

Implementing Legal Education with Gender and Multicultural Perspectives

By Lelia Mooney Sirotinsky¹

“Domestic violence is one of the major causes for the recent increase in femicides, as well as, the activity of organized crime. Due to the absence of temporary shelters or crisis homes, the affected women and their children, after reporting the abuses, have no other alternative but to return to the place where their aggressor lives.”

“The CIDH representative on women's issues also suggested that the Guatemalan Congress classify sexual harassment and violence as a criminal offense.”

According to the congressional Human Rights Commission, so far this year there have been 349 recorded cases of brutal murder of women. From 2001 to 2004 figures totals 1,188. Cases have been on the rise in rural areas, especially in the departments of Quetzaltenango and San Marcos.

Inter-American Human Rights Commission (CIDH) Special Rapporteur Susana Villaran after concluding her September 2004 visit to Guatemala.

Introduction

Legal reform has been considered one of the most important tools to promoting and fostering development alternatives for developing countries, particularly in the areas of the so-called Reform of the State, Rule of Law, Governance, Financial Sector and International Economic Law among others. However, little consideration has been given to the importance of focusing on the role of the legal education and its influence on the legal profession and the justice system as a whole in responding to the needs to the social contexts they come from and interact with. Maybe, the challenge is not to focus on identifying development alternatives, but exactly the opposite: begin by focusing on what are the alternatives to development as we pursue the road of development promotion in

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so-called developing countries. Then, the law is not merely seen as a tool for development but considered as an instrument for social change. That might be a start.

This executive paper is concerned with legal education for the promotion of gender and multicultural equality. It is based on the experience of devising and then running a program on postgraduate legal education for and with legal professionals (judges, advocates, justice system professionals, law professors) in Guatemala through a development assistance program.

This paper is about telling a story. In doing that, it will first focus on the importance of analyzing the challenges brought by the social context in which a particular development assistance program was to intervene, designed and interact. Secondly, it will move towards describing the strategies developed to respond to the needs, its level of outreach and impact. A third momentum, will place the previous framework under the lens of analyzing some success stories through the lens of guiding principles used as part of the implementation process.

Lastly, some concluding ideas will recapture the most fundamental tensions identified in each one of the pillars discussed above and will set the ground for conclusions. They will place the previous framework under the lens of critical eyes. In doing so, consideration will be given to identifying some lessons learned on the way that could be used for the purposes of discussing issues of integration, sustainability and inclusion.

The Challenges: Understanding the Context

According to the Assessment and Analysis report developed by the Women's Legal Rights Initiative (WLR) released on 2003², Guatemalan women have endured high levels of violence against them in recent years. How authorities respond is indicative of the inattention afforded this problem. Between 2001 and 2004, 1,049 cases of murders of women were reported, said Yakin, Erturk, the United Nations Special Rapporteur on violence against women. Erturk states in her 2004 report to the High Commissioner on Human Rights, that no alternatives are possible to such a critical situation without concrete responses by authorities, proper investigation, prosecution, and survivor compensation.

Issues springing from a lack of understanding of women's legal rights in Guatemala have had broad negative impact on the administration of justice. Not only are the lives of women adversely affected, but social, legal and economic institutions are greatly challenged and diminished. A number of factors converge to create an environment where the absence of gender equality prevails. Key factors include poorly trained justice sector officials and the inability of the legal and judicial system to enforce laws.

² http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/wlr_guatemala.pdf

Nevertheless, there have been improvements to the legal framework in support of women's rights, including: development of a National Policy of Promotion and Development of Guatemalan Women and the Equal Opportunities Plan for 2001-2006; passage of the Law on Domestic Violence; passage of Civil Code amendments that allow a married woman to work outside the home without her husband's permission; and ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. Yet deficiencies remain: lack of compliance with international standards and norms for women's rights, weak implementation and enforcement of law by the justice sector, and a low level of awareness by women and civil society of women's legal rights.

Faced with this situation, there was a need to understanding the challenges that women face while trying to access the justice system. This was the role of the baseline development³ exercise from which WLR would start understanding the problem and giving it a human face through the reality faced by the actors that are tasked with providing access to the system to the citizens (ciudadanas). The findings brought by this study shed new light on conditions in which prosecutors work and what victims face when encountering the system. Sixty percent of staff interviewees found that the Guatemalan criminal procedure law directly contradicted human rights standards in cases where women and indigenous women victims were denied access to justice. Sixty-one percent mentioned that they were not sure whether the indigenous interpreters that collaborate with the Public Ministry had a permanent post with the institution or if they collaborated voluntarily on an as needed basis.

They expressed concern that even when it was very important to provide assistance to an indigenous victim in her own language, they did not necessarily have the interpreters to do so. Also, 44 percent mentioned that they considered it extremely important to listen to the whole victim's story that the indigenous woman engages in while sharing her story. The interviewees noted that person interviewing the victim oftentimes appeared uninterested in listening to the whole story or focused on asking concrete questions to the victim. Clearly these practices indicate general knowledge was lacking in understanding the situation of indigenous women victimized within the home. There was evident confusion as to what procedures should be followed when processing the claim of the victim of a domestic violence attack. One third mentioned that they tend to conciliate the matter between the aggressor and the victim, which runs against what is prescribed by the domestic violence law; the other third focused on following proper procedures established by law.

Another important factor in understanding the context is that Guatemala has no up-to-date, complete or nationally acknowledged academic curriculum on gender and the law that is accessible to civil society, lawyers and justice sector officials. A major weakness in Guatemala is the lack of legal professionals and civil society advocates who fully understand women's legal rights as a result of a undergraduate and graduate legal training with gender and multicultural analysis. This in turn, prevents from having a cadre of

³ See "Guatemala: Women's Legal Rights Initiative of the Women in Development IQC Activity Report: "Implementing the Domestic Violence Law from gender and Multicultural Perspectives," July 2004.

judges, prosecutors, police and policymakers who are knowledgeable about making gender-equitable decisions and interpreting and applying the law with gender and multicultural equity. On the other hand, this situation leads to the need to work together with justice sector officials, civil society advocates and lawyers to teach women's legal rights at law schools, judicial training centers and law enforcement academies, and to strengthen the ability of civil society groups to promote women's legal rights.

The Ability to Respond: Designing the Strategy

From the development assistance point of view, the first step of understanding the context and society needs becomes critical if the ultimate goal is not only to provide technical assistance but to facilitate a process from which local actors can be part of as leaders of the process themselves. Then, the ability to respond to the challenges brought by understanding the social context is driven by the level of involvement that public institutions and private organizations and citizens themselves can and actually do have in the process. Moreover, the levels of appropriation and institutionalization by any national actors of any development assistance-driven activity become the clearest indicator of success. By working with national actors and promote their leadership, then any type of intervention becomes sustained as it is seen as an integral effort (as in the case of Guatemala) to strengthen the justice system through an integrated approach to teaching law with gender and multicultural perspectives.

The postgraduate (or graduate) gender and the law diploma program was designed and implemented to make these issues a priority and to further the understanding of gender and multiculturalism by building strategic partnerships with universities, justice sector institutions and their training academies, government agencies and civil society organizations. In doing so, this program went beyond mere implementation of a series of academic courses and workshops.

WLR fostered a dialogue between prosecutors, judges, civil society leaders and institutions providing access to justice for women who suffer from domestic violence and other types of violence. It challenged its institutional partners and cadre of local academic experts to foster a dialogue among themselves so they could identify their own ways of understanding the problem and the responses they wanted to identify as part of the beginning of a solution. As a result of their participation in the program, the diploma students are now better able to identify the capabilities and the gaps they need to fill in order to respond to the growing needs of Guatemalan society.

The strategy WLR followed to design and implement the diploma in gender and the law was based on six phases:

Phase I began with the signing of a Memorandum of Understanding (MOU) between the University of San Carlos Law School and WLR, which laid the foundation for inter-institutional relationships and terms of cooperation.

Phase II, focused on jointly implementing a recruitment methodology of 50 potential participants through justice sector institutions, government agencies, the university system and women and indigenous women civil society advocates.

Phase III focused on the development together with a cadre of national experts of a curriculum in gender and the law that comprised of three major components: 1-analysis of the legal framework with gender and multicultural perspectives, 2-pedagogy techniques in teaching gender, multiculturalism and the law, and 3-advocacy and awareness campaign design.

Phase IV focused on facilitating a series of discussions between the 50 diploma students with critical actors in the areas of public policy for women and indigenous women, women and access to justice and traditional and non traditional alternative dispute resolution mechanisms. These series of dialogues were developed in cooperation with the Presidential Office on Women's Issues (SEPREM), the Indigenous Women Ombudsman Office (DEMI), the Judicial School and the International Women Judges Association and the University of Landivar's ADR project.

Phase V, and as a requirement for graduation, the diploma students developed their own advocacy and awareness for women's rights programs to be implemented within their own sponsoring institutions.

Phase VI focuses on a monitoring and evaluation of the impact these plans are having within the organizations themselves (for instance, the Justices of the Peace attending the program are participating as trainers of their own colleagues at the Judicial School covering the Human Rights and Gender training components, the indigenous women are developing a public awareness campaign in maya languages together with DEMI and the Public Ministry's training academy is incorporating gender as a component within its continuing education offer to prosecutors).

The Critical Eyes Lens: Success through clear Guiding Principles and Lessons Learned

The program components focus on strengthening the institutional capabilities of government ministries, universities and civil society organizations to improve women's legal rights. In support of this mission statement and in the process of designing and implementing activities, WLR Guatemala is been guided by four key principles that have helped the achievement of success stories. They are as follows:

Support coordination and leverage resources.

WLR conducted a careful review of previous and existing initiatives addressing women's legal rights and paid careful attention to the status of legal education processes (the lack of and why previous efforts failed in their attempts and approaches) addressing these issues. The team has also conducted an internal assessment together with the Public Ministry and partner agencies — Prosecutor for Women's Issues, OAV (National Office for Victim's Assistance), OAP (Office of Permanent Assistance), district prosecutor offices, UNICAP (Public Ministry Training Academy) — on the level of implementation of the domestic violence law with a gender and multicultural perspective as a why of not only understanding the social context but also the challenges it faces for both institutions and citizens. This coordination was critical in that it contributed to strengthening the ties between WLR and the Public Ministry, the Judicial School and the University of San Carlos Law School (USAC). This higher education institution, run for the very first time a postgraduate program in gender and the law for lawyers, justice sector professionals and civil society advocates.

Provide high impact, results-oriented technical assistance that promotes participation and transparency.

The prosecutor trainings, public awareness campaign and the Diploma in Gender and the Law project were designed in consultation with the leadership of the participating agencies and institutions, which provided the baseline and identified the needs for technical assistance and impact. This tactic, though time consuming, ensured transparency from beginning to end. It has also facilitated the opening of doors within public institutions that do not easily discuss internal matters openly and frankly. In turn, discussions contributed to the overall strategy for providing technical assistance for institutional strengthening and improvement of access to justice.

Foster sustainability through strengthening capacity of local partners.

WLR is a short-term effort that has relied heavily on the institutional capabilities of its partner institutions. The activities were successful in developing partnerships through MOU with the Public Ministry and the University of San Carlos Law School. By

becoming involved in the process from the very beginning and by becoming actors in both lessons learned and success stories, both institutions and partner agencies developed a sense of ownership.

Stimulate discussion and action on women's legal rights, diversity and economic empowerment.

WLR has helped change the traditional way of addressing women's legal rights, which has focused only on the law and what needs to change. WLR understood that there were many challenges for the Guatemalan legal system and decided on a new approach to the domestic violence law. This approach brought gender and multicultural perspective to the service that prosecutors as civil servants are obliged to provide to women and indigenous women as citizens; the impact of domestic violence goes beyond the legal spectrum and impacts the socio-economic situation of women, such as the loss of years of productive life for victims.

This process has also brought challenges to implementation. Rather than looking at them as negative inputs and outputs or obstacles to the process, they have been transformed into strengths to provide support to a quite challenging process. They are as follows:

Be prepared for the challenges of working with government. Development assistance programs need to be aware of the way government functions, which leads to different timings and ways of responding to challenges. This also involves changes in administrations and the constant need to have clear and open lines of communication to foster program sustainability and the institution's interest in a program that adds value to the services it provides to citizens.

Listen to the institutional partner's feedback. WLR For these projects to be successful, it remains critical to carefully listen to institutional partners' feedback. This prompts communication and results on better program implementation and success achievements.

Be alert to traditional institutional and societal patterns of understanding women's legal rights. Years of exclusion and discrimination against women, particularly indigenous women, and highly institutionalized patriarchal patterns have prevented Guatemalan institutions and civil servants from engaging in debate on respecting women's legal rights and access to justice. The focus of public and academic debates up until then failed to examine the situation of indigenous women. WLR understood the challenge from the very beginning. Rather than imposing the issue at the institutional level, WLR acted as a catalyst for strengthening the institution. The team found an approach to women's legal rights that included diversity and multiculturalism in the debate on how to work with civil servants.

Reflections: Concluding Remarks

The social context is not an even concept. It is influenced by the different actors and the way these actors have traditionally reacted and acted within the public realm, the *res publica* in front of others. It comes from traditional and cultural patterns and its being constantly influenced by the ways in which each different society operates and how it reacts to external factors. Understanding these social interactions and reactions is critical for development assistance programs to be of any value and for the society in itself, to achieve integration and foster sustainability.

Secondly, the section on the Ability to Respond, constituted a specific narrative of a process that a specific development assistance program undertook based on an analysis of the social context in which it was about to operate. Though successful, it proved to be challenging. Still, the importance of building strategic partnerships remains as the golden rule for programs like this to succeed, achieve institutional integration and remain sustainable.

Thirdly, this experience could not become of any value without a critical analysis of what works and what does not. Indeed, by having clear guiding principles as part of this development intervention, the initiative was able to conduct its own self-evaluation on process development and identify lessons learned that far from being understood as negative trends or impacts were turned into strengths.

The objective of the analysis presented on this brief paper on Implementing Legal Education with Gender and Multicultural perspectives was to walk the reader through the challenges, successes and lessons learned of a development assistance experience based on a developing country and the social context provided by it. However, there are some issues that even though they were briefly mentioned here, are worth of a final remark as a way to foster –hopefully– future and deeper discussions.

On the Law

Somewhere else I argued⁴ the importance to explore a debate on the law and its capabilities as an opposite to see it as an instrumentality. The former offers the opportunity to look beyond a concrete framework of set rules and interactions while fostering social change. Perhaps, the challenge for the law within this complex framework of actors, interactions, interests and rules may be its ability to offer a common

⁴ See Mooney Sirotnsky, Lelia, "On Corporate Citizenship" (June 2004). <http://ssrn.com/abstract=556665>

language while guaranteeing that those core values that respect human dignity are enforced.

On Legal Education

Traditionally- at least in the contexts where I come from and that I am most familiar with- legal education has been conceived as a tool to produce and generate lawyers and justice sector professionals that apply the law considered in its instrumental facet. And that is necessary. We need lawyers and judges that are fully knowledgeable of the law and know how to enforce it, seek justice and guarantee the most fundamental rights. I personally believe that we need to embark on a process that envisions legal education as a critical tool that contributes to the development of a cadre of legal professionals that undertake different roles (judges, professors, advocates) with a clear understanding of the important role they play in society. That is to say, that they are fully aware of the capabilities they have in their hands to promote social change and advocate pro the public interest. The legal profession could tremendously benefit from such approach as it could find a way to properly respond to highly litigious and conflictive societies. Judges could become-as they do in many societies- the leaders in getting societies' confidence back in the Judicial System.

On Development

What does development has to do with this discussion? Legal reform is a tool for development but has to be conceived and implemented having in mind the impact that will create in the societies in which will be enforced. For legal reforms as development tools to succeed, Rule of Law and Governance conditions are a *condictio sine qua non*. In turn, as described above, legal education can set the framework for success stories that promote alternatives to development⁵ when seen as part of a deliberative process that incorporates diversity, change and is alert to the societal needs. Lastly, this is when the role of the legal professional also becomes the role of the development professional. The development professional does not give up on the importance of its instrumental role but is also fully aware of the capability⁶ opportunities that the role brings and acts based on accountable standards and committed towards social change and the improvement of the rules of the game within the public realm.

⁵ Arturo Escobar, "Encountering Development: The Making and Unmaking of the Third World," Princeton Paperbacks, 2000.

⁶ Martha Nusbaum, "*Women and Human Development: The Capabilities Approach*"