciudad de Guatemala, 1998; and *Fundación Myrna Mack*, “El Problema de la Corrupción en el Sistema de Administración de Justicia”, Serie *Justice and Rule of Law* No. 4, Ciudad de Guatemala, 2002.

<sup>13</sup> For more information, see, Paul Rueda, ‘La Participación de la Sociedad Civil en la Modernización del Sistema Judicial Costarricense: El Papel del Colegio de Abogados de Costa Rica’ (Washington D.C.: Due Process of Law Foundation, 2005). Available at [www.dplf.org](http://www.dplf.org)