



Executive Summary:

Evaluation of the Justice Component of the Maya programme for the full exercise of the rights of Indigenous peoples in Guatemala

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An external consultant has prepared this report. The views expressed herein are those of the consultant and therefore do not necessarily reflect the official opinion of OHCHR.

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Executive Summary

Background

From 2009 to 2013, OHCHR-Guatemala implemented the justice component of the inter-agency “Maya programme”, funded by the Norwegian Government. The overall objective for this joint programme was to strengthen individual and collective rights of indigenous peoples through three components: strategic litigation and access to justice (OHCHR), bilingual education (UNICEF), and participation in defining the scope of public policies (UNDP).

The objective of introducing the justice component was to strengthen the capacity of Indigenous organizations to claim rights before national courts and, if needed, before the International and Regional human rights systems. One of the outcomes of the work of the justice component of the Maya programme was the creation of jurisprudence in areas of importance to indigenous people, such as legal recognition of collective lands, and recognition of traditional authorities and forms of organization.

At the end of the first phase, the Norwegian Government decided to fund a second phase with all three agencies, but with an increased proportion of the funds and activities dedicated to OHCHR for the period between 2014 and 2017.

The Maya programme is an effective initiative in a country that is undergoing important transformations towards recognizing the rights of Indigenous peoples. After eight years of programme development, progress is evident in the legislation as well as the Executive and Judiciary branches. Progress cannot be solely attributed to actions of the Maya programme, although it has contributed greatly.

Within the Maya programme, the justice component had the task to create the most visible impact. Its objective was to give high visibility to cases of strategic judicial litigation at national and international level, and to contribute - together with other initiatives in the justice sector - to including the element of plurality (a term used to describe the diversity of the society) within the system of justice administration. The outcome of this work is particularly evident in the change in quality and content of the rulings by the highest Courts, as they are more aligned with international standards on the rights of Indigenous peoples.

This task has not been devoid of challenges. The development of the programme has forced the implementing agency (OHCHR) to focus on innovation, both in terms of the representative and by country office staff. The latter have had to adapt their administrative system to the specific requirements of the project. Despite the challenges, overall, the consequences of implementing the programme have led to improved performance.

The justice component of the Maya programme has been a successful initiative and is one that should be analyzed, systematized and replicated in similar contexts. OHCHR should take note

of this initiative and try to adapt its programme and system of operation towards more innovative forms of intervention. In a context of withdrawal of cooperation, the best way to mobilize resources is by showing an ability to produce changes. This is what the justice component of the Maya programme offers.

Context of the Maya programme

Guatemala is a multicultural, multi-lingual and ethnically diverse country; however, this diversity is still unrecognized by the State. Nearly twenty years after signing the Peace Accords, Guatemala has yet to fulfill its obligations. Issues such as poverty, exclusion, discrimination and racism are existing challenges in the country today.

The Indigenous population of Guatemala is one of the groups which have fallen victim to Guatemala's injustice. A source of the problem is the State's lack of recognition for traditional justice systems which protect vulnerable groups. That said, there has been some positive progress towards advancing the rights of Indigenous people. For example, the Courts are seeing higher quality cases with greater success rates. The rulings resulting from these cases are important, particularly in terms of the recognition of a Plural (i.e. *culturally diverse*) State. Notable changes can also be identified in the legal culture of justice officials.

Phase I of the *Maya programme for the Full Exercise of the Rights of Indigenous peoples in Guatemala* covers a five-year period (2009-2013). A second phase was scheduled for the period between 2014 and 2017. The sum allocated to the justice component in Phase I was USD 2,523,418. The sum allocated to Phase II was USD 4,304,628.

The general objective of the Maya programme was formulated in two different ways in the two Phases, but both follow the same vein. The general objective for Phase II states: "*Progress has been made towards the establishment of a culturally diverse State. This has been achieved by strengthening the capacity of rights' holders and duty bearers for the full exercise of the rights of Indigenous Peoples in the justice, education and political systems, while promoting gender equality, in harmony with nature.*"

In an attempt to further integrate the three components of the programme, the intervention in Phase II was grouped around two effects, one aimed at right holders and the other at duty bearers. The inclusion of work with duty bearers was as a result of a recommendation from the evaluation of Phase I and in effect, it contributed greatly towards the significant impact achieved by the justice component.

The first joint effect is aimed at right holders. It contains a joint outcome related to the justice component: RC I.I: increased demand to protect the rights of Indigenous peoples and women, through the use of strategic litigation. As a basic element, the main strategy is to strengthen the

empowerment of right holders - this is done through strategic litigation before State bodies, and it includes legal, social and communication actions.

The second joint effect seeks to continue supporting the institutional strengthening of duty bearers and dialogue with right holders. It focuses on education as the main intervention strategy. The joint outcome is related to the justice component *RC 2.1: changes in the legal-political culture of justice officials for the issuing of judgements consistent with national and international norms related to the rights of Indigenous peoples and women.*

The administrative-financial management model is the "Pass Through"¹ model. UNDP acts as the lead agency, in coordination the OHCHR and UNICEF. The UNDP Multilateral Trust Office (MPTF Office) serves as an administrator.

Objective of the Evaluation

The objectives of the evaluation are: to identify strengths and weaknesses in the planned and achieved outcomes; to identify lessons learned and good practices in intervention strategies; to produce recommendations which identify the actions and responsibilities of OHCHR.

The methodology used can be described as **constructive**, aimed at collecting recommendations and lessons learned; **participatory**, in that everyone must have a voice; **joint**, in a horizontal relationship and with a common vision; **broad**, whereby the initial situation and the current situation are viewed with an open mind, analyzing both the expected as well as the unintended outcomes; and **sensitive** to cross-cutting issues, in particular with regard to *indigenous women's rights and a gender focus; as well as an environmental approach emphasizing harmony with nature.*

An Inception report containing details on the methodology and the tools to use was drafted, shared and agreed upon with the reference group. The evaluation seeks to be practical and concrete so as to enable a practical application of its findings.

Findings and Conclusions

Relevance

From the outset, the programme was aligned with national and justice sector priorities, the United Nations Development Assistance Framework (UNDAF) and specifically with the OHCHR mandate and thus relevant to the context of the country and the interventions of partners.

In spite of all the problems and challenges, it is clear that there was a window of opportunity to introduce strategic litigation with the objective of enhancing the effective enjoyment of the rights

¹ Each component of the Joint Program –Maya Program- is under the responsibility of an Agency, according to its mandate and regulations, financial regulations and strategic planning. UNDP acts as Lead Agency with a monitoring and administrative management role in the implementation of the Joint Programme, in coordination with the two agencies (OHCHR and UNICEF), and with the support of the ATP as Executive Coordinator. The UNDP Multilateral Trust Office (MPTF Office) serves as an administrator.

of Indigenous Peoples in Guatemala. This is demonstrated by the progress being made at all levels, especially among justice officials. Results achieved included: an augmentation in the capacity of justice officials to advance the rights of Indigenous people, the recognition of strategic litigation as a usable tool (according to interviews conducted) and lastly, the introduction of plurality in the sentences of the Constitutional Court.

Effectiveness

One of the merits of the programme was the quality of the team involved in its administration and management. This can also be said of the Justice Unit of the OHCHR in-country Office, and EATLE team (Technical Assistance for Strategic Litigation). They have had the ability to support, facilitate and advise Non-Governmental Organizations (NGO) partners to engage in strategic litigation. The diversity of the team has been invaluable in understanding the cultural sensitivities underlying many of the legal cases.

Strategic litigation actions were accompanied and strengthened by the introduction of a 'Network to Support Strategic Litigation' (RALE) created to support each case. This has resulted in harmonizing the efforts of cooperation agencies and other national stakeholders as well as NGOs working on Indigenous people issues.

The strategic litigation strategy and related actions were very well outlined and theoretically defined, and skillfully and methodically developed in each case. Many of the lessons learned in Phase I were used in Phase II to improve performance.

Training activities were well thought through and adapted to the context including moving away from the traditional concept of capacity building and sensitization, and focusing more on long-term processes and the use of novel methodologies, such as the inclusion of practical learning and the introduction of input and output assessments. Many novel formats were used: technical training on strategic litigation in the area of Human Rights of Indigenous peoples for all stakeholders; legal clinics that put into practice all the knowledge acquired in the training; interdisciplinary clinics; meetings to discuss constitutional matters; discussion groups on a specific aspect of a case; and ad hoc workshops.

Among the most noteworthy outcomes of the programme were: the quality of the course on strategic litigation, which in the view of the justice officials had important repercussions (according to interviews conducted). According to the EATLE report, 32 cases received support and advice: 11 from Phase II of the programme, 5 from Phase I, 11 from criminal cases and one from CCDA (Peasant Committee of the Highlands), 2 criminal cases from ACDIP (Association of Indigenous and Peasant Communities for the Integrated Development of Petén), one new land case from Churranchito and one land case from Rabinal, a member of RALE. The Constitutional Court has now issued paradigmatic rulings, for example, the judgment relating to the case of Sierra Santa Cruz- Q'eqchi' Communities represented by the CUC (Peasant Unity

Committee), which provides permanent protection to the inhabitants of 8 Q'eqchi' communities of the Sierra Santa Cruz located in El Estor and Livingston, Izabal, who have demanded the reclamation of 3 farms that were stripped when they were registered illegally in the name of other persons.

Cross-cutting elements were paid adequate attention to. Both the approach to Gender and Indigenous women's rights, as well as respect for the environment in harmony with nature were included in the execution of the project, including in the training modules on strategic litigation.

Efficiency

The programme has specific features that make it a unique and especially complex intervention to manage both administratively and politically. For example, one of the features is a technical support component provided by civil society organizations that defend the rights of indigenous peoples.

The initiative is a highly efficient intervention from a cost-benefit point of view. With relatively limited resources and a relatively small team, a significant impact is being achieved which has the ability to transform the social, political and judicial structure of the country.

The Representative of the Office of the High Commissioner for Human Rights (OHCHR) in Guatemala has played a critical role in the governance structure of the programme, and this has been accompanied with support from the UN Resident Coordinator, in particular in terms of political management and high level support.

The structure of the programme's team was adjusted to take account of the financial resources it uses. So much so that it was necessary to use the physical space of the country office to host the programme. In fact, the administrative structure of a small country office like the one in Guatemala has faced difficulties in supporting the volume of work, which has grown largely in recent years. This has involved a huge effort on the part of all the staff.

Despite the internal difficulties faced by the country office in taking on the programme with all its special features and considering the physical distance with headquarters in Geneva, financial and administrative management has been carried out with great professionalism and flexibility. Budget reductions caused by the difference in the rate of exchange vis-a-vis the donor's currency has been significant and are estimated to reach 32% in total by the end of this Phase. Although items such as courses, workshops and consultancy contracts were cut, the cuts had a minor effect on grants for NGO partners. This suggests a responsible approach vis-à-vis responding to a changing financial situation. Given the characteristics of the intervention's focus on transferring capacity and technical support, the biggest investment has been in staff, training and grants for NGO partners.

Focus on impact

The intervention of the Maya programme through the justice component has demonstrated that there is an opportunity to create a big impact. Strategic litigation has produced three forms of effect:

- (i) better quality rulings that are more soundly based and consistent with international standards on Indigenous peoples' rights, and which contribute to changes in the legal culture of justice officials;
- (ii) the legislative discussion around laws such as the Water Act; the drafting of a bill for the collective intellectual property of Guatemalan Indigenous textiles; the Community Radio Stations Act which was a result of discussions endorsed by the Maya Programme; and,
- (iii) from a social dimension, the recuperation of ancestral authorities and contribution to the beginning of a new relationship between Indigenous peoples and the State. In regards to this aspect, changes in the Executive Branch, such as the creation of "Healthcare standards with cultural relevance" and "Guidelines for health staff in their relationship with midwives" (Ministry of Health), have been produced by urging the Executive Branch to enable the relevant governmental agencies to work with the communities with a recognition of their political character.

Sustainability

Sustainability has been a strong focus throughout the development of the programme. NGO partners have acquired knowledge about strategic litigation and have developed related practices and policies. This has been supported by communication measures which has created awareness in the population.

The analysis of the ever-changing political context is a determinant for any subsequent phase of the programme. In the complex political, social and economic context of Guatemala, progress accomplished thus far should not be considered as irreversible. Therefore, sustainability requires a need to continue the promotion of programming in a manner which will consolidate outcomes and practices.

Lessons learned, Good Practices and Recommendations

Lessons Learned

1. One of the recommendations of the evaluation of Phase I was to integrate the three components of the Maya programme to work as a single unit - a single programme. A programme for Phase II was therefore defined, where the three Components are interlinked, with the additional expectation that the three might coincide geographically and thematically. These efforts were not fruitful: agencies and the components of the Maya programme had different practices. In the case of the justice component, its logic relates to the selection of cases as a strategy to produce change, and therefore does not have a large capacity to be thematically or geographically structured. On the other hand, the justice component operates in an environment of high political sensitivity, which forces it to follow a different set of practices from the rest of the programme.

2. The political component of this programme is unavoidable. Given the particular nature of the work done by the justice component, a team is needed that combines both technical and political capabilities. The innovative field work done by the Technical Assistance for Strategic Litigation Team (EATLE) for OHCHR in strategic litigation, and the importance of strengthening both rights-holders and duty bearers, requires both flexibility and resilience.

3. There are a number of challenges that need to be taken into account, particularly if this type of work is to be replicated in other offices. The following challenges must be identified as risks when designing litigation projects: the State's lack of recognition of institutions of Indigenous Peoples; the State's lack of recognition of communal property and indigenous territory as institutions that are subjects of Public International Law, and protected by international Human Rights' Law; the criminalization of Human Rights defenders and community leaders; the complications of litigation processes when criminal lawsuits are settled and the resulting increase in costs and lengthier proceedings; the lack of an effective legal recourse to enforce rulings.

Good practices

1. Exceptional work has been done to make internal OHCHR's administrative and financial standards flexible in order to adapt them to the particular circumstances and demands of the programme. In the same manner, the Maya Programme strategic litigation team had to make an effort to adapt as much as possible to the internal administrative-financial management standards of OHCHR. This outcome has not been easy to achieve but has clearly been part of the success of the programme.

2. Reducing the number of cases in Phase II as compared to Phase I was a good decision, as was the decision to choose strategic cases with the help of the criteria of social, legal and political viability and with a focus on collective rights. Reducing the number of cases also takes into account the problem that cases can become complex and providing support for them can become difficult. Furthermore, a reduced number of NGO partners saves money on administrative procedures.

3. The evaluation of Phase I was a turning point in the development of the programme. Highly relevant recommendations were suggested and subsequently used in the design of Phase II. The result was a formulation and subsequent implementation of much higher quality. The programme included a *Result* aimed at duty bearers which completes the programme's delivery spectrum - a set of programme management instruments to be used as a results-based management scheme: a complete logical and quality framework; a monitoring and internal analysis scheme; and programme and financial monitoring tools.

4. The political context was continuously analyzed through different internal monitoring and programme analysis mechanisms in order to make decisions, which at times involved changing the course of the programme. Special attention was given to changes in government and to cultivating a high-level dialogue with government officials.

5. The conceptual analysis of "strategic litigation" from a theoretical perspective and the resulting sound methodological framework has allowed the programme team to display a set of strategies that have enhanced the impact of litigation, rendering it more effective.

6. An innovative teaching methodology was applied to training processes. The contents of the strategic litigation are taught to a number of stakeholders from different backgrounds (indigenous organizations, ancestral authorities, lawyers, university professors, students). The heterogeneous nature of participants leads to a discussion that enriches all of them.

7. The inclusion in Phase II of the work with duty bearers has meant not only greater awareness and more training, but also the introduction of some important changes in justice institutions, which have improved the quality of ordinary justice administration for indigenous peoples. This for example includes the introduction of protocols on cultural expertise and guidelines on access to justice by indigenous people with cultural or linguistic relevance in the Public Prosecution office.

8. Of particular note is the comprehensive approach to communications, even with limited resources, and through support from RALE, the Network to Support Strategic Litigation, specifically for each case. Work in communications has been strategically important and has had a strong focus on impact. It has been greatly successful in balancing the objective of mobilizing a critical social mass, but at the same time managing an adequate political profile.

Recommendations

Out of the total list of recommendations, we have **highlighted in blue** those that we consider to be a priority and useful in the drafting and implementation of a follow-up action plan.

General

1. Given the current context of the country and the potential of the programme to have a significant impact, the programme should continue to be implemented under the auspices of OHCHR's Country Office.

2. OHCHR should consider replicating this programme as a high impact methodology. Similar programmes could be implemented in other countries which face similar conditions, i.e. in inter-cultural, multi-ethnic and pluri-lingual contexts. In doing so, the Office should take advantage of the lessons learned and good practices of the Guatemalan experience. The success of the Guatemalan experience is due to the combination of an integrated and committed team with the advantage of successful political management.

3. It is recommended to document and standardize the experience, good practices and lessons learned of the Maya programme in 2017, once Phase II has been concluded. Even though a design of the proposal for this task exists, it has yet to materialize because of budget cuts. OHCHR country office should take on this task as a way to thoroughly document the different stages of the programme and to obtain precise instructions for the replication of this programme by other offices. This process will also be useful for the mobilization of funds for the programme by highlighting the ability of programming to produce change and generate impact.

Relevance

4. In view of the lack of cases related to the Garifuna people, it would be advisable to increase efforts to find a case, as was done with the Xinca people.

5. Starting with the design stage, even more attention should be paid to the area of communication. This involves larger budgetary allocations for communication, integrating it into programming and working with NGO partners. Training in communication for external partners in order to enhance their communication strategies could also be more methodological and intense.

6. It is recommended that during the eventual next phase of the programme, the practice of choosing selected cases should continue and there should be a focus on a manageable number of cases with the aim of creating a greater impact.

Effectiveness

7. In order to guarantee compliance with judgements, it is necessary to develop a strategy different from the one devised for the establishment of a case. It is essential to work with stakeholders who raise awareness for the rights of vulnerable people, and who are well positioned to persuade the relevant bodies to comply with what is judicially ordered. Contributing to ensuring that court rulings are implemented should be a main component of the programme in the future.

8. Training in strategic litigation is important, however, it can create an excessive workload for the programme team, and can deplete its ability to support litigation. Transferring training in strategic litigation to a managing body may therefore be an appropriate strategy.

9. Continuous attention must be paid to protecting case documents and to ensuring the safety of all those involved in a case.

10. It is advisable to put stronger emphasis on inclusion in the future implementation including by involving the mayors of the communities concerned, for example, by making them participants of the training process.

Efficiency

11. OHCHR should make a greater effort to enable the Strategic Litigation team, the Programme Coordinator and the Justice Unit of OHCHR to strengthen the coordination of their actions and strategic discussions in a way that allows for greater cohesion as a programme. Joint work between the areas responsible for supporting rights-holders and duty bearers is essential. In order to have an effective relationship and a synergy between the two lines of action, there must be coordination between the teams that take forward this work.

12. Extensive dialogue and communication with OHCHR Headquarters in Geneva is required in order to involve more of its units in the programme, not only in relation to administration and finance aspects but also in relation to the substantive aspects of the programme, so as to increase the sense of ownership of the programme.

13. It is strongly recommended that greater administrative authority be allocated to the coordinator of the justice component. As such, the coordinator's functions should include the approval of expenses and staff missions.

14. It is recommended to revise the administrative-financial practice of conditioning the delivery of the final tranche of 20% of the funding provided to NGO partners to support their litigation efforts, upon the implementation of the planned activities with their own resources. Most NGOs do not have this amount of funds at their disposal and it therefore means a reduction in the resources available to support the strategic litigation project.

Sustainability

15. Continued emphasis should be given to the sustainability of training processes. This can be achieved to a large extent if modules which specialize in the rights of indigenous peoples and strategic litigation are institutionalized in curriculums of the relevant university degree courses.