

## LEGAL EMPOWERMENT OF THE POOR IN NICARAGUA

### *Microjustice avant-la-lettre?*

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Managua, September 2010

#### ABSTRACT

*In Nicaragua – one of the poorest countries in the Western Hemisphere - a new type of intervention has been developed to facilitate access to justice for the rural poor.*

*Facilitadores Judiciales are volunteers, selected by the community, who assist judges and other legal authorities in effecting the rule of law in their area. One of their tasks is to facilitate mediations. They work under the supervision of the local judge*

*This intervention offers a new way to integrate informal alternative dispute resolution operated by representatives of the local communities with the formal justice sector. In this way, it brings the rule of law much closer to the homes of the Nicaraguans. Another remarkable aspect is that the facilitators work on a voluntary basis, so the intervention is low cost, making it scalable and much more affordable for developing countries than other access to justice interventions such as subsidised legal aid and extra funding for state courts. The “Programa de Facilitadores Judiciales” now covers all rural communities in Nicaragua, is being extended to urban areas, and has been introduced in Paraguay (2008) and Panama (2009). This paper explains the intervention and the program supporting it, reports the available data about impact, and explains how this intervention fits in with current theory about access to justice and dispute system design. It concludes with listing its possible strengths and weaknesses.*

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# CHAPTER 1 WHAT IS THE FACILITATOR PROGRAM AND HOW DOES IT WORK?

## 1.1. Background: Nicaragua and its justice sector

Nicaragua is the largest Central American country with an area of 130,000 square kilometres (equivalent to Greece) and a population of 5.6 million. With a GNI of \$5.6 billion and a per capita gross net income of \$980 in 2007, Nicaragua is the second-poorest country in the Western Hemisphere.<sup>2</sup> The division of riches is unequal (a Gini coefficient of over 0,5); according to the most optimistic data, 15% of the population lives in extreme poverty and 46% is considered poor.<sup>3</sup> The poverty is reflected in various ways, such as in an illiteracy of 32% and chronic malnutrition affecting 27 % of the population.<sup>4</sup>

Nicaragua is a constitutional democracy with executive, legislative, judicial and electoral branches of government. Administratively, the country is divided into fifteen provinces (“*departamentos*”) and two – mostly indigenous - autonomous regions. The provinces and autonomous regions are subdivided into 153 municipalities (“*municipios*”), the smallest administrative units in Nicaragua. Nearly two thirds of the municipalities and 43% of the population are considered rural.<sup>5</sup>

Nicaragua’s history is marked by natural disasters, (civil) wars, dictatorship and foreign intervention. The most recent civil war of the eighties left the country broke, scarred, highly polarized and with a culture of solving problems by using violence.

The challenges that a justice system faces in this environment are obvious.

During the period immediately following the war (1990-1997), efforts were made, with considerable success, to consolidate peace (e.g. more than 20,000 men were disarmed), to depolarize the country and to strengthen governmental institutions. During the last 15 years, the judiciary has been strengthened considerably, both in terms of staff as regarding new legislation. The introduction of a prosecution service and a legal aid system further strengthened the legal sector. Nicaragua’s judicial system is based on the continental European or civil law tradition (influenced by the Spanish), into which more recently several common law elements were introduced.<sup>6</sup>

<sup>2</sup> After Haiti, measured in terms of GNI per capita; 2007 data, World bank;

[http://devdata.worldbank.org/AAG/nic\\_aag.pdf](http://devdata.worldbank.org/AAG/nic_aag.pdf) and

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:22117191~pagePK:146736~piPK:146830~theSitePK:258554,00.html>

<sup>3</sup> According to World Bank 2005 data, see

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/NICARAGUAEXTN/0,,contentMDK:20214837~pagePK:1497618~piPK:217854~theSitePK:258689,00.html#Top> . Though CEPAL, Panorama Económico y

Social de América Latina, anuario estadístico de america latina, 2008 estimates that poverty rates are much higher at 32 and 62% respectively, see [http://websie.eclac.cl/anuario\\_estadistico/anuario\\_2008/docs/ANUARIO2008.pdf](http://websie.eclac.cl/anuario_estadistico/anuario_2008/docs/ANUARIO2008.pdf)

(2005 data)

<sup>4</sup> Idem

<sup>5</sup> Idem

<sup>6</sup> Many laws dating from the 19<sup>th</sup> century were or are being revised. In 2000 a law came into force that introduced a prosecution service to Nicaragua (*Ley Orgánica del Ministerio Público o Fiscalía*). Also a Legal Aid system was

Some important changes in criminal procedural law came into effect in 2001: the system changed from adversarial to inquisitorial in character, and at the same time the obligation to try to settle a case before the actual trial, was introduced. The *Corte Suprema de Justicia* of Nicaragua (the “Supreme Court”) supervises the functioning of nine Courts of Appeal (*Tribunal de Apelacion*), 193 District Courts and 144<sup>7</sup> Local Courts. There is at least one District Judge in each province or autonomous region, based in the provincial or regional capital and at least one Local Judge in each of the 153 municipios (with an average number of inhabitants of 35.000, and often less in the countryside), based in its main town or village. This distribution is a result of the significant expansion of staff during the last fifteen years.<sup>8</sup>

In spite of considerable advances in recent years, the Nicaraguan justice system continues to have several limitations and lacunas. Of the traditional legal institutions, the Prosecution as well as the Legal Aid System - both recently introduced – are still weakly developed.<sup>9</sup> Prosecutors have been installed in 65 (of 153) municipios. The Legal Aid Service so far only has 78 lawyers available for the whole country. Furthermore, the judiciary is perceived by many to be largely ineffective, overburdened and highly politicized. Although in terms of statistics<sup>10</sup> the Nicaraguan justice system does not stand out in all respects, the number of legal aid lawyers is exceptionally low as is the clearance (or resolution) rate of 19% (in 2003), which is one of the worst resolution rates of legal cases in Latin America. One of the problems perceived is the interaction between politics and the judiciary. *“In Nicaragua, applying the law is a challenge, not because legal instruments are lacking, for there are good regulations, but because (application) is prevented by politics.”*<sup>11</sup> The general confidence in and satisfaction with the legal system is extremely low at 14%.<sup>12</sup>

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created to appoint counsel to those who cannot afford to pay for their defence (*La Defen*<sup>6</sup> After Haiti, measured in terms of GNI per capita; 2007 data, World bank; [http://devdata.worldbank.org/AAG/nic\\_aag.pdf](http://devdata.worldbank.org/AAG/nic_aag.pdf) and <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:22117191~pagePK:146736~piPK:146830~theSitePK:258554,00.html>

<sup>6</sup>According to World Bank 2005 data, see

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/NICARAGUAEXTN/0,,contentMDK:20214837~pagePK:1497618~piPK:217854~theSitePK:258689,00.html#Top>. . Though CEPAL, Panorama Económico y Social de América Latina, anuario estadístico de america latina, 2008 estimates that poverty rates are much higher at 32 and 62% respectively, see [http://websie.eclac.cl/anuario\\_estadistico/anuario\\_2008/docs/ANUARIO2008.pdf](http://websie.eclac.cl/anuario_estadistico/anuario_2008/docs/ANUARIO2008.pdf) (2005 data)

<sup>6</sup> Idem

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<sup>6</sup> Many laws dating from the 19<sup>th</sup> century were or are being revised. In 2000 a law came into force that introduced a prosecution service to Nicaragua (*Ley Orgánica del Ministerio Público o Fiscalía*). Also a *soria Publica*), although this is purely theoretical in those places where there are no legal aid lawyers yet. A school for the judiciary was established in 1993. Most recently a new Criminal code came into force (2007; see footnote 17). See also <http://www.poderjudicial.gob.ni>

<sup>7</sup> 2007 numbers; <http://www.poderjudicial.gob.ni/arc-pdf/juznacional.pdf>

<sup>8</sup> In 1997 the judiciary had a staff of 1,676; currently this is 2,430, an increase of 45%. Ten years ago there were no local courts in each municipio and many of the local judges were laymen. Many courthouses have been constructed: all district judges now have their own courthouse and 144 (of 153) local courts have their own courthouse.

<sup>9</sup> Prosecutors have so far been installed in 65 (of 153) municipios. The Legal Aid Service so far only has 78 lawyers available for the whole country. (2008 data) See also footnote 3.

<sup>10</sup> For every 100,000 inhabitants, there are 6.1 judges, 2.4 prosecutors and only 1.35 Legal Aid lawyers. The annual case load per judge is 633, with an extremely low clearance rate (= cases resolved/ cases filed) of 19% (2003 data, [www.cejamerica.org](http://www.cejamerica.org), reporte 2006-2007, pages 311-322). The crime rate is high: in 2004, 1,986 crimes were committed for every 100,000 inhabitants. In comparison see *Court Performance Around the World, A comparative perspective*, Maria Dakolias 1999, [http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186404259243/14pub\\_br176.pdf](http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186404259243/14pub_br176.pdf)

*The 2008/2009 cejamerica report appeared but has no new data on the Nicaraguan judiciary; except for the Supreme Court.*

<sup>11</sup>Miguel Peñailillo, consultant of ‘Diagnóstico de la Corrupción en Nicaragua’, 15 nov 2009, in EL Nuevo Diario <http://www.elnuevodiario.com.ni/especiales/61844>

<sup>12</sup> SISMO XIV, april of 2008, M&R Asociados.

This may in part be due to poor access to justice. Many *municipios* are vast, encompassing numerous small communities (hamlets and villages), and often hundreds of square kilometres. Although there is a judge in each *municipio*, judges only reside in the municipal capital (i.e. its main town or village), which means that in practice communities can be many hours or sometimes days walking away from a local judge, with public transport either non-existent or infrequent and costly for the rural poor. The police and other branches of the law are also rarely seen in these isolated communities. Hence, the rural areas of, particularly, the central, northern and “Atlántica” (autonomous regions on the Atlantic coast) regions of Nicaragua were characterized by a high level of isolation, insecurity, virtually no institutional presence of the government, violence, impunity (due to both lack of enforcement and ignorance), and a constant threat to social and political stability, combined with extreme poverty.

In this environment, the access to justice-program, known as the *Programa de Facilitadores Judiciales Rurales* (the “Program”), was developed by the Organisation of American States (“OAS”) in cooperation with the Supreme Court. The **objectives** of the Program were not only to improve access to justice and to contribute to the legal empowerment of the poor, but also to strengthen prevention mechanisms, to introduce alternative dispute resolution methods and to improve social stability and harmony.

## **1.2 Historical Evolution of the Program of Judicial Facilitators**

The Program officially started in 1998. However, the seeds for the creation of the program were sown a few years earlier, by local judges working in remote, post-conflict areas in the north of Nicaragua. Because of the vastness of their *municipios*, these judges had developed the habit of using community leaders in remote parts within their district to assist them with the administration of justice and to promote the rule of law. The actual development of the Program can be divided into three stages.

### **1.2.1. Pilot Phase (1998-2001)**

During the pilot-phase, *Facilitadores Judiciales Rurales* (Rural Judicial Facilitators, “facilitators”) were appointed in a limited number of *municipios* in remote post-conflict areas in the north of Nicaragua. In fact the Supreme Court, with the help of the OAS, started out by formalizing the status of community leaders already assisting local judges in some isolated rural communities. The number of facilitators gradually increased to 76 spread over 18 *municipios* by 2001.

At the end of the pilot the Supreme Court and OAS concluded that the program had been successful. The workload of the local judges had been reduced, the level of security in the communities with judicial facilitators was perceived to have increased and the facilitators had managed to resolve several conflicts through mediation.

### **1.2.2.. Consolidation and Expansion (2002-2007)**

During the second stage, the OAS and the Supreme Court again cooperated closely, with a view to expand<sup>13</sup> the network of facilitators from eighteen to fifty *municipios*. New *municipios* were selected according to three variables:

- more than 50% of the *municipio* is rural;
- the poverty level is higher than 50% and
- the *municipio* is isolated.

Within each selected *municipio*, facilitators were appointed in ten communities, that were chosen in consultation with the local judge, either because of their isolation or because the need for a facilitator in that particular community was urgent.

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<sup>13</sup> *Programa de Expansión de los Facilitadores Judiciales Rurales.*

During this stage, the Program was also introduced in the Autonomous Regions on the Atlantic coast of Nicaragua. In these - mostly indigenous - areas, local indigenous judges, called *Wihita* were incorporated into the program. In this way, indigenous laws and traditions were respected and integrated into positive law. Use of local languages was also promoted.

The second stage of the program was concluded successfully, surpassing the set goals. By the end of 2007 the program was operational in 120 *municipios* and counted 1,260 active judicial facilitators, including 92 facilitators in the indigenous autonomous regions and 290 (23%) female facilitators. The commitment of the judiciary, especially the local judges, was high, illustrated by the fact that local judges of the *municipios* concerned often took the initiative to install facilitators in other *municipios*.

By the end of this expansion phase, a certain level of consolidation and sustainability of the program had been attained, both economically and institutionally. Rules and Regulations for the Facilitators were in place and the Supreme Court established a special office, *La Oficina de Atención a Facilitadores*, to support the facilitators and to disburse funds for certain events associated with the Program. As an indication of the success of the Program, many local (*municipio*) governments started to sponsor the Program financially as they appreciated the beneficial impact the presence of Facilitators had on their community, namely increased security.

### **1.2.3. Creation of a National Service of Facilitators (2008-2012)**

Because of its apparent success, the Supreme Court decided to transform the institution of the facilitators from a largely externally supported and sponsored program, into a National Service of Facilitators (*Servicio Nacional de Facilitadores*; hereinafter also “the Service”), embedded in and funded by the judiciary, with 100% Nicaraguan ownership. The facilitators are perceived to be instrumental in promoting some of the strategic objectives of the Supreme Court, namely to increase access to justice, to improve legal security and to increase the efficiency of the justice system. In addition facilitators – according to the Supreme Court - stimulate civil participation in the justice sector and are instrumental in decentralizing the judiciary.<sup>14</sup> The goal is to have a completely self-sufficient National Service of Facilitators country-wide by the end of this phase. This will involve:

- introducing Facilitators country-wide, in all *municipios*, including (sub)urban areas;
- formalizing and strengthening the normative and institutional basis of the Facilitators, notably their relationship with other players within the justice sector and the local governments;
- strengthening the administrative capacities within the Supreme Court to manage the logistics of the day-to-day operation of the Service;
- ensuring that by the end of this phase, the recurring, day-to-day operational costs of facilitators, are funded entirely by the Nicaraguan (judicial) budget.

## **1.3 Legal Framework**

The work of the facilitators at first had no legal basis. Rural judicial facilitators started out as informal, extra-judicial assistants, and rules and regulations followed as the program grew and proved to be of use. Nowadays their position is firmly embedded in the legislation of Nicaragua. The following rules and regulations are relevant for facilitators:

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<sup>14</sup> See the website of the Supreme Court for the goals, impacts and perceived benefits of the program: <http://www.poderjudicial.gob.ni/facilitadores/index.htm>

- The Organizational Code of the Judiciary, as amended; art. 169 of this Code provides that Facilitators are official assistants to the Administration of Justice;<sup>15</sup>
- Art. 200 (bis) of the same Code has a similar text and also provides that the Supreme Court regulates the organization, functioning, training, rights and obligations, appointment etc. of facilitators.<sup>16</sup> Article 57 sub 2 of the Criminal Procedural Code has a similar wording;<sup>17</sup>
- On 22 November 2002, the Supreme Court adopted a set of Rules and Regulations pertaining to Facilitators, the “*Reglamento de los Facilitadores Judiciales*” (hereinafter the “Reglamento”). An Addendum, articles 34 – 42, especially applies to Indigenous Facilitators that work with *Wihntas* (traditional indigenous community leaders) on the Atlantic Coast and is published in Spanish as well as in the local languages of the autonomous regions: English, Miskito and Mayanga;
- In article 57 sub 1 of the Criminal Procedural Code<sup>18</sup> and art. 563 of the Criminal Code 2007,<sup>19</sup> facilitators are explicitly mentioned as pre-mediators<sup>20</sup> in certain criminal cases;
- The Code of Civil Procedures and the Civil Code, that are currently being revised, will also include reference to Facilitators.

#### 1.4 Rights, obligations and mandate

The rights and obligations of the Facilitators are regulated in the aforementioned “*Reglamento*”. To all services rendered by the Facilitator, certain common rules apply. Firstly, the Facilitator should serve as an example within his community; he must abide to principles of honesty, impartiality, dignity and competence.<sup>21</sup> The mandate of the Facilitator is limited territorially to the community where he<sup>22</sup> resides and where he has been appointed.<sup>23</sup> Furthermore, the Facilitator must keep a record of all services he delivers in a Registration Book that he receives from the judge.<sup>24</sup> Facilitators are staff “at the service of the Administration of Justice”<sup>25</sup> in many different ways. Their tasks can be divided into the following main groups that will be discussed in more detail below:

- a. assistance to members of the justice sector (judge, police, prosecutors and defence);<sup>26</sup>
- b. referral of cases to institutions within and outside the justice sector;
- c. assistance and counselling to individual members of their community (the “beneficiaries”);<sup>27</sup>
- d. holding talks: spreading knowledge on laws and regulations;<sup>28</sup>

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<sup>15</sup> Ley Orgánica del Poder Judicial de la República de Nicaragua, Ley No. 260; published in the Gaceta # 137, dated July 23, 1998, as amended by art. 423 of the new Criminal Procedural Code (see footnote 15), reads: “(..) personal al servicio de la Administración de Justicia están comprendidos (...), Facilitadores Judiciales Rurales (...)”

<sup>16</sup> Idem

<sup>17</sup> “La Corte Suprema de Justicia organizará el funcionamiento de los facilitadores de justicia en zonas rurales”.

<sup>18</sup> Código Procesal Penal de la República de Nicaragua; Ley No. 406, adopted November 13, 2001, published in La Gaceta No. 243 and 244 del 21 and 24 December 2001

<sup>19</sup> Código Penal; Ley No. 641, Publicada en La Gaceta No. 232 del 03 de Diciembre del 2007

<sup>20</sup> *Pre-trial* mediators refers to a certain type of mediation in criminal cases wherein the (criminal) law prescribes posterior confirmation by a judge for the mediation to be legally valid.

<sup>21</sup> Art. 8 sub 12 Reglamento

<sup>22</sup> <sup>22</sup> For the sake of readability, Facilitators are referred to with he/his etc. However, this should be understood to refer to mean she/her etc. as well.

<sup>23</sup> Art. 8 sub 13 Reglamento

<sup>24</sup> Art. 8 sub 2 Reglamento

<sup>25</sup> Ley Orgánica del poder judicial de la república de Nicaragua, Art. 169 (as amended; see footnote 12) “(..) personal al servicio de la Administración de Justicia están comprendidos (...), Facilitadores Judiciales Rurales (...)”

<sup>26</sup> Art. 6 Reglamento sub 5 and 6

<sup>27</sup> Art. 6 Reglamento sub 1

<sup>28</sup> Art.6 Reglamento sub 2

e. performing mediations (both civil and criminal).<sup>29</sup>

*a. Assistance to members of the justice sector*

At the start of the Program, assisting the justice sector, especially the local judge, but also the police, the prosecution and the defence, was the only task of the Facilitators. They can assist judges in various ways, in both civil and criminal cases, upon requests of the judiciary, mostly with logistics: they may deliver summons and make appointments, locate witnesses, take measurements of land, perform inspections, examine evidence on location, or perform other investigations. As they are perceived to be the representative of the justice sector within their community, *Facilitators* can also be instrumental in collecting evidence in criminal cases; they can be the ears and eyes of the justice sector that is present when something happens. Facilitators may gather information and evidence, and also prepare “expert-reports”.

*b Referrals*

If a Facilitator cannot resolve a case himself, he is expected to refer beneficiaries to the relevant legal or administrative authority that can deal with their case. This can be the judiciary, the police, but also the local government or an NGO (Non-Governmental Organisation).

*c. Individual Assistance and Counselling*

The population of the community may seek the help of Facilitators for an array of actions varying from explaining how the justice system works and what they can do to solve a conflict they have, to helping them with administrative issues and preparing documents for legal procedures. For administrative issues, the Facilitator can either accompany the beneficiary on a visit to the (legal) authorities or perform the necessary acts himself, on behalf of the beneficiary.

*d. Holding talks: spreading of legal knowledge*

Part of the task of the *Facilitator* is to educate the population of his community on legal matters. Thereto the facilitator organizes meetings regarding various topics on a regular basis. In addition, such legal empowerment efforts may also take place in a more informal way during various activities within the community, such as after church services.

*e. Mediation in Civil and Criminal Cases*

An important task of the Facilitator is to mediate conflicts. Such extra-judicial mediations are within the mandate of the *Facilitators* in all civil cases if the parties agree (this is not yet regulated) and in those criminal cases specified in the Criminal Procedural Law, i.e. all misdemeanours and some felonies.<sup>30</sup>

The usual process is that the facilitator, upon receiving a case, first judges whether the case can be mediated or should be referred to the judge or another authority. In case mediation is permitted, but not successful, the case can also be referred to a formal authority at a later stage. Facilitators receive specific training on mediation techniques. Before starting a mediation, the facilitator must establish the identity of the parties.<sup>31</sup> The facilitator cannot perform mediations in cases in which he has a personal interest, or when one of the parties is related to him.<sup>32</sup> The facilitator prepares a deed (“acta”) of each successful mediation. During their training, facilitators receive sample-deeds that indicate which information to include, such as the date, names and ID’s of the parties,

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<sup>29</sup> Art.6 Reglamento sub 3 4 and 7

<sup>30</sup> Specified in Art. 56 of the *Código Procesal Penal* as well as pre-trial mediations of Art. 57 of the *Código Procesal Penal* (Criminal Procedural Code).

<sup>31</sup> Art. 8 sub 4 Reglamento

<sup>32</sup> Art. 8 sub 10 Reglamento

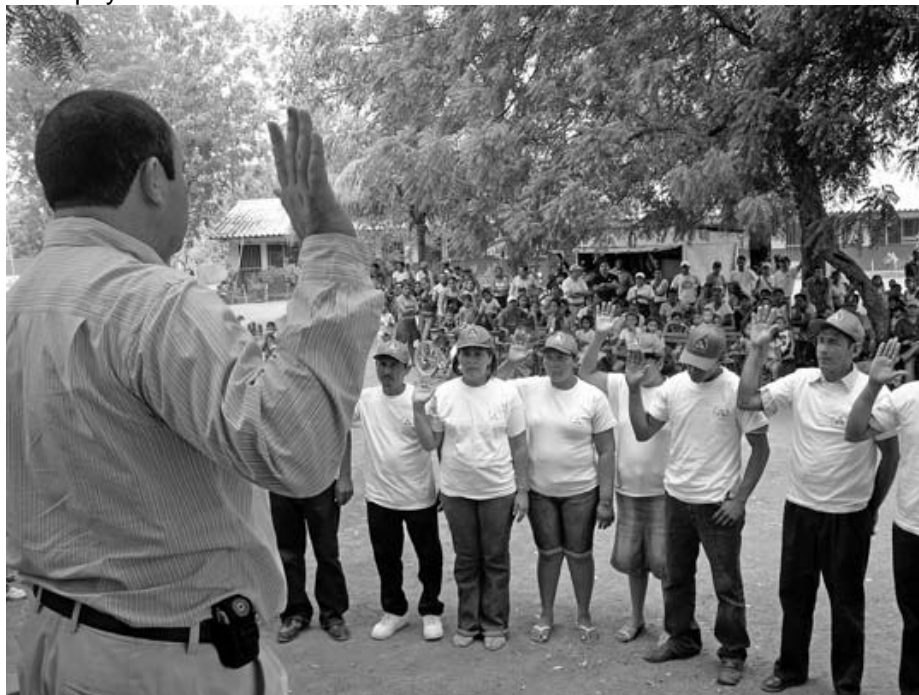
the problem and the solution. The deed is signed by all parties, witnesses, if any, and the facilitator, and included in the facilitator's Registration Book.

During his next meeting with the local judge, the facilitator will present the deed to the judge, who will make sure it is filed with the Public Prosecutor in the district, or if the district does not have a prosecutor, in the registry of the court. The facilitator is also expected to monitor compliance and follow-up of mediations<sup>33</sup>. If parties do not abide to what they agreed, the deed may serve as evidence in a possible litigation.

### 1.5 Appointment

In order to become a judicial facilitator one has to be selected by the community and subsequently appointed by the judge of the *municipio*.<sup>34</sup> In order to be eligible, a person must:<sup>35</sup>

- be an adult;
- be able to
- read and write;
- be a recognized leader in his community;
- reside in the community that proposes him;
- have no criminal record;
- not belong to a political party;
- not be in the military or police or have resigned from the military/police less than 12 months prior to his nomination and
- he or she should be in a position that enables him to facilitate voluntarily, that is without payment.<sup>36</sup>



The latter is a crucial aspect of the Program: a facilitator does not receive any remuneration for his work; he is expected to derive his income from other sources. The local judge should verify that all requirements are met, before officially appointing the facilitator during a community meeting. An official record of the appointment is

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<sup>33</sup> Art 6 sub 4 Reglamento

<sup>34</sup> Artt. 9 and 10 Reglamento

<sup>35</sup> Art. 4 Reglamento

<sup>36</sup> .For the *Wihita*, n the autonomous regions, separate requirements apply Art.. 37 Reglamento (Addendum)



prepared, signed and sealed. This deed is registered with the Supreme Court for official accreditation and registration.<sup>37</sup> The facilitator is appointed for an indefinite period of time.<sup>38</sup> Although this is not officially regulated, it has become customary for the facilitator to receive a new identity card<sup>39</sup> that has the qualification “*Facilitador Judicial*” printed on it. Facilitators also receive a basic outfit (T-shirt, cap) with the Facilitator logo, and materials necessary to perform the job.

## 1.6. Training

The local judge of the *municipio* where the facilitator is appointed is responsible for the legal education of all facilitators in his district. The goal of the training is to equip the facilitators with the practical knowledge and skills necessary for their work. The legal education of the Facilitators is divided into three parts.

All facilitators receive an *initial* legal training of about ten hours in the municipal capital. This training includes skills training regarding mediations and meetings. This is followed by *monthly meetings* with the judge during a period of six months to one year. Each month, a module concerning a certain topic is discussed, and first experiences on the job are shared and reviewed. In the periods between these meetings, the facilitators are given written material (booklets) to study at home and exercises to complete. These instruction booklets explain the most important laws by topic in detail and in a practical way and are important references for the facilitators. The topics covered include: the organization and tasks of the judiciary, the prosecution, the police and other parts of the legal sector; the role of the judicial facilitator; pre-trial and extra-judicial mediation (both theory and skills); classification of offences; the principle of opportunity; family law; domestic violence; children’s rights; environmental law; municipal law; election law and human rights.

The actual training time is kept to a minimum, and the topics studied are, where possible, adapted to the educational background of the facilitators (many of whom only have a few years of primary school). All information is presented in a – politically and religiously - neutral way. Others within the justice sector, as well as third parties with expertise on specific topics – for instance NGOs specialized in domestic violence or MARENA (the ministry of environment) -, assist with the instruction of the facilitators.

The third, and perhaps most important and continuous, part of the training, is *on the job*. The facilitator accompanies the judge or other members of the justice sector in the field and receives instructions from the judge (or others) in specific cases. For this part of the education, regular meetings (monthly or bi-monthly) between the local judge and the facilitators of his municipality are also essential. Most meetings with the judge take place jointly with all facilitators from the *municipio*, so the exchange of experiences between facilitators is an additional learning tool. Apart from being the most important trainer, local judges also play a crucial role in motivating the Facilitator.

Facilitators, who have performed their job successfully for at least one year, can do an extra course which accredits them to perform *pre-trial*-mediations in criminal cases.

## 1.7 Supervision

The local judge is the direct supervisor of the facilitators<sup>40</sup> in his *municipio*, although ultimately, it is the Supreme Court that is responsible for all facilitators.<sup>41</sup> In this role,

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<sup>37</sup> Art. 11-13 Reglamento

<sup>38</sup> Art. 26 Reglamento

<sup>39</sup> *Cédula*

<sup>40</sup> Art. 26 Reglamento

the Supreme Court adopted the Reglamento in 2002. The Reglamento also regulates the supervision, resignation,<sup>42</sup> suspension,<sup>43</sup> dismissal and impeachment,<sup>44</sup> of facilitators. The “*Oficina de Atención a Facilitadores*” within the Supreme Court has the task to facilitate administrative and logistical issues regarding facilitators. Recently, decentralized administrative units were installed within the Courts of Appeal. These units are responsible for the supply of materials and reimbursement of costs to facilitators.

## 1.8. Funding

The facilitator is not allowed to request any remuneration for his work,<sup>45</sup> but costs (mostly transportation) incurred in relation to his activities as facilitator, are reimbursed. In about 75% of the *municipios* with Facilitators the municipal government has offered to support the Program by paying for these costs. In the other *municipios*, Facilitators are reimbursed through the judiciary (see above). These costs, as well as the costs of materials (including booklets), and of developing new training programs, are recurring. Other costs are those involved with the set up of the Program, such as developing training material, performing a pilot, external technical assistance supervision etc. During both the pilot and the expansion stage of the program, external funding and technical assistance played an important role to cover both recurring and initial development costs. The funds were provided by foreign donors. In the future, with the transformation into a National Service, the recurring costs of the Facilitators are planned to be sustained by the Supreme Court, independently of external funding. In the (near) future, external funding and technical support will still be needed to develop new aspects of the Program, such as the introduction of Facilitators in (sub) urban environments.

## **CHAPTER 2.- OUTPUT, IMPACT AND TESTIMONIES**

Some output statistics will be presented in 2.2, supplemented by experiences of Facilitators and local authorities in order to give a better understanding of the work. Although to date no extensive research has been done regarding the impact of the Program, some preliminary results regarding its broader effects, especially the central question whether the Program improved access to justice for the rural poor in isolated communities, will be discussed in 2.3. Firstly, paragraph 2.1, will try to give insight into who the Facilitators are and what motivates them.

## 2.1. The Facilitators

### 2.1.1. Number of Facilitators and distribution

According to the statistics compiled by the Supreme Court and the OAS, there are currently<sup>46</sup> over 2,200 Facilitators in Nicaragua. This number includes (sub)urban facilitators recently nominated. Facilitators are active in 148 (of the 153) Nicaraguan

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<sup>41</sup> Art. 200 (bis) of the Ley Orgánica del Poder Judicial de la República de Nicaragua, Ley No. 260; published in the Gaceta # 137, dated July 23, 1998, as amended by art. 423 of the Código Procesal Penal de la República de Nicaragua; Ley No. 406, adopted November 13, 2001, published in La Gaceta No. 243 and 244 of 21 and 24 December 2001; See also Art. 57 sub 2 Código Procesal Penal: “La Corte Suprema de Justicia organizará el funcionamiento de los facilitadores judiciales en zonas rurales.”

<sup>42</sup> Art. 14 Reglamento

<sup>43</sup> Artt. 15 and 16

<sup>44</sup> Artt. 17-2

<sup>45</sup> Art. 8 sub 9 Reglamento

<sup>46</sup> Data Base of the Program, September 2010, see <http://www.oepifj.org/nicaragua.html>

*municipios*. The percentage of female Facilitators is 31%. In the Autonomous Regions, there are over 110 indigenous facilitators (of whom the majority are Misquito; about 10% are Mayagna and less than 5 % Creole). As mentioned above, there is no time limit to the position of Facilitator and the turnover is very low. For the *Wihta*, customary law can be different; in some communities the *Wihta* changes every year.

### **2.1.2 Who are these Facilitators and what motivates them? Some testimonies.**

Visits to the sites where facilitators work and interviews with facilitators, give the following impression of the setting. Most rural facilitators in the program are people with little education, living in modest houses in the countryside. Their houses usually have roofs of corrugated iron and earthen floors. The roads in their villages are typically unpaved and get very muddy in the rainy season and dusty when it is dry. Their houses have a drop toilet in a small cabin outside the house and in more remote areas there is no access to electricity. Most do have a radio and several have a television.

The position of Facilitator has attracted people from many different walks of life. The majority are farmers, but there are also carpenters, pastors, housewives, students, teachers, traders, cleaners, mechanics, construction workers and office workers among them. Joining the program has meant a considerable step forward for many. The facts that they were elected and appointed, and receive continuous training, seem to have empowered them, both in their knowledge about law and as a person. They also explain how they are motivated by the increased respect they enjoy within their community: they are the ones who know the authorities in the municipal capital: the judge, the mayor, the prosecutor and the police. And they know the rules. Many cite as a reason for being a facilitator, the opportunity to help others in their community. The following are some portraits of Facilitators obtained during site visits and interviews.

Five years ago, Magdalena was a teenage housewife with two young kids, very low self esteem and little education. She hardly got out of her house in the village, and was mistreated by her husband, both physically and psychologically. When a neighbour stopped by to tell her that the Local Judge from the municipal capital was in their village to oversee the election of a Judicial Facilitator, Magdalena went with her and found that her husband was one of the candidates. Some of her neighbours convinced her to participate as well and she was the one that was elected. She recalls: "At first it was very difficult for me, especially because my husband did not accept that I was elected over him. He treated me cruelly, trying to force me to give up the position. The judge helped me a lot. I have learned a lot through the program and also went back to school. I am now in the last year of secondary school. In the morning I am a teacher for children from the neighbourhood. They come to my house. I hope to study law after I finish my baccalaureate (secondary diploma). I like to be a facilitator because it has helped me a lot personally. And it has also helped my community as now everybody knows much better what is wrong and what is right. When there is a problem they come to me and do not need to travel to the municipal capital. Everyone, including my husband, now respects me and they know I am here to help them and I have the support of the judge and the police. Our community is now a safer place."

Jose is 29 years old. He earns his living by working his plot of land, growing corn, beans, yucca and plantains, and tending his cows. He has 8 maternal siblings and 20 paternal siblings. He lives in the community Nueva Alianza, municipio Kukra Hill in the autonomous region Atlantico Sur. While growing up, he had to move several times to flee for the war. Nine years ago he was elected member of the local council and started to become a community leader. When the Program arrived in his community, he was elected Facilitator and appointed by the Local Judge based in Kukra Hill. He likes to work as a Facilitator: "Because I like to serve my community. Because the people are poor and need my help. Because I was a child that suffered and that made me more receptive (to the problems of the poor). Because I want to contribute to the education of my own people. Being a Facilitator also is a personal investment because it has

improved my knowledge. I see the world differently now, I am more knowledgeable, and I understand and interpret things better.”

Eulalia from Rancho Grande, Matagalpa, was threatened a few years ago: her house was burned down by someone in her community who thought she was taking sides in a conflict. She is, however, determined to continue her work: “If there was no facilitator here, victims would have to go to Matagalpa to file a complaint and many crimes, like violation and stealing of cattle, would remain unpunished. (...) The most significant part of my job is maintaining peace. All the violence that was common before, no longer exists. The people are more peaceful. I also visit the evangelic church. The fact that I am a catholic is of no importance: I teach in both churches and if there was another type (of church) I would go there too. The payment for my work is that violence has diminished considerably in all of Rancho Grande and there is nothing better than living in peace.”

Facilitator Marcia lives in el Quebrachal, a community in the municipio Esquipulas. She is 32 years old, has 6 children and 2 grandchildren. The first grandson was born because her 14 year old daughter was raped. Just three weeks after giving birth, the daughter was violated again and this time also seriously wounded with a machete (a knife). This experience of Marcia’s family is illustrative for the situation that existed in her community. “Before I was elected, I had a passive attitude towards the legal problems as I was completely ignorant about my rights and obligations as a citizen. (...) the work is not easy for me; I am always afraid, especially when I have to help in cases of domestic violence, where the man hits his wife. In the beginning I had many problems with my husband. He did not understand why I should get involved in other people’s problems. When I had to travel to Managua for training he said I was only going there to find another man.” In spite of this she continued and the violence that was commonplace in her community has diminished considerably: “The most important part of my work is maintaining peace, socially, and to assure that all have access to justice, regardless of religion or political colour. The significant pay I receive is that I have learned a lot about the laws of our country – no one can deceive me anymore - ; I am no longer afraid to speak in public, I relate more to other people and I help to maintain peace.”<sup>47</sup>

## 2.2 The output of the Facilitators

In 1.4 above, we distinguished five main tasks of the facilitators. These tasks can be grouped into:

- (i) activities that involve direct interaction with the formal justice system, especially judges (requests and referrals; 2.2.1) and
- (ii) community services (assistance, counselling, legal empowerment and mediations; 2.2.2).

The local judge, who is responsible for each facilitator, documents the different tasks performed by facilitators during the monthly meetings. These data are submitted to the central Facilitators’ Office within the Supreme Court that compiles the accumulated data, with the help of the OAS. The accumulated output data from 2003-2010 for each type of service are shown in table 2<sup>48</sup>. It is probable that these data are incomplete; not everything was filed. Furthermore, it is important to keep in mind that the Facilitators do their work voluntarily, next to their normal work. Hence, on average, the number of cases handled per Facilitator per year is modest. For instance, for mediations the average is less than three annually per (rural) Facilitator. There are indications that the

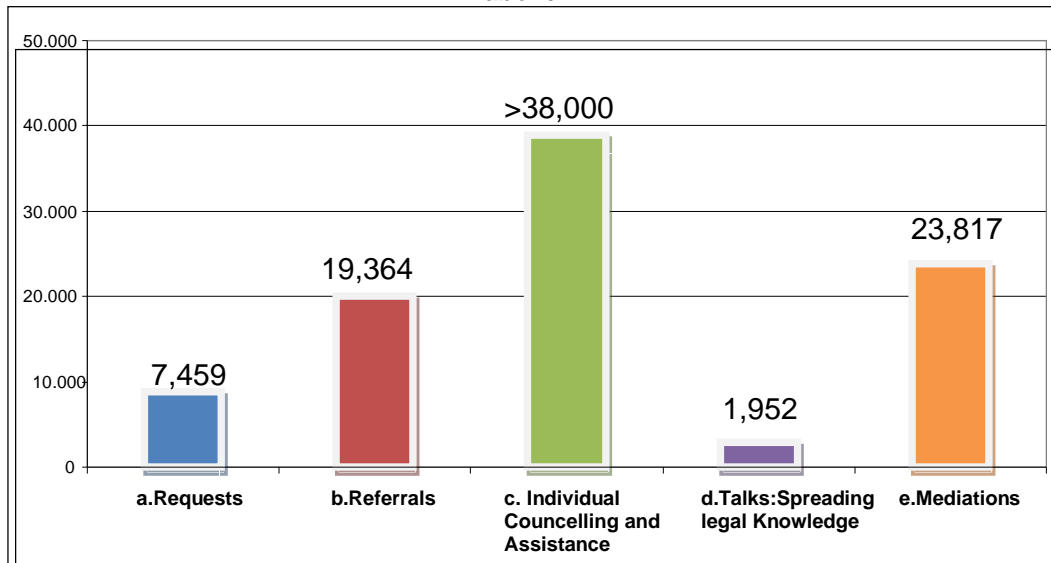
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<sup>47</sup> See <http://www.oecipfj.org/OEA%20libro%5B1%5D.pdf>., Capitulo IV (valoraciones y experiencias de Facilitadores Judiciales) and Capitulo V, Testimonios de vidas (in Spanish). Some names and places were changed to protect the privacy.

<sup>48</sup> Unfortunately no data are available to compare the output data to the formal justice system.

workload of a Facilitator in (sub)urban areas will be quite different; the number of mediations handled by facilitators in those environments will be much higher and handling requests from judges will not play a role.<sup>49</sup>

**Table 1: Services provided by Facilitators**  
 This graph shows the accumulated number of activities realized by all Facilitators from 2003 up to March 2010, divided by category. The categories correspond to those mentioned in 1.4 above.<sup>50</sup>



**2.2.1 Direct interaction with the formal justice system: requests and referrals**

Below is a hypothetical interaction between a judge and facilitators, based on observations and interviews with facilitators and judges.

Facilitator Eulalia from the community El Coyolar has been a facilitator for twelve years. She meets with Local Judge Jorge in the municipal capital La Dalia every month, together with the eight other facilitators from communities within the same municipio. She left her home early in the morning: it takes her about two hours to get to La Dalia by bus. The bus only goes once a day so she always has to spend the night in La Dalia on the days of these meetings. During the four hour meeting of this month, Judge Jorge explains the new environmental law to the Facilitators: it is not allowed to throw trash on the road or in rivers, trees cannot be cut down without permission and leftover pesticides should be disposed properly, especially not in a river.

The judge receives all ‘deeds’ of mediations that were successfully concluded by Facilitators since their last meeting. These will be filed. They also discuss specific problems encountered by Facilitators and, as usual, domestic violence comes up. Facilitators are not allowed to mediate in these kinds of cases: they should always be referred to the judge or the police. Eulalia has had several of these cases; last month she referred a case of her neighbour Esperanza, who had been beaten by her husband and was badly bruised in her face, to the police. She can only refer the case if one of the parties comes to seek her help. Although this is the official policy, Maria, another Facilitator, explains that she usually tries to get the two parties around the table in cases of domestic violence. If she succeeds, she starts out by explaining their rights and obligations to both parties, stressing that both the man and the woman will have to make

<sup>49</sup> An urban facilitator in San Marcos whom I (MK) visited handled hundreds of mediations in her first year.

<sup>50</sup> See database online, also for the most recent data: <http://www.oepifj.org/resultados.html>

For this article the numbers for counselling (‘asesoramiento’) and assistance (‘gestiones’), both to individual beneficiaries, are combined.

changes. If parties agree not to repeat the violence, she lets them sign an agreement and threatens that she will send the case to the judge immediately if it ever happens again.

At the end of the meeting, Judge Jorge requests Eulalia to go to the house of Jose R. B. in her community, to deliver to him personally a summons to appear in court next month. He also asks her help to locate witnesses in an assault case that is pending and asks her help to try to mediate a case of rape.

*a. Requests.* Facilitators handled nearly seven and a half thousand *requests for assistance from* judges, between 2003 and March 2010. Requests from the police and other members of the justice sector to facilitators were not documented.

The majority of requests (55 %) concern 'making appointments', such as the delivering or serving of notifications or summons to members of their community (Table 2). The importance of this work of facilitators should not be underestimated. There are no bailiffs to deliver communications from the judge to citizens, there is no working mail system and travel time to many rural areas is long. The impact of the work of facilitators on the workload of the judiciary will be discussed in 2.3.3 below.

**Table 2: Types of Requests**

TYPE	%
Appointments (including the serving of writs of summons)	54.90
Inspections	11.68
Locating witnesses	8.25
Land measurements	8.50
Investigations	6.25
Others	10.23

*b. Referrals.* During the same period, facilitators referred nearly twenty thousand cases to the authorities. When a facilitator comes across a case that he cannot or is not allowed to handle, he points the party or parties to someone who can. As the facilitator knows the judge, the police and other members of the justice sector personally, and is trained to know which cases go where, he can direct the beneficiary correctly. Facilitators referred 35% of those cases to the judiciary, 23% to the National Police, 3% to prosecutors and 38% to other institutions, such as the local government and the Peace Committees (see footnote 51).

**2.2.2 Activities within the community: counselling, assistance, spreading legal knowledge and mediations.**

Below is a hypothetical description of the interaction of a facilitator with her community, based on real stories.

When Eulalia returns to her community after her meeting with the judge, she will start to explain the new rules about the environment to other people during informal meetings, e.g. at church. At almost every meeting she also discusses the necessity to treat others with respect, also within marriage. For Ileana, a Facilitator from a neighbouring community, it has helped her in her work that she was a victim of domestic violence herself. By learning about her rights she has been able to stand up to her husband and respect herself. This feat did not go unnoticed within her community and she serves as an example to other women.

Eulalia handles the chores assigned to her by the judge; she walks an hour to the house of Jose R. B. to deliver the writ of summons and explains to him what the document means. She talks to people who know about the assault case and manages to locate a witness. However the witness is not prepared to go to court in La Dalia as that would mean losing two working days. So Eulalia asks him to sign a declaration explaining what he saw, and she will hand that to the judge.

Eulalia also walks to the houses of the offender and the victim (a minor) in the rape case and invites them (the minor with her mother) to come to her house the next day for a pre-trial mediation as requested by the judge. She will try to see if the offender is prepared to apologize and to pay damages, and if the victim is prepared to accept the offer. If the parties reach an agreement, she will document this in a deed signed by the parties. The judge will use this document to settle the case.

Magdalena and Jose show up at Eulalia's house. They want to get married and would like to know how to do this. Eulalia explains that they will need to bring their birth certificates and their IDs and go to the judge in La Dalia on a certain day of the week.

*c. Assistance and counselling.* Facilitators assisted citizens in their community with formalities in close to forty thousand cases. In about one quarter of these, about 10,000 cases, the assistance involved accompanying beneficiaries to the relevant authorities, helping them to fill out forms or visiting the authorities on their behalf. Table 3 shows for which authorities the Facilitators provided assistance. The local government is the authority visited most frequently (34%), closely followed by the police (31%).

**Table 3: Assistance to citizens regarding formalities concerning various authorities**

Relevant authority	%
Local Government	34%
Police	31%
Prosecution	12%
Peace Committee <sup>51</sup>	5%
Court	2%
Others	16%
<b>Total</b>	<b>100%</b>

In the remaining close to 30,000 cases, Facilitators provided individual legal counselling to individuals in their community. Topics covered during such counselling include explaining the role of the Facilitator, explaining what felonies and misdemeanours are and how they are classified, domestic violence, family law, property and inheritance law, environmental law, election law, mediation, labour law and human rights.

*d. Spreading of Legal Knowledge.* Facilitators organized or participated in almost 2,000 community sessions in order to *spread legal knowledge* in their community. The topics discussed during these educative sessions include: environmental law, the Facilitators' Program, gender and domestic violence, criminal law, family law, debts, sales, inheritance and property law, family law and human rights. In many communities people became more aware of their rights and obligations through these talks.

*e. Mediation.* In the OAS statistics, mediations were grouped into three types of legal issues, namely land and property (accounting for 57 % of the cases mediated between 2003 and March 2010); issues involving violence (25%) and family issues (18%). The three types of legal issues were sub-divided into specific types of cases; table 4 shows the types of case most frequently mediated by facilitators. The settlement of financial issues is the single most common type of case mediated (21 %), followed by neighbour feuds (10%) and damage to crops caused by cattle (9%).

<sup>51</sup> The "Comisiones de Paz" or Peace Committees were installed in the early nineties in an effort to reach reconciliation within communities; they focused on human rights and community development. They played an important role within the communities and are well respected.

**Table 4 Mediation: Most common types of cases addressed by facilitators<sup>52</sup>**

<b>Break down (main issues):</b>	<b>% of total number of mediations</b>
Financial settlement	21
Neighbour feuds	10
Damage by animals to crops	9
Insults and slander	8
Boundary problems	8
Domestic disputes (incl. domestic violence)	7
Transfer or sale of goods	6
Settlement between spouses	5
Almenéis	3
Others	23
Total	100

The above data do not include so-called mediations *previa* in criminal cases. These are not initiated by the parties, but referred to Facilitators by judges, and were registered separately. Mediations *previa* occur in criminal cases that are already pending in court. Before starting the trial, the judge is obliged to try to settle the case; he can delegate this requisite to certain others, specified in the Criminal Procedure Code (see 1.3 above). Judicial Facilitators are one of those listed. Of the 617 mediations *previa* (concerning a variety of felonies and misdemeanours) registered in the period 2003 – March 2010, 25% concerned minor offences against persons, 20% related to theft or robbery and 12% was about insults and slander.

The following is an example of a case mediated by a Facilitator, as documented in a deed.

Acta (deed) #14, 29 June 2007, an alimony case mediated by facilitator Pablo Antonio Gomez In the comarca La Gateada, municipio Villa Sandino, province Chontales, at 4.40 p.m. on 29-06-06, before me, Pablo Antonio Gomez, legal Facilitator, appeared Ms. R.E.A.G., adult, single, housewife, (ID...), resident of this community, in her position as victim, and Mr. H.J.M.V., adult, single, day labourer, (ID...), resident of this community, accused; and they expressed to me their wish to settle a case concerning failure to pay for two children.

I explained them my position, de advantages of mediation and the rules to be followed.

R.E.A.G explains that she has two children with H.J.M.V, namely C.M. and M.A., and that he does not help to support them. Compensatory settlement: the parties agree voluntarily to resolve the conflict in the following manner:

1. H.M. will help with 400 cordoba (about \$20) every month;
2. In addition he will assist when he can with shoes en clothes for the children;
3. H.M. will not spread false accusations concerning R.E.A.G.

(signed by parties)

In practice, facilitators also monitor the compliance of mediation-agreements. For the payment of alimonies and pensions, facilitators often serve as intermediates; e.g. a man who has to pay alimony for his children, pays the monthly dues to the facilitator, and his former partner collects the money or goods in the facilitator's house. In this way the facilitator can easily monitor compliance. The following is an example of a case where mediation by a facilitator was successful, whereas the formal justice system had not brought a solution for many years.

<sup>52</sup> March 2010 data.



35 years of hostility: a case mediated by facilitator Dionisio in El Coyolito. Forty years ago, BS bought a piece of land that bordered the land of FR on one side. Since 1972 the neighbours have had border conflicts, and that year a judge came for the first time to inspect the situation and ordered FR to pay 1000 cordoba. The problems continued and in 1981 the police came and arrested FR. He was fined 2000 cordoba and his 38 calibre revolver was seized. The problems between the two enemies continued for years and years and when a facilitator was elected in the community, BS realized that the conflicts with his neighbour had cost him at least six months of work and he made an appointment with the local facilitator. By coincidence, on the very same day of the appointment, in November 2004, BS was ordered to come to the police office because FR had denounced him. He went to the police, and the police tried to solve the matter in vain, and then referred the case to the Local Judge. The judge tried to convince them with everything in his power, but did not succeed. He was the fourth judge to look at this case over the years. The judge referred the case to the legal facilitator. Dionisio began his mediation by asking the help of Jesus who is the perfect judge. He treated FR and BS as friends. Where all authorities had failed to reunite the parties during all those years, Dionisio succeeded. By talking and reasoning he managed to convince them to reach a settlement. And after living as enemies over a land conflict for 35 years, on that day they shook each other's hands and they lived in peace for two years, until FR died in 2007.

## 2.3 Impact of the Facilitators

Although more in depth research regarding the impact of the program is needed, and is currently being done, the impact of the program has been studied in several ways in the past. The data presented in this paragraph are based on the following information:

- statistics compiled by the OAS, Supreme Court, lower courts, the police and local governments;
- an impact study commissioned by the OAS in 2007, for which twelve local judges, three prosecutors, ten mayors, one defence lawyer and eight facilitators were interviewed in twelve *municipios* in four provinces;<sup>53</sup>
- testimonies of judicial facilitators and outcomes of question and answer sessions with facilitators from eight communities selected by the OAS;
- testimonies of other stakeholders and beneficiaries;
- research done by several students for their theses.

In the course of 2007, the OAS published two documents that summarize data, collected during 2006 and 2007, regarding the impact of facilitators.<sup>54</sup> These data suggest that the facilitators have (had) a positive effect on several parameters, such as security, crime rates, access to justice and gender rights. These issues will be discussed below.

### 2.3.1 Reduced number of conflicts; improved security

The hypothesis that the Program has reduced the number of conflicts was tested by comparing crime rates of *municipios* before and after the introduction of facilitators. These data show that the number of criminal cases reported to the authorities reduced by at least one third.<sup>55</sup> Can this effect be attributed to the introduction of facilitators? Or is the general crime level in rural Nicaragua dropping? The results of interviews with 36 judges, police officers, prosecutors and local government authorities indicate an effect

<sup>53</sup> See the publication "Hallazgos de Impacto de los Facilitadores Judiciales en Nicaragua" ("Findings regarding the impact of the Judicial Facilitators"), August 2007, <http://www.oepifj.org/Hallazgos.pdf> (in Spanish; hereinafter : "Hallazgos")

<sup>54</sup> See: Hallazgos and "El Impacto del Servicio de los Facilitadores Judiciales", Chapter III of the book 'Los Facilitadores Judiciales en Nicaragua', October 2007, <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>. (also in Spanish)

<sup>55</sup> Hallazgos pg 7-10

of the facilitators: 81% of the interviewed believes that the presence of facilitators has reduced the number of conflicts. Some comments of authorities on this issue:

**Daniel Espinoza, head of the Police in San Rafael del Norte:**

“the work of the judicial facilitator has helped to reduce the number of conflicts and I believe the most important (part of their work) is the legal empowerment by spreading of legal knowledge, because this created the awareness to solve conflicts by dialogue.”

**His colleague from San Pedro de Lovago, Capitan Hector Ugarte, confirms:**

“the index of conflicts has decreased because, in addition to mediating problems, the Facilitator also acts as an advisor which helps to prevent crime.”

**The Local Judge from the same municipality adds:**

“facilitators have reduced the number of conflicts (...) because they solve the problems in their community in different ways, such as by counselling and mediation.”

**According to Local Judge Amparo Luiza Martines from Villa Sandino:**

“the number of conflicts has decreased, due to the continuous talks and advice that the Facilitators give. This has helped, because the people are now more knowledgeable about the laws and they are more careful to act, as they are now aware that they are going to commit a crime and in this way they (the facilitators) avoid that the number of conflicts increases in their communities”

El Almendro, a remote community in the central south of Nicaragua, used to be a dangerous place to live. It was a battlefield in the eighties, and a place of kidnappings, murders, cattle theft and neighbour feuds in the beginning of the 21st century, explains Alfredo Arguello, the mayor of El Almendro. Asked what impact the Program has had on his community he says:

“Thank God, the problems in the community have decreased to almost zero. (..) thanks to the Judicial Facilitators for the support that they have provided to the population in general, especially to farmers (..). The program has been very constructive because it is accepted and well respected by the community. In fact we have an authority in the community (now): when there is a problem, people know that the Facilitator is always prepared to help to solve it.”

**Gustavo Ortega Hernandez, Captain of the Almendro police department, confirms:**

“While mediation is taking place, the case is not (...) a police matter. So, the mediation of the Facilitators avoids expenditures to hire a lawyer and to travel to the city, where the court house and the police station are. They also speak the same language as the people of the community which makes it much easier to solve the problems in the community”

The above comments illustrate that the presence of a facilitator is perceived to have a preventive effect on crime and therewith to improve security in the community. More study is needed, but it seems likely that this is due to a combination of legal empowerment of the community by the facilitators which creates more legal awareness, and the presence in the community of, what is perceived as, an accessible arm of justice, resulting in less impunity. In addition, the fact that some criminal conflicts are mediated by the facilitator in the community probably helped to reduce the official crime rate.

### **2.3.2 Impact on Access to Justice**

Whether people can actually obtain a fair and just solution for their conflicts, is known as the problem of access to justice<sup>56</sup>. In recent years, the importance of access to

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<sup>56</sup> *Barendrecht, Maurits, Understanding the Market for Justice (June 9, 2009). Tilburg University Legal Studies Working Paper No. 009/2009, chapter II A. He also gives an overview of approaches to improving access to justice. The paper is available at SSRN: <http://ssrn.com/abstract=1416841>*

justice for the poor has been recognized by the international community as a condition for socio-economic development. In 2005, the United Nations Development Programme (UNDP) established the Commission on Legal Empowerment of the Poor ([www.undp.org/legalempowerment](http://www.undp.org/legalempowerment)), co-chaired by Madeleine Albright and Hernando de Soto, to promote access to justice of the less fortunate. In its 2008 report “Making the Law work for Everyone”, it stresses the importance to ensure access to protection of basic rights, such as those regarding identity, property, labour and informal enterprises.

There is no generally accepted framework for analysing access to justice<sup>57</sup>, but an assessment method that is currently being developed will be discussed below and applied to the Program. In the past, the hypothesis that the Facilitators’ Program improves access to justice was assessed in two ways. Firstly, in some types of civil cases, such as divorce, alimonies and domestic violence, data of court registries indicated that the number of conflicts increased in communities where Facilitators were introduced. More study is needed to verify this, but it is assumed that this increase does not reflect an increase in the number of conflicts as such, but rather an increase in access to justice. The Local Judge of Santo Tomas, Edmundo Leyva, explains:

“The number of cases in this type of law has increased (...) this does not mean that the number of conflicts has increased, but that people now address the authorities. The impact of the facilitators is measured here: the inhabitants of the communities have been made aware where to go in case of a conflict. Perhaps before, many conflicts remained unpunished due to ignorance of the law or fear of the authorities”

Secondly, the improvement of access to justice was analysed by comparing the number of cases that remained unpunished in *municipios* with and without Facilitators. These data indicate that in *municipios* without Facilitators the impunity is about 50%, whereas in *municipios* with Facilitators this is reduced to about 15%. In *municipios* with Facilitators, a significant number of the cases presented to the authorities before, seems to have shifted to Facilitators<sup>58</sup>. Local judge Carlos Castro Urbina of La Dalia explains:

‘the poorest and least protected part of the population can have improved access to justice. They have direct access, because through the facilitators that are in their communities, they can resolve their problems and put an end to conflicts.’

In the project “*Measuring Access to Justice: The Hague Model of Access to Justice*”, Gramatikov, Barendrecht et al.<sup>59</sup>, developed a method to assess (improved) access to justice by measuring three distinct parts of conflict-solving procedures, namely (i) the costs of procedures, (ii) the quality of procedures and (iii) the quality of outcomes. Although this methodology has not been applied to the Program, we will use the three criteria of this assessment method below, to explore the impact on access to justice of the mediations performed by Facilitators. The mediations offered by the Facilitators are an informal path to justice through a type of ADR (Alternative Dispute Resolutions).

*The costs of procedures*: the mediations provided by facilitators compare favourably to the costs of resolving the same conflict through the formal justice system<sup>60</sup>. In the latter case, costs include transportation (to the authorities in the municipal capital), food

<sup>57</sup> Undp, Commission on Legal Empowerment of the Poor, Making the Law Work for Everyone, Volume II, New York, 2008, Chapter One, “Access to Justice and the Rule of Law”, page 2

(<http://www.undp.org/legalempowerment/report/index.html>)

<sup>58</sup> Hallazgos pgs 10-12

<sup>59</sup> Gramatikov, Martin, Barendrecht, Maurits and Verdonschot, Jin Ho, *Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology* (September 17, 2008). TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 004/2008; Tilburg University Legal Studies Working Paper No. 009/2008. Available at SSRN: <http://ssrn.com/abstract=1269328>; for more recent information see also [www.measuringaccessstojustice.com](http://www.measuringaccessstojustice.com)

<sup>60</sup> Hallazgos, pages 18-20; hypothesis that the facilitators reduce poverty.

(that needs to be bought during the trip), loss of salary due to travel time, in some cases legal fees and fines, apart from intangible costs such as stress and damage to relationships. Facilitators do not charge for their work and they offer their services within their community so transportation and other costs through travelling are negligible. There is generally no loss of salary as the facilitator schedules sessions after working hours. Facilitator Ernesto from El Rotulo explains:

“Before, when there was no facilitator here, the poor people needed to travel to San Carlos, having to pay for transportation, food and lodging on the way. They also had to leave their house unguarded, they lost a day of work and they would often not find anyone who could attend them in San Carlos. Now (with facilitator) they do not need to incur costs to solve their problems; now they can count on a well-trained person within their community who is able to help them with their problems. A while ago I had a case of serious physical injuries. When the parties came to see me, I told them that the case was too serious; it was not within my competence. However, the injured party did not want to spend money and time to go to San Carlos and they preferred me to settle the case. The other party agreed to pay all costs necessary for the recuperation of the injured. The agreement was made in the presence of both sides’ parents.”

The *quality of the procedure* is measured by Gramatikov, Barendrecht et al on the basis of criteria for procedural, interpersonal, informational and restorative aspects of the procedure: neutrality, respect and receiving the opportunity to present one’s case, are very important to users of a procedure. This aspect has not been studied for the facilitators, but in view of the fact that legal procedures in Nicaragua tend to take a long time, the resolution rate is extremely low and confidence in the highly politicized justice system is minimal (see 1.1. above), the quick, user friendly mediation offered by facilitators, where both parties are heard, is likely to compare favourably. As Otoniel Tinoco, mayor of San Dioniso, put it:

‘the poor and unprotected, i.e. the majority of the population, are afraid to address the judiciary or the police; they prefer to solve their conflicts with a leader from their community. In addition, they know that this is much cheaper!’

The third aspect measured by Gramatikov, Barendrecht et al, *the quality of the outcome*, focuses on indicators that highlight the need for a fair, equal, predictable and functional outcome. This was not researched either, however the fact that parties agree voluntarily to resolve their conflict through mediation and sign a deed that sets out the remedy resulting from their mediation, is an indication that the satisfaction with the outcome is positive by those involved. At least theoretically, outcomes can be expected to be fairer because the introduction of the facilitators makes it easier to obtain a neutral decision by a court. The facilitator is not only accessible as a mediator, but can also help with formalities and informing the court of the urgency of the matter. If it is easier to obtain a judgement from the court, settlements will tend to be fairer. Gulnara Torres of the mayor’s office of San Ramon explains:

‘there is a much better connection with the judiciary through the facilitator. Citizen participation is concrete and (the Program) breaks with the myth that only those with a tie can solve problems: it is the rubber boot that solves our problems. Where there is no facilitator, impunity is higher.’

Another indication of improved access to justice is the analysis of the results and costs of the Program performed internally by the Nicaraguan judiciary in July 2006.<sup>61</sup> The Program was rated positively by almost all players, and it was perceived to be a mechanism permitting a better access to justice. The study concluded:

“A good practice of the justice model in Nicaragua is undoubtedly the Facilitators’ Program, with the direct aim of giving access to justice for people living in isolated rural areas of the

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<sup>61</sup> Evaluación del PJFR, ASDI, Managua 2006.

country, who are the most vulnerable because of their extreme poverty, and which set up the concept of citizen participation in the administration of justice”.

### **2.3.3. Impact on the work of the judiciary**

The hypotheses that judges gain time through the Program, that their workload is reduced and that they can work more effectively, were also tested.<sup>62</sup> Interviews with local judges indicate that, on average, 20% of their workload is reduced by the work done for them by facilitators. This work includes counselling members of their community, mediations, as well as the handling of requests and mediations *previa*. The time invested by judges in the program (training, supervision) is outweighed by the hours gained by delegating work to the Facilitators. This means that overall the local judge can work more efficiently and focus on more difficult cases. Judge Walter Frauenberger from San Ramón explains:

‘The time saved by judges due to the counselling provided by facilitators, is significant. The people no longer go to the judge for advice regarding (the requirements for) marriage, divorce, alimonies etc.’

‘Such counselling reduces my workload by 10%’,  
estimates Judge Sandoval from Pantasma.

‘In my case, I asked facilitators to try to settle some cases that were pending in court. Between January and June (2007), they managed to resolve seven cases, which saved me three working days for each case, hence I gained a total of 21 working days’,

explains Judge Martinez from Villa Sandino. According to Judge Membreno from Yali:

‘The facilitators help us primarily in terms of time gained, because instead of attending to people who live in communities with facilitators, I can dedicate my time to pending cases and to difficult cases.’

Extrapolating these data to one hundred local judges (even more Local Judges are assisted by facilitators), would mean that the hours gained by the work of the facilitators, equal the hours of twenty fulltime judges.

Another, unexpected, effect of the introduction of facilitators seems to be that the judges are perceived as more human by the population, and on the other hand, judges feel they have a closer contact with the communities within their *municipio*<sup>63</sup>. Most judges in rural areas come from the cities and rural life is unknown to them. Judge Carlos Urbina of La Dalia:

‘Both sides have profited from the Program: we as judges have learned to be more humane, (...). It has given us judges the opportunity to get to know the reality of daily life in our municipio. The advantage of the Program is that through the Facilitators, we can relate directly with the population.’

The website of the Supreme Court lists the following effects (“*impactos*”) of the Facilitators’ Program on the judiciary:<sup>64</sup> decongestion of the judiciary; reduction of the costs per resolved case; strengthening of the relation between local judges and the community and improvement of the people’s perception of the legal sector.

The Program also seems to have strengthened the relationship between the judiciary and local governments. The *municipios* felt the impact of the presence of Facilitators in their municipality: access to justice has improved, and subsequently, the security and local governability in the *municipio*<sup>65</sup>. This perceived advantage resulted, in October 2007, in the signing of an agreement between the association of *municipios* of Nicaragua (AMUNIC) and the Supreme Court to institutionalize the financial and other

<sup>62</sup> Hallazgos, pages 12-18.

<sup>63</sup> See <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>, pages 198 and 199

<sup>64</sup> <http://www.poderjudicial.gob.ni/facilitadores/index.htm>

<sup>65</sup> See <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>, pages 167-169 and 196-197 (in Spanish)

support that local governments were giving to the Program. The relationship between the judiciary and other branches of the justice sector also seems to have improved through the Program as they are forced to cooperate more to coordinate training of and meetings with the Facilitators.

#### **2.3.4. Impact on Poverty**

As mentioned in 1.1 above, 46% of the Nicaraguan population is considered poor according to international standards. Poverty is understood here in a broad sense, not only involving lack of financial resources, but also the inability to access and effect basic needs and rights.

Various factors, to which the introduction of facilitators contributed, may play a - modest - role in mitigating poverty. The following are the most important: (i) fewer conflicts and less escalation of conflicts resulting in more security and a better economic environment, (ii) reduced costs for beneficiaries who want to solve conflicts, (iii) creation of an accessible, affordable and effective way to resolve conflicts and effect ones rights and (iv) increased efficiency of the judiciary and other branches of the justice sector<sup>66</sup>. By improving access to justice, the Program also contributes to improving the socio-economic situation of the poor.

The president of the Supreme Court, addressing mayors in 2007, pointed out:

“Supporting this service (of Facilitators) is a (good) investment (...) because it generates peace, and where there is peace, there is work, and work generates taxes.”

The mayor of El Almendro, Ulfredo Arana, commenting on the fact that the Program had helped to bring peace to his municipality, explains:

“with the pacification of our municipality, the people started to arrive from San Juan del Norte, from Nueva Guinea and from Acoyapa, and the production of livestock flourished.”

#### **2.3.5. Impact on Gender**

The hypothesis that the Program has improved the position of Nicaraguan women was assessed by interviewing 100 women in five communities with facilitators and a control group of 50 women in two communities without facilitators for a thesis study<sup>67</sup>. The study concluded that the effect of the Program on gender relations is positive, especially when the facilitator is a woman. The majority of women in communities with Facilitators believe that the presence of a facilitator had improved her family relationship (especially that it had reduced domestic violence), and had improved her participation in the community and in her house and her ability to take decisions. This is supported by another thesis study on the impact of the Program on domestic violence. Training facilitators on gender issues, has led to legal empowerment not only of the facilitator, but also to the creation of awareness of gender issues among the community. Facilitator Magdalena's story is illustrative:

“My husband used to abuse me. Through the training I learned what my rights and obligations are and I learned that my husband is not allowed to treat me badly. I have learned to stand up to him. We have a good relationship now because we respect each other more. Other women in my village have seen this and I also explained to them what their rights are and this has helped them too.”

Facilitator Jose explains:

“My life has changed a lot since I became a facilitator. Before I used to hit my wife but at the first training I received from the Local Judge, I understood that this is not in agreement with my position as a facilitator. Now I do not do this anymore. I was always looking for trouble, but now I have to set an example for my community.”

<sup>66</sup> Hallazgos, pgs 18-20 and <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>, pages 199-207

<sup>67</sup> Hallazgos, pgs 21 and 22 and <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>, pages 208-215

Maria, a facilitator in the *municipio* Sebaco, summarizes the empowerment of women in her community as follows:

“Before we, the women, would at best end up with a chicken leg, after we had served the men the whole breast of the chicken in their hammock and after the boys had eaten. Now we know that we are entitled to have half of the chicken breast.”

### **2.3.6. Impact on Indigenous Community**

The mostly indigenous autonomous regions on the Atlantic coast of Nicaragua are still a much neglected, underprivileged and traditional part of the country. Traditional indigenous law prevails for minor cases and the interaction between the formal and the traditional justice systems is not always clear. It is a fact that more than 100 indigenous facilitators are active as part of the Program. Their work differs from that of other facilitators: they do not perform mediations themselves, but rather form a bridge between the judiciary and the traditional indigenous elders or *Wihta*, the traditional administrators of law in the indigenous communities. They help to connect the formal justice system with indigenous, mostly customary, law and ancestral practices. By 2007, the Program had established a relationship with more than 200 *wihtas* of three different ethnical backgrounds, mostly Misquito. These participated in massive seminars and other regional get-togethers of representatives of many different communities and the judiciary. Both parties learned from each other during such meetings<sup>68</sup>.

No specific research has been done regarding the impact of the Program in the indigenous autonomous areas of Nicaragua. However, a Norwegian master student, researched the “Justice administration based on indigenous law in the Misquito community of Karate, North Atlantic Coast of Nicaragua” independently of the OAS in 2008.<sup>69</sup> She came across the Facilitator Program during a workshop:

“In Bilwi, I had the opportunity to participate in a workshop, whereby the Supreme Court of Justice was training *Wihta*’s from ten neighbouring communities in gender, leadership, conflict resolution and basic aspects of the criminal law as part of the capacity building programme. (...) The Rural Judicial Facilitators (RJFs) is a body to the service of the administration of justice (...) The RJFs programme is part of the cooperation agreement between the Supreme Court and the Organisation of American State (OAS) to establish the foundations of a program, which should focus on improving access to justice in rural areas.” (thesis, page 5)

She cites Dr. Rhina Mayorga Paredes, President of the Court of Appeal in the North Atlantic Coast, commenting positively on the capacity building program of the OAS/Supreme Court:

“it is important to work hand in hand (*pana – pana*) and propitiate meetings and forums between Judges, Magistrates and *Wihta* to exchange experiences and knowledge.”

In her conclusions (page 79/80) she comments:

“The possible mechanism through which the Positive System (the formal justice system) can undoubtedly bring about significant improvements to the way justice is delivered by some traditional leaders is by training courses, such as the one offered by the Organisation of American States (OAS). This is done through the Supreme Court of Justice and the establishment of guidelines of coordination between the *Wihta* and the judicial system in Puerto Cabezas.”

This is precisely what the Program aims to do in the region: promote coordination and exchange of knowledge, while respecting both the customary, indigenous, legal system and Nicaragua’s formal laws.

<sup>68</sup> <http://www.oepifj.org/OEA%20libro%5B1%5D.pdf>, pages 216-219

<sup>69</sup> Thesis by Sandra Carolina Rojas, 2008, <http://www.ub.uit.no/munin/bitstream/10037/1544/1/thesis.pdf>



## CHAPTER 3 CONCLUSIONS AND DISCUSSION

Although the statistics are incomplete and additional research is required (and under way),<sup>70</sup> the above data, gathered during the more than ten years Nicaragua is now working with facilitators, support the general perception of officials (the judiciary, the police, local governments) that the various activities performed by facilitators improve access to justice for the rural – and often isolated - poor and has managed to improve the sense of security within communities. The facilitators seem to have managed to form a bridge between the authorities and the community. Facilitators, working on a voluntary basis, seem to provide an informal, accessible and affordable way to resolve issues within their community.

No annual data are available to link the output of the facilitators to the formal justice system, but the data regarding time gained by the judiciary due to the work of the facilitators, suggest that their impact is substantial and helps to decongest the Nicaraguan courts.

Perhaps the best indicator of the success of the Facilitator Program is that during each stage of its development, the Program's goals (in terms of numbers of facilitators to be installed) were well surpassed by the demand that it generated. In fact, the expansion of the program was and is often initiated by local courts and governments (which frequently finance such expansion). At the international level, the Nicaraguan successful experience has inspired the emergence of facilitator programs in Paraguay and Panama, coordinated by the Inter-American Program of Judicial Facilitators of the OAS<sup>71</sup>. The program is starting in Guatemala the end of this year and other Latin American countries have also expressed interest.

The Program seems to have made a difference for many rural poor in isolated communities of Nicaragua. Preliminary results suggest that the most important impacts of the program are:

- Increased access to justice for poor people in isolated communities, due to low cost, quick solutions to conflicts (using Alternative Dispute Resolution methods) and accessibility of facilitators;
- Positive impact on security; decreased number of criminal conflicts.
- Legal empowerment of the community.

The facilitators are generally well-received by their community, by the formal justice system and by local administrative authorities. The costs to sustain the program are rather low, and the judiciary has committed to making the recurring costs part of their annual budget, therewith ensuring sustainability of the judicial facilitators in the long term.

The data obtained from stakeholders, suggest that the objectives of the Program (listed at the end of 1.1., above), namely, to improve access to justice; to contribute to the legal empowerment of the poor, to strengthen prevention mechanisms, to introduce

<sup>70</sup> The Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution, TISCO, is conducting an impact evaluation of (sub) urban facilitators in Nicaragua. The OAS/PIFJ and the Supreme Court continue to collect data.

<sup>71</sup> The OAS Nicaragua is now the head office for the PIFJ: the “*Programa Interamericano de Facilitadores Judiciales*”: <http://www.oepifj.org/>



alternative dispute resolution methods and to improve social stability and harmony, have been addressed in a positive way.

The main strengths of the Program that may have contributed to its success can be summarized as follows:

- The introduction of an informal justice system involving ADR, offering quick, affordable solutions to conflicts;
- Interaction between the informal system and the formal justice system: recognition of outcomes of mediations; appointed by the local judge;
- Institutionalized in Nicaraguan legislation/regulatory basis;
- Facilitators work voluntarily, keeping transaction costs of cases minimal;
- The Program involves all players in the justice sector;
- Facilitators contribute to the humanization of the justice sector by forming a bridge between the authorities and their community;
- Indigenous, customary, law is respected;
- Facilitators are selected by their community and are strongly community based, supported and respected;
- Coached and supported by members of the justice sector at a local level;
- Respected at a national level;
- It promotes civil involvement in solving legal problems;
- It stimulates legal empowerment both of the Facilitator and of his community;
- It interacts with and respects civil society.

The UNDP's Commission on Legal Empowerment of the Poor mentions four strategies to create affordable, inclusive and fair justice for the poor and disadvantaged.<sup>72</sup>

1. *at the client/beneficiary end*: facilitating self-help and education; empowering the poor and disadvantaged to seek remedies for injustice;
2. *regarding the provision of legal services*: development of procedures that are better suited to legal needs and resources of the poor; potential of informal justice system (ADR e.g. mediation through paralegals);
3. *reducing transaction costs*; improving the climate for fair settlements in the shadow of the law by ensuring a credible threat of neutral intervention, bundling claims, introducing standard solutions for claims and
4. *Improving informal and customary dispute resolution*.

The Facilitator Program incorporates elements of all of these strategies and that might explain its success. Judging by the rapid increase of the number of judicial facilitators in both Paraguay (795 installed by August 2010, after the introduction of the first in April 2008) and Panama (326 active in May 2010, after the start of the program there in 2009), and meetings with magistrates from both countries, the facilitators are well received there.<sup>73</sup>

There are also some challenges that should be mentioned.

- Firstly, as the Program is expanding to (sub)urban areas, new types of players involved in legal consulting, including lawyers, will start to appear in the world of the facilitator. There is a risk that the concept of facilitators is misunderstood by some of these players, and they may perceive facilitators as a threat to their personal or corporate interest. This process has to be monitored carefully in order to find a new equilibrium with facilitators in the local legal environment.

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<sup>72</sup> Undp, Commission on Legal Empowerment of the Poor, Making the Law Work for Everyone, Volume II, New York, 2008, Chapter One, "Access to Justice and the Rule of Law", section 3, (<http://www.undp.org/legalempowerment/report/index.html>)

<sup>73</sup> See for Paraguay: <http://www.oecipifj.org/paraguay.html> and for Panama: <http://www.oecipifj.org/panama.html>

- The expansion of the Program beyond the rural areas may also require other adaptations; the developments will have to be followed closely. Settings and social norms in rural areas and in urban areas are different.
- Another challenge is to make sure that facilitators are not pressured to stretch their competences beyond what they really can or should handle as volunteers.
- Various organisations (such as the Church and certain NGOs) would like to profit from the success of the Program by using the name "*Facilitador Judicial*" for their own staff. They are putting pressure on the Supreme Court to let them use the name, but they do not want to comply with the *Reglamento*, nor do they want to do the training or be subject to the instructions of the judiciary. If this would be allowed, this could damage the standards, the recognition and the goodwill of the Program.
- In the field, some facilitators express discontent with the fact that they make costs (for travel) to accompany beneficiaries to court and there is no compensation mechanism for this.
- Once a facilitator is selected, there is no formal mechanism which reconfirms the confidence of the community in his abilities. It is necessary to install a recurring reconfirmation process.
- Lastly, the good relationship between the judiciary and the facilitators, and the acceptance of the facilitators by the formal system, has played an important role in promoting the success and expansion of the Program. This relationship will become even closer with the incorporation of the facilitators into the judiciary as a National Service of Facilitators, by the end of phase three. In view of the problems that the Nicaraguan judiciary faces, there is a risk that these problems will also spread to the (National Service of) facilitators. Especially the fact that a sustainable institutional control mechanism within the higher and middle level of the judiciary is underdeveloped needs attention. The strengthening of this, where is concerns the facilitators, is currently being addressed by the Program. The development of a sustainable Service of Facilitators for the future, involves not only the services rendered by facilitators at a local level and the role of local judges and other local officials. It also requires the development of an efficient and reliable method of administration in the higher and middle instances of the judiciary, including at the level of the Supreme Court, to assure that the facilitators receive their materials, get their travel costs reimbursed and continue to be trained.

Microjustice is an initiative launched in 2007 that promotes the search for low-cost, bottom-up solutions to facilitate access to justice and to legally empower the poor<sup>74</sup>. The Initiative has embraced the *Facilitadores Judiciales* Program as an innovative access to justice program and an example of microjustice<sup>75</sup>. Is the *facilitador judicial* the Microjustice Facilitator it promotes? This would merit a separate article that could include the best practices of the Facilitator Program, as well as a first evaluation of the functioning of (sub) urban facilitators.

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<sup>74</sup> Maurits Barendrecht and Patricia Van Nispen, Microjustice, March 2007. See also: Barendrecht, Maurits, Understanding the Market for Justice; mentioned in footnote 56

<sup>75</sup> See [http://microjustice.net/wiki/Main\\_Page](http://microjustice.net/wiki/Main_Page) and "Learning from innovative A2J programs"