The Guatemalan Genocide and the International Commission Against Impunity in Guatemala – Justice at Last?

Sander Wirken - April 2011
University of Amsterdam

Master's thesis: International Public Law
Bachelor's thesis: International Relations

University of Amsterdam Thesis Prize 2011
First Prize

Table of Contents

ABSTRACT **4**

INTRODUCTION **6**

CHAPTER 1 POLITICAL HISTORY OF GUATEMALA **7**

INTRODUCTION 7
PRIOR TO INDEPENDENCE 7
FIRST DECADES OF INDEPENDENCE 8
LIBERAL REVOLUTION 8
CONSERVATIVE RULE 9
OCTOBER REVOLUTION 10
COUNTERREVOLUTION 12
CIVIL WAR 13
THE GUATEMALAN MILITARY PROJECT 13
RETURN TO FORMAL DEMOCRACY AND PEACE NEGOTIATIONS 15
FIRST YEARS OF PEACETIME 17
TWENTY-FIRST CENTURY 19
TOWARDS SEPTEMBER 2011 21

CHAPTER 2 INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA **23**

INTRODUCTION 23
GRUPO CONJUNTO IN EL SALVADOR 24
CICIACS IN GUATEMALA 25
MANO DURA 25
IMPUNITY 27
EVENTS LEADING TO THE CREATION OF CICIG 28
MANDATE 29
a Investigating and co-prosecuting *30*
b Proposing legislative reforms *31*
c Aiding and strengthening Guatemalan state institutions *32*
BOTTOM-UP AND TOP-DOWN 33
NATIONAL AND INTERNATIONAL 34
CICIG'S TEMPORAL JURISDICTION 38

CHAPTER 3 A LEGAL OBLIGATION TO PROSECUTE **40**

CHAPTER 3.1 THE CRIMES **40**

CEH FINDING GENOCIDE 40
Limited mandate *41*
Contrast with REMHI *42*
The factual findings of the CEH *43*
Actus reus *44*
Mens rea *46*
INDIVIDUAL CRIMINAL RESPONSIBILITY 48
ATTRIBUTION OF THE CRIMES TO THE GUATEMALAN STATE 48
REACTION TO THE CEH'S FINDING OF GENOCIDE 48
OTHER CRIMES THAN GENOCIDE 49
CRIMES COMMITTED BY THE GUERILLAS 49
LEGAL VALUE OF THE CEH REPORT 50

CHAPTER 3.2 INTERNATIONAL LAW **52**

GENOCIDE CONVENTION 52

AMERICAN CONVENTION ON HUMAN RIGHTS 52
HUMANITARIAN LAW 53
TORTURE 55
THE CRIME OF ENFORCED DISAPPEARANCE 56
THE OBLIGATION TO PROSECUTE UNDER INTERNATIONAL LAW 57

CHAPTER 3.3 NATIONAL LAW 64
RECEPTION OF INTERNATIONAL LAW IN THE GUATEMALAN LEGAL ORDER 64
NATIONAL RECONCILIATION LAW 65
STATUTORY LIMITATIONS 66
ENFORCED DISAPPEARANCE AS A CONTINUING CRIME 70

CHAPTER 3.4 ACHIEVING JUSTICE 72
UNIVERSAL JURISDICTION: THE CASE BEFORE THE SPANISH COURTS 73
THE INTER-AMERICAN SYSTEM 76
NATIONAL PROCEEDINGS 78
Dos Erres 79
Río Negro 80
Felipe Cusanero Coj 81
El Jute 81
Myrna Mack 82
Bishop Gerardi 83
Bámaca 84
CICIG 85

CONCLUSION 91

LITERATURE 93

INDEX 101

Abstract

In my thesis, I argue that impunity in twenty-first century Guatemala is in part a result of impunity for the genocide that has been carried out against the indigenous population of Guatemala in the early 1980s. In 2007, the United Nations and the Guatemalan government created the International Commission Against Impunity in Guatemala. The Commission exclusively targets recent crime. I argue that the Commission provides a unique opportunity to address the Guatemalan genocide.

Guatemala has a long history of social exclusion and inequality, starting with the Spanish *Conquista*. An attempt at democratic governance following the October Revolution of 1944 came to an end with the CIA-sponsored coup of Castillo Armas in 1954. In 1960, civil war broke out in Guatemala. What had started as an armed conflict between the conservative military state leadership and socialist guerillas gradually turned into an increasingly violent campaign against the Maya civilian population. Under the eighteen-month presidency of Ríos Montt (1982-1983) alone, 75.000 Maya civilians were massacred.

A truth commission with the support of the Guatemalan state and the United Nations (CEH) investigated the crimes of the civil war. In its 1999 report, the CEH identified a total of 42.275 victims by name; the total death toll of the conflict was estimated by the Commission to be around 200.000. The CEH found that the Maya indigenous population accounted for 83% of the victims and that 93% of the atrocities committed during the 36-year civil conflict can be attributed to the armed forces and their allies. Looking at the patterns of massacres, the planning of the atrocities and the specific targeting of Mayas, the Commission concluded that genocide had been committed from 1981 to 1983.

In 1996, the weakened guerilla leadership and the military signed the Guatemalan Peace Accords. Hopes were high that the country would find a more peaceful future after the 36-year civil war. But a downward spiral of violence, corruption and impunity soon muted the optimism. In 2008, the Guatemalan police reported over 6.000 murders. Convictions for murder however are rare – around 98% of murders go unresolved and hence unpunished.

To tackle this state of affairs, the United Nations and the government of Guatemala in 2007 created the International Commission Against Impunity in Guatemala (CICIG, to its Spanish initials). CICIG brings in international elements, most notably funding and independent and qualified staff, but is at the same time to a high degree integrated in the national legal order. From a top-down perspective, CICIG engages in proposing legislative reforms to Guatemalan Congress and in scrutinizing candidates in the nomination process of judges to Guatemala's highest courts. From a bottom-up perspective, CICIG provides for training of Guatemalan prosecutors and investigators and acts as a co-prosecutor in high-profile cases such as the case against former president Portillo.

Upon the signing of the Peace Accords in 1996, a National Reconciliation Law was also enacted. It provided for amnesty for crimes of the civil war, but the crimes of genocide, torture and enforced disappearance were explicitly excluded from the amnesty provisions. The legislative intention appeared to be that low-

ranking perpetrators would reintegrate into society, whereas the masterminds of the genocide that had occurred in the early 1980s would be prosecuted.

Such prosecution is indeed called for, both under international law and under national law. Under international law, the Genocide Convention and the American Convention on Human Rights as well as customary international law oblige the state of Guatemala to effectively investigate and prosecute genocide and other crimes against humanity and war crimes. Also under Guatemalan national law the state is obliged to prosecute. Yet, no effective investigation and prosecution has been carried out to date.

In exercise of universal jurisdiction claims, Spain has issued arrest warrants against Ríos Montt and seven others for genocide and related charges. The Guatemalan courts refuse however to carry them out. The Inter-American Court of Human Rights has repeatedly ordered the state of Guatemala to carry out effective investigation and prosecution for crimes dating back to the civil war era, to no avail. Recently, national proceedings against low-ranking perpetrators of crimes of the civil war era have led to a small number of convictions. The men that were at the top of the military state hierarchy when genocide was committed against the Mayas however remain unpunished.

In fact, the present-day impunity, the eradication of which is CICIG's aim, follows an uninterrupted pattern of impunity in Guatemala, from the crimes committed by Castillo Armas in 1954 through the impunity for the Guatemalan genocide and other atrocities of the civil war to the present day. The rule of force trumps the rule of law when it comes to dealing with Guatemala's atrocious past. For a restoration of trust in the rule of law, effectively investigating and prosecuting the Guatemalan genocide is of major importance.

When acting as a co-prosecutor in high-profile cases, CICIG focuses on recent crimes and has not (yet) addressed the still existent impunity for the Guatemalan genocide. CICIG presents a unique opportunity to finally achieve justice for the Guatemalan genocide, an opportunity that should not be lost.

Introduction

Guatemala, as most Latin-American nations, has had a very violent history. Guatemala stands out among its neighbors however for having had the deadliest internal armed conflict of the region. An estimated 200.000 people died in a conflict that lasted from 1960 to 1996. A UN-backed truth commission found that genocide had taken place from 1979 to 1983.

Guatemala's civil war came to an end in 1996. Hopes were high that the country would evolve into a peaceful, stable democratic society. Those hopes did not materialize. Crime has dramatically increased since 1996, with over 6.000 murders per year on a population of around 13 million. Domestic institutions are extremely weak. Former ministers are frequently arrested for corruption charges. The world was shocked when the current president, Álvaro Colom, was accused of involvement in murder in 2009. Congress, the courts and the Public Prosecutor's Office share in this institutional weakness. The result is near universal impunity. Guatemalan courts deliver less than 200 murder convictions per year on the annual murder rate of 6.000.

To combat this impunity, the state of Guatemala and the United Nations jointly created the International Commission Against Impunity in Guatemala (CICIG). CICIG combines national and international elements. The Commission acts as a co-prosecutor in high-profile cases and proposes legislative and institutional reform to increase the effectiveness of the Guatemalan state. So far, results of CICIG have been mixed. Among the most prominent positive result is the arrest of former president Portillo in January 2010. On the legislative reform agenda of CICIG, results have been less satisfactory however, due to difficulties in the cooperation with Congress.

Although former president Portillo is now being held accountable for his actions, the perpetrators of the genocide and of other crimes in 1979-1983 continue to enjoy impunity. This impunity should be of great concern to Guatemala and to the international community. In this thesis, I argue that CICIG should move forward the cases against the state leadership of the 1979-1983 era and should end the impunity for the Guatemalan genocide.

First, I give an overview of the political history of Guatemala. I do that because I believe that the impunity that Guatemala society faces today flows directly from historical patterns. The UN-backed truth commission argued that to understand the causes of the civil war, you have to understand where Guatemalan society came from when the war started. I share this belief and consider it to be applicable to understanding present-day impunity as well. Second, I shall introduce the phenomenon of the International Commission Against Impunity. I shall explain its creation, its mandate and its results so far. Third, I provide a legal analysis of the internal armed conflict. I analyze the crimes that were committed and the international as well as national legal implications to those crimes. After noting that the efforts to achieve justice so far have not been successful, I argue that CICIG should take up the cases against those bearing most responsibility for the Guatemalan genocide.

Chapter 1 Political history of Guatemala

Introduction

In order to understand twenty-first century Guatemala, understanding of the internal armed conflict that waged in Guatemala from 1960 to 1996 is crucial. And in order to understand the internal armed conflict, understanding of the preceding history of Guatemala is required. In the words of the Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico*, hereinafter: CEH), the United Nations backed truth commission that investigated Guatemala's internal armed conflict, "comprehension of the way in which Guatemalans have constructed their own history [is] the only way to understand and explain the origins and the course of the prolonged armed conflict."[1] [2]

Prior to Independence

Guatemala was the heartland of the pre-Columbian Maya civilization. The Maya civilization had its finest moments in the so-called Classic Period (250-900 AD), when large cities were constructed and long distance trade with other Central-American civilizations flourished. The Maya civilization declined during the 8th and 9th centuries, for reasons historians and archeologists still do not agree upon. During the so-called Post-classic Period, Maya city-states continued to exist with differing levels of success.[3]

All was to change with the arrival of the Spanish *conquistadores*. The Spaniards first fought the Aztecs, another great pre-Colombian civilization located north of the Mayas in present-day central Mexico. The Aztecs had a high degree of central organization and were subjugated by the Spaniards in 1524 when their last stronghold fell. The Mayas lacked a high degree of central organization. Instead, they were organized into a number of independent states,

---

[1] The final CEH-report, published in 1999, is entitled *'Guatemala: Memoria del Silencio'* (Guatemala: Memory of Silence). The full version is available online only in Spanish at http://shr.aaas.org/guatemala/ceh/mds/spanish/toc.html. An English summary is available at http://shr.aaas.org/guatemala/ceh/report/english/toc.html. When referring to the report, I mention the Spanish title if I refer to the full Spanish report and I mention the English title if I refer to the English summary. In referring to paragraph numbers, I refer to the paragraph numbers as in the online versions of the full Spanish report or the English summary.

[2] CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo I, Introdución, para. 11. Own translation; Spanish original: "El objetivo de este capítulo del Informe de la CEH es contribuir a la comprensión de la forma en que los guatemaltecos han construido su propia historia, única vía para entender y explicarse los orígenes y curso del prolongado enfrentamiento armado."

[3] Wilk (1985). For a recent contribution to the debate, see David L. Webster, *The Fall of the Ancient Maya: Solving the Mystery of the Maya Collapse*, London: Thames and Hudson, 2002.

which made the Spanish *conquista* a more difficult task. The last independent state of the Maya civilization fell to the Spaniards in 1697.[4]

Guatemala was not as rich in gold and silver as Peru and Mexico were and was therefore not of major interest to the Spanish rulers. The Captaincy General of Guatemala was composed of the area from present-day Chiapas, Mexico all the way to present-day Costa Rica. The area's rule by the Spaniards was characterized by great inequality and repression of the remaining indigenous population.

In reaction to the events in Europe, where Napoleon's France invaded Portugal in 1807 and Spain in 1808, independence movements in Latin America gained force. Independence from Spain was formally declared by a congress of Central-American *criollos*[5] to be effective on 15 September 1821. That date is still celebrated in Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica as Independence Day.

First decades of Independence

Shortly after gaining independence from Spain, Guatemala was incorporated in the Mexican Empire, which was dissolved two years later. In 1823 the Federal Republic of Central America was formed, comprising Guatemala, Honduras, El Salvador, Nicaragua and Costa-Rica. The project was short-lived however. Liberals focusing on trade and hoping for the Federal Republic to evolve into a modern democratic nation found themselves opposed to conservatives who allied with the Roman Catholic clergy and the landowners. At the same time the elites in the other countries feared domination from the biggest member state, Guatemala. Nicaragua separated from the federation in 1838, quickly followed by Honduras and Costa Rica. The Union effectively ceased to exist in 1840. The idea of Central American union was revived on a number of occasions, however never with much success.

The great winner on the battleground for power in Guatemala was the conservative Rafael Carrera. Backed by the Roman Catholic clergy and the large landowners, he managed to take hold of power in 1839 and to hold on to it until his death in 1865. His rule was highly favorable to the interests of the landowners and the clergymen whose support sustained his power. Two consecutive governments continued Carrera's conservative line after his death, up to what became known as the Liberal Revolution in 1871.

Liberal Revolution

Guatemalan liberal exiles living in Mexico united under the leadership of Miguel García Granados and Justo Rufino Barrios. After the liberal revolutionaries invaded Guatemala from Mexico in 1871 to overthrow the conservative

---

[4] Michael D. Coe, *The Maya* (6th edition, revised), London: Thames and Hudson, 1999

[5] The *criollos* were a social class in the system the Spanish colonial rulers established in Latin America, which comprised the locally born people of pure or mostly Spanish ancestry. They were ranked below the *peninsulares*, the colonists born in Spain, but above all the other classes, including people of mixed or indigenous descent. The racial distinctions applied by the Spanish colonial rulers have maintained relevance in Guatemalan society up till the present day.

government of Vicente Cerna Sandoval, Granados became the provisional president. Elections were organized in 1873, won by Barrios. Among the policies implemented by Granados and Barrios were the proclamation of the freedom of press and of freedom of religion, the abolishing of the *diezmo*[6] and of other privileges of the Church, and the introduction of free public education. These liberal privileges were limited to the non-indigenous urban population however and did not extend into the indigenous countryside. Barrios was a fierce proponent of Central American union. He found an ally in Honduran president Luis Bográn, but the governments of El Salvador, Nicaragua and Costa Rica opposed the idea of unification. Barrios and Bográn tried to impose unification by force. Guatemalan troops led by Barrios invaded El Salvador in 1885. Justo Rufino Barrios died in combat in March 1885. The day of the 1871 invasion is still celebrated as the *Día de la Revolución Liberal* in Guatemala every June 30.

A period of political instability followed in Guatemala upon Barrios' death. After the four-day presidency of Alejandro Sinibaldi, Manuel Lisandro Barillas Bercián took hold of power. He dissolved Congress and he survived many attempted coups d'état. In 1892, he ceded power to José María Reina Barrios, a moderate liberal who had won the presidential election. The latter was assassinated while still in power in 1898. His minister of Justice, Manuel Estrada Cabrera, took over power.

Conservative rule

Estrada Cabrera's rule turned out to be that of a typical conservative *caudillo*.[7] He managed to rule from 1898 until 1920. The infamous United Fruit Company, founded in 1899, found a willing ally in Cabrera. It was under Cabrera's rule that United Fruit Company became the major economic actor in Guatemala, owning the country's telegraph lines, railroads, major ports and becoming the country's largest landowner.[8] The presidents of Guatemala that were to succeed Cabrera continued the policies favoring the interests of the United Fruit Company. Social policies in the meantime were non-existent as were labor rights. In fact, the liberals had already reinstated the colonial instrument of the *mandamiento*. The *mandamiento* required each municipality to provide a certain number of workers for a certain amount of time at an administratively determined wage. A system under the name of *peonaje*, a form of debt servitude, was also enacted. Landowners would provide a cash advance, or *habitilación*, to workers. Until the debt was paid off through the provision of labor, peons were not free to leave the employer's property. When land was sold, the debts of the peons working the land was usually sold with it, and indebtedness, along with the obligation to provide labor, was inheritable. Needless to say, *mandamiento* and *peonaje* mainly affected the indigenous population.[9]

---

[6] The *diezmo* (tithe) was the ten percent of all production to be given to the Roman Catholic Church.

[7] *Caudillo* is a hard to translate Spanish word for a political-military leader at the head of an authoritarian power structure, who is charismatic and populist.

[8] Schlesinger and Kinzer (1999), pp. 70-71

[9] As a matter of fact, a labor law from 1894 explicitly exempted from forced labor schemes, amongst others, 'Indians who know how to read and write and are abandoning their traditional dress.' Quoted in Schweigert (2004), p. 536

The presidency of Jorge Ubico (1931-1944) was perhaps the most authoritarian and repressive seen so far. It gave rise to great popular unrest. Guatemala's politics hitherto had been a primarily elite affair. Guatemala's independence movement of 1821 was led by the *criollo* elites to further *criollo* interests more than to advance the interests of the Guatemalan people. The liberal invading liberation army of 1871 was composed of exiles living in Mexico and was far from a popular movement. Times were changing however. The small middle-class that had emerged was discontent with the semi-feudal export-oriented agricultural economic order in Guatemala and with the lack of domestic economic opportunities. The popular class and progressive elements of the elites in the meantime were upset over the increased repression exercised by the Ubico regime. Big popular demonstrations were held in Guatemala City to express discontent with Ubico's government in 1944. In June 1944, mass demonstrations were violently repressed; the death of a young teacher called María Chinchilla on June 25, 1944, as a result of the violence unleashed by the army upon the demonstrators, turned into a symbol of the struggle between the people and the dictator.[10] In July 1944, Ubico decided to resign, after more than twelve years of repressive authoritarian rule. He was succeeded by Federico Ponce, who turned out to be at least as repression-minded as Ubico. His rule lasted until October 1944.

October Revolution

A broad group composed of dissident army officers, students and intellectuals, united by their opposition to Ubico's and Ponce's repressive rule, encouraged the popular demonstrations. On October 20, 1944, Ponce was forced to resign in what became known as the October Revolution. A triumvirate composed of Jorge Toriello, Jacobo Arbenz Guzmán and Francisco Javier Arana took provisional power. It was to be the start of what would later be called Guatemala's political spring. A new Constitution was enacted, considered by many commentators of the era one of the most progressive constitutions of Latin America.[11] The Constitution provided for non-renewable terms of five years for the presidency. None of the triumvirate-members ran in the 1945 election, in accordance with the constitutional bar on the renewability of the presidential mandate. The 1945 election was won by Juan José Arévalo, a philosophy teacher who returned from his exile in Argentina. The 1950 election was won by Jacobo Arbenz Guzmán, a former army captain. It was in fact the first time in Guatemalan history that presidential power was ceded from one person to the other on schedule and in a peaceful manner.[12]

Arévalo was an intellectual, who published about political philosophy both prior to and after the October revolution. According to him, classical Western liberalism would not work for Guatemala, nor would classical Marxism. Some form of statist progressive leadership was needed in the eyes of Arévalo, who never supported the confiscation of private property but rather believed that some state-led reform of the capitalist system would make production more

[10] Schlesinger and Kinzer (1999), p. 27
[11] Immerman (1982), p. 49
[12] Immerman (1982), p. 61

beneficial to the population and would improve the situation of the working majority.[13]

In 1947 Arévalo passed a new Labor Code, calling for compulsory labor-management contracts, requiring collective bargaining in good faith and establishing a system of labor courts. Furthermore, it expressly acknowledged the right for laborers to organize and it established the principle of minimum salaries and the principle of equal pay for equal work. The United States ambassador to Guatemala at the time, Edwin Jackson Kyle Jr., said that the Labor Code "provided for the moral and economic improvement of the workers of Guatemala and definitely had not been aimed against the foreign interests in the country."[14]

The era was marked by great political freedom: political parties, labor unions and media of many different political denominations flourished, especially in the cities. On the countryside however, the great breakthrough in the circumstances for the rural poor did not materialize under Arévalo. This led his democratically elected successor, Arbenz, to make agrarian reform his prime concern.

The position of the United Fruit Company (UFC) had gradually expanded over the preceding decades, with UFC owning around 40% of Guatemala's fertile soil, Guatemala's main port and all of Guatemala's railroads and telegraph lines. A lot of UFC's land was unused while the great majority of the rural poor were landless. In order to change this Arbenz entered into negotiations with UFC. Arbenz's idea was not to confiscate the property of UFC but rather to compensate UFC for any unused land that would come to belong to individual peasants. UFC had put its stakes on another course of action however, namely pressuring the United States government into a military overthrow of the Arbenz administration. Hence, it refused to enter into negotiations with the Arbenz administration about compensation for land reform. Eventually, Arbenz unilaterally expropriated UFC of some of its vast amounts of unused lands, famously offering UFC the land value the company had reported to Guatemalan tax authorities as compensation.[15]

Arbenz was just as his predecessor Arévalo explicit in his denouncing of communism. In his inaugural speech, Arbenz explained that the basic policy of his administration would be "to convert Guatemala from a country bound by a predominantly feudal economy into a modern, capitalist one."[16] The Eisenhower administration seemed not to be convinced however. The era was not one of nuanced thought about communism.[17] Coupled with the fierce anti-communism

---

[13] Arévalo (1945)

[14] Quoted in Immerman (1982), p. 54

[15] Schlesinger and Kinzer (1999), p. 76

[16] Quoted in Immerman (1982), p. 63

[17] As Secretary of State John Foster Dulles put it when speaking to representatives of the American republics in March 1954, communism was considered to be "not a theory, not a doctrine, but an aggressive, tough, political force, backed by great resources and serving the most ruthless empire of modern times" by the American government. John Foster Dulles, 'Statement Introducing U.S. Draft Resolution on Communist Intervention,' 8 March 1954, United States Department of State, *Tenth Inter-American Conference: Report of the Delegation of the United States of America with Related Documents*, p. 52, quoted in Immerman (1982), p. 10

in the United States administration was the belief that interventionism was both desirable and feasible. The overthrow of Mossadeq in Iran by the CIA in August 1953 had proven that the overthrow of an 'unfriendly' regime by covert military action was possible. In what is now known as one of the most harming displays of American Cold War interventionism, the Arbenz administration was overthrown by a CIA-sponsored counterrevolution formally led by former Guatemalan colonel Castillo Armas in June 1954. A long period of military rule would follow.

Counterrevolution

Castillo Armas was a colonel in the Guatemalan army and participated in the 1944 October revolution on the side of the revolutionaries. He was a supporter of Colonel Arana, a strongman of the revolution who had more conservative tendencies than his political opponents Arévalo and Arbenz. Arana was assassinated in 1949 under circumstances that remain unclear until today.[18] In the turmoil that followed upon Arana's death, the *aranistas* did not succeed in toppling the Arévalo administration. Castillo Armas retired from the military and moved to Honduras. There he became the leader of the community of exiles from Guatemala opposing the Guatemalan government. He was the leader of an unarmed group of some 200 exiles when in 1953 the CIA found in his person the ideal Guatemalan leader for a coup. The CIA armed and trained Castillo Armas' band and provided it with air support and radio broadcasting equipment. In 1954, Castillo Armas invaded Guatemala with a force of about 480 armed men. He was seriously outnumbered by the Guatemalan army that had an estimated 5000 soldiers.[19] Yet, thanks to the intimidating effects of the air support and the successful radio propaganda campaign the Guatemalan army deserted only six days after the invasion. Arbenz fled to Mexico and Castillo Armas assumed power.

Castillo Armas returned to the *caudillo* style of government, yet his reign proved unstable. Within the first weeks after the resignation of Arbenz, Castillo Armas joined forces with the remnants of the Ubico regime, banned 'subversive' literature, disenfranchised illiterates (about two-thirds of the electorate), outlawed all political parties, labor federations and peasant organizations, and finally decreed a 'political statute' that put aside the 1945 constitution and gave Castillo Armas complete executive and legislative authority.[20] Guatemala got into economic difficulties as Castillo Armas counted on extensive United States backing of his expenses whereas the United States government counted on fiscal responsibility of the new regime. As accusations of corruption and the fierceness of the economic problems grew, so did the opposition against the new regime. In 1957, Castillo Armas was assassinated under circumstances that remain unclear until today.

A period of political instability followed upon the assassination of Castillo Armas. After a number of interim presidents and military junta rule, general Miguel Ydígoras Fuentes was able to seize power in 1958. A former member of the Ubico administration and runner-up in the 1950 election, Ydígoras Fuentes

---

[18] See Gleijeses (1990) for an overview of possible explanations to Arana's murder
[19] Cullather (1999), p. 87
[20] Schlesinger and Kinzer (1999), p. 221

managed to hold on to power until 1963. His rule was very autocratic and repressive. In 1960, a group of young military officers tried to oust Ydígoras Fuentes from power. They did not succeed in overthrowing him. Those rebellious officers that were not arrested fled into the mountains and, inspired by the success of the Cuban communist revolution in January 1959, they became the first insurgency combatants. The civil war had started.

Civil war

The Guatemalan civil war was fought in the context of the Cold War. The insurgents established ties with Cuba and the Soviet Union, whereas the military regime received considerable economic and military assistance from the United States. It was under the rule of Ydígoras Fuentes that the Bay of Pigs invasion of Cuba was allowed to be mounted from Guatemalan soil in 1961. Ydígoras Fuentes was ousted from power in 1963 in a coup d'état that left Enrique Peralta Azurdia in power. The latter organized elections in 1966 that he lost to Julio César Méndez Montenegro.

Under Montenegro the army waged a fierce campaign against the insurgents, almost annihilating them. The campaign against the insurgents was waged with a high degree of violence, resulting in the deaths of thousands of peasants. Guatemala became "the first country where 'disappeared' came to be used to describe the political condition of being kidnapped by government death squads, tortured to death, and buried in a clandestine grave."[21] In 1970, colonel Carlos Manuel Arana Osorio won the presidential election. The first insurgency movement was more or less beaten in combat by the army under Montenegro, but in 1972 the insurgency movement gained renewed force. In 1974, general Kjell Lauguerud García won the election. In 1978, general Romeo Lucas García assumed the presidency. It was under Lucas García's rule that the civil war would evolve into a war of terror against the population.

The Guatemalan military project[22]

The Guatemalan army had been in power since the 1954 counterrevolution. The armed insurgency had been launched in 1960, but was left almost annihilated in combat by 1970. However, the Cold War in Latin America was far from over. 1973 saw the toppling of Salvador Allende in Chile by Augusto Pinochet. The fight of the Sandinistas in Nicaragua against the Somoza rule became particularly forceful after the 1972 earthquake devastating Managua, and the Sandinistas succeeded to take power in 1979. In Guatemala, the guerilla movement united under the URNG (*Unidad Revolucionaria Nacional Guatemalteca*) command structure and regained force during the 1970s, aided by Cuban and Soviet Union support and inspired by the ongoing poverty in and neglect of the countryside.

The military developed ever more repressive views on how to beat the guerillas. Under Lucas García, the army discourse was based on a violent and

---

[21] Sanford (2003), p. 61

[22] This term is taken from Jennifer Schirmer's book "The Guatemalan Military Project," on which I draw considerably for the description of the Guatemalan military state in the 1970s and 1980s

primitive anti-communism.[23] The communist guerilla was perceived to form an imminent threat to the Guatemalan military state. In order to confront that threat, the attack was believed to be the best defense. Already in the campaign of the 1960s, terror was unleashed upon Guatemala's rural population. But terror came to take on a form and scale never seen before in Guatemala.

In 1978, the Guatemalan army began a selective campaign of political disappearances and assassinations in Guatemala City and other urban centers.[24] When General Ríos Montt took over power in a coup in 1982, the selective campaign in the cities turned into an unselective Scorched Earth campaign in the countryside. Maya ethnicity was equated with communist guerilla activity, and a campaign of indiscriminate massacre in Maya villages started in 1981. The UN-sponsored Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico*, or CEH) would later find that campaign to have been a campaign of genocide.[25] In total 667 massacres that occurred in 1981-1982 were described by the CEH-report.

After a massacre had occurred in a village, typically the village and its surrounding crop fields would be burnt down and the survivors forced to flee into the mountains. The army attacked the groups of survivors in the mountains both through land and air force. Many survivors of massacres were subsequently killed in the mountains. When survivors were captured or surrendered they were placed in so-called model villages. In those model villages, life was completely controlled by the military. Villagers were forced to participate in Civil Defense Patrols (*Patrullas de Autodefensa Civil*, or PACs). PACs had existed since the 1960s but immensely increased in enrollment after 1981. In 1982, around one out of every two Guatemalan adult men was a patroller.[26] Typically every seven days villagers were forced to patrol for twenty-four hours. PACs were frequently involved in massacring neighboring villages under the leadership of the military.[27]

By 1983, the majority of massacre survivors had fled the harsh conditions in the mountains in exchange for food under the army's '*Fusiles y Frijoles*' ('Bullets and Beans') campaign.[28] Large parts of the Guatemalan countryside had been completely reshaped through the relocation of survivors of the violence in model villages and their subsequent enrollment into PACs. The guerilla forces had ceased to be an actual military threat to the state, if they had ever posed one. The terror would not stop entirely however. Christian Tomuschat, an international law and human rights expert who would later be in charge of the CEH, was witness to an aerial attack on a Maya village as late as 1991.[29]

---

[23] Schirmer (1998), p. 110
[24] Sanford (2003), p. 121
[25] CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 3, *Genocidio*, paras. 849-1257; *Guatemala: Memory of Silence*, Conlusions, paras. 108-123. See below, chapter 3.1, for an analysis of the CEH's finding of genocide.
[26] CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 1, *Las Patrullas de Autodefensa Civil*, para. 607
[27] For a compelling historical analysis of the PACs, see CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 1, *Las Patrullas de Autodefensa Civil*, paras. 492-635.
[28] Sanford (2003), p. 133
[29] Sanford (2003), p. 177

Ríos Montt had seized power by military coup in 1982. In 1983, his own Minister of Defense, General Oscar Mejía Victores, orchestrated yet another coup, in which Ríos Montt was replaced. Ríos Montt's presidency had lasted sixteen months. In that short period, 75.000 people died as a result of the army violence, making Ríos Montt's presidency of Guatemala relative to its duration one of the deadliest presidencies the world has ever seen.

Parallel to the increasingly repressive views of the military was the process of the taking over of the state by the military. Jennifer Schirmer explains that "the army moved from being a determinant presence within the civilian state structure to assuming control of the State itself" by 1963.[30] This process of taking over the state resumed throughout the 1970s and 1980s. "By the 1980s, [the] economic institutionalization of the army had become so fused with the state that members of military intelligence "sometimes receive their paychecks from the government agencies responsible for electric power or tourism.""[31]

Return to formal democracy and peace negotiations

It was in this context of militarization that Minister of Defense Mejía Victores toppled president general Ríos Montt in the 1983 coup. Under Mejía Victores, a return to democracy was initiated. The devastation of the entire country by the war and the international isolation had taken their toll on the Guatemalan state leadership. In 1985 a new Constitution took effect and in 1986 a presidential election was held. Vinicio Cerezo won the 1986 election to become the first civilian president of Guatemala since the 1954 coup. The civilian presidency was very limited in its powers however by the military. The Minister of Defense remained a military man and members of the military held key positions in all realms of government. Cerezo turned out to be a docile leader, unable to provoke fundamental change in Guatemala.[32] Surviving various coup attempts, Cerezo managed to serve his full four-year term in the presidency.

Jorge Serrano Elías won the 1990 election. Serrano proved to be an autocratic leader. Apparently inspired by the example set by Peru's president Fujimori a year earlier, he staged an 'auto-coup'[33] on May 25, 1993, dissolving Congress and the Supreme Court and assuming absolute control. He had overestimated his influence however, and upon a dictamen of unconstitutionality of the president's actions by the Constitutional Court, Serrano was forced to flee to Panama on June 1, 1993.

The military candidate for the presidency, Espina Salguero, assumed the presidency on June 1, 1993. Congress voted against his candidacy however and he resigned on June 5, 1993, to be succeeded by then Human Rights Ombudsman and army critic Ramiro de León Carpio. De Léon Carpio intensified peace negotiations with the guerilla and signed the Comprehensive Agreement on

---

[30] Schirmer (1998), p. 17

[31] Schirmer (1998), p. 19; quoting an anonymous military intelligence officer

[32] Schirmer (1998), p. 202-203

[33] An auto-coup or self-coup is a form of coup d'état executed by a country's legitimate leader, in this case president Serrano, assuming extraordinary powers to the detriment of the country's legislature and/or judiciary.

Human Rights in 1994,[34] which among other things provided for the dissolving of the PACs. New elections were held on the date envisioned as the end of Serrano's term. In January 1996, Álvaro Arzú assumed the presidency. One of the central points of his campaign was that he would sign a peace accord with the guerilla and would end the internal conflict. He gave an enormous impetus to the peace process that had begun in 1990 by personally meeting the guerilla leadership in Mexico in February 1996. A series of negotiations and accords followed. The final Accord for a Firm and Lasting Peace was signed on December 29, 1996.[35] The United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), described the commitment of the peace agreements as follows:

> "The peace agreements committed the Government and the guerrillas to a comprehensive set of measures to address the underlying causes of the war: decades of authoritarian government, repression of potential political opposition, and the political and economic exclusion, discrimination and extreme poverty suffered by the indigenous populations. The first step involved disarming and reintegrating the guerrillas; restructuring and redeploying the armed forces for peacetime; disbanding the military commissioners and the PACs dominating rural indigenous areas; dissolving the clandestine groups set up by military intelligence during the war; and ending the State's decades-long policy and practice of repression as a means of social and political control. The second step required a fundamental restructuring of the State's security and justice sector institutions: the creation of a new national civilian police force; modernization and reform of the judiciary and the Public Prosecutor's Office; establishment of a public defender's programme; an overhaul of the prison system; economic development and victim compensation directed to the indigenous communities hardest hit by the conflict; and the promotion of national reconciliation. In addition, the Government committed itself to protect human rights defenders and adopt the security, legal and constitutional measures necessary for full enjoyment and protection of human rights."[36]

Two days prior to the signing of The Accord for a Firm and Lasting Peace, as a product of the same negotiations, Congress passed the National Reconciliation Law.[37] The National Reconciliation Law provided for amnesty for political crimes

---

[34] *Acuerdo Global Sobre Derechos Humanos,* March 29, 1994. For an overview of all Accords concluded in the negotiations between the Guatemalan government and the URNG, including the Comprehensive Agreement on Human Rights, see http://www.congreso.gob.gt/gt/acuerdos_de_paz.asp

[35] *Acuerdo de paz firme y duradera*, December 29, 1996

[36] MINUGUA, 14th Report on Human Rights, November 10, 2003, General Assembly A/58/566

[37] *Ley de Reconciliación Nacional*, Decreto No. 145-1996, December 27, 1996. For the legal significance of the National Reconciliation Law, see below, under 3.3 'National law'.

committed in the context of the internal armed conflict, with the explicit exception of the crimes of genocide, torture and enforced disappearance.[38]

First years of peacetime

Hopes were high for Guatemala at the beginning of 1997. A conflict that had started in 1960 and had cost the lives of an estimated 200.000 people had finally come to an end. The power and influence of the military, that had determined Guatemalan politics since Castillo Armas had taken power by military coup in 1954, was heavily restricted under the terms of the Peace Accords. Two truth telling projects were carried out: the official UN-backed project of the CEH and the Catholic Church's REMHI project, led by bishop Juan José Gerardi. The final REMHI-report *Guatemala: Nunca Más* ('Guatemala: Never Again') was presented on April 24, 1998. The report estimated that 200.000 people had died during the armed conflict and that the army was to be blamed for 87% of the atrocities and called various perpetrators by name.[39] On April 26, 1998, bishop Gerardi was brutally murdered in the bishopric, only two blocks away from the Presidential Palace. The murder shocked the national public and the international community alike. President Arzú quickly declared that it was a case of common crime and not political crime. The investigations into the circumstances of Gerardi's murder have been shockingly inadequate.[40]

The constitutional reforms related to the implementation of the Peace Accords were defeated in a 1999 referendum. Among the measures defeated was the recognition of Guatemala's multiethnic and multicultural national identity. The recommendations included in the Peace Accords and those formulated by the CEH were far from completely implemented by the state of Guatemala. Moreover, the end of the formal internal conflict between army and guerillas was followed by a steep increase of common crime. According to MINUGUA, "[t]he number of violent deaths since the end of the conflict increased from 3,200 in 1995 to 3,999 in 1997, declined to 2,655 in 1999, and then shot up again to 3,600 in 2002."[41]

Alfonso Portillo, who was runner-up in the 1996 election won by Arzú, ran again in 2000. He was the candidate of the FRG, the political party founded by Efraín Ríos Montt. Ríos Montt himself was barred from running for office on the ground that the constitution forbids people that have participated in coups to run.[42] Portillo rallied on an agenda that promoted fierce government action

---

[38] *Ley de Reconciliación Nacional*, Article 8

[39] ODHAG (Oficina de Derechos Humanos del Arzobispado de Guatemala), *Guatemala: Nunca Más. Informe del Proyecto Interdiocesano de Recuperacíon de la Memoria Histórica*, 4 vols., ODHAG 1998. The complete four-volume report in Spanish can be acquired at www.odhag.org.gt.

[40] For a compelling description of the failing investigation into the murder of Gerardi, see Fransico Goldman's 'Who Killed the Bishop - The Art of Political Murder'. For a short description of the national proceedings into the Gerardi murder, see below, under 3.4 'Achieving justice,' 'National proceedings'.

[41] MINUGUA, 14th Report on Human Rights, November 10, 2003, General Assembly A/58/566

[42] *Constitución Política de la República de Guatemala* (1985), Article 186(a), which reads: "No podrán optar al cargo de Presidente o Vicepresidente de la Républica: (a) El caudillo

against delinquency and cynically portrayed himself as the candidate that would protect the Maya peasant population against the white elites in Guatemala City. His *mano dura*[43] image was reinforced when he admitted to having shot two students in Mexico while he was a teacher at the University of Chilpancingo in 1982, declaredly in self-defense.[44] He won the second round against Óscar Berger in December 1999 with 68% of the votes.[45]

When Portillo assumed the presidency in January 2000, he defined an ambitious reform agenda.[46] Later that year, he declared that the governments of the previous two decades had been involved in human rights abuses and endorsed the findings of the REMHI- and CEH-reports. He seemed to show some willingness in bringing down the influence of the armed forces and improving Guatemala's human rights situation.[47] He soon found himself overwhelmed by the reality of corruption and crime however. Moreover, Portillo was in a constant battle for power with the founder of his party and acting President of Congress, Efraín Ríos Montt.[48] Portillo's government became to be corrupt on an unprecedented scale. Large sums of money, allegedly totaling around one billion US dollars,[49] were taken from the state budget and channeled to bank accounts in Panama, Mexico and the United States. When his immunity as a member of the Central-American Parliament was revoked on 19 February 2004, he immediately fled to Mexico.[50] He was extradited to Guatemala in 2008, but soon thereafter he was released on bail. On January 26, 2010, one day after the United States unsealed an indictment against Portillo for money laundering charges, Portillo was arrested in an operation led by the International Commission Against Impunity (*Comisión Internacional Contra la Impunidad en Guatemala*, or CICIG).

Ríos Montt had put his mind on running himself in the next presidential election. His candidacy was rejected however by the Supreme Court on July 14, 2003, on the same grounds as in previous elections. This time, Ríos Montt denounced the rejection of his candidacy and called upon his followers on radio to go on the streets and demonstrate against the decision. On July 24, 2003, thousands of his supporters rioted in the streets of Guatemala City. TV journalist Héctor Fernando Ramírez died on this day that became to be known as *jueves negro* (black Thursday).[51] Since 2000, Ríos Montt's political associate Portillo had been the President while Ríos Montt had been the President of Congress.

---

ni los jefes de un golpe de Estado, revolución armada o movimiento similar, que haya alterado el orden constitucional, ni quienes como consecuencia de tales hechos asuman la Jefatura de Gobierno. (…) "

[43] *Mano dura* stands for being tough on crime and criminals, focusing on repression rather than on prevention, see below, Chapter 2.

[44] *Prensa Libre*, February 23, 2002, 'Sombra de Chilpancingo sigue a Portillo'

[45] Lehoucq (2002), p. 110

[46] *Prensa Libre*, January 15, 2000, 'Definido lo urgent' and 'A la expectativa'

[47] Ruhl (2005), pp. 68-70

[48] See *Prensa Libre*, May 7, 2000, ' "Riosmontistas a la ofensiva" '; see Carolina Escobar Sarti, 'La sombra del presidente', Opinión in *Prensa Libre*, March 23, 2000.

[49] *Prensa Libre*, October 2, 2005, 'Se pierde la lucha contra la corrupción'. The total alleged embezzled sum of around 1 billion US dollars is the equivalent of one third of Guatemala's annual state budget during Portillo's administration.

[50] *Prensa Libre*, February 20, 2004, 'Alfonso Portillo está en México con visa de noventa días'

[51] *Prensa Libre*, July 25, 2003, 'Jueves Negro: Turbas del FRG causan terror en la capital'

This power position had enabled Ríos Montt to name his supporters as members of the Constitutional Court.[52] The Constitutional Court overturned the Supreme Court ruling barring the candidacy of Ríos Montt on July 30, 2003, applying the logic that the 1985 Constitution that prohibits the candidature for the presidency of persons involved in coups could not be applied retrospectively to events that had occurred before 1985.[53] He was thus able to run, and as a presidential candidate he resigned from Congress. He ended a distant third in the first round of the presidential election on November 9, 2003. In congressional elections in September 2007, he won a seat in Congress again that he holds until the present day, giving him immunity.[54]

Twenty-first century

The presidency of Portillo has been disastrous for the Guatemalan state. Corruption had been thriving as never before and crime had continued to grow. Óscar Berger, the runner-up of the 1999 election, won the second round of the 2003 election. Berger was a former mayor of Guatemala City (1991-1999) and a close ally of Álvaro Arzú, himself the predecessor of Berger as the mayor of Guatemala City (1986-1991) and the current mayor of Guatemala City (2003-present). Berger's presidency saw an incredible increase of violence, with the average annual murder rate going up from 3500 during Portillo's administration (2000-2004) to 5378 during Berger's (2004-2008).[55] Recently, former members of his administration have been targeted in extrajudicial execution cases by CICIG, leading to the arrest of Berger's former Minister of the Interior Carlos Vielman in Spain in October 2010.

The main candidates to the 2008 presidential elections were Alejandro Giammattei, Álvaro Colom and Otto Pérez Molina. Giamattei had been the head of Guatemala's penitentiary system in the Berger administration and was the candidate of choice of Berger, but he came in third in the first round. He has later

---

[52] *Constitución Política de la República de Guatemala* (1985), Article 269, stipulates that of the total of five members of the Constitutional Court, both the President and Congress name one. Moreover, in case the Constitutional Court is called upon to overrule a decision of the Supreme Court, two additional members are appointed. When the Constitutional Court was called upon to overrule the Supreme Court's decision barring the candidacy of Ríos Montt, as additional members were appointed, in a manner described by the Commission of Human Rights of Guatemala as lacking transparency, a former minister of the Portillo administration and one of Ríos Montt's former lawyers. See FIDH (2003). See also MINUGUA, 14th Report on Human Rights, November 10, 2003, General Assembly A/58/566: "The need for judicial appointments based on merit and not political criteria was demonstrated in the 2003 crisis over the inscription of Ríos Montt: the widely criticized political behaviour of the Constitutional Court, whose members are appointed by political sectors, contrasted sharply with the adherence to legal procedures and precedents by a Supreme Court selected openly on the basis of qualifications."

[53] In 2006, the Constitutional Court would declare the 2003 decision allowing Ríos Montt to run for president to have been erroneous and denied it future application. *Prensa Libre*, October 11, 2006, 'Veto definitivo a Ríos Montt para presidente'

[54] *Prensa Libre*, May 19, 2007, 'Inmunidad para Ríos Montt: TSE lo inscribe'. *Prensa Libre*, January 15, 2008, 'Efraín Ríos Montt vuelve al Legislativo'

[55] ODHAG 2010, p. 6

been charged with involvement in extrajudicial executions while in charge of the country's penitentiary system and was arrested on August 13, 2010. Moderate left-wing politician and former businessman Álvaro Colom came in first with hard-liner former general Otto Pérez Molina coming in second on a very small margin. The international community greeted the result of the 2008 presidential elections with great relief. Former general Otto Pérez Molina ran on a *mano dura* discourse promising to be tough on crime. He has been a key political player during many turning points of Guatemala's recent history, having played pivotal roles in the 1982 coup against Ríos Montt and in the resistance to the 1993 auto-coup by Serrano. [56] In his campaign, he declared that he would not hesitate to suppress constitutional rights and proclaim a state of siege to fight insecurity,[57] a discourse reminiscent of the not so distant military past.

Although the international community and large parts of Guatemalan society were relieved that former general Otto Pérez Molina had not won the elections, it remained unclear what was to be expected of Álvaro Colom. It turned out that not so much was to be expected. Poverty, inequality and crime remained soaring. Colom faced charges of unconstitutionality before the Constitutional Court for the role he has given to his wife, Sandra Torres de Colom. The president has created the Secretariat of Social Works of the First Lady (*Secretaría de Obras Sociales de la Esposa del Presidente*, or SOSEP) and the program 'My family progresses' (*Mi Familia Progresa*) within the presidential Council for Social Cohesion (*Consejo de Cohesión Social)*, through which the government's budget for social projects is spent. Public money is spent through these agencies allegedly more with the purpose of improving the public image of the presidential couple than with the purpose of sustainably improving the living conditions of the recipients of the social aid.[58] Álvaro Colom officially discharged his wife of her duties to avoid a ruling of unconstitutionality, but it is widely believed that Sandra Torres de Colom is the key figure of Álvaro Colom's government behind the scenes.[59] Apparently inspired by the example set by the Kirchners in Argentina, Sandra Torres de Colom announced to run for president herself in September 2011.

On May 10, 2009, prominent Guatemalan lawyer Rodrigo Rosenberg was shot to death on a Guatemala City street while he was riding his bicycle. At the day of his funeral, a video message was published on Youtube that showed Rosenberg. In his post mortem published video statement, Rosenberg claims that president Colom and his wife Sandra had ordered his murder because he had discovered evidence of government complicity in the murder of one of his clients. The accusation addressed to the presidential couple caused great

---

[56] Otto Pérez Molina is open about the role he has played in Guatemalan politics as a general, see the website of his party Partido Patriota (www.partidopatriota.com.gt), under 'Otto Pérez'

[57] *Prensa Libre*, June 13, 2007, 'Pérez Molina aplicaría el estado de Sitio'

[58] For Christmas 2008, the SOSEP and the Presidential Secretary for Social Wellbeing spent almost 1.5 million dollar on toys to be handed out in 333 municipalities, together with calendars with pictures of the presidential couple. *Prensa Libre*, December 11, 2008, 'Regalos de la pareja presidencial'

[59] Even the Embassy of the United States of America seems to believe that Sandra Torres de Colom is the most powerful person in Álvaro Colom's administration. *Prensa Libre*, December 16, 2010, 'Wikileaks sobre Sandra de Colom'

political turmoil. CICIG has led the investigation from the start. So far there is no proof supporting their alleged involvement,[60] but the post mortem allegation by Rosenberg has been one of the defining events of Colom's presidency.

Common crime in the mean time has consistently risen over the past years. In 2008, the National Civil Police reported a staggering 6.292 homicides on a population of 14 million.[61] Paradoxically, Guatemala in peacetime nowadays shows a higher violent mortality figure than the average yearly death toll of Guatemala's 36-year civil war.[62] After already having gone up from 3500 during Portillo's administration (2000-2004) to 5378 during Berger's (2004-2008), the average annual murder rate during Colom's administration from his inauguration in January 2008 until October 2010 is estimated to have been 6137.[63] The Ministry of the Interior and the National Civil Police suffer great leadership instability in the meantime. Carlos Menocal was appointed Interior Minister by Colom on January 2, 2010, the fifth person to hold this position since Colom's presidency started in January 2008.

Towards September 2011

In 1991, Arzú ended third in the presidential election eventually won by Serrano. Arzú went on to win the 1995 election. He was the last person to win a presidential election when having ended third in the previous one: all following presidents would be persons having been the runner-up in the previous one. Portillo narrowly lost the 1995 election against Arzú to win the 1999 election. Berger was defeated by a landslide victory in 1999 but won in 2003. Álvaro Colom was the runner-up in 2003 but went on to win the 2007 election against Otto Pérez Molina. The two main candidates for the 2011 election are Sandra Torres de Colom and Otto Pérez Molina. The apparently total absence of alternatives is perplexing.[64] Taking into account the historic regularity of former runner-ups winning the next election, Otto Pérez Molina seems to have a good chance at winning the 2011 election. The candidature of Sandra Torres de Colom was long contested constitutionally, as the constitution forbids family members of serving presidents or vice-presidents to run for office. While a legal debate

---

[60] See below, in chapter 2, for an analysis of CICIG's investigations in the Rosenberg case

[61] Policía Nacional Civil, Homicidios 2008, available online at http://www.nd.edu/~cmendoz1/homicidios.htm

[62] The estimated 200.000 deaths during the 36-year civil war would lead to an average yearly death toll of 5.555. The majority of deaths as a result of the civil war occurred during 1979-1983. The average death toll during 1983-1996 was actually even much lower than 5.555.

[63] ODHAG 2010, p. 6

[64] In November 2010, former president and current mayor of Guatemala City Álvaro Arzú announced that he wants to run for president again. His candidacy is not admissible however: *Constitución Política de la República de Guatemala* (1985), Article 187 clearly states that previously elected presidents can never be reelected, '*en ningún caso*'. The Constitutional Court has proven to be vulnerable to the interest of (potential) presidential candidates however, and the future course of the Court is subject to speculation. *Prensa Libre*, January 31, 2011, 'Corte de Constitucionalidad recibirá una brasa caliente'; *Prensa Libre,* January 15, 2011, 'Ven como clave elección en Corte de Constitucionalidad'. The constitutional prohibition on reelection is so unambiguous however that it seems improbable that Arzú's candidature would be accepted.

concerning the question whether the wife of a president qualifies as a family member in the terms of the concerning constitutional provision long was ongoing,[65] Álvaro Colom and Sandra Torres de Colom announced that they would officially divorce in order for Sandra Torres to be able to run for president.[66]

Whether *mano dura* proponent Otto Pérez Molina or Sandra Torres (de Colom)[67] wins, the Guatemalan public is highly skeptical about the quality of their leaders. Institutionalized political parties do not exist: political parties are mainly vehicles for strongmen to gain the presidency, and Guatemala has only one political party that has existed for longer than twenty years.[68] Although there are clearly differences between Álvaro Colom and Sandra Torres on the one hand and Otto Pérez Molina on the other, the opportunistic quest for power is more influential in Guatemalan politics than ideological debate.[69]

Guatemala has lived through a long period of repressive military rule. By 2011, many Guatemalans see in at least partially renewed military rule the only solution to the rising crime rates of the country. In order to preserve civil democracy and counter the rising crime rates at the same time, the state of Guatemala and the United Nations have instituted the International Commission Against Impunity in Guatemala, or CICIG.

---

[65] *Constitución Política de la República de Guatemala* (1985), Article 186(c) stipulates that excluded from running for office are "[l]os parientes dentro de cuarto grado de consanguinidad y segundo de afinidad del Presidente o Vicepresidente de la República, cuando este último se encuentre
46ejerciendo la Presidencia (…)" The contentious issue is whether marriage qualifies for a relationship 'de grado'. The Civil Code defines the relationship of husband and wife as not forming 'grado'. (*Código Civil,* Article 190: "los cónyuges son parientes, pero no forman grado"). The Constitutional Court has given a consultative opinion to Congress on the matter in 1989, stipulating that spouses are covered by Article 186(c) of the Constitution (*Corte de Constitucionalidad de Guatemala*, Opinión Consultativa, expediente 212-89, No. 8, resolución 16-11-89, November 11, 1989: "El artículo 186, inciso c), de la Constitución de la República contiene prohibición categórica para que los parientes dentro del cuarto grado de consanguinidad y segundo de afinidad, lo que incluye al cónyuge, puedan optar a los cargos de presidente o vicepresidente cuando este último se encuentre ejerciendo la Presidencia (…)") If the candidature of Sandra Torres de Colom would be allowed, the Constitutional Court would have to reverse its 1989 consultative opinion. Reversing previous decisions concerning presidential candidature is not unprecedented in the history of the Consitutional Court, as seen in the case of Ríos Montt. See *Prensa Libre*, January 31, 2011, 'Corte de Constitucionalidad recibirá una brasa caliente'

[66] *Prensa Libre*, April 7, 2011, 'Sala da luz verde a resolución del divorcio de Colom y Torres'

[67] Both "Sandra Torres" and "Sandra Torres de Colom" appear on her campaign billboards and posters. *Prensa Libre*, April 13, 2011, 'Torres sigue con el "De Colom"'

[68] Mack, Luis Fernando and Erazo (2006)

[69] In the words of one of Guatemala's most prominent human rights activists, Helen Mack: "There's no ideology here anymore. It's survival. No parties. Only opportunism." *New York Times*, November 10, 2003, 'Guatemalan voters reject a former dictator.'

Chapter 2 International Commission Against Impunity in Guatemala

Introduction

In the context of staggering crime and persistent lack of effective government action against crime, the International Commission Against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala*, or CICIG) was created in 2007. It is CICIG's mission to target the clandestine security apparatuses that have held the state and the judicial system hostage for the past decades.

Guatemala has experienced numerous instances of international intervention since the *Conquista*. The 1954 CIA-initiated coup against the Arbenz administration can be taken as powerful example of modern international intervention in Guatemala. Throughout the civil war, with the exception of the presidency of Jimmy Carter (1976-1980), the United States government has supported the Guatemalan military.[70] Jimmy Carter had suspended all aid to Guatemala in 1978, upon persistent reports of human rights violations committed by the armed forces.[71] Ronald Reagan revoked that decision upon becoming president and even went as far as paying an official visit to Ríos Montt in 1982. Bill Clinton would declare in 1999: "For the United States, it is important that I state clearly that support for military forces and intelligence units which engaged in violence and widespread repression was wrong, and the United States must not repeat that mistake. We must, and we will, instead, continue to support the peace and reconciliation process in Guatemala."[72]

When the URNG and the Guatemalan army signed the Comprehensive Agreement on Human Rights in 1994, the United Nations General Assembly launched the Human Rights Verification Mission in Guatemala, MINUGUA.[73] Following the signing of the Agreement on a Firm and Lasting Peace on 26 December 1996, the United Nations Security Council authorized the deployment of a peacekeeping force in Guatemala.[74] The last members of the MINUGUA monitoring team left Guatemala in 2004. The terms of the Comprehensive Agreement on Human Rights had also provided for the establishment of an international Commission for Historical Clarification, CEH, headed by German lawyer Christian Tomuschat, to establish the truth about what had happened during the civil war. The CEH published its report, in which it explicitly stated that it had found evidence for genocide, in 1999.

Where international intervention had meant military support from the United States to the Guatemalan army (and, albeit on a much more limited scale,

---

[70] Schirmer (1998), p. 37

[71] Bowen, Gordon L. "U.S. Approaches to Guatemalan State Terrorism, 1977-1986," in Terrible Beyond Endurance? The Foreign Policy of State Terrorism, ed. Michael Stohl (Westport, CT: Greenwood Press, 1988)

[72] *Washington Post*, March 11, 1999, 'Clinton: Support for Guatemala Was Wrong'

[73] United Nations General Assembly, Resolution 48/267, September 19, 1994

[74] United Nations Security Council, Resolution 1094, January 20, 1997

support from Cuba to the guerillas[75]), intervention had taken a more benign form since the Peace Accords of 1994 with MINUGUA and subsequently with the CEH. Since 2003, Guatemala has engaged in talks with the United Nations about an international commission to tackle the increasing crime and the power clandestine security apparatuses have on the state. Neighboring El Salvador had had such a commission called *Grupo Conjunto* in 1992-1993. The first initiative to form such a commission in Guatemala, under the name of CICIACS, was blocked by Guatemala's Constitutional Court in 2004. A renewed attempt at creating an international commission to combat crime and impunity was undertaken, this time under the name of CICIG, *Comisión Internacional Contra la Impunidad en Guatemala*. CICIG started operations in September 2007.

In this chapter, I will briefly describe the two precedents to CICIG: the *Grupo Conjunto* in El Salvador and CICIACS in Guatemala. Then, I will turn to the sequence of events in Guatemala that contributed to the successful establishment of CICIG before turning to the institutional design and mandate of CICIG. After analyzing the formal mandate of CICIG, I develop two perspectives to enhance understanding of the nature of CICIG, the first being the combination of national and international elements, the second being the simultaneous employment of both top-down and bottom-up efforts by CICIG.

Grupo Conjunto in El Salvador

The history of El Salvador has a lot in common with neighboring Guatemala. El Salvador's civil war started in 1980 and came to an end by the signing of Peace Accords in 1992. It was a war between the state armed forces and a leftist guerilla movement, as was the case in Guatemala. During the twelve years of civil war, approximately 75.000 persons were killed. In El Salvador a UN-backed Truth Commission was installed in 1992, just like in Guatemala in 1996. One of its recommendations was that a commission be installed that would investigate into the role of former paramilitary illegal security organizations. That commission was coined Joint Group for the Investigation of Illegal and Armed Groups with Political Motivation in El Salvador (*El Grupo Conjunto para la Investigación de Grupos Armados Ilegales con Motivación Política en El Salvador,* or *Grupo Conjunto*) and started work in December 1992 to publish its report in July 1993. The *Grupo Conjunto* had a mix of international and Salvadoran staff and was mandated to do an autonomous, impartial and apolitical investigation. As the *Grupo Conjunto* had no jurisdictional functions, such as the powers of prosecution and arrest, all it could do was issuing recommendations addressed to El Salvador's government, much like a conventional truth commission. Follow-up on the recommendations was minimal.[76] The contribution of the *Grupo Conjunto* appears to have ultimately been not more than merely having documented the existence of illegal security organizations in El Salvador.[77]

---

[75] CEH (1999), *Guatemala: Memoria del Silencio*, Conclusiones, paras. 17-20
[76] Amnistía Internacional (1996)
[77] WOLA (2008), p. 7

CICIACS in Guatemala

In 2003 the United Nations and the Guatemalan government engaged in a process of creating a commission with the same aim as that of the *Grupo Conjunto*, namely to address the former paramilitary security organizations. The initiative was labeled International Commission against Illegal Bodies and Clandestine Security Structures (*Comisión International contra los Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*, or CICIACS). Guatemalan civil society, in this case represented by the Human Rights Ombudsman, and the Guatemalan ministry of Foreign Affairs reached agreement about what Guatemala would request the cooperation with the United Nations to look like in March 2003.[78] The government of Guatemala and the United Nations subsequently reached agreement about the creation of CICIACS in January 2004.[79]

CICIACS would have far greater powers than the *Grupo Conjunto*. It would be an investigative and prosecutorial body, with not only the power to join prosecutions already initiated by the Public Prosecutor's Office,[80] but also the power to initiate prosecutions by itself if prosecutions by the Public Prosecutor's Office were not forthcoming.[81] President Berger asked the Constitutional Court for a Consultative Opinion about the creation of CICIACS before sending the proposal to Congress. The Court ruled that the Guatemalan Constitution bestowed the power to prosecute exclusively upon the Public Prosecutor's Office, that that power cannot be divided nor delegated, and that the creation of CICIACS would hence be a violation of Guatemala's Constitution.[82] The Court acted in the same composition in which it had acted when it had allowed Ríos Montt to run for president on July 30, 2003.[83]

Mano dura

The barring of CICIACS by Guatemala's Constitutional Court was a major setback for the movement in favor of international intervention in Guatemala's crime problem. The answer of the Portillo administration to crime had been *Plan Escoba* (Plan Broom), instituted in 2003, continued by Berger after 2004 and

---

[78] *Acuerdo político entre el Ministro de Relaciones Exteriores de Guatemala y el Procurador de los Derechos Humanos sobre el establecimiento de una Comisión de Investigaciones de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ("CICIACS"),* March 13, 2003

[79] *Acuerdo entre las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ("CICIACS")*, January 7, 2004 (hereinafter: Acuerdo CICIACS)

[80] Acuerdo CICIACS, Article 3(2)

[81] Acuerdo CICIACS, Article 3(3)

[82] *Corte de Constitucionalidad de Guatemala*, 'Opinión Consultativa sobre el texto del Acuerdo celebrado entre la Organización de las Naciones Unidas (ONU) y el Gobierno de Guatemala relativo al establecimiento de una Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ('CICIACS')', Expediente No. 1250-2004, August 5, 2004. The Court found six provisions of the Acuerdo CICIACS to be unconstitutional, amongst which most notably Article 3(3).

[83] Namely with judges Mario Ruiz Wong, Rodolfo Rohrmoser, Francisco Flores, Saúl Dighuero and Cipriano Soto.

inspired by El Salvador's *Mano Dura* (Tough Hand). The *mano dura* way of combating delinquency and promoting the rule of law is based on zero tolerance crime fighting. The focus is on repressive action against the highly visible street gang violence, leaving prevention of gang membership and rehabilitation of convicts on a second plan. *Mano dura* politics in countries like El Salvador and Guatemala have led to massive incarceration of actual and alleged (youth) gang members. The prison systems in both countries have actually come to be determined by gang life and many observers agree that prison sentences reinforce gang identification more than anything else.[84] Guatemala's prisons are severely overpopulated with large numbers of gang members continuing gang activity in prison as if they were still on the streets. The approach has been hopelessly ineffective in tackling gang crime.[85]

What is more, the *mano dura* politics attack primarily the street gangs. Street gang members typically live in extremely impoverished neighborhoods where they have limited perspectives on a legitimate job or improvement of their living conditions. Life as a gang member is characterized by drug use and extreme violence. Gang violence is essentially non-political low-level crime, notwithstanding the great human toll it takes. Clandestine security apparatuses that run corruption rackets in the state institutions are a wholly different phenomenon, as are the major drug trafficking organizations. Under the Portillo administration, the total amount of money taken by corruption is estimated to have been as high as one billion dollar.[86] The gains made by regional cartels trafficking cocaine from Colombia to the United States, passing through Central America and Mexico, are estimated to be six billion dollar per year.[87] These revenues allow for power positions and lifestyles that have nothing in common with the misery which street gang members live through[88] and ask for a different approach by the authorities.

State agents charged with curbing drug trafficking in the meantime are extremely corrupt. In 2005, the head of Guatemala's drug enforcement agency was arrested in the United States for charges of drug trafficking.[89] In March 2010, Guatemala's national police chief and the head of Guatemala's drug enforcement agency were arrested in Guatemala, also for drug trafficking charges. The predecessor of the national police chief arrested in March 2010 had

---

[84] Arana (2005)

[85] Savenije, Wim, '¿La seguridad nacional en juego? Las transformaciones de las pandillas callejeras o 'maras' en Centroamérica', in García, Bastos and Camus (eds.) (2009)

[86] *Prensa Libre*, October 2, 2005, 'Se pierde la lucha contra la corrupción'

[87] United Nations Office on Drugs and Crime (UNODC), *World Drug Report 2010*, p. 237

[88] To put the multi-billion dollar gains from drugs trade and corruption in perspective with the street gang crime: on February 21, 2011, the corpses of a kidnapped couple were found in Guatemala. Negotiations between the families of the kidnapped couple and the kidnappers had gone on for five days. With agreement between the demand of approximately 6000 euro and the offer by the family of 2500 euro not forthcoming, the couple was murdered.

[89] DEA Public Affairs, November 16, 2005, 'High ranking Guatemalan police officers arrested for conspiracy to import cocaine into the United States'

himself been accused of stealing cocaine and cash and arrested in August 2009.[90] These are but some of the many examples of high-ranking police officials implicated in drug trafficking. While *mano dura* politics are employed to ineffectively tackle Guatemala's street gang violence problem, the rich and powerful drug trafficking organizations and corruption rackets remain out of the hands of Guatemala's justice system.

Impunity

The result is a pervasive sense of insecurity, an almost completely dysfunctional prosecution service, intimidation and corruption of judges and prosecutors, and many powerful people with a vested interest in maintaining the system in its current ineffective form.[91] Guatemala's National Civil Police reported 6.292 homicides in 2008.[92] The courts reported 169 convictions for homicide in the same year.[93] That means that roughly 2% of homicides in Guatemala are punished against 98% of homicides that remain unpunished. Over all crime in Guatemala in 2009, Guatemala's Supreme Court estimates impunity to be as high as 99.75%.[94] It led the UN Special Rapporteur on Extrajudicial Executions to conclude that "Guatemala is a good place to commit a murder, because you will almost certainly get away with it."[95]

Impunity is not an uncommon phenomenon to Guatemala. The murders of presidential candidate Arana (1949), former president Castillo Armas (1957) and bishop Gerardi (1998) are but three of the many examples of murder of prominent political figures in Guatemala that have never been solved.[96] Impunity has become more of the rule than of the exception in Guatemala. Impunity for crimes that have occurred during the civil war has been institutionalized since Ríos Montt declared a state of siege by which the courts were paralyzed.[97] The CEH stated in its 1999 report that genocide had been committed between 1979 and 1982. Not one single person has been punished for genocide or genocide-related crimes before the courts of Guatemala.

The CEH-report has underlined the complicity of the judicial branch of the Guatemalan state in the atrocities of the internal armed conflict.[98] When the

---

[90] *New York Times*, March 2, 2010, '2 Top Guatemalan Police Officials Are Arrested on Drug Charges'; *Prensa Libre*, September 29, 2010, 'Narcotráfico se infiltró en Daia desde su inicio'

[91] Roht-Arriaza (2008), p. 102

[92] Policía Nacional Civil, Homicidios 2008, available online at http://www.nd.edu/~cmendoz1/homicidios.htm

[93] *ElPeriódico de Guatemala*, January 6, 2009, 'En 2008: 114 sentencias por delitos contra la vida'

[94] CICIG (2010), p. 4

[95] Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, 'Civil and Political Rights, Including the Question of Disappearances and Summary Executions', UN Doc. A/HRC/4/20/Add.2, February 19, 2007, para. 17

[96] By comparison, high profile political murders having occurred in the Netherlands like those of William of Orange (1584), Pim Fortuyn (2002) and Theo van Gogh (2004) have typically resulted in convictions.

[97] Sanford (2003a), p. 251

[98] CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 3, '*Denegación de Justicia*,' paras. 283-441

Peace Accords were signed in 1996, some improvements were undertaken. The National Police was transformed into a new force under the name of National Civil Police.[99] Already in 1994, the Guatemalan Congress had enacted a new criminal procedure code, which transformed the penal system from an inquisitorial system to an adversarial one. Key features of the new scheme are "shortened pre-trial detentions, plea bargaining, introduction of evidence through oral proceedings, the presumption of innocence and a right to defense, a right to use one's native language, and changes in appeal processes."[100] Moreover, the 1996 Accord on Strengthening of Civil Society and the Role of the Army in a Democratic Society, which formed part of the Peace Accords, made reform of the justice system a priority, and created the Commission on Strengthening the Justice System to achieve its goals.[101] The recommendations of the latter Commission were not unlike those of the CEH and the REMHI, and included the need for modernization, professional standards, access to justice, speedier trials, security and justice, and constitutional reforms.[102] The constitutional reform proposals, as well as additional legislation to implement the Peace Accords, were defeated however by public referendum in 1999, with 18% of the eligible electorate actually voting.[103]

The Guatemalan justice institutions have continuously failed to deliver security and justice to the Guatemalan population. A 2001 study by Heasley et al. focused on the failure on the part of Guatemala's institutions to provide justice for four specific massacre cases from the civil war era. Their study suggested that the judicial reforms initiated by Guatemala theoretically prepared it to provide timely justice, but that success was precluded by six major obstacles, being "intimidation; corruption; incompetence; resource management/lack of resources; the lack of a definition for the term 'military secrets;' and the misuse and failure to utilize procedural mechanisms."[104]

Whatever the cause, the institutions charged with ensuring justice are evidently not effective. In a 2007 report, the UN Office on Drugs and Crime has declared that "in such a climate of impunity, the deterrent effect of the law is minimal."[105] Impunity and violence tend to mutually reinforce one another, perpetuating a vicious circle that the REMHI-report had already alluded to when it called impunity both "a cause and a consequence of violence." [106]

Events leading to the creation of CICIG

In early 2007, the world was shocked by a sequence of violent acts that brought the influence illegal actors had on the functioning of the Guatemalan state to the forefront. On February 19, 2007, three Salvadoran members of the Central-

---

[99] Glebbeek (2001)
[100] Hendrix (1998), p. 365
[101] *Acuerdo sobre fortalecimiento del poder civil y función del Ejército en una sociedad democrática*, September 19, 1996, Article 15
[102] *Comisión de Fortalecimiento de la Justicia*, 'Una nueva justicia para la Paz', April 1998
[103] *BBC*, May 17, 1999, 'Guatemalans reject reforms'
[104] Heasley et al. (2001), p. 1185
[105] United Nations Office on Drugs and Crime (UNODC), *Crime and Development in Central America – Caught in the Crossfire*, May 2007, p. 13
[106] ODHAG (1998), *Guatemala: Nunca Más*, at xxxiii

American Parliament and their driver were found dead, their car burnt out and the bodies bullet-ridden. Two days later, four police officers, including the chief of the national organized crime unit, were arrested for their alleged involvement in the killings. They were brought to the country's maximum-security prison facility, where all four police officers were murdered only three days after their arrest. The perpetrators of the in-prison killing were never identified. In the aftermath, a Guatemalan prosecutor investigating the case was also murdered.[107] Prosecutors in Guatemala and El Salvador now believe a former member of the Guatemalan national parliament and a former member of the Salvadoran national parliament to be the intellectual authors of both the killing of the Salvadoran Central-American Parliament members and of the killing of the four Guatemalan police officers in prison.[108]

The Salvadoran killings and sustained international pressure on Guatemala's government to improve the human rights situation contributed to an environment favoring the creation of an international commission to fight impunity. Following the blocking of CICIACS by the Constitutional Court in 2004, the Guatemalan government and the United Nations had engaged in sustained talks for a renewed initiative. On December 12, 2006, President Berger signed the Treaty Establishing CICIG between the United Nations and Guatemala. Before ratifying the treaty, Guatemalan Congress asked the Constitutional Court for an advisory opinion. Since the composition of the court had changed relative to 2004 when CICIACS was blocked, and because the powers of CICIG were less far-reaching in terms of initiating prosecutions and issuing indictments, Guatemala's Constitutional Court gave a favorable consultative opinion on the constitutionality of the CICIG treaty on May 8, 2007.[109] In July 2007, the International Relations Commission of Congress refuted the CICIG proposal however, with two members of presidential candidate Colom's UNE party breaking with the internal party discipline and voting against the CICIG proposal. The ratification of CICIG was subsequently considered as a matter of national urgency and as such was subject to a vote in favor by a two-thirds majority in Congress' plenary session. Under great national and international pressure, Congress approved the CICIG proposal on August 1, 2007, six months after the murder of the Salvadoran Central American Parliament members and one month before the general elections. CICIG initiated operations in September 2007.

Mandate

CICIG has the aim of fighting impunity in Guatemala by supporting and strengthening Guatemala's legal institutions, identifying the structures and financing of illegal security forces and clandestine security organizations and

---

[107] *Prensa Libre*, July 14, 2008, 'Matan a auxiliar fiscal que investigaba muerte de diputados salvadoreños'

[108] *Prensa Libre*, February 19, 2008, 'Vinculan a 14 personas a crimen de diputados salvadoreños'; *Prensa Libre,* January 7, 2009, 'Caso Parlacen: Vinculan a salvadoreños en asesinatos'

[109] *Corte de Constitucionalidad de Guatemala,* 'Dictamen de la Corte de Constitucionalidad sobre el Acuerdo de CICIG', Expediente 791-2007, May 8, 2007

promoting their dismantling and prosecution.[110] CICIG is not a *mano dura* institution to be engaged in the fight against the street gangs. It is explicitly mandated to target the illegal security forces and clandestine security organizations that the Guatemalan state is infiltrated by to such an extent that it has become impossible for the Guatemalan state to target them by itself. Its mandate is considerably further reaching than mere provision of technical assistance, but does not go as far as the creation of a hybrid tribunal. The activities that CICIG may deploy can be divided into three distinct categories.

a Investigating and co-prosecuting

CICIG can be involved in the investigation and prosecution of cases before Guatemalan courts in two distinct ways: as a *querellante adhesivo* and through UEFAC.

Guatemalan penal law has the figure of the *querellante adhesivo*, most aptly translated as co-prosecutor. Initiating a prosecution is a power reserved to the Public Prosecutor's Office, unlike the situation foreseen in the CICIACS proposal. If the Public Prosecutor's Office has started a prosecution and a party is granted *querellante adhesivo* status, that party has the same power as the Public Prosecutor's Office to introduce evidence and make procedural motions.[111] Typically, relatives of victims or national human rights organizations act as *querellante adhesivo*. CICIG is the first international organization that can be granted the *querellante adhesivo* status in the Guatemalan national legal order.[112] CICIG is to assume the *querellante adhesivo* status in high impact cases involving actors that potentially yield influence in Guatemala's national justice system.

Moreover, CICIG has come to an agreement with Guatemala's Public Prosecutor's Office to create the Special Prosecutorial Unit Assigned to CICIG (*Unidad Especial de Fiscalía Adscrita a la CICIG*, or UEFAC).[113] UEFAC is part of Guatemala's Public Prosecutor's Office and rests under the responsibility of the *Fiscal General* or Chief of the Public Prosecutor's Office of Guatemala. The prosecutors within the UEFAC are not personnel of CICIG but are prosecutors from the Public Prosecutor's Office, selected to form part of the UEFAC jointly by the Public Prosecutor's Office and CICIG and continuously trained and accompanied by CICIG personnel. The creation of UEFAC allows CICIG to be involved in criminal proceedings without having to rely on the *querellante adhesivo* status and, importantly, gives CICIG the opportunity to indirectly initiate proceedings. Although approval from the *Fiscal General* is still required before a prosecution can be initiated by UEFAC, the close and continuous contact between UEFAC and CICIG provides a channel through which CICIG can bring about the initiation of prosecutions. Moreover, UEFAC provides the opportunity for Guatemalan prosecutors to receive intensive training from CICIG on top of the technical assistance CICIG is mandated to give to regular Guatemalan prosecutors if the Public Prosecutor's Office so requests.

---

[110] *Acuerdo entre la ONU y el Gobierno de Guatemala relativo al establecimiento de una CICIG*, December 12 2006, (hereinafter: Acuerdo CICIG), Article 1

[111] *Código Procesal Penal de Guatemala*, *Decreto No. 51-92*, articles 116-121

[112] Acuerdo CICIG, Article 3(1)(b)

[113] *Convenio de cooperación bilateral entre el Ministerio Público y la Comisión Internacional Contra la Impunidad en Guatemala (CICIG)*, February 27, 2008, Article 3

In September 2007, CICIG started functioning. It assumed *querellante adhesivo* status for the first time in a case known as the Zacapa massacre case.[114] *Querellante adhesivo* status was assumed in a total of eleven cases,[115] including those of Musa and Rosenberg,[116] of former Special Prosecutor Matus,[117] of former president Portillo and related cases,[118] and of the extrajudicial killings in the Pavón prison.[119] UEFAC has twenty-nine cases under investigation, amongst which the Nicaraguan bus case[120] and the case of Amatitlán.[121]

b Proposing legislative reforms

CICIG is explicitly mandated to propose legislative reforms to Congress in order to improve the efficiency and effectiveness of Guatemala's justice system.[122] Legislative reform proposals were presented to Congress in two packets. The first packet was presented in October 2008 and included far-reaching amendments to the Weapons and Ammunition Law and to criminal procedure law, most notably in the field of *amparo*.[123] The second packet included the

---

[114] On March 25, 2008, a shoot-out between competing drugs gangs resulted in the death of eleven persons. Twelve persons are prosecuted for their involvement. On June 26, 2008, CICIG assumed *querellante adhesivo* status in the case.

[115] CICIG (2010), containing information until September 2010

[116] Khalil Musa was a Guatemalan banker who was shot to death, together with his daughter on April 14, 2009. Rodrigo Rosenberg was an influential Guatemalan lawyer who was shot to death while driving his bicycle through the streets of Guatemala City on May 10, 2009. At the day of his funeral, a video message was published on Youtube that showed Rosenberg. In his post mortem published video statement, Rosenberg claims that president Colom ordered his murder because he had discovered evidence of government complicity in the murder of his client Musa. See also above, chapter 1.

[117] Víctor Rivera was a corruption fighter from Brazil working in Guatemala who was shot to death in April 2008. Head of the homicide division of the Public Prosecutor's Office at the time was Álvaro Matus, who is charged with withholding and destroying evidence and obstructing justice in the Rivera case.

[118] Portillo's presidency (2000-2004) was characterized by staggering corruption, for which he is prosecuted before Guatemalan and United States courts. He was arrested on January 26, 2010, thanks to the intervention of CICIG. Many other high-ranking officials from the Portillo administration are also implicated in these and related proceedings, including two former Ministers and Major General Enrique Ríos Sosa, son of Efraín Ríos Montt and head of the financial department of the Defense Ministry under Portillo.

[119] On September 25, 2006, seven inmates of the Pavón prison were killed. High-ranking members of the Berger administration (2004-2008), including the former Minister of the Interior, are suspects in the case.

[120] On November 8, 2008, a bus from Nicaragua was found in the eastern province of Zacapa containing the bodies of fifteen Nicaraguans and one Dutchman shot to death and subsequently burnt.

[121] On April 24, 2009, an unauthorized raid in a drug warehouse by the Anti Drugs Agency of Guatemala's National Civil Police in Amatitlán lead to a shoot out, leaving five police officers dead. 370 kilos of cocaine and a large amount of heavy weaponry went missing.

[122] Acuerdo CICIG, Article 2(1)(c)

[123] *Amparo* is a type of injunctive relief frequently used to delay and obstruct criminal proceedings. Suspects in criminal proceedings can almost unlimitedly submit *amparos* to an Appelate or to the Constitutional Court, claiming a violation of a constitutional

introduction of a new court with competence in high-risk cases and amendments in the field of substantive criminal law designed to make the fight against organized crime more effective and was presented to Congress in February 2009.[124]

Follow-up by Congress on the legislative reform proposals has been mixed. The reforms to the Weapons and Ammunition Law have by and large been enacted. A new court with competence in high-risk cases has been created,[125] audiovisual evidence is now allowable in court as proposed by CICIG, and the figure of crown witness in Guatemalan law[126] has been revised.
Two proposals that have priority according to CICIG, concerning reforms to the *Ley de Amparo* and to the *Ley de Antejuicio*,[127]have not been legislated upon by Congress however.

c Aiding and strengthening Guatemalan state institutions

The institutions of the Guatemalan state involved in the justice system are extremely weak. CICIG is mandated to aid and strengthen Guatemalan institutions involved in the justice system, mainly the Public Prosecutor's Office and National Civil Police, through training, advising and providing or arranging technical assistance.[128] Moreover, CICIG can denounce public servants which it suspects of illegal actions.[129]

The intervention by CICIG in the election of public servants has been very prominent on CICIG's agenda. Since 2009, important public servants, like members of the Supreme Court and the Appelate Court and the *Fiscal General* (chief of the Public Prosecutor's Office), are pre-selected by the so-called *Comisiones de Postulación* before they are officially appointed by Congress.[130] The purpose of the *Comisiones de Postulación* is to improve the quality of appointments to important posts and make the process more transparent, as in the past even persons without any legal background could be appointed to the country's highest courts. Not only are formal prerequisites in terms of legal education and experience checked by the *Comisiones de Postulación*, civil society groups also have the opportunity to comment on nominations before Congress decides on appointments. The new process did not prevent Congress from appointing six candidates to the Supreme Court in October 2009 that were

---

right. As long as the *amparo* is not ruled upon, proceedings are halted. Sometimes suspects keep on filing the same *amparo*, with minimal changes, over and over again.

[124] The full text of all the proposals, as well as an executive summary of the two packets, are available at http://cicig.org/index.php?page=reforma-legales

[125] *Decreto 35-2009, Reforma a la Ley de Competencia Penal en Procesos de Mayor Riesgo*, October 21, 2009

[126]The old legal regime for crown witnesses, or *colaboradores eficaces*, on the one hand ruled out that the perpetrators of certain crimes could become a crown witness and on the other hand allowed for non-prosecution rather than diminishing of sentence for crown witnesses.

[127] The *Ley de Antejuicio*, imperfectly translated as 'Law of Immunities', awards far-reaching protection to public servants against prosecution and limits the possibilities of suspending public servants during criminal investigations.

[128] Acuerdo CICIG, Article 3(1)(c)

[129] Acuerdo CICIG, Article 3(1)(d)

[130] *Decreto 19-2009, Ley de Comisiones de Postulación*, May 21, 2009, Article 1.

opposed by CICIG for serious corruption charges. The Constitutional Court gave a provisional *amparo* declaring the appointments void, upon which Congress replaced three of the six contested magistrates.[131] For the appointment of the magistrates of the Appellate Court, Congress did not elect any of the twenty candidates that CICIG had expressed objections towards.[132]

A second test for the *Comisiones de Postulación* was the appointment of the new *Fiscal General*, the chief of the Public Prosecutor's Office. The *Comisión de Postulación* nominated six candidates, out of which President Colom chose Conrado Reyes, a candidate severely opposed by CICIG. CICIG's Commissioner, Carlos Castresana, decided to resign on June 7, 2010, partially in reaction to the appointment of Conrado Reyes.[133] The resignation of Castresana caused great political turmoil in Guatemala. On June 11, 2010, the Consitutional Court annulled the appointment of Conrado Reyes and installed a new *Comisión de Postulación* to get to new nominations. Colom declared that, if the Constitutional Court would not have annulled the appointment of Conrado Reyes, he would have done it himself that very same day.[134] Colom appointed Claudia Paz y Paz the first woman to lead the Public Prosecutor's Office on December 9, 2010.

Bottom-up and top-down

The problem of impunity in Guatemala stems from complete failure on the part of all state institutions involved to bring successful prosecutions, not only in high impact cases involving influential people but also in cases of ordinary crime. Victoria Sanford has described the case of Claudina Velasquez, a young woman shot to death on the streets of Guatemala City on August 12, 2005.[135] The sequence of investigational failure in the case of Claudina is disturbing: no fingerprints are taken, nor is any form of forensic research conducted at the crime scene, no witness statements are taken, and maybe most illustrative of all the ballistic report from the National Civil Police on the impact of the bullet in Claudina's body is dated February 2, 2005 and is stamped by the Public Prosecutor's Office as received on February 28, 2005, whereas Claudina's murder occurred in August 2005. It is this kind of investigational incompetence that provides some explanatory context to the impunity rate of around 98%.

Not only do Guatemalan state institutions fail to resolve ordinary crime, the influence of former counterinsurgency and military intelligence organizations remains great.[136] That influence is being exercised both from

---

[131] *Prensa Libre*, October 8, 2009, 'Congreso elige a tres nuevos magistrados de la CSJ'
[132] CICIG (2010), p. 23
[133] Carlos Castresana declared that a personal campaign against his personal integrity, following the success in the Portillo case and the fear that that progress caused among criminals in Guatemala, was the most important reason for his resignation. He also declared the support CICIG received from Guatemalan state institutions to be insufficient and he declared that CICIG had convincing evidence that Conrado Reyes has ties with criminal organizations during the press conference in which he announced his resignation. See *ElPeriódico de Guatemala*, June 8, 2010, 'Castresana: "Para la ONU, Guatemala no ha cumplido su parte"'
[134] *Prensa Libre*, June 12, 2010, 'Presidente ofrece dar más apoyo a la Cicig'
[135] Sanford (2008)
[136] Peacock and Beltrán (2003)

within the state institutions[137] as from the outside, through brutal force, intimidation and murder of state justice actors.[138]

CICIG's mandate implies a two-fold strategy: from an example-setting bottom-up approach it engages in criminal investigations and it acts as *querellante adhesivo* in a number of high impact cases, and from more of a top-down approach it proposes legislative and institutional reforms. In the first field, CICIG can be considered effective. CICIG has joined prosecutions as a *querellante adhesivo* in eleven cases and through the UEFAC it is engaged in yet another twenty-nine.[139] Former president Portillo and the son of former president Ríos Montt are in prison in great part due to CICIG's efforts. CICIG's efforts have demonstrated that the Guatemalan criminal justice system can be made to work. Besides acting in a number of high impact cases, either as *querellante adhesivo* or through UEFAC, CICIG also engages in bottom-up training of limited numbers of police and prosecutor's office personnel. The results of those training programs remain to be seen.

As for the second field, top-down legislative and institutional reform has proven problematic. Congressional opposition to CICIG's proposals has been constant. The initiative for a law against illegal enrichment has been blocked by parliamentarians from president Colom's UNE,[140] while reform proposals for the *Ley de Antejuicio*, *Ley de Amparo* and many others are still awaiting Congressional approval.[141] Another important challenge in the top-down approach of CICIG is its highly publicized involvement in the appointment of new Supreme Court magistrates and the Chief of the Public Prosecutor's Office. The fact that Congress ignored CICIG's objections towards six candidates for the Supreme Court, and that president Colom ignored CICIG's objections towards Conrado Reyes as the Chief of the Public Prosecutor's Office, is indicative of the difficulty CICIG encounters in its efforts to achieve top-down change in Guatemala's justice system.

National and international

CICIG fits well in the emerging trend in transitional justice mechanisms to combine international and national elements.[142] CICIG employs both Guatemalan and foreign personnel[143] and is the product of a treaty between the United

---

[137] See the case of former Special Prosecutor Matus, who allegedly deliberately frustrated justice in the Rivera case.

[138] See the case of the Salvadoran Central American Parliament members, in which a prosecutor was murdered.

[139] Situation until September 2010, CICIG (2010), p. 14

[140] *Prensa Libre*, May 17, 2010, 'Congreso entrampa ley contra riqueza ilegal'. *Prensa Libre*, November 1, 2010, 'Grupos de poder bloquean leyes de seguridad y justicia'

[141] CICIG, January 27, 2011, 'Estado actual de las reformas promovidas por CICIG', available online at http://cicig.org/index.php?page=reforma-legales

[142] The strictly international tribunals for the Former Yugoslavia (1993) and Rwanda (1994) were followed by a range of 'hybrid' institutions, including the Special Court for Serious Crimes in Timor-Leste (2000), the Special Court for Sierra Leone (2002), The Extraordinary Chambers in the Court of Cambodia (2003) and the Special Tribunal for Lebanon (2007)

[143] The mix of both international and domestic personnel has led to difficulties concerning the diplomatic immunities of CICIG's staff members, as the Guatemalan

Nations and the Guatemalan government. It is funded by international donors and was headed by the Spaniard Carlos Castresana since September 2007 until he resigned in June 2010 and was replaced by the Costa Rican Dall'Anese in August 2010. Yet, CICIG operates exclusively within the Guatemalan legal order.

The *querellante adhesivo* power of CICIG and the special unit within the Public Prosecutor's Office attached to CICIG, UEFAC, form the most far-reaching powers of CICIG within the Guatemalan legal order. They give CICIG the sort of means that the *Grupo Conjunto* in El Salvador completely lacked. An international organization acting as a co-prosecutor before the national courts at first sight seems to constitute an intrusion upon Guatemala's sovereignty. With the proposal of CICIG's predecessor CICIACS, the intrusion upon Guatemala's sovereignty was considered intolerable by the Guatemalan Constitutional Court. Relative to the CICIACS proposal, the power to independently initiate prosecutions had been removed from the mandate, but the Commission still arguably presented an intrusion upon Guatemalan sovereignty. Why did the Guatemalan state allow CICIG?

Various factors seem to have played a role. Most analysts agree that the murder of the Salvadoran Central-American Parliament members and the subsequent murder of the suspected police officers in the country's maximum-security detention facility in 2007 have played a very important role in creating a sense of urgency.[144] Also, sustained international pressure to combat impunity has played an important role in international donor dependent Guatemala. The Salvadoran killings and the international pressure combined helped to create the political will necessary; all three main candidates to the September 2007 first round of the presidential elections were in favor of CICIG.[145] Whereas the failed CICIACS project was formulated primarily in a dialogue between the Guatemalan government and human rights NGOs, CICIG was the result of direct negotiations between the Guatemalan government and the United Nations.[146] Apparently crucial in assuring approval from the Constitutional Court was the removal of independent prosecutorial powers relative to the CICIACS proposal, limiting CICIG's prosecutorial powers to the *querellante adhesivo* status. The latter limit was later partially circumvented however by the establishment of the UEFAC.

Attempting hybrid forms of transitional justice is, as mentioned above, nothing new. Hybrid tribunals were created in countries such as Timor-Leste,

---

government has not granted to the Guatemalan staff members the immunities the international staff members enjoy. See Naciones Unidas Asamblea General, September 23, 2009, A/64/370, 'Actividades de la Comisión Internacional contra la Impunidad en Guatemala. Informe del Secretario General,' at para. 29

[144] WOLA (2008), p. 2

[145] Eventually winning the elections Álvaro Colom from UNE (National Unity of Hope), former general Otto Pérez Molina from PP (Patriotic Party), and Alejandro Giammattei from then president Berger's GANA (Grand National Alliance). Ironically, all three are subject of CICIG investigations. Giammattei has actually been arrested as a result of charges of involvement in extrajudicial killings brought by CICIG. Colom features in the Rosenberg investigation, in which CICIG so far has only revealed evidence exculpating the president. The name of Pérez Molina has also appeared as a suspect in the Rosenberg case, see *La Hora*, June 8, 2009, 'Acusan ante la CICIG a Pérez Molina'.

[146] WOLA (2008), p. 12

Sierra Leone, Cambodia and Lebanon.[147] Those are actual courts or special chambers within courts, with varying degrees of international law and international staff. Another example is the War Crimes Chamber (WCC) within the Court of Bosnia and Herzegovina that was created in March 2005 to receive cases from the International Criminal Tribunal for the former Yugoslavia when the latter ceases operations. Together with the WCC the related Special Department within the prosecutor's office was created.[148]

Fact-finding commissions mandated by the UN Human Rights Council such as the 2009 commission to investigate the Gaza conflict are another tool of international intervention. They are a relatively toothless tool however, lacking any enforcement mechanism under either national or international law. Guatemala has experience with the phenomenon of a fact-finding mission in the form of the Historical Clarification Commission created by the UN General Assembly and the state of Guatemala in 1996. The International Independent Investigative Commission (UNIIIC) in Lebanon was created in 2005 and differs fundamentally from Human Rights Council or General Assembly created commissions in the sense that the UN Security Council endowed it with Chapter VII authority.[149] UNIIIC acted under domestic law, used a mixed team of domestic and international investigators and intended to pass over the results of its investigations to domestic institutions for prosecution.[150]

Embedding international judges and prosecutors in the domestic legal order directly, and not through the creation of a special tribunal or court or special chambers, has been done as well. In 2000, the UN mission administering Kosovo enacted Regulation 2000/64 allowing international judges and prosecutors to serve in Kosovo's judiciary when requested by the parties to a case.[151] The fact that Kosovo was being administered by a UN mission makes this measure fundamentally different from CICIG, where Guatemala although a weak state was a fully autonomous and sovereign state when CICIG was created. The Serious Crimes Investigation Team (SCIT) in Timor-Leste was established in 2008 in order to assist Timor-Leste's Prosecutor General in completing investigations from the previous UN mission and to train Timorese counterparts.[152] The SCIT is a part of the United Nations Integrated Mission in Timor-Leste and therefore, as the Regulation 64 Panels in Kosovo, operates in a totally different context from CICIG.

---

[147] In Lebanon, the United Nations International Independent Investigation Commission was superseded by the Special Tribunal for Lebanon.

[148] Ivanisevic, B., *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, International Center for Transitional Justice, 2008

[149] SC Res. 1595, April 7, 2005

[150] Mehlis, D., 'Report of the International Independent Investigation Commission established pursuant to Security Council Resolution 1595 (2005)', UN Doc. S/2005/662, October 19, 2005, at 5

[151] Carolan, R.F., 'An Examination of the Role of Hybrid International Tribunals in Prosecuting War Crimes and Developing Independent Domestic Court Systems: The Kosovo Experiment', 17 *Transnational Law & Contemporary Problems*, 2008 9-29

[152] 'Agreement between the United Nations and the Democratic Republic of Timor-Leste concerning assistance to the Office of the Prosecutor-General of Timor-Leste', February 12, 2008

CICIG is to function completely integrated in the Guatemalan national legal order, although it receives international funding and makes use of international expertise and staff. The level of integration into the national legal order that CICIG has acquired, through the cases in which it operates as *querellante adhesivo* or through UEFAC as well as through its legislative reform initiatives, is unique and is likely to lead to a more sustainable contribution to the country's legal institutions than less integrative approaches.

The degree to which CICIG is embedded in the national legal order also carries a risk however. Guatemalans have extremely low levels of trust in their national institutions and in their fellow nationals working for the state. Trust towards foreigners is typically much higher. The national legal order risks becoming dependent on CICIG, with the domestic public automatically turning towards CICIG when something needs to be done. This tendency was clearly visible in the Rosenberg case, where the critical domestic public would probably have not accepted the Public Prosecutor's Office, whose chief is appointed by the President, having taken the lead in the investigation into the accusations towards the President. In the Rosenberg case, turning towards CICIG might have prevented an institutional crisis in Guatemala. But CICIG is not omnipotent and faultless. The Public Prosecutor's Office must in principle take care of the majority of cases, with involvement of CICIG being the exception and handling by the Public Prosecutor's Office the rule. A relationship of dependency between the national authorities and CICIG must be avoided.[153]

Avoiding a dependency relationship between the international body and the national institutions has proven difficult however. One of the key national counterparts of CICIG is the Interior Ministry, under which the National Civil Police resides. CICIG and the Interior Ministry signed an agreement of cooperation on March 25, 2008.[154] At the time, Vinicio Gómez was Interior Minister. He died in a helicopter crash on June 27, 2008. The circumstances under which the crash occurred might become subject of a CICIG investigation.[155] Three consecutive Interior Ministers have followed, all subject of investigation by CICIG. Gómez's direct successor was Francisco Jímenez, who is currently a suspect in a case led by UEFAC for embezzlement within the National Persons Registry (RENAP).[156] Salvador Gándara replaced Jímenez, but only remained in office for six months. He is accused by CICIG of inciting a supposed witness in the Rosenberg case to give false testimony[157] and moreover, he is accused of eighteen different charges of embezzlement and related crimes in a separate case by the Public Prosecutor's Office.[158] Gándara was succeeded by Raúl Velásquez, who authorized the transfer of around 5 million dollar, an amount destined for the purchase of fuel for the National Civil Police, to a

---

[153] *Prensa Libre*, September 10, 2010, 'Cicig llega a tres años en medio de apoyo y crítica'
[154] *Convenio bilateral de cooperación entre el Ministerio de Gobernación y la Comisión Internacional Contra la Impunidad en Guatemala (CICIG)*, March 25, 2008
[155] *Prensa Libre*, June 25, 2010, 'Familia de ministro Gómez solicita a la Cicig investigar accidente aéreo'
[156] CICIG (2010), p. 16. See also *Prensa Libre*, July 23, 2010, 'Ligan a proceso a ex ministro de Gobernación por anomalías en caso Renap'
[157] *Prensa Libre*, January 19, 2010, 'Investigación contra Salvador Gándara ya inició, afirma fiscal'
[158] *Prensa Libre,* October 13, 2009, 'MP investiga 18 denuncias contra Salvador Gándara'

cardboard company. The money has disappeared without any company delivering fuel, causing an acute lack of fuel at police stations in the entire country. Raúl Velásquez was arrested in January 2011, after having been a fugitive for ten months.[159] CICIG is *querellante adhesivo* in the case against Raúl Velásquez.[160] On March 1, 2010, Carlos Menocal became the fifth person in the Colom administration, which started in January 2008, to assume the function of Interior Minister.[161]

Under these circumstances, with the leadership of the national counterparts so extremely volatile, prospects of the national institutions actually taking the lead with the international body in a supportive role are problematic. Although most commentators do not consider Guatemala a completely failed state yet, many agree that it comes close.[162] The involvement of the international community through CICIG should reinforce the Guatemalan state. It should not take it over and push the national institutions over the brink. CICIG should always consciously work towards making itself eventually unnecessary, with national institutions taking over. To avoid the international body from becoming the alternative to national institutions, rather than an instrument of support to those national institutions, continuous conscious efforts towards national institution strengthening are crucial.

CICIG's temporal jurisdiction

Many transitional justice institutions, from Guatemala's truth commission CEH to the International Criminal Tribunals for the former Yugoslavia and for Rwanda, had their mandates restricted to crimes that occurred in a limited time period. The CEH mandate was to investigate the crimes that had occurred from 1962 until the signing of the Agreement to a Firm and Lasting Peace on 26 December 1996.[163] UNIIIC in Lebanon was charged with investigating the murder of former Prime Minister Rafik Hariri and others[164] whereas in Pakistan in 2009 a UN commission was created to investigate the assassination of former Prime Minister Benazir Bhutto.[165] CICIG's mandate was drafted in a wholly different manner. Its task is to 'identify and dismantle illegal bodies and clandestine security apparatuses' with the aim of combating impunity, without its mandate containing any temporal limitations. This allows the commission great flexibility in its approach. It can target crimes that occurred after the date CICIG was

---

[159] *Prensa Libre*, January 12, 2011, 'Jueza deja preso a ex ministro de Gobernación, Raúl Velásquez'
[160] CICIG (2010), p. 19
[161] *Prensa Libre*, March 1, 2010, 'Menocal ofrece transparencia y combate a la criminalidad'
[162] *BBC World*, October 19, 2010, 'Could Guatemala become a failed state?'. *Associated Press*, November 14, 2010, 'Guatemala close to failed state: U.N.-backed investigators shake up ruling elite'. Martin Barillas, *Speroforum* editor, April 8, 2010, 'Guatemala verges on status of a failed state'. *Los Angeles Times*, July 6, 2010, 'Guatemala at risk of becoming a failed state'.
[163] CEH (1999), *Guatemala: Memoria del Silencio*, Mandato y procedimiento de trabajo, Capítulo II: El Mandato, at para. 23
[164] United Nations Security Council Resolution 1595, April 7, 2005
[165] Letter dated February 2, 2009, from the Secretary-General to the President of the Security Council, UN Doc. S/26865

established, as the commission has done on numerous occasions. It also allows the commission to target crimes that have occurred only a short period of time prior to its date of establishment. Reading CICIG's mandate in the Agreement establishing it, not a single provision explicitly prevents CICIG from investigating into crimes of the further past. If the mission of the International Commission Against Impunity in Guatemala is to fight impunity in Guatemala, why doesn't CICIG address the impunity for the Guatemalan genocide?

Chapter 3 A Legal Obligation to Prosecute

Having provided an overview of Guatemalan political history and of the phenomenon of the International Commission Against Impunity in Guatemala, I now turn to a more in-depth investigation into the crimes that have occurred during the civil war, more specifically during the 1979-1983 period, and their legal implications.

First, I shall describe the crimes. Great emphasis shall be put on the finding by the UN-backed truth commission CEH of genocide. Secondly, I shall go into the international legal obligations incumbent upon the state of Guatemala with regard to the genocide and other human rights violations. Thirdly, I shall do the same for the national legal obligations. Fourthly, I shall describe the various forums available to those seeking justice for the genocide. Observing that the various forms through which justice has been sought have not delivered, I shall turn my attention to the question whether CICIG should investigate the genocide or not. Having established the legal obligations incumbent upon the state of Guatemala to investigate into genocide, the main question is enforcement of those obligations. I shall conclude that CICIG provides a unique window of opportunity with regard to the enforcement of those obligations, a window of opportunity that should not be lost.

Chapter 3.1 The crimes

The Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico*, or CEH) found that genocide had occurred in four specifically mentioned areas in the 1979-1983 era. Additional evidence for genocide has been demonstrated on numerous occasions, by the Guatemalan Human Rights Ombudsman and before the Inter-American Court for Human Rights and before a Spanish investigative judge. Evidence for enforced disappearances and torture is also abundant, as is evidence for other war crimes and crimes constituting crimes against humanity.

CEH finding genocide

The Guatemalan civil war ended by the signing of a series of peace treaties. One of the key provisions of the treaties was the establishment of a United Nations backed truth commission (*Comisión para el Esclarecimiento Histórico*, Historical Clarification Commission, hereinafter: CEH), already agreed upon at the start of the peace negotiations in Oslo in 1994. The CEH consisted of three members: German international lawyer Christian Tomuschat and the Guatemalans Alfredo Balsells Tojo and Otilia Lux de Cotí. It was mandated to document and clarify the

history of the violence and the causes of the conflict, and to formulate recommendations about how to "encourage peace and national harmony."[166]

Limited mandate

The mandate of the CEH was very broad and unrestricted in terms of its historical scope. The time period to be covered stretched from the start of the internal conflict in 1962[167] up until the signing of the Peace Accords in 1996. The Commission was called upon to clarify the 'human rights violations and acts of violence' related to the conflict. Its mandate included shedding light upon the historical causes of the conflict, thereby bringing the entire Guatemalan history of oppression since the *Conquista* into the scope of the work of the commission. In terms of substantial scope, the mandate of the CEH was also very broad. All historical, economic and social causes and consequences of the conflict were to be taken into account.

In terms of its powers, the commission was severely limited. It had no power to hear witnesses sub-poena and Guatemalan government institutions, most notably the army, repeatedly refused to hand over information to the commission.[168] It was not a truth and reconciliation Commission with the power to grant amnesty to remorseful perpetrators after confession like the South-African Commission. Neither could it impose any sanctions, whether civil or criminal. The Commission's report was not to have "any judicial aim or effect"[169] and the Commission was prohibited from naming names.[170] The only powers left to the Commission were to draft an authoritative impartial historical record and to make recommendations.

Significantly, the Commission was given six months to fulfill its mandate. The period was officially expanded with an additional six months period, and it eventually took the Commission eighteen months to produce its report. Within this eighteen months period, the Commission was to investigate all human rights

---

[166] *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer*, Oslo, June 23, 1994. Reproduced in *The Guatemala Peace Agreements*, United Nations Department of Public Information (1998), and available in Spanish at http://www.congreso.gob.gt/gt/acuerdos_de_paz.asp

[167] The CEH-mandate takes January 1962 as the start of the conflict, being the moment when dissident members of the military publicly declared that they had started a guerilla war against the Ydígoras Fuentes regime. Other accounts take November 1960, being the moment when a military rebellion took place in Zacapa, as the starting point. 1960 is most generally accepted as the starting point of the internal armed conflict.

[168] CEH (1999), *Guatemala: Memoria del Silencio*, *Mandato y procedimiento de trabajo*, Capítulo III La colaboración de las partes, and Annexo III

[169] *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer*, Article 1(III)

[170] The CEH partially circumvented the prohibition to name names by implying that the consecutive heads of state and ministers of defense were responsible, when it concluded that "[t]he responsibility for a large part of these violations, with respect to the chain of military command as well as the political and administrative responsibility, reaches the highest levels of the Army and successive governments." CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 106.

violations that had occurred during a thirty-six year conflict and to make recommendations to prevent reoccurrence of violence. Commissioner Tomuschat has explained that the Commission was overburdened, thereby "preventing it from discharging its mandate in a thorough fashion."[171]

The CEH's mandate reflects the respective power positions of the negotiating parties, the Guatemalan state army and the URNG guerilla leadership, at the time of drafting the CEH's mandate. The URNG had virtually lost the war on the battlefield, hence its position was weak and the demand by the Guatemalan army that a truth commission not name names could not be resisted.[172] The Guatemalan military was allegedly pushing "for a time scale to include the whole period of the armed conflict so as to overwhelm an under-resourced investigation team"[173] during the negotiations. The broad scope and insufficient duration of the eventual CEH mandate seem to inhabit a victory for the Guatemalan military in this respect. Indeed, the Oslo Agreement containing the CEH mandate was greeted with enthusiasm by the Guatemalan state.[174]

Contrast with REMHI

In reaction to the limited mandate that was established by the 1994 Oslo Agreement for the CEH, which was to be the official truth-telling process backed by the United Nations and the Guatemalan government, the Roman Catholic Church started its own truth-telling process under the name of Recuperation of the Historical Memory (*Recuperación de la Memoria Historica*, or REMHI). The REMHI-project was a private project from the Catholic Church, and as such was not constrained by any mandate limitations insisted upon by the Guatemalan government. It lacked any power to impose sanctions, just like the CEH. The Guatemalan government had no obligation to cooperate with REMHI, in contrast to the CEH with which it was obliged to cooperate under the terms of the Peace Accords.[175] But most crucially, the REMHI-project was not prohibited from individualizing responsibility and naming names. The final REMHI-report *Guatemala: Nunca Más* (Guatemala: Never Again) was presented on April 24, 1998, and contained explicit accusations directed to individual members of the military state leadership.[176] Bishop Gerardi, the leader of the REMHI-project, was

---

[171] Christian Tomuschat, 'Lessons Learned from the Historical Clarification Commission in Guatemala', quoted in Keller (2001), p. 301

[172] In contrast, in El Salvador, the war the state army of El Salvador had fought for eleven years with the Frente Farabundo Martí para la Liberación Nacional (FMLN) had led to a military stalemate, with both the guerillas and the state army controlling certain parts of the territory. The mandate of the UN Truth Commission for El Salvador reflected the FMLN's favorable bargaining position. The mandate of the Salvadoran Truth Commission does not contain any prohibition against identifying individual perpetrators by name and the Salvadoran Truth Commission was mandated to investigate certain crimes that had occurred during the eleven-year civil war, rather than to investigate all crimes that had occurred during a thirty-six-year civil war as was the case for the CEH. See Keller, p. 299-300

[173] Richard Wilson, *The Politics of Remembering and Forgetting in Guatemala*, in Guatemala After the Peace Accords 181, 184 (Rachel Sieder ed., 1998), quoted in Keller, p. 300

[174] Keller, p. 302-303

[175] Notwithstanding this obligation, many government institutions refused to hand over documentation. See above, footnote 168

[176] ODHAG (1998)

brutally murdered only two days after the publication of the *Nunca Más* report. The intellectual authors of the murder of Bishop Gerardi remain unpunished up until the present day.[177] The same goes for virtually all individuals who were named as the intellectual authors of the atrocities of the civil war in the *Nunca Más* report.

The factual findings of the CEH

The CEH published its final report, titled *Guatemala: Memoria del Silencio* (Guatemala: Memory of Silence), in February 1999. The Commission went much further than was expected beforehand. Among the most disturbing findings were the finding that the Maya indigenous population accounted for 83% of the victims, and the finding that 93% of the atrocities committed during the 36-year civil conflict can be attributed to the armed forces and their allies.[178] The report identified a total of 42.275 victims by name; of these, 23.671 were victims of arbitrary executions, and 6.159 were victims of forced disappearances. The total death toll of the conflict was estimated by the Commission to be around 200.000.

These figures are depressing and demonstrative of an atrocious conflict as they are. Yet, the Commission went even further than merely identifying victims and documenting the atrocities. It concluded that the attacks on the civilian population were not isolated incidents but rather formed part of a campaign targeted at the Maya population constituting genocide.

Classification of the crimes as genocide

Why did the Commission classify the crimes as genocide? The Commission's report nor any of its works were to have judicial effect. The Commission was not a court before which individual criminal responsibility had to be established. It was mandated to clarify the historical causes of the conflict and document the human rights violations and the acts of violence. The phrase 'acts of violence' in the Commission's mandate, which is sometimes replaced by 'incidents of violence', seems possibly inconsistent with the genocide that was found to have taken place by the Commission.[179] Yet, the evidence for the fact that a genocide had taken place encountered by the Commission was simply so overwhelming that the Commission could not escape the conclusion. Although the Commission was not mandated to name perpetrators by their names, it was within the mandate to name crimes by their names.

---

[177] See below, under 3.4 'Achieving justice', for a description of the Gerardi investigations

[178] In this respect, the CEH-report went even further than the REMHI-report, which accused the state of 87% of the atrocities perpetrated.

[179] The Spanish mandate speaks of 'hechos de violencia', which is literally best translated by 'acts of violence'. The official English version of the Oslo Agreement speaks of 'acts of violence', but 'incidents of violence' is also frequently used as a translation. See for example Inter-American Commission on Human Rights, *Application filed with the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín (Case 10,686) against the Republic of Guatemala*, July 28, 2007, at footnote 104 (available online at http://www.cidh.oas.org/demandas/10.686%20Tiu%20Tojin%20Guatemala%2028%20julio%202007%20ENG.pdf)

Actus reus

The Commission found that genocide had taken place in 1981-1983 in four regions: the 'Ixil triangle' in the Quiché department (between the cities of Nebaj, Cotzal and Chajul), the northern strip of the Huehuetenango Department, the Zacualpa area in the Quiché department, and the area around the city of Rabinal, Baja Verapaz department. Those are regions that were predominantly inhabited by Maya people and that were particularly hit by violence since the start of the conflict. By 1981, the excessive violence in these regions had been turned into a campaign to destroy the Maya as a group, according to the Commission.

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter: Genocide Convention) defines genocide as:

> "... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group."

The mission of the CEH was to document the human rights violations and the incidents of violence. While doing so, the incidents of violence it was documenting revealed a pattern of systematic, premeditated violence aimed at the Maya as a group per se. Volumes 2 and 3 of Part II of the Report both carry the title 'Human Rights Violations'. In the very last chapter of Volume 3, the violations in four specific areas are systematically analyzed. That chapter came to carry the title 'Genocide' in the final report.[180]

The period in which genocide is found to have been committed is the period of 1981 to 1983. In this period, 81% of all human rights violations of the 34-year period under investigation took place. In the year 1982 alone, 48% of all the registered violations occurred.[181]

In the 1970s, the guerillas were not only active in the mountainous highlands, but also in the east of Guatemala, an area predominantly inhabited by ladinos.[182] By the early 1980s, the guerillas' presence and activity had retreated

---

[180] CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 3, 'Genocidio', paras 849-1257.

[181] CEH (1999), *Guatemala: Memoria del Silencio*,, para. 865

[182] Ladino is a term that originally meant to say as much as 'of mixed descent', as opposed to Spaniard or Indian. The Guatemalan Ministry of Education defines the term today as follows: "The ladino population has been characterized as a heterogeneous population which expresses itself in the Spanish language as a maternal language, which possesses specific cultural traits of Hispanic origin mixed with indigenous cultural elements, and dresses in a style commonly considered as western." Ministerio de Educación (MINEDUC) (2008)"*Reflexiones sobre el mestizaje y la identidad nacional en Centroamérica: de la colonia a las Républicas liberales*". In the 1980s, ladino served more to say 'non-indigenous' than anything else.

to only the predominantly Maya-inhabited highlands. The state had come to a full identification of the Maya people with the guerillas and had come to the conclusion that killing Mayas was a justifiable military tactic. Clearly speaking of the Mayas as an inferior 'other', Rios Montt has declared: "Naturally, if a subversive operation exists in which the Indians are involved with the guerrillas, the Indians are also going to die. However, the army's philosophy is not to kill the Indians, but to win them back, to help them."[183]

The Commission perceives the genocide as a process with three phases. The first phase is that of 'selective repression', eliminating community leaders and members of specific sectors. The second is that of indiscriminately massacring villages and applying scorched earth tactics. The third phase of the genocide consists of the consolidation of control over the Maya people through militarization of daily life and the introduction of a system of military commanders and Civil Defense Patrols (*Patrullas de Autodefensa Civil,* hereinafter PACs).[184] It is obvious that the second phase was the phase where most acts within the scope of the *actus reus* of the Genocide Convention have taken place. Yet, to fully understand what happened, the Commission approaches the three phases as distinct yet crucially interrelated.

The CEH has recorded a total of 628 massacres. A massacre is defined by the CEH as an act that entailed "the execution of five or more people, in the same place, as part of the same operation and whose victims were in an indefensible state."[185] Many reported massacres involved the killing of every individual in the village under attack, even the infants and the elderly. But the Guatemalan military did not stop at merely killing everybody present in the village under attack. After the killing, scorched earth tactics like burning all the surrounding crops around the massacred village, thereby forcing any survivors to either turn themselves over to the army or face starvation in the mountains, were consistently applied. The destruction of homes and crops and entire villages constituted the deliberate infliction of conditions of life calculated to bring about the partial physical destruction of the group.

Moreover, the army systematically engaged in acts of cruelty, like the display of the mutilated, tortured and sexually violated victims, obligating members of the group to commit acts of violence against one another and in full view of the entire community, the killing of girl-children, infants, women, and the elderly, systematic, public and gang rapes of women, including girls and pregnant women, and the gouging of fetuses from women's bodies.[186] These acts

---

[183] Foreign Broadcast Information Service, Central America, Ríos Montt Views on Peasant Killings, Communism, June 2, 1982, quoted in CEH (1999), *Guatemala: Memoria del Silencio*, para. 888

[184] CEH (1999), *Guatemala: Memoria del Silencio*, paras 892-893

[185] CEH (1999), *Guatemala: Memoria del Silencio*, para. 709, Spanish original: "La CEH ha definido una masacre como la ejecución arbitraria de más de cinco personas, realizada en un mismo lugar y como parte de un mismo operativo, cuando las víctimas se encontraban en un estado de indefensión absoluta o relativa." Translation taken from Rocio Mezquita, 'The Guatemalan Commission for Historical Clarification: Data Processing', in *Making the Case: Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis*, Ball, Spirer and Spirer (eds.), 2000, available at http://shr.aaas.org/mtc/chap08.html

[186] CEH (1999), *Guatemala: Memoria del Silencio*, paras. 1123-1136

are considered by the Commission to be aimed not only at bringing about he physical destruction of the group, but also at destroying any basis for social cohesion within the group.

The violence was clearly directed at the indigenous population in the four areas under study. In the Ixil-triangle, 88% of the population was Ixil, yet they counted for 96% of the victims of the violence.[187] In the Zacualpa area of the Quiché district, 90% of the population was maya k'iche', yet they counted for 99.2% of the reported victims.[188] There is henceforth a clear statistical disparity between the numbers of indigenous and ladino victims and their shares of the total populations in each of the areas studied. Narrative evidence further supports this disparity, as there are numerous counts reported where ladino members of the population were warned and told to leave prior to an attack.

Mens rea

The ICTY, in its rule 61 Decision in the case against Karadzic and Mladic, has distinguished three categories of analysis for interpreting genocidal intent:

> " 1 the general political doctrine of the aggressor;
> 2 the repetition of discriminatory and destructive acts;
> 3 the perpetration of acts which violate or are perceived by the aggressor as violating the foundations of the group, whether or not they constitute the enumerated acts prohibited in genocide definition, and so long as they are part of the same pattern of conduct." [189]

The evidence for genocidal intent is considered convincing by the CEH. The Mayas are recognized by Guatemala's Constitution to form a distinct ethnical group.[190] Hence, it falls within the group criterion of the Genocide Convention.

---

[187] CEH (1999), *Guatemala: Memoria del Silencio*, para 925

[188] CEH (1999), *Guatemala: Memoria del Silencio*, para 1083 and 1092

[189] ICTY Case No. IT-95-5-R61 & No. It-95-18-R61, *Karadzic and Mladic*, Decision of Trial Chamber I, Review of Indictment Pursuant to Rule 61, July 11, 1996, para. 94. Note that this decision was rendered in July 1996, prior to the start of the work of the CEH. Since then, more clarification on the issue has been given. For instance, in the Decision on Appeal in the *Jelisic* case (July 5, 2001) the ICTY ruled on the issue, as did the ICTR Trial Chamber in *Prosecutor v. Jean-Paul Akayesu*. In *Prosecutor v. Clément Kayishema and Obed Ruzindana*, the Trial Chamber opined that, "for the crime of genocide to occur, the mens rea must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent." (*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgment of May 21, 1999, para. 91) It goes beyond the purpose of this essay to provide a full overview of all legal sources relevant to determine the meaning of the *mens rea* requirement to genocide that have developed after the publication of the CEH- report.

[190]CEH (1999), *Guatemala: Memoria del Silencio*, paras 868-874. To be more precise, the Maya people is composed of various ethnical groups, like the Maya-Ixil, Maya-Achi, Maya-Kaqchikel and Maya-K'Iche'. Together, these various groups of Maya ethnicity form the Maya people. The Maya people see themselves as one people, as do Guatemalan society at large and Guatemalan law. Hence, for the interpretation of 'ethnical group' in the Genocide Convention, the Maya people as a whole is taken as a basis of reference.

That the Guatemalan army perceived the Maya people as such as a hostile and inferior group it seeked to destroy in whole or in part, is revealed by a multitude of evidentiary sources. As early as 1972 an army intelligence manual asserted that "the enemy has the same sociological characteristics as the inhabitants of our highlands."[191] A declassified CIA document of February 1982 observes that "[w]hen an army patrol meets resistance and takes fire from a town or village it is assumed that the entire town is hostile and it is subsequently destroyed. (…) An empty village is assumed to have been supporting the EGP [guerilla group], and it is destroyed. (…) The army has yet to encounter any major guerilla force in the area. (…) [the army is] highly pleased with the initial results of the sweep operation and believes it will be successful. (…) [the army's] successes to date appear to be limited to the destruction of several 'EGP-controlled' towns and the killing of Indian collaborators and sympathizers. (…) The well-documented belief by the army that the entire Ixil Indian population is pro-EGP has created a situation in which the army can be expected to give no quarter to combatants and non-combatants alike."[192]

During the height of the violence, a repeated pattern of intimidation, massacre and persecution occurred against Maya communities in the highlands. The indiscriminate mass killing of infants, elderly and women points to the intent to destroy the group. The Guatemalan military's defense is that the military campaigns against Maya communities served a military goal and were never intended to destroy the ethnical group of the Mayas. Ríos Montt has formulated the military logic of massacring Maya villages as "draining the water from the fish."[193] Even if the intent of destroying the Maya group in whole or in part is stemming from a military motive, that does not bar the existence of genocidal intent. If the official motive might have been the destroying of the fish (the guerilla), the army willingly resorted to destroying the water (the Maya civilian population). By expressing the desire to 'drain the water from the fish', he makes clear that the Maya civilian population was the primary military target rather than the guerilla.

Moreover, the army did not have to resort to massacring villages given its military position, if its intent were only to destroy the guerilla. The state "had access to the sources of information necessary to identify the insurgent combatants, assess their military capacity, and enable them to distinguish the insurgents from civilian non-combatants."[194] Yet the state resorted to massacring. Hence, by going further in massacring civilians than can be justified or considered beneficial from a military perspective, genocidal intent is revealed.

Apart from the aimed targeting of Mayas as victims of massacres, there is more evidence for the intent to destroy the group. The CEH considered acts of cultural destruction as signposts of the subjective intent of the attackers, when they were committed together with the acts of physical destruction specifically proscribed in the Genocide Convention. In this respect, incidents of bombing of

---

[191] CEH (1999), *Guatemala: Memoria del Silencio*, para. 880

[192] CIA, *Documento desclasificado del Departamento de Estado de los EE UU*, G5-41, P12.41, released February, 1998. Quoted in CEH (1999), *Guatemala: Memoria del Silencio*, paras. 904 and 909. Translation taken from Sanford (2003a), p. 152-153

[193] *Reuters*, 'Guatemala hands over key file in army genocide case', April 22, 2010

[194] CEH (1999), *Guatemala: Memoria del Silencio*, para. 1251. Translation taken from Perlin (2000), p. 407

sacred Maya lands used for ritual worship or the deliberate burning of 'huipiles', traditional dress reflecting both the geographic origin and ethnicity of the wearer, or the prohibition on ritual burial of the dead, were indicative of an intent to destroy the group, as such.[195] The fact that the genocidal intent was not as evidently formulated as in the cases of the Holocaust and the killings in Rwanda, does not mean that genocidal intent was not present.[196]

Individual criminal responsibility

As mentioned, no names were named by the CEH in its final report. Yet, the CEH concluded that "[t]he responsibility for a large part of these violations, with respect to the chain of military command as well as the political and administrative responsibility, reaches the highest levels of the Army and successive governments."[197] Thereby it asserted that the Defense ministers and Presidents of the time had individual command responsibility for the genocidal acts being carried out. According to Commissioner Tomuschat, "[T]he results of our investigations demonstrate that, in general, the excuse that mid-level commanders acted with a wide margin of autonomy … is unsubstantiated and totally lacking any basis whatsoever."[198]

Attribution of the crimes to the Guatemalan state

The REMHI-report estimated that the army and its associated forces were to be blamed for 87% of the atrocities and called various perpetrators by name. The CEH went even further to blame the state army and its associated para-military forces for 93% of the atrocities.

The CEH considers the State responsible not only for human rights violations "perpetrated by its public servants and state agencies", but also for "actions of civilians to whom it delegated, *de jure* or *de facto*, authority to act on its behalf, or with its consent, acquiescence or knowledge." This definition includes members of the military and "any other third party that may have acted under the direction or with the knowledge of state agents." [199] The latter includes the actions of the PACs.[200]

Reaction to the CEH's finding of genocide

The REMHI had found the systematic targeting of communities for religious or ethnic reasons to generally include 'aspects of genocide.'[201] The CEH carried out a systematic analysis of all human rights violations it found, looking into patterns that systematically preceded and followed massacres and into the shares of different ethnicities among the victims, to find not merely that the violence

---

[195] Perlin (2000), p. 402
[196] Perlin (2000), p. 412
[197] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 106
[198] Perlin (2000), p. 396
[199] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 106
[200] See also CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 1, *Las Patrullas de Autodefensa Civil*, paras. 492-635
[201] ODHAG (1998), at 289-311

included aspects of genocide, but that "within the framework of counterinsurgency operations carried out between 1981 and 1983, [the State] committed acts of genocide against groups of Maya people" in four instances.[202] In particular, the CEH found that documented acts indicated violations of Article 2(a), 2(b), and 2(c) of the Genocide Convention, committed with the "intent to destroy" the Maya group "in whole or in part."[203]

The Guatemalan government has denied that genocide had taken place. President Arzú declared on June 30, 1999,[204] that although the civil war had caused many casualties, never was there a campaign aimed at the destruction of the Maya people.[205] The CEH's finding of genocide and the CEH's implicit attribution of command responsibility to Ríos Montt did not prevent the latter from winning the 1999 Congressional elections. In December 1999, Ríos Montt assumed the presidency of Congress. Not one conviction for genocide has been delivered.

Other crimes than genocide

Whether or not the acts documented by the CEH constitute genocide, they certainly constitute war crimes and crimes against humanity. The Guatemalan state committed acts in violation of Common Article III of the Geneva Conventions, including "attacks against life and bodily integrity, mutilation, cruel treatment, torture and torment, the taking of hostages, attacks on personal dignity, and particularly humiliating and degrading treatment, including the rape of women."[206]

Crimes committed by the guerillas

Although the Guatemalan state committed the overwhelming majority of crimes, the guerillas were not without blame. The CEH attributed three percent of the violations to the guerillas.[207] Those violations include thirty-two massacres, arbitrary executions, forced disappearances, and kidnappings. The Commission concluded that the guerillas' actions violated Common Article III of the Geneva Conventions. The CEH furthermore asserted that the violations occurred either upon the explicit orders of the guerilla high command or with the knowledge of the highest ranking guerilla commanders, thereby assigning responsibility for the violations to the highest levels of the guerillas' organic structure.[208] The guerillas were not in any position to commit genocide. As only 3% of the atrocities are attributed to the guerillas, I will not go into further detail about their crimes. However, that is not to say that CICIG, if it were to instigate

---

[202] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 122
[203] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 122
[204] June 30 is *Día del Ejército*, or Day of the Army, a national holiday in Guatemala
[205] *Prensa Libre*, June 30, 1999, 'Arzú Aboga por Espinoza'
[206] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, para. 100
[207] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, paras. 127-143. See also CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 4, 'Las organizaciones guerilleras y el derecho internacional humanitario', paras. 1-20, at para. 10
[208] CEH (1999), *Guatemala: Memory of Silence*, Conclusions, part II, paras. 142-143

investigations into the genocide and war crimes committed during Guatemala's civil war, should not take atrocities committed by the guerillas into account.

Legal value of the CEH report

The CEH-mandate specified that the CEH-report would have "no judicial aim or effect."[209] It is not clear from the outset what is meant by this provision. The CEH had no powers to engage in criminal proceedings in the first place. The power that CICIG has, of acting as *querellante adhesivo*, was never even considered to be bestowed upon the CEH. Practically speaking, the evidentiary value of the CEH-report is limited in a trial without the underlying witnesses and documentation. The Commission's obligation to maintain confidentiality[210] would mean that a prosecutor would have to discover the identity of witnesses through independent means. However, the availability of witnesses seems not to be a practical constraint, given amongst others the abundant witness testimony given in cases in the Inter-American system. The Commission's factual analyses, legal arguments and the references to historical and social context can at least inspire a framework for victims and conscientious prosecutors to seek redress for the gross violations of human rights documented.[211]

Although *Guatemala: Memoria del Silencio* is indeed an influential historical record, and the CEH had the official support of the Guatemalan state, the work by the Commission does not discharge the state from its duty to establish the truth and promote justice. In the words of the Inter-American Court for Human Rights:

---

[209] *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer*, Oslo, June 23, 1994, Operation, III: "The Commission shall not attribute responsibility to any individual in its work, recommendations and report nor shall these have any judicial aim or effect."

[210] *Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer*, Oslo, June 23, 1994, Operation, IV: "The Commission's proceedings shall be confidential so as to guarantee the secrecy of the sources and the safety of witnesses and informants."

[211] Perlin (2000), p. 391. See also CEH (1999), *Guatemala: Memoria del Silencio*, Volumen I, 'Mandato y procedimiento de trabajo', at para. 68: "Si bien el Acuerdo dice que ni los trabajos ni el Informe tienen efectos judiciales, nada obsta que la institucionalidad del Estado, particularmente las entidades del sistema de administración de justicia, puedan basarse en elementos contenidos en el Informe de la CEH. Este mismo razonamiento es aplicable a los ciudadanos, que mantienen su pleno derecho a ejercer las acciones que, en relación con casos descritos en este Informe, les pueda corresponder en su calidad de víctimas o de familiares de las mismas." My own translation: "Although the Agreements says that neither the works nor the Report shall have judicial effect, nothing prevents the state institutions, particularly the entities charged with the administration of justice, from basing themselves on elements contained in the Report of the CEH. This same reasoning is applicable to citizens, who maintain their full right to bring actions that, in relation to cases described in this Report, correspond to their quality of victims or relatives of victims."

" (…) [T]he Court values the publication of a report by the CEH, *Guatemala: Memory of Silence*, which includes the case of the Las Dos Erres Massacre, as an effort which has contributed to the search for and determination of the truth on a historical period in Guatemala. Nevertheless, the Court deems it pertinent to note that the "historical truth" contained in this report does not complete or substitute the State's obligation to establish the truth and ensure the judicial determination of individual or State responsibilities through the judicial proceedings."[212]

[212] Inter-American Court of Human Rights (2009), *Case of the "Las Dos Erres" Massacre v. Guatemala*, Judgment of November 24, 2009, para. 232

Chapter 3.2 International law

Guatemala is a party to numerous conventions, amongst which the Genocide Convention, the American Convention on Human Rights, and the Geneva Conventions. Moreover, norms of international customary law prohibiting genocide, torture, and other crimes that were committed during the internal armed conflict, were beyond doubt existing and binding upon the state of Guatemala at the time of the internal armed conflict. From an international law perspective, the Guatemalan State is under a clear obligation to investigate and prosecute the crimes committed described in the foregoing.

Genocide Convention

The Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter: Genocide Convention) was opened for signature on December 11, 1948. During the government of Juan José Arévalo, the state of Guatemala signed the Convention in 1949 and ratified it in 1950. The parties to the Convention are obliged to provide effective penalties for persons guilty of genocide or genocide-related crimes.[213] Jurisdiction to try genocide and genocide-related crimes is bestowed upon "a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."[214] The CEH explicitly concludes that the State of Guatemala violates its obligations stemming from the Genocide Convention by not investigating and sanctioning the genocidal acts committed on its territory.[215]

Moreover, the prohibition of genocide and the obligation to prosecute persons that have committed genocide are norms of *jus cogens*. The International Court of Justice asserted in an advisory opinion that the principles underlying the Genocide Convention "are recognized by civilized nations as binding on States, even without any conventional obligation."[216]

American Convention on Human Rights

Guatemala is a party to the American Convention on Human Rights. It signed the Convention on November 22, 1969, and ratified it on April 27, 1978. The violations of human rights protected by the American Convention that have occurred during the armed conflict are overwhelmingly numerous and include violation of the right to juridical personality (Article 3), life (Article 4), humane treatment (Article 5) and personal liberty (Article 7), as well as the right to property (Article 21), the right to freedom of movement and residence (Article

---

[213] Article 3 of the Genocide Convention enumerates as punishable acts: "(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide."

[214] Article 6 of the Genocide Convention

[215] CEH (1999), *Guatemala: Memoria del Silencio*, Capitulo II, Volumen 3, *Genocidio*, para 1257

[216] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, 1951 ICJ 15, at 23

22) and the right to participation in government (Article 23), amongst others. On many occasions, both in friendly settlements and in Inter-American Commission and Court rulings, the State of Guatemala has accepted state responsibility for violations of rights protected by the American Convention, including forced disappearance and torture.

Humanitarian law

Guatemala ratified the Geneva Conventions in 1952, and Additional Protocols I and II in 1987. The threshold for establishing an internal conflict in the sense of Common Article 3[217] or in the sense of Additional Protocol II of the Geneva Conventions[218] was not necessarily reached during every moment of the thirty-six year duration of the conflict. However, it is evident that the threshold was met in 1979-1982, when the intensity of conflict was at its highest.

The provisions of Common Article 3 of the Geneva Conventions were binding on Guatemala by virtue of its ratification of the Conventions in 1952. The Article prohibits "murder of all kinds, mutilation, cruel treatment and torture" of "[p]ersons taking no active part in the hostilities."[219] Moreover, in the eyes of the International Court of Justice in 1986, the provisions of Common Article 3

---

[217] Common Article 3 of the 1949 Geneva Conventions for the Protection of War Victims requires that the armed conflict be "not of an international character" and "occurring in the territory of one of the High Contracting Parties"

[218] The 1977 Protocol Additional (II) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-international Armed Conflict, Article 1.1, further requires that the armed conflict be between the armed forces of a High Contracting Party "and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of the territory as to enable them to carry out sustained and concerted military operations."

[219] The full text of Common Article 3 of the 1949 Geneva Conventions for the Protection of War Victims reads: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

represent customary international law.[220] The Additional Protocols were only ratified by Guatemala in 1987, and were thus not applicable during the 1979-1983 era by virtue of ratification. The CEH determined that Additional Protocol II "reflected the uses and practices universally accepted as customary international law and/or as juridical principles universally accepted based on common Article 3. This is reason why these norms should be considered as a valid and relevant point of reference."[221] The CEH's statement that Additional Protocol II in its entirety must be considered to have been applicable during the internal armed conflict in Guatemala by virtue of its proclaimed status of customary international law is problematic. State practice to sustain this conclusion is limited, and this conclusion finds little support in the drafting history of the 1977 Additional Protocol.[222] The rules of Additional Protocol II have developed towards customary international law status over the past decades.[223] However, in 1977, when Additional Protocol II opened for signature, it was signed by only 39 states. To consider all the rules of Additional Protocol II to have been customary law in 1979-1982, has probably been a too far-reaching conclusion by the CEH.

However, the CEH has unquestionably demonstrated violations of Common Article 3 by the Guatemalan state constituting grave breaches. Under the Geneva Conventions, which were binding during the course of the internal armed conflict by virtue of Guatemala's ratification, "[e]ach High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."[224]

---

[220] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), Merits, 1986 ICJ Rep. 4 (June 27), at paras. 218-220. At para. 218, the Court considers the rules of Common Article 3 to be "elementary considerations of humanity".

[221] CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 2, *Marco Jurídico*, para. 42. Translation from Perlin (2000) p. 392. Spanish original: "Sin embargo, esta CEH consideró que las disposiciones contenidas en el Protocolo II recogieron usos y prácticas universalmente aceptadas como el derecho consuetudinario y/o como los principios jurídicos de aceptación universal sobre la base del artículo 3 común. Este es el motivo por el cual deben ser considerados como un marco de referencia válido y relevante."

[222] In a 1982 book, when speaking about the drafting of Additional Protocol II, Bothe, Partsch and Solf state that the "[deletion of a reference to the law of nations] is justified by the fact that the attempt to establish rules for a non-international conflict only goes back to 1949 and that the application of common Art. 3 in the practice of states has not developed in such a way that one could speak of "established custom" regarding non-international conflict." Meron, Theodor, 'The Geneva Conventions as Customary Law', *The American Journal of International Law,* Volume 81, No. 2, 1987, 348-370, at footnote 33, quoting M. Bothe, K. Partsch and W. Solf, *New Rules for Victims of Armed Conflict* 620 (1982)

[223] *International Review of the Red Cross*, Volume 87 Number 857, March 2005, 'Customary Law'

[224] Article 146 of Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949

Torture

Torture can be under certain circumstances part of the *actus reus* of genocide,[225] a violation of common Article 3 of the Geneva Conventions,[226] and can in all circumstances be considered a violation of the right to humane treatment as protected by the American Convention on Human Rights.[227] As such, torture is proscribed by the United Nations Convention Against Torture. The latter has entered into force on June 26, 1987, and was ratified by Guatemala on January 5, 1990, well after the days of Lucas García and Ríos Montt. The Committee Against Torture, established by the Convention Against Torture to monitor compliance,[228] has made clear that the provisions of the Convention cannot be applied retroactively.[229] Article 5 of the Universal Declaration of Human Rights holds that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The International Covenant on Civil and Political Rights (ICCPR) prohibits torture in similar terms in Article 7. In general comments interpreting Article 7 of the Covenant, the Human Rights Committee, charged with monitoring compliance with the Covenant, has asserted: "Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible (…)"[230] Guatemala has only joined the ICCPR in May 2000 however. Asserting the prohibition of torture under customary international law in 1979-1982 can be problematic, given the lack of state practice supporting such assertion.[231] Hence, under international

---

[225] Article 2(b) of the Genocide Convention: "[c]ausing serious bodily or mental harm to members of the group"; the presence of intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, is required.

[226] Common Article 3 (1)(a): "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture"; the presence of an internal armed conflict is required.

[227] Article 5(2) of the American Convention on Human Rights: "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

[228] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 17

[229] See O.R., M.M. and M.S. v. Argentina, Comms. Nos. 1/1988, 2/1988 and 3/1988, Decisions of the Committee against Torture under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, where the Committee held inadmissible three communications relating to events that had occurred prior to the entry into force of the Convention. See also the *Bouterse* case in the Netherlands, where the Dutch Supreme Court (*Hoge Raad*) ruled that the Dutch Torture Convention Implementation Act of 1989 was not applicable to Bouterse's acts in 1982, since the Dutch Constitution prohibits retroactive application of the law. The Supreme Court gave precedence to the principle of legality, reversing the previous ruling of the Amsterdam Court of Appeal that the Convention was only declaratory of pre-existing international customary law and that accordingly Bouterse could be held accountable under it for acts committed prior to its entry into force. Supreme Court (*Hoge Raad*), Criminal Chamber, judgment of September 18, 2001, nr. 00749/01 (CW 2323)

[230] Report of the Human Rights Committee, 37 U.N. GAOR Supp. (No. 40) Annex V, general comment 7(16), para. 1, U.N. Doc. E/CN.4/Sub.2/Add.1/963 (1982)

[231] Roberts (2001), pp. 768-773

law, the prohibition of torture appears most unambiguously from the American Convention on Human Rights, and under the circumstances present in the Guatemalan context also from the Genocide Convention and Common Article 3 of the Geneva Conventions.

The crime of enforced disappearance

Guatemala has the dubious honor of being the site of the first documented mass disappearance in the Americas.[232] Enforced disappearances were a systematic practice that, in nearly all cases, was the result of intelligence operations by the State.[233] Enforced disappearances constitute a violation of the right to life and of the right to access to a judge, which are protected human rights under the American Convention on Human Rights.[234] The crime of enforced disappearance has taken the dimension of a continuing crime in recent international and Guatemalan jurisprudence. That is to say, as long as the whereabouts of the victim of a disappearance have not been revealed, the crime is considered to be ongoing.

Internationally, the nature of enforced disappearances as a continuing crime was confirmed by the Inter-American Court for Human Rights. It was alluded to in the *Velásquez Rodríguez v. Honduras* case,[235] and subsequently elaborated upon in the case of *Blake v. Guatemala*.[236] In the latter case, United States citizen and journalist Nicolas Chapman Blake was abducted and murdered by agents of the Guatemalan state in 1985. His fate and whereabouts were only revealed in 1992. When the case was submitted to the Court in 1995, the Guatemalan state argued that it was not admissible for reasons of non-retroactivity, as Guatemala had only accepted the contentious jurisdiction of the Court in 1987. The Court however ruled that the effects of an enforced disappearance "may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established,"[237] and therefore considered itself competent to examine the possible violations. The International Commission of Jurists has also confirmed this viewpoint in a Legal Brief Amicus Curiae presented before the Inter-American Court in the *Efraín Bámaca Velásquez v. Guatemala* case.[238]

---

[232] Perlin (2000), p. 394; CEH (1999), *Guatemala: Memoria del Silencio*, Annexo I, Vol. 1, illustrative case No. 68, 'Los 28 desaparecidos de 1966'

[233] CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 2, *'Las desapariciones forzadas'*, paras. 384-537. Most notably '*La labor de Inteligencia*', paras. 445-449.

[234] Article 4 of the American Convention protects the right to life, Article 7(5) the right to access to a judge or other officer authorized by law to exercise judicial power

[235] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Ser. C, No. 4, at para 155

[236] I/A Court H.R, *Case of Blake v. Guatemala*, Preliminary Objections, Judgment of July 2, 1996, Ser. C No. 27; and Merits, Judgment of January 24, 1998, Ser. C. No. 36

[237] I/A Court H.R, *Case of Blake v. Guatemala*, Preliminary Objections, Judgment of July 2, 1996, Ser. C No. 27, at para. 39

[238] International Commission of Jurists, "Legal Brief Amicus Curiae Presented by the International Commission of Jurists before the Inter-American Court of Human Rights in the Case of Efraín Bámaca Velásquez vs. Guatemala," June 27, 2000, available online at www.icaed.org/fileadmin/user_upload/BamacaAmicusENG.doc. At para. 70: "In the

The obligation to prosecute under international law

Establishing a prohibition on genocide and defining human rights under international law is one thing. Establishing the extent of the obligation upon the state to prosecute is quite another.

Among the earliest international criminal legal norms are the classification of piracy as a crime against whole mankind and the customary law obligation requiring states to provide legal redress for injury to foreign nationals. The classification of certain crimes as international crimes that bring an obligation to prosecute as such is a separate phenomenon. In 1625, Dutch jurist Hugo Grotius formulated it as follows: "The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever."[239]

The codification of such norms of international criminal law effectively commenced after the Second World War, through the proceedings of the Nuremberg tribunals and the adoption of the Genocide Convention in 1948. The prohibition of certain behavior, such as genocide, torture and enforced disappearance, is naturally coupled to an obligation to prosecute. As the U.S. Military Tribunal in the *Einsatz-gruppen* case reasoned: "Where law exists a court will rise … It would be an admission of incapacity, in contradiction of every self-evident reality, that mankind … should be unable to maintain a tribunal holding inviolable the law of humanity, and, by doing so, preserve the human race itself."[240] Without making reference to the dimension of the whole of mankind being affected by certain crimes, in general punishment of criminal behavior is the most effective insurance against future committing of such criminal behavior.[241]

The obligation to prosecute is thus inherently and unavoidably linked to the existence of the prohibition. The existence of a prohibition without the existence of the obligation to prosecute would lead to a result that is self-evidently contradictory to the purpose of law. However, under certain circumstances strict adherence to the obligation might lead to an undesirable

---

case of forced disappearance, this obligation to investigate takes on a particular dimension due to the special character of this type of human rights violation, namely: the situation of total defenselessness in which the disappeared person is placed, and the nature of the crime as both a multiple violation of human rights and as a continuous or permanent violation."

[239] Hugo Grotius, *De jure belli et pacis*, chapter XX, § XL, para. 1 (1625) (Carnegie trans. 1925). Quoted in Orentlicher (1991), p. 2556

[240] United States v. Ohlendorf, IV Trails of War Crimes, at 499-500. Quoted in Orentlicher (1991), p. 2557

[241] As Fingarette puts it: "unless society imposes a sanction when its laws are violated, the law "becomes functionally a mere appeal"; "the concept of law as a *requirement* becomes unintelligible" (emphasis in original). Fingarette, *Rethinking Criminal Law Excuses*, Yale L. J. 1002, 1013-16 (1980), at 1014. Quoted in Orentlicher (1991), p. 2542

result. Transition from authoritarian to democratic rule can create such circumstances.

When a society faces transition from authoritarian rule to democratic rule, the challenges it faces are manifold. If the predecessor authoritarian regime has committed atrocities on a large scale, one of the most crucial challenges the democratic successor regime faces is how to confront the atrocious past. While prosecution of atrocities might seem warranted, both from a moral and from a legal point of view, prosecution might not always be feasible. If the predecessor authoritarian regime is a military regime and if the armed forces still wield considerable power in the new balance of power, insisting on prosecuting past crimes might put the democratic transition at risk. Moreover, if the judicial branch of government has been implicated in the crimes of the authoritarian regime or has been severely debilitated by it, the judicial branch might not be in an adequate position to guarantee fair trials if prosecutions take place.[242]

The transition that took place in Guatemala is a case in point. Formal civil democracy was reestablished in 1986, whereas the Peace Accords were signed in 1996. The Peace Accords provided for a radical restructuring of civil-military relations and for a great reduction in the size of the army. Yet, the control the military exercised in the country was great. It might convincingly be argued that prosecuting the leadership of the military state for the crimes of 1979-1982 would have put the transition in imminent danger had it occurred immediately after the transition to formal civilian democratic rule in 1986. As is clear from the overview of the political history of Guatemala, military coups d'état are not an uncommon phenomenon in the country. The brief period of democracy that had commenced in 1944 with the October revolution came to an end through the 1954 counterrevolution. Whereas the 1944 October revolution was a combination of civil and military forces, the 1954 counterrevolution was purely military.[243] In 1983, Oscar Mejía Victores took power in a coup d'état, ousting Efraín Ríos Montt who himself had come to power by a coup d'état in 1982. Therefore, any fear on behalf of the Guatemalan civil governments since 1986 that insisting on prosecuting the 1979-1982 crimes would entail the risk of a military uprising ending the transition to democracy can arguably be considered justifiable.

Such claims were not explicitly made however. President Cerezo nor president Serrano ever expressed their interest in the crimes of the period from 1979 to 1982. With the signing of the Peace Accords in 1996 under president Arzú, a National Reconciliation Law was also enacted.[244] The law explicitly excluded the crimes of genocide, torture and enforced disappearance from the application of any amnesty provisions. The framework of the National Reconciliation Law seemed to suggest that perpetrators of lesser crimes would not be punished in order to avoid an overload of the judicial system given the massiveness of the crimes of the 1979-1982 period, but that those carrying the

---

[242] A trial following transition that is a clear sign of abuse of prosecution power is the summary trial and execution of Nicolae Ceausescu and his wife in Bukarest, Romania, 1989.

[243] A reason for not considering it a coup d'état *strictu sensu* is that it was more of a foreign intervention. The rebel army led by by former Guatemalan colonel Castillo Armas was supported by the CIA and invaded Guatemala from Honduras.

[244] For a more detailed description of the National Reconciliation Law, see below.

greatest responsibility for genocide, torture and enforced disappearances would be punished. However, nothing happened. When in 2000 Ríos Montt's close ally Alfonso Portillo assumed the presidency, any possibly existing forces in favor of prosecution were muted.

This lack of accountability poses a fundamental problem to the Guatemalan state. The democratic transition is founded upon the idea of the rule of law. Both national and international law impose an unambiguous obligation upon the state of Guatemala to prosecute genocide, torture and enforced disappearances. If the rule of law is not upheld with regard to the most heinous of crimes, the entire concept of the rule of law loses its credibility before the Guatemalan population, the more so if the absence of prosecutions stems from the implicit threat of force from the military.[245]

Absence of prosecutions might have been allowable or at least understandable in the context of 1996, when the Peace Accords were very recent and the grip of the civilian regime on the military tenuous. That made it not any less problematic however, even in 1996, as the principles of rule of law and of civilian rule over the military were compromised. In fact, upholding impunity may have only encouraged the Guatemalan military to retain a grip on power in the years following the 1996 Peace Accords.[246]

However compelling and legitimate practical constraints on the ability to prosecute might seem, never do they relieve a state from its obligation to prosecute. At best, a transitional government is relieved temporarily from its obligation to prosecute. If the practical constraints on the ability to prosecute might have been reasonable in the years immediately following 1996, they have ceased to be so today. In 2011, a return to military rule through a coup d'état seems highly unlikely, and the consideration that the army would intervene today when prosecutions are pushed forward lacks convincing power.

But even if there were such a credible risk of destabilization by the army or by other actors, that risk would not offset the obligation to prosecute. If the fact that the military exercises substantial control over the state, to such an extent that prosecution by the judicial branch of the civilian state against the military is rendered impossible, were to be recognized by international law, that would in fact be a reward for the military's behavior holding the state hostage.

---

[245] "A popular conception of the rule of law is that a system of law replaces a private system of force. (…) Measured against this ideal, paralysis of legal institutions by an illegitimate threat of force is the very antithesis of the rule of law." Orentlicher (1991), footnote 15

[246] The Peace Accords called for a one-third reduction of the army in number of conscripts and in budget. This provision was initially met, in great part caused by a sharp increase in the army's size between 1994 and 1996, whereby a subsequent bringing down by one third called for by the 1996 Peace Accords effectively meant bringing the size back to the 1994 state of affairs. Allegedly as a response to increasing crime rates, already in 1997 the demobilization targets were discarded with interior military outposts reopening. This is a clear indication that the power of the civilian institutions over the military was far from complete. That can be interpreted two ways: as a justification for not having prosecuted (as the power the military still retained might have been used for a coup d'état and an end to transition were prosecutions to have been pushed forward), or alternatively as a malign result from the absence of prosecutions (if prosecutions had been pushed forward, the military would not have been able to continue its grip over civilian institutions).

International law should be interpreted such as to provide incentives for governments to assert control over their armed forces.

The consideration that state stability would be put in danger by pushing forward prosecutions does not convince. The obligation to prosecute posed on the state of Guatemala as far as the Genocide Convention is concerned is unambiguous. The obligation to prosecute as part of the victims' right to an effective remedy is also evident in the Inter-American system. Article 25 of the American Convention protects the right to judicial protection:

> Article 25. Right to Judicial Protection
> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States Parties undertake:
> a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
> b. to develop the possibilities of judicial remedy; and
> c. to ensure that the competent authorities shall enforce such remedies when granted.

Article 8 moreover protects the right to a fair trial. The principle purpose of fair trial guarantees as protected by the American Convention is arguably the protection of the rights of the accused.[247] However, the Inter-American Court of Human Rights has given a broad interpretation to the fair trial guarantees of Article 8, reading them in conjunction with Article 25 to reach the conclusion that the two are closely linked and together establish the right of the victim to have perpetrators prosecuted. In *Blake v. Guatemala* the Court explained:

> "Article 8(1) of the Convention must be given a broad interpretation based on both the letter and the spirit of this provision (…) Thus interpreted, the aforementioned Article 8(1) of the Convention also includes the rights of the victim's relatives to judicial guarantees … [and]

---

[247] American Convention on Human Rights Article 8 reads:
1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of *any accusation of a criminal nature made against him* or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person *accused of a criminal offense* has the right to be presumed innocent (…)
3. A confession of guilt *by the accused* shall be valid only if it is made without coercion of any kind.
4. *An accused person* acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
(…) (emphasis added)

> recognizes the right (…) to have [the crimes] effectively investigated, (…) those responsible prosecuted for committing said unlawful acts; [and] to have the relevant punishment, where appropriate, meted out."[248]

In a later judgment, the Court sated that Article 25 of the Convention "is closely linked to Article 8(1) (…) Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity."[249] The Inter-American Court has subsequently, in the operative paragraphs of its judgments, repeatedly ordered states to conduct investigations and prosecute offenders as forms of providing effective reparations to the victims.

When interpreting Article 1(1) of the American Convention in a case against Honduras, the Inter-American Court of Human Rights reasoned that Article 1(1) imposes on each State Party a "legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."[250] "As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention (…)"[251] In line with the general law of state responsibility, the Court found that Honduras' duties under the Convention persisted even though the government in power at the time of its decision was not the same one that was responsible for the alleged human rights violation in question.[252]

It might be argued that by vetting the army and other institutions and by financially compensating the victims, the obligation to investigate and to impose appropriate punishment can also be fulfilled. To be sure, no such vetting of public institutions has taken place in Guatemala. Moreover, the obligation to investigate and to impose appropriate punishment means criminal proceedings. In the words of the European Court of Human Rights: "[T]he protection afforded by the civil law in the case of wrongdoing of the kind inflicted on Miss Y is insufficient. This is a case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions; indeed, it is by such provisions that the matter is normally regulated."[253] The Inter-American Court of Human Rights has been unequivocal on the issue of the duty to prosecute under the terms of the American Convention on Human Rights as well, as we have seen previously.

Prosecutions would serve to fulfill an international legal obligation evidently incumbent upon the state of Guatemala. On a less positivistic note, prosecutions serve multiple ends. In the first place, prosecutions serve to

---

[248] I/A Court H.R, *Case of Blake v. Guatemala* Merits, Judgment of January 24, 1998, Ser. C. No. 36, at paras. 96-97

[249] I/A Court H.R, *Case of Loayza-Tamayo v. Peru*, Reparations and Costs, Judgment of November 27, 1998, Ser. C No. 42, at paras. 169-170

[250] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Ser. C, No. 4, at para. 174

[251] Id., para. 164

[252] Id., para. 184

[253] Eur. Ct. H.R., *X and Y v. Netherlands*, (ser. A) (1985) (judgment), para 27

prevent future occurrence of the undesired behavior through deterrence. In order for deterrence to be effective, it is important that the imposition of punishment be as nearly certain as possible. The deterrent rationale for prosecuting the crimes that have been committed during Guatemala's internal armed conflict has both a national and an international side to it. On the national side, members of the armed forces, police and gangs composed of former members of the army and the police are still regularly reported to be engaged in criminal behavior, ranging from intimidation to extrajudicial killings.[254] They might be deterred from continuing their criminal behavior through effective prosecution of high-ranking former officials for the crimes of 1979-1982. Also on the national side, thousands of cases of sexual violence against women have been reported by the CEH.[255] Not one conviction for rape or other sexual violence has been rendered. The impunity for sexual violence against women has lead to a sharp increase of feminicide, the targeting of women as victims of murder. Acting on the thousands of accounts of violence against women reported by the CEH could help to stop present day violence against women. On the international side, effective prosecution of a genocidal military regime, even long after the transition to peace and democracy, can serve as a deterring signal to military regimes around the world.[256]

In the second place, prosecutions of former high-ranking military officials by the civilian state of Guatemala would serve as a powerful affirmation of the supremacy of civilian institutions over the military and of the supremacy of the rule of law over the rule of force. The rule of law was severely compromised by the state of siege that was declared by Ríos Montt and by the disguising of the atrocities by the military regime as legally warranted. Under those circumstances, for the rule of law to gain credibility vis-à-vis the rule of force, a legal assessment of and indeed punishment for the crimes of 1979-1982 is crucial.[257] In the third place, prosecutions contribute to the rehabilitation of victims of past violations.

The obligation to prosecute under international law does not necessarily extend to all perpetrators. Defined limits on the scope of prosecutions are very well allowable. Targeting primarily "those who bear greatest responsibility"[258]and those who have committed the most heinous crimes, and not prosecuting all lower-ranking perpetrators, is acceptable. When prosecuting

---

[254] See for an example Amnesty International, 'Police involvement in killings in Guatemala', December 15, 2009, available at http://www.amnesty.org/en/library/info/AMR34/010/2009/en

[255] CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 3, 'La violencia sexual contra la mujer', paras. 1-134

[256] *Prensa Libre*, October 26, 2010, 'Goldhagen cree "malo para el mundo" no juzgar a Ríos Montt'

[257] Teitel (1997) p. 2050-2051: "[E]stablishing knowledge of past actions committed under color of law and its public construction as wrongdoing is the necessary threshold to prospective normative uses of the criminal law."

[258] The Special Court for Sierra Leone has as its explicit mandate to try "those who bear the greatest responsibility". Statute of the Special Court for Sierra Leone, Article 1(1)

lower-ranking perpetrators for the particular heinousness of the concerned crimes, the defense of "following orders" should not be accepted.[259]

In conclusion, international law poses upon the state of Guatemala an unambiguous obligation to prosecute at least those bearing most responsibility for the genocide that was committed in Guatemala from 1979 to 1982 and for other grave human rights violations. This international legal obligation remains unfulfilled until today. I shall now turn to the national legal obligations upon the state of Guatemala before turning to the different ways conceivable for fulfilling current obligations.

[259] The Nuremberg Charter Article 8 provides that the fact that a defendant "acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment (…)" This principle was incorporated, inter alia, in the Convention Against Torture Article 2(3) and the Inter-American Convention to Prevent and Punish Torture Article 4.

Chapter 3.3 National law

Guatemalan national law reaffirms the international legal obligation to prosecute those bearing most responsibility for the Guatemalan genocide in two different ways. First of all, the Guatemalan constitution provides for international human rights treaties to take precedence over any national obligations. Second, the crime of genocide is punishable by thirty to fifty years under Guatemala's Penal Code. Furthermore, genocide, forced disappearance and torture were explicitly excluded from the amnesty provisions of Guatemala's 1996 National Reconciliation Law. Henceforth, it is not only international law, but also national law that creates an obligation upon the state of Guatemala to prosecute.

Reception of international law in the Guatemalan legal order

The constitutional order of Guatemala has taken a monistic approach towards the reception of a specific branch of international law, namely international human rights treaties. That is to say, no implementing national legislation is required for international human rights treaties to take effect; international law takes direct effect as such. This is stipulated in Article 46 of the Guatemalan Constitution, reading:

> " **Preeminence of International law**. As a general principle, in matters of human rights, the treaties and conventions accepted and ratified by Guatemala, have preemince over national law." [260]

The pre-eminence of human rights treaties over national law is reconfirmed in Article 9 of the Law of the Judiciary, of which the first part reads:

> " **Supremacy of the Constitution and hierarchy of norms**. The Tribunals shall always honor the principle of hierarchy of norms and the supremacy of the Constitution over any law or treaty, except over treaties or conventions in the area of human rights, which prevail over national law." [261]

It is beyond any doubt that the Genocide Convention and the American Convention on Human Rights qualify as international human rights treaties in the sense of Article 46 of Guatemala's constitution and of Article 9 of the Law of

---

[260] *Constitución Política de la República de Guatemala (1985)*, Article 46. Own translation. Spanish original: "**Preeminencia del Derecho Internacional**. Se establece el principio general de que en materia de derechos humanos, los tratados y convenciones aceptados y ratificados por Guatemala, tienen preeminencia sobre el derecho interno."

[261] *Ley del Organismo Judicial, Decreto No. 2-89*, Article 9, reformed by Decreto 11-93. Own translation. Spanish original: "**Supremacía de la Constitución y jerarquía normativa**. (Reformado por Decreto 11-93 del Congreso de la República). Los Tribunales observarán siempre el principio de jerarquía normativa y de supremacía de la Constitución Política de la República, sobre cualquier ley o tratado, salvo los tratados o convenciones sobre derechos humanos, que prevalecen sobre el derecho interno."

the Judiciary.[262] Therefore, all obligations as described in the preceding that stem from the Genocide Convention and the American Convention on Human Rights are directly applicable in Guatemala's national legal order and are accorded preeminence over any possibly conflicting obligations stemming from national law.

National Reconciliation Law

The National Reconciliation Law,[263] enacted in the context of the 1996 Peace Accords, provides for amnesty for political crimes committed during the internal armed conflict, which enabled former guerillas, PAC-members and soldiers to reintegrate into society. Specifically excluded from the amnesty provisions were all cases involving genocide, torture and forced disappearance, as well as crimes that are not subject to any statute of limitations under either national law or under international treaties ratified by Guatemala.[264] Although the military high command wanted full amnesty for all crimes committed during the civil conflict, the military did not succeed in preventing these four categories of crimes from being excluded from the amnesty.[265] From the fact that genocide, enforced disappearance and torture are excluded from the amnesty provisions, it seems to follow that the intent of the Guatemalan lawmaker was that the perpetrators of lesser crimes were to be reintegrated into society, whereas the perpetrators of the most serious crimes would be prosecuted. By the spirit and by the letter of the National Reconciliation Law, prosecution for the most serious crimes of the internal armed conflict is called for. In practice, prosecution has not taken place.

---

[262] What constitutes a human rights treaty in the sense of Article 46 also played a role in the Constitutional Court Consultative Opinion of 2004 in which CICIACS was declared unconstitutional. One of the questions asked by President Berger to the Constitutional Court with regard to the CICIACS Agreement was whether the Agreement could be considered an international human rights treaty or not. If the CICIACS Agreement would have been considered an international human rights treaty, Congressional approval of an implementing law would be rendered unnecessary and the agreement would take direct effect. Guatemala's Constitutional Court ruled the CICIACS Agreement to be an investigatory or criminal justice agreement rather than a human rights treaty, hence denying the direct effect of Article 46 of Guatemala's Constitution to the CICIACS Agreement. (See *Corte de Constitucionalidad de Guatemala*, 'Opinión Consultativa sobre el texto del Acuerdo celebrado entre la Organización de las Naciones Unidas (ONU) y el Gobierno de Guatemala relativo al establecimiento de una Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ('CICIACS')', Expediente No. 1250-2004, August 5, 2004, at VIII A). For the Agreement establishing CICIG, the question of Article 46 of the Constitution was not raised before the Constitutional Court again, but compelling arguments for why CICIG would actually qualify as an international human rights treaty have been put forward; see Fundación Myrna Mack, *Análisis sobre la constitucionalidad de la CICIG: Fundación Myrna Mack presenta Amicus Curiae a la CC*, April 17, 2007

[263] *Ley de Reconciliación Nacional,* Decreto No. 145-1996

[264] *Ley de Reconciliación Nacional*, Decreto No. 145-1996, Article 8

[265] Jonas (2000), 90-91

Statutory limitations

The National Reconciliation Law dates back to 1996. Most of the instances of genocide, torture and forced disappearance took place in the period from 1979 to 1982. In 1996, these crimes were relatively recent still. In 2011, these crimes are around thirty years ago, which brings them potentially within the reach of statutory limitations.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968 has never been signed by Guatemala. Articles 107 to 111 of Guatemala's Penal Code deal with statutory limitations. The provisions of the Penal Code do not provide for any crimes for which statutory limitations are non-applicable. Guatemala' Constitution declares any statutory limitations inapplicable to crimes committed by guardians against persons detained or held prisoner.[266] That is the only instance of Guatemalan law explicitly declaring statutory limitations inapplicable to certain crimes. The provision refers explicitly to guardians ('*el custodio*') and can henceforth probably not be invoked against the state leadership.

In 2005, Mexico's Supreme Court declared a thirty-year statute of limitations applicable even for genocide in a case against Mexico's ex-president Luis Echeverria, relating to events of 1971.[267] Under the terms of Guatemala's Penal Code, after twenty years have passed, prosecution is ruled out.[268] Twenty years indeed have passed since the genocide of 1979-1982. It is uncertain whether the applicability of statutory limitations to the crime of genocide would be accepted in Guatemala. The Mexican ruling of 2005 provides a precedent for applying statutory limitations even to genocide. Ruling out such applicability to genocide however would be more in line with Guatemala's National Reconciliation Law and international legal obligations.

The Reconciliation Law lists crimes to which the amnesty provisions do not apply. Next to genocide, torture and forced disappearance, the National Reconciliation Law speaks of "those crimes that are 'imprescriptible' or that do not allow for the extinction of criminal responsibility, in conformity with national law or international treaties ratified by Guatemala."[269] It is not immediately clear what is meant by this phrasing. The only category of crimes that is 'imprescriptible' under Guatemalan law consists of crimes committed by guardians against persons detained or held prisoner of Article 21 of the Constitution. Guatemala has not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

---

[266] *Constitución Política de la República de Guatemala (1985)*, Article 21. Spanish original: "El custodio que hiciere uso indebido de medios o armas contra un detenido o preso, será responsable conforme a la Ley Penal. El delito cometido en esas circunstancias es imprescriptible."

[267] García (2006). The fact that the events of 1971 would probably not constitute the crime of genocide under international law is not of relevance here. The Court found that inapplicability of statutory limitations to the charged crime of genocide had only become a rule valid in Mexico's legal order with the ratifying of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity by Mexico in 2002, and that hence for all charges of genocide relating to events prior to 2002, Mexico's statutory limitations apply.

[268] *Código Penal de Guatemala, Decreto No. 17-73*, Article 107(2). Article 107(1) provides for a 25-year statute of limitations for crimes punishable by the death penalty. The Penal Code does not make the crime of genocide punishable by the death penalty however, see Article 376.

[269] *Ley de Reconciliación Nacional*, Decreto No. 145-1996, Article 8. Own translation. Spanish original: "aquellos delitos que sean imprescriptibles o que no admitan la extinción de responsabilidad penal, de conformidad con el derecho interno o los tratados internacionales ratificados por Guatemala." 'Imprescriptible' means 'not subject to any statute of limitations'.

Should the phrase "those crimes that are 'imprescriptible' or that do not allow for the extinction of criminal responsibility, in conformity with national law or international treaties ratified by Guatemala" be interpreted as only referring to Article 21 of the Constitution? In that case, explicit reference to merely Article 21 of the Constitution would have made more sense, or alternatively reference to just "those crimes that are 'imprescriptible'". By alluding to crimes "that do not allow for the extinction of criminal responsibility in conformity with national law or international treaties ratified by Guatemala", the legislator acknowledged the existence of such crimes under Guatemalan law. The existence of such crimes under Guatemalan law cannot stem from the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, as the latter convention was never ratified by Guatemala. Hence, the Guatemalan legislator must have been referring to other treaties ratified by Guatemala, such as the Genocide Convention, the Torture Convention,[270] or the American Convention on Human Rights,[271] as international treaties ratified by Guatemala that create the obligation not to apply statutory limitations to certain crimes. Such reading of the National Reconciliation Law is also in line with Article 2 of Guatemala's Constitution, which reads: "It is the duty of the State to guarantee to all inhabitants of the Republic life, liberty, *justice*, security, peace and integral development of the person."[272]

The existence of a rule of customary international law proscribing the applicability of statutory limitations to certain crimes is debatable. Although the spirit of the Genocide Convention arguably calls for the non-applicability of statutory limitations to genocide, no explicit reference to that end is made in the text of the Genocide Convention. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity was opened for signature in 1969. Since, only fifty-four States have ratified that Convention, sixteen of which with reservations or declarations.[273] In the aforementioned *Bouterse* case in the Netherlands, independent expert Dugard declared in 2000:

---

[270] Only for crimes that have been committed after ratification of the Convention by Guatemala in 1990.

[271] Article 1(1) of the American Convention: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." In conjunction with the obligation to prosecute under the American Convention as described above, Article 1(1) can be interpreted as ruling out the applicability of statutory limitations for certain crimes. The Inter-American Court supports this view; in I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala,* Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211, at para. 129, the Court explicitly prohibits the State of Guatemala to apply statutes of limitations to the crimes at hand.

[272] *Constitución Política de la República de Guatemala (1985)*, Article 2. Own translation, emphasis added. Spanish original: "Es deber del Estado garantizarle a los habitantes de la República la vida, la libertad, la justicia, la seguridad, la paz y el desarrollo integral de la persona."

[273] Mexico is in fact one of the States having ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, doing so in 2002; however, it did so "on the understanding that it will consider statutory limitations non-applicable only to crimes dealt with in the Convention which are committed after the entry into effect of the Convention with respect to Mexico." The validity of this declaration could be questioned; not giving retroactive application to the rule that statutory limitations are non-applicable to war crimes and crimes against humanity can very well be argued to go against the object and purpose of the Convention. In the case against Echevarria, Mexico's Supreme Court considered whether the declaration was compatible with Article 19 of the Vienna Convention on the Law of

> " Whether customary international law prohibited statutory limitations in respect of crimes against humanity in 1982 cannot be answered with absolute certainty. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity has not been widely ratified. However, the principle objection to this Convention in respect of crimes committed before 1968 is that it is retrospective. This consideration does not apply to crimes committed in 1982. In my opinion the 1968 Convention was, at least, declaratory of customary international law as it stood in 1968 with the result that crimes against humanity committed thereafter were imprescriptible. In their very nature such crimes, which have the character of *jus cogens*, are imprescriptible." [274]

Irrespective of the stand one takes with regard to the question when a rule of customary international law, or even of *jus cogens*, barring the application of statutory limitations to crimes against humanity and/or war crimes, has come or has not come into being, application of such a rule of international customary law in criminal procedures, if it is acknowledged to exist, is problematic. In *Bouterse*, the Supreme Court of the Netherlands referred to Article 94 of the Dutch Constitution, which does not permit courts to invoke customary international law as a justification for not applying domestic law, when it held that the prescription period of eighteen years provided for in the Dutch Penal Code could not be ignored with regard to the case at hand by applying customary international law.[275] Article 46 of the Guatemalan Constitution as well as Article 9 of the Guatemalan Law of the Judiciary only provide for preeminence of treaties or conventions in the area of human rights, and do not refer to customary international law. The National Reconciliation Law Article 8 likewise only speaks of international treaties and not of customary international law. With express reference in Guatemalan law only being made to treaties and not to custom, it seems difficult for Guatemalan courts to invoke custom as a justification for not applying Guatemala's statutory provisions.

Treaties, which prohibits reservations that are incompatible with the object and the purpose of a treaty. Applying a logic that is difficult to follow, the Court found that the reservation-declaration of Mexico did not constitute a reservation that would be incompatible with the object and purpose of the treaty at hand because the declaration would merely constitute a re-affirmation of the non-retroactivity of treaties recognized by the Vienna Convention on the Law of Treaties. The Court chose to ignore the first sentence of Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, saying "No statutory limitation shall apply to the following crimes, *irrespective of the date of their commission*" (emphasis added), in combination with Article 28 of the Vienna Convention on the Law of Treaties, which recognized the non-retroactivity of treaties "Unless a different intention appears from the treaty or is otherwise established." See *Suprema Corte de Justicia de la Nación*, Mexico, Sentencia del 15 de junio de 2005, en el recurso de apelación 1/2004-PS, derivado de la facultad de atracción 8/2004-PS (available at http://www.scjn.gob.mx/2010/transparencia/Documents/Resoluciones/Información%20Jurisdiccionales/2005/7.1Anexo07-2005-J.pdf), pp. 153-182; see Sosa (2006), pp. 233-235

[274] The Netherlands, Opinion Re Bouterse, ELRO- No. AA 8427, July 7, 2000, at §4.5.6; quoted in Kok, Ruth Alberdina, *Statutory Limitations in International Criminal Law*, Dissertation, 2007, available online at http://dare.uva.nl/document/44354?fid=44354, at footnote 979.

[275] Kok (2007), p. 203

I believe the National Reconciliation Law should be read in its spirit, and that reference in Article 8 to "those crimes that are imprescriptible or that do not allow for the extinction of criminal responsibility, in conformity with national law or international treaties ratified by Guatemala" must be accepted to imply the non-applicability of statutory limitations to genocide, crimes against humanity and war crimes. Support for this interpretation is found in a case before Guatemala's Constitutional Court about the honoring of Spanish arrest warrants for genocide charges against Ríos Montt and others, based on universal jurisdiction.[276] The question of statutory limitations was not dealt with explicitly in this judgment by Guatemala's Constitutional Court.[277] However, the case relates to crimes that have been committed between 1978 and 1980.[278] The defendants argued that the crimes were not sufficiently precisely described and that therefore their detention was unconstitutional. The defendants did not invoke that the statute of limitations would be applicable. The Constitutional Court gave its judgment in 2007, twenty-seven years after the alleged facts, whereas the Guatemalan law has a twenty-years statute of limitations. The Constitutional Court eventually did not explicitly rule about whether the alleged facts were sufficiently precisely described nor about the possible application of statutory limitations because it denied validity to Spain's jurisdiction claim. However, the Court declared that "nothing would prevent the application of the rule *aut dedere, aut judicare*, which the third interested party or the Public Prosecutor's Office of Guatemala may invoke"[279] when denying execution of the Spanish arrest warrants. In ruling so in 2007, the Constitutional Court implies that statutes of limitations are not applicable to genocide.

If the National Reconciliation Law, the spirit of the Genocide Convention, Article 2 of Guatemala's Constitution and the ruling of the Constitutional Court in the Spanish arrest warrants case that nothing would prevent the application of the rule of *aut dedere aut judicare* for the genocide charges, together are not read to imply the non-applicability of statutory limitations to at least genocide, and if hence the Guatemalan legal order would accept to apply the twenty-years statute of limitations even to genocide, prosecution under Guatemalan law becomes problematic. There are two possibilities under Guatemalan law relating to statutory limitations that could be of relevance. Under Article 109 of the Penal Code, interruption of the prescription occurs while a case is ongoing as well as when the accused commits another crime.[280] A case for genocide has been dormant before Guatemalan courts, but might suffice to fulfill the requirement of Article 109 of the Penal Code of an active case interrupting the period for prescription. The extradition case as a result of the Spanish arrest warrants might also fulfill that requirement. Moreover, Article 109 of the Penal Code also provides for

---

[276] For the universal jurisdiction case before the Spanish courts, see below

[277] Note that Spain has dealt with the issue of statutory limitations under Spanish law. Article 131(4) of the Spanish Penal Code provides for the non-applicability of statutory limitations to the crime of genocide. Spain is not a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity however.

[278] *Corte de Constitucionalidad de Guatemala*, Expediente 3380-2007, December 12, 2007, at p. 6

[279] *Corte de Constitucionalidad de Guatemala*, Expediente 3380-2007, December 12, 2007, at p. 59. Own translation. Spanish original: "No obstante, como se ha manifestado, nada impediría la aplicación de la regla *aut dedere, aut judicare*, que la parte interesada o el Ministerio Público de Guatemala pudiesen invocar."

[280] *Código Penal de Guatemala, Decreto No. 17-73*, Article 109. Spanish original: "La prescripción de la acción penal se interrumpe, desde que se inicie proceso contra el imputado, corriendo de nuevo el tiempo de la prescripción desde que se paralice su prosecución por cualquier circunstancia.
También se interrumpe respecto a quien cometiere otro delito."

interruption of the period for prescription for those who commit another crime. Many of those responsible for genocide, crimes against humanity and war crimes during Guatemala's internal armed conflict have committed crimes afterwards and could see their statutory limitation being interrupted as a result under Article 109 of the Penal Code. Article 33 of the Code of Criminal Procedure[281] also provides for interruption of the period for prescription, if the accused is escaping justice (*fuga*) and if that renders criminal prosecution impossible. The Spanish arrest warrants in the Genocide case, for which eight accused are running away, could be interpreted as fulfilling the requirement of "fuga" of Article 33 of the Code of Criminal Procedure. The Spanish "por la fuga del imputado, cuando imposibilite la persecución penal" could be interpreted also even in a broader sense, in that "fuga" (flight) is not only running away from arrest warrants, but also running away from justice in general. In that sense, the constant efforts by Ríos Montt and others to obstruct justice could be interpreted as constituting "fuga" that renders criminal prosecution impossible and as such leading to interruption of the period of prescription under Article 33 of the Code of Criminal Procedure.

If statutory limitations are considered to be applicable to genocide, war crimes and crimes against humanity, and if moreover the period for prescription is not considered to be interrupted by the Spanish arrest warrants or by other circumstances relating to the investigation into the crimes, only two categories of crimes remain prosecutable under Guatemalan law. The first consists of crimes committed by guardians against persons detained or held prisoner under Article 21 of the Guatemalan Constitution. The second concerns the crime of forced disappearance as a continuing crime.

Enforced disappearance as a continuing crime

In the Comprehensive Agreement on Human Rights signed on March 29, 1994, the Guatemalan state committed itself to undertaking legal action against forced disappearance. This resulted in the inclusion of Article 201-ter in Guatemala's Penal Code on July 14, 1995 by Legislative Decree 48-1995. Article 201-ter of the Guatemalan Penal Code stipulates that:

> " [T]he crime of forced disappearance is committed by anyone who, by order or with authorization or support of State authorities, in any way deprives a person or persons of their liberty, for political reasons, concealing their whereabouts, refusing to reveal their fate or recognize their detention, as well as any public official or employee, whether or not they are members of the State security forces, who orders, authorizes, supports or acquiesces in such actions.
>
> (…)
>
> The crime is considered to be permanent as long as the victim is not released." [282]

---

[281] *Código Procesal Penal de Guatemala*, *Decreto No. 51-92*, Article 33. Spanish original: "La prescripción durante el procedimiento se interrumpe por la fuga del imputado, cuando imposibilite la persecución penal.
Desaparecida la causa de interrupción, el plazo comenzará a correr íntegramente."

[282] *Código Penal de Guatemala, Decreto No. 17-73*, Article 201-ter. Own translation. Spanish original: "Comete el delito de desaparición forzada quien, por orden, con la autorización o apoyo de autoridades del Estado, privare en cualquier forma de la

The Criminal Code provides for a penalty of twenty-five to forty years of imprisonment and, in the event of the death or serious physical or psychological harm of the victim of enforced disappearance, even for capital punishment.[283] The crime of enforced disappearance also appears explicitly in the National Reconciliation Law of 1996, as a crime for which amnesty is excluded.

Before the Guatemalan courts, the Public Prosecutor's Office brought forward two cases of enforced disappearance. They both concerned facts dating back to the period between 1981 and 1984. In both cases, the defendants invoked the principle of non-retroactivity of criminal law and claimed that they could not be charged with the crime of enforced disappearance as Article 201-ter had not been introduced in Guatemala's Penal Code until 1995. The issue went to the Constitutional Court, which gave judgment on July 7, 2009. The Guatemalan Constitutional Court ruled the crime of enforced disappearance to be a continuing crime, in line with the text of Article 201-ter of the Penal Code and siding with the Inter-American Court of Human Rights on this matter.[284] It reasoned that, as long as the victim has not appeared, the crime is continuing and the prohibition on the retroactive application of the law hence is not relevant. Likewise, the continuing nature of the crime of forced disappearance under Guatemalan national law also precludes the application of statutory limitations to the crime.[285]

Enforced disappearance under Guatemalan national law is thus a continuing or permanent crime. Also, it is explicitly excluded from the amnesty provisions of the National Reconciliation Law. There is therefore under Guatemalan national law no reason for the Public Prosecutor not to investigate the total of 6.159 cases of forced disappearance reported by the CEH.

---

libertad a una o más personas, por motivos políticos, ocultando su paradero, negándose a revelar su destino o reconocer su detención, así como el funcionario o empleado público,pertenezca o no a los cuerpos de seguridad del Estado, que ordene, autorice, apoye o de la aquiescencia para tales acciones. (…) El delito se considera permanente en tanto no se libere a la víctima."

[283] The fact that forced disappearance is punishable by death, whereas genocide is only punishable by a maximum of fifty years imprisonment, makes forced disappearance as an ended crime prescriptible in twenty-five years in stead of in twenty years.

[284] *Corte de Constitucionalidad de Guatemala*, Expediente 929-2008, available online at http://www.impunitywatch.org/upload/UserFiles/file/Cusanero%20Case%20-%20Decision%20Constitutional%20Court%2007_07_09.pdf, at pp. 5-6.

[285] See *Código Penal de Guatemala, Decreto No. 17-73*, Article 108, which specifies: " Prescription of criminal responsibility starts to be counted: (…) 4th for permanent crimes, on the day on which its effects cease to be." Own translation. Spanish original: "La prescripción de la responsabilidad penal comenzará a contarse: (…) 4o. Para los delitos permanentes, desde el día en que cesaron sus efectos."

Chapter 3.4 Achieving justice

As described in section A, the crimes of genocide, torture and enforced disappearance have been committed in Guatemala between 1979 and 1983. Evidence for those crimes is available in abundance. As described in sections B and C respectively, international and national legal norms pose an obligation on the state of Guatemala to prosecute those crimes. What remains is the question of enforcement of this legal obligation.

As explained in section B, the obligation international law imposes on Guatemala to prosecute might be temporarily superseded if carrying out prosecutions would put the transition in imminent danger. Any such practical constraint might at best relieve a transitional government temporarily from its obligation to prosecute in order to preserve the transition, but can never serve to definitively relieve the state from its obligation to prosecute. The obligation on the state of Guatemala to prosecute is henceforth still present.

When the national institutions for enforcement of the rule of law are not in a position to prosecute, international forums can fill in the gap. International prosecutions can be carried out by the courts of another nation on the basis of universality, or by international courts.[286]

In the case of Guatemala, both national and international proceedings have taken place. They have not led to a satisfying fulfillment of the obligation to punish the crimes that have taken place. In this section, I shall first describe the actions that have already taken place. I shall describe the case before the Spanish courts based on universality, the proceedings that have taken place within the Inter-American Human Rights system, and the cases that have been or still are before Guatemalan courts. Observing that the legal obligation to prosecute has not been satisfactorily fulfilled, I shall turn my attention to CICIG. I argue that CICIG provides a unique window of opportunity with regard to enforcement of the long-standing legal obligations incumbent upon the state of Guatemala, and that that window of opportunity should not be lost.

[286] Note that the jurisdiction of the International Criminal Court is temporally restricted to crimes that have taken place after June 1, 2002, the date the Rome Statute took effect. Even if Guatemala had been a party to the Rome Statute (which it is not), the crimes in question would not fall within the temporal jurisdiction of the International Criminal Court as they date back to 1979-1983.

Universal jurisdiction: the case before the Spanish courts[287]

The CEH published its final *Guatemala: Memoria del Silencio* report in February 1999, only three months after former dictator of Chile Augusto Pinochet had been arrested in London as a result of an arrest warrant issued by Spain in exercise of its universal jurisdiction legislation. In December 1999, a suit was filed before a Spanish court for terrorism, genocide and systematic torture against eight senior Guatemalan government officials, amongst whom former presidents generals Ríos Montt, Lucas García and Mejía Victores.[288] The suit was filed by a group of Guatemalan and Spanish non-governmental organizations, with a prominent role for Rigoberta Menchú. Menchú had lost her entire family during the internal armed conflict and has won the Nobel Peace Prize in 1992 for her efforts to stop the atrocities of Guatemala's civil war. One of the central elements of the suit was the Spanish Embassy Fire. On January 31, 1980, a group of Maya peasant protesters occupied the Spanish Embassy in Guatemala City. The Guatemalan authorities decided to violently expel the group, setting fire to the Embassy building. Thirty-six people died in the flames. The Spanish Ambassador managed to survive, together with one of the protestors. The surviving protestor was sent to a hospital for treatment, but was kidnapped from the hospital the day after the fire and was killed. Among the thirty-seven lethal victims of the Spanish Embassy Fire were Spanish consul Jaime Ruiz del Arbol and seven other Spanish Embassy employees, as well as former Guatemalan foreign minister Adolfo Molina, former Guatemalan vice president Eduardo Caceres, and the father of Rigoberta Menchú, Vicente Menchú.

The Public Prosecutor in Spain filed a motion to dismiss the action against the former Guatemalan government officials, claiming that domestic legal remedies in Guatemala had not been exhausted. The plaintiffs argued that justice in Guatemala was effectively denied because victims and lawyers were frequently threatened and intimidated and the courts refused to entertain or pursue suits. In December 2000, a chamber of the Spanish National Court ruled in favor of the Public Prosecutor. The plaintiffs appealed to the Spanish Supreme Court, which partially overturned the previous National Court decision in February 2003 by ruling that those cases that had close ties to Spain could proceed. In effect, this meant that only the case relating to the victims of the Spanish Embassy Fire with the Spanish nationality could continue. The case subsequently went to the Constitutional Court, which in a groundbreaking decision in September 2005 reversed the previous Supreme Court's Decision.

---

[287] Note that there has also been a case before the Belgian courts, when that country had far-reaching universal jurisdiction legislation under the "Act concerning Punishment for Grave Breaches of International Humanitarian Law" of 1993, amended in 1999 to include universal jurisdiction over crimes against humanity and genocide in addition to war crimes. An investigation started, but did not lead to indictments. The Belgian law concerning universal jurisdiction was changed in 2003. See *Human Rights Watch*, 'Universal Jurisdiction in Europe', June 27, 2006, at Chapter VI 'Belgium'. Available at http://www.hrw.org/en/node/11297/section/8#_ftn170

[288] The other five accused were Former Minister of Defense Ángel Aníbal Guevara Rodriguez, former Minister of Interior Donaldo Álvarez Ruiz, former Director of the National Police German Chupina Barahona, former chief of Command 6 of the National Police Pedro García Arredondo, and former Chief of the General Staff Benedicto Lucas García.

According to the Constitutional Court, it was the legislators' intention to make Spain a country that observes the principle of universal jurisdiction for certain egregious crimes, regardless of the nationality of the victims and perpetrators. The Spanish Constitutional Court found no textual support for the restrictive interpretation of the jurisdiction criteria by the Supreme Court and argued that the Spanish law gave Spain subsidiary jurisdiction for certain egregious crimes with the only limitation of *ne bis in idem*.[289]

After the Spanish Constitutional Court ruling, the case could continue. In July 2006, Spain issued arrest warrants for genocide and other crimes against the eight defendants named in the case. The Guatemalan Constitutional Court accepted the warrants and extradition proceedings were initiated. Guatemala's Constitution contains a prohibition on the extradition of nationals, but an exception to this prohibition is provided for if the alleged crimes are contained in treaties and conventions with respect to crimes against humanity or against international law.[290] However, in December 2007, the Guatemalan Constitutional Court unexpectedly reversed its previous rulings, now holding that the arrest warrants and extradition requests from Spain violated the Guatemalan Constitution.[291] The Guatemalan Constitutional Court held that Spanish courts did not constitute a 'competent authority' and that Guatemala might accept the jurisdiction of an international tribunal but that it will not accept the extraterritorial jurisdiction of a foreign national court. Moreover, the Guatemalan Constitutional Court considered the alleged crimes to be political crimes because they are connected to the armed conflict, and observed that the Guatemalan Constitution bars extradition of nationals for political crimes. This is legally incorrect, as the Genocide Convention explicitly states that "genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition."[292]

At the end of the judgment, the Court recognized the obligation of Guatemalan courts to investigate and prosecute under the principle of *aut dedere aut judicare*.[293] This recognition is somewhat cynical as the judges of Guatemala's Constitutional Court were very well aware of the fact that cases relating to the genocide and other crimes of the internal armed conflict were initiated at a certain point in Guatemala's national justice system but did not show any progress. The lack of progress of national proceedings was such that Spain's Constitutional Court had recognized the victims' claim that they were effectively

---

[289] *Sentencia 237/2005 de Tribunal Constitucional, Sala Segunda*, September 26, 2005; available online at http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=8691

[290] *Constitución Política de la República de Guatemala (1985)*, Article 27

[291] *Corte de Constitucionalidad de Guatemala*, Expediente 3380-2007, December 12, 2007. Note that the Court had changed composition relative to the term in which the Court allowed Ríos Montt to run fur the presidency and in which it ruled against CICIACS. The composition in which the Court denied execution to the Spanish arrest warrants is in fact the same as in which it ruled favorably upon the constitutionality of CICIG.

[292] Genocide Convention, Article VII; see Roht-Arriaza (2008), p. 95-96

[293] *Corte de Constitucionalidad de Guatemala*, Expediente 3380-2007, December 12, 2007, p. 59

denied access to justice in Guatemala, in reaction to the Spanish prosecutor's claim that the local remedies in Guatemala had not been exhausted. The recognition of an *aut dedere aut judicare* duty to investigate and prosecute by Guatemala's Constitutional Court, coupled with the international pressure and publicity around the Spanish case, were hoped to prompt Guatemala's Public Prosecutor's Office into action with regard to the genocide.[294] The hoped-for effect did not fully materialize however.

Testifying before and evidence gathering by the Spanish investigative judge continued, notwithstanding Guatemala's refusal to execute Spanish arrest warrants. Various witnesses have traveled to Madrid to give testimony about their experiences with army violence. Moreover, notwithstanding the December 2007 Guatemalan Constitutional Court ruling that denied execution of the Spanish arrest warrants, in April 2008 Guatemalan trial court judge José Eduardo Cojulún decided that he would honor the Spanish requests to hear witnesses. He reasoned that the Constitutional Court's decision with regard to the arrest warrants had no bearing on his international judicial cooperation obligations, and that, although he could not allow Spanish investigators to come to Guatemala, he could conduct the interviews himself and forward the results to the Spanish court.[295] Both Guatemalan judge Cojulún and the Spanish judge have heard many witnesses. The fact that survivors were able to give testimony before a judge can be argued to have a reparatory effect as such and contributes to the further formation of a historical record of the events of the early 1980s. However, as long as Guatemala upholds its refusal to execute the warrants, and as long as the suspects do not leave Guatemala, the defendants shall remain free and the obligation to investigate and prosecute resting on the Guatemalan state shall remain unfulfilled unless Guatemalan prosecutors initiate prosecutions.

The Guatemalan genocide case before the Spanish court based on universal jurisdiction appears unlikely to result in direct arrests.[296] It is to be hoped for that the indirect effect of the case pursued by Spanish authorities provides an impetus to national proceedings. To be sure, universal jurisdiction cases are second best. National proceedings are, in terms of practical considerations like evidence gathering and knowledge of local circumstances, but also in terms of being able to guarantee a fair trial to the accused and in terms of healing society and providing survivors the opportunity to testify and to assist the hearings, to be preferred over international ones if they are possible.

---

[294] Roht-Arriaza (2008)

[295] Roht-Arriaza (2008), p. 100

[296] A new case has recently been brought before the Spanish courts, namely the case of former Interior Minister Vielman. Vielman was Interior Minister in the Berger administration (2004-2008) and is accused of involvement in the extrajudicial execution of prisoners. CICIG has taken up the investigation against Vielman, and Spain has arrested Vielman on CICIG's request on October 13, 2010. With a formal extradition request from Guatemala not forthcoming within the proscribed 40-day period, Vielman was released on November 23, 2010. In December 2010, he was detained again, this time not based on the Guatemalan arrest warrant but based on a case against him by the Spanish authorities. Vielman possesses the Spanish nationality and the criminal investigation concerning the crimes he committed in Guatemala is based on the active nationality principle rather than on any grounds for universal jurisdiction. Vielman was released on a 100.000 euro bail on December 16, 2010.

Therefore, the success of the Spanish universal jurisdiction efforts with regard to Guatemala should not only be measured by the failure to have the arrest warrants executed in Guatemala, but also by the degree to which they have succeeded in changing the possibilities for justice within the national system of Guatemala. The Spanish warrants have had the positive effect of renewing interest for the impunity for the genocide in Guatemalan public debate. The witness statement taking by judge Cojulún might lead to independent prosecutorial action on the part of the Public Prosecutor's Office. However, conclusive action with regard to genocide has not yet occurred. Before moving to the national proceedings, I shall first describe the proceedings within the Inter-American system.

The Inter-American system

Guatemala accepted the competence of the Inter-American Court of Human Rights on March 9, 1987.[297] Numerous cases dating back to the internal armed conflict were brought before the Inter-American Commission and Court. On many occasions, the Guatemalan state has recognized state responsibility for atrocities of the civil war era in friendly settlements. The Inter-American Commission and Court have ruled on several occasions in favor of victims, condemning the state of Guatemala. A total of fourteen contentious cases against Guatemala made it to the Inter-American Court.[298]

One of the most publicized cases before the Inter-American Court of Human Rights relating to Guatemala is the *Plan de Sánchez massacre* case. The case concerns the massacring of 268 residents of the village of Plan de Sánchez, Baja Verapaz, on July 18, 1982. The case was submitted to the Inter-American Commission in 1997, which subsequently presented the case to the Inter-American Court in 2004. In April 2004, in its judgment on the merits, the Court found the state of Guatemala indeed responsible for conducting 'scorched earth' operations and massacres against the Maya population, including the massacre of Plan de Sánchez.[299] In its judgment on the reparations, the Court ordered that: "[t]he State [of Guatemala] shall investigate effectively the facts of the Plan de Sánchez Massacre in order to identify, prosecute and punish the perpetrators and masterminds (…)."[300] The judgment on the reparations also provided for public acknowledgement of state responsibility for the massacre (Operative Paragraph 2), publication of the judgment (Operative Paragraph 5), financial support to the chapel in which the victims pay homage to those executed in the

---

[297] http://www.oas.org/juridico/english/sigs/b-32.html#Guatemala

[298] Being the cases of: Paniagua Morales et al., Blake, "Street Children" (Villagrán Morales et al.), Bámaca Velásquez, Myrna Mack Chang, Maritza Urrutia, Plan de Sánchez massacre, Molina Theissen, Carpio Nicolle et al., Fermín Ramírez, Raxcacó Reyes, Tiu Tojín, Dos Erres massacre, and Chitay Nech et al. The rulings of the Inter-American Court in the cases of Bámaca Velásquez, Myrna Mack Chang and Dos Erres massacre, and the effects of those rulings on national proceedings, shall be treated in the next paragraph, 'National Proceedings.'

[299] I/A Court H.R, *Case of the Plan de Sánchez massacre v. Guatemala*, Merits, Judgment of April 29, 2004, Series C No. 105, at para. 42

[300] I/A Court H.R, *Case of the Plan de Sánchez massacre v. Guatemala*, Reparations, Judgment of November 19, 2004, Series C No. 116, at Operative Paragraph 1

massacre (Operative Paragraph 6), medical treatment for the victims (Operative Paragraph 7), adequate housing to the surviving victims (Operative Paragraph 8), and monetary compensation of a total of around 7 million dollars (Operative Paragraphs 10-13).

The Court has issued Monitoring Compliance with Judgment Orders in the case of the Plan de Sánchez massacre on November 28, 2007; on August 5, 2008; and on July 1, 2009. In the 2009 order, the Court declared that the state had only fully complied with the order to publish the judgment and to pay for maintaining and improving the chapel. All other duties arising from the previous judgment, including the obligation to investigate and prosecute, had not been fully complied with on July 1, 2009, almost five years after the Judgment on Reparations in the Plan de Sánchez case.[301] Then Vice-President of Guatemala Eduardo Stein has been present at a memorial ceremony in Plan de Sánchez in 2005 in which the state formally accepted responsibility and offered apologies for the massacre. Although the presence of the Vice-President is an improvement compared to the past in terms of the acceptance of responsibility by the state, some commentators noticed with anger the absence of the President of the Republic, Óscar Berger, in the ceremony in which state responsibility for the deaths of 268 innocent persons was acknowledged.[302]

The judgments on reparations by the Inter-American Court are often very detailed. Besides ordering to investigate and prosecute, and besides ordering the payment of monetary reparations, the Inter-American Court has ordered the state of Guatemala on numerous occasions to publish Inter-American Court rulings in national newspapers, to offer psychological and psychiatric assistance to victims and survivors, and to name streets after certain distinguished victims.[303] These reparatory measures ordered by the Inter-American Court are indeed one of the few ways through which victims and survivors of Guatemala's internal armed conflict gain some justice. Although they are not fully followed up upon, as is apparent in the Monitoring Compliance with Judgment Orders in the *Plan de Sánchez massacre* case, follow-up in terms of publication, memorial services and places, and monetary repair payments is at least partially forthcoming and provides a valuable tool to repair the injustice that has been done.

The frequent orders to investigate and prosecute, on the other hand, are barely followed up upon. The order to investigate in the *Plan de Sánchez massacre* case is directly related to the genocide case, which is before the Spanish and Guatemalan courts and which, as described above, does not proceed. The order by the Inter-American Court to investigate the murder of Myrna Mack and the disappearance of Efraín Bámaca has, as we shall see below,

---

[301] I/A Court H.R., *Case of the Plan de Sánchez massacre v. Guatemala*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 1, 2009

[302] Heraldo Shetemul, Opinion in *Prensa Libre*, 'A Contraluz: Plan de Sánchez', July 19, 2005

[303] A recent example of the latter can be found in I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, at Operative Paragraph 16, where the Court ruled that the State must name a recognized street in San Martín Jilotepeque with the name of Florencio Chitay Nech and place a commemorative plaque with his name.

not been complied with. Although an accessible forum, convenient for securing reparations for victims, the Inter-American Court can only denounce violations by states of the rights protected by the American Convention and order states to apologize, pay repair payments, and investigate and prosecute. The mere establishment of state responsibility for certain crimes before the Inter-American Court cannot come in the place of establishing individual criminal responsibility for the crimes that have been committed, even if it comes with generous reparation schemes to be paid by the state to the victims and survivors. The order to investigate and prosecute is often placed on the forefront by the Inter-American Court itself in its judgments.[304] Ultimately, to comply with the duty of Article 1(1) of the American Convention, of respecting the rights and freedoms recognized by the Convention and to ensure to all persons subject to Guatemalan jurisdiction the free and full exercise of those rights and freedoms, it is imperative that the state follow up on the frequent orders to investigate and prosecute.

National proceedings

National proceedings have started in a limited number of instances, sometimes prompted by an Inter-American Court ruling, but for a variety of reasons they have typically not led to any results. Many complaints that are brought are simply ignored, or cases are suspended after minimal efforts for lack of evidence, or for a variety of possible reasons.

One of many examples of cases that are suspended after minimal efforts is the case of the Portillo family, described by MINUGUA in its Tenth Report.[305] On April 1, 1998, Adriana Portillo filed a complaint with the Public Prosecutor's Office for the enforced disappearance, in 1981, of six members of her family. The proceedings were brought against the former Interior Minister, the former Director of the National Police, the former Chief of the Judicial Police, and the former Chief of Unit 6 of the National Police. Although most of the accused were no longer agents of the State, the investigation was assigned to the Office of the Prosecutor for Administrative Offences. In June 1998, the latter Office suggested that the case might fall under the National Reconciliation Law, a suggestion rejected by the Court of Appeal. The subsequent investigation by the prosecutor consisted of requests for relevant information to the state institutions concerned. The Ministry of Defense and the National Civil Police replied that they had no relevant information. No further steps were taken.[306]

The experiences of Adriana Portillo are exemplary of what victims of the internal armed conflict encounter when they seek justice within Guatemala's criminal justice system. However, a few exceptions in which convictions have been given exist, including the massacre cases of Dos Erres and Río Negro and the enforced disappearance cases against Felipe Cusanero Coj and against the

---

[304] E.g., in the *Plan de Sánchez massacre* case, it is the first order in the judgment; in the case of *Efraín Bámaca Velasquez,* which is a case of forced disappearance, the order to locate the mortal remains of the victim is the first with the order to investigate and prosecute the second; in the case of *Myrna Mack Chang*, the order to investigate and prosecute is the first order; etc.

[305] MINUGUA (1999)

[306] From MINUGUA 1999, para. 66

perpetrators of the enforced disappearance of eight victims in the village of El Jute.

Dos Erres

In the community of Dos Erres in Petén 250 men, women and children have been tortured and killed on December 5, 1982. The investigation into the massacre was officially opened in 1994. With the case not showing significant progress, in 1996 the Association of Families of the Detained and Disappeared of Guatemala (FAMDEGUA) presented the Dos Erres massacre case to the Inter-American Commission on Human Rights. In April 2000, a friendly settlement was reached, in which the state of Guatemala accepted:

> "To undertake an investigation to individually identify and punish the persons responsible for the massacre, both direct perpetrators and masterminds, as well as those responsible for the delay in justice."[307]

With results of that investigation not forthcoming, the Commission referred the case to the Inter-American Court of Human Rights.[308] The Inter-American Court gave its judgment in the case in November 2009, deciding that Guatemala "shall investigate, without delay, in a serious and effective manner, the facts [relating to the Dos Erres massacre case] (…), in order to prosecute and eventually punish those responsible (…)."[309] Moreover, the Court forbade the State of Guatemala to apply statutory limitations to the concerning crimes.[310] For a very long time, the investigations had been completely stalled.[311] In February 2010 however, twent-seven years after the massacre was committed and sixteen years after the investigation was opened, a significant breakthrough was finally reached when arrest warrants against seventeen members of the military suspected of having participated in the Dos Erres massacre, were reactivated.[312] By the end of 2010, seven people had been arrested: four in the United States and three in Guatemala. On January 20, 2011, an eighth suspect was arrested in Canada.[313] Among those arrested in the United States was Gilberto Jordán, arrested on May

---

[307] Framework friendly settlement agreement of April 1, 2000, signed by the State and the victims' representatives. Quoted in Inter-American Commission on Human Rights, Application to the Inter-American Court of Human Rights in the case of The Las Dos Erres Massacre (Case 11.681) against The Republic Of Guatemala, July 30, 2008, para. 57.

[308] Inter-American Commission on Human Rights, Application to the Inter-American Court of Human Rights in the case of The Las Dos Erres Massacre (Case 11.681) against The Republic Of Guatemala, July 30, 2008

[309] I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala,* Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211, Operative paragraph 8

[310] I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala,* Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211, para. 129

[311] Amnesty International (2009), p. 1

[312] *Prensa Libre*, February 11, 2010, 'Reactivan caso Dos Erres'

[313] *Prense Libre,* January 20, 2011, 'Capturan en Canadá a kaibil por masacre'

5, 2010, in South-Florida[314] and sentenced to ten years imprisonment for making false statements on US citizenship forms on September 16, 2010, slightly over four months after his arrest.[315] After serving his sentence in the United States, he shall be deported to Guatemala, where he shall face charges of homicide and crimes against humanity. Among those arrested in Guatemala was Carlos Antonio Carías López, the presumed leader of the massacre. He was released on bail.[316] The trial against Carlos Antonio Carías López and his co-suspects Manuel Pop Sun and Reyes Collin Gualip opened in September 2010.[317] The trial is obstructed by the excessive filing of *amparos* by the accused.[318]

The results of the trial opened against the first three suspects remain to be seen. Whether trials against the other fourteen suspects will commence is also uncertain. Guatemala's courts might pronounce themselves on the explicit order by the Inter-American Court that statutory limitations do not apply to serious human rights violations such as torture, extrajudicial, summary or arbitrary executions and forced disappearance.[319] They probably do not have to however, as the fact that the investigation into the massacre was officially opened in Guatemala in 1994[320] might suffice to fulfill the requirement of Article 109 of the Penal Code of an active case interrupting the period for prescription. The fact that in 2010 at last trials against some of the Dos Erres suspects have commenced is a sign of progress, but the bail on which Carías López was released might be indicative for the ability of Guatemala's justice system to adequately punish those responsible for the Dos Erres massacre.

Río Negro

Between 1980 and 1982, the community of the Achí village of Río Negro in the Rabinal municipality has been the victim of five massacres, killing an estimated 444 of a total of 791 inhabitants.[321] In total, eight PAC-members have been convicted for their involvement in the Río Negro massacres. The first three suspects were sentenced to death in November 1998.[322] It was the first conviction in a court of law of military or paramilitary men for their involvement in the scorched earth campaigns under Lucas García and Ríos Montt. The judgment was overturned because of 'inconsistencies' in the trial and a new trial

---

[314] *The Miami Herald,* May 6, 2010, 'Massacre in Guatemala leads to arrest in South Florida'; *Prensa Libre*, May 6, 2010, 'Capturan a cuatro kaibiles en EE. UU.'

[315] *Prensa Libre*, September 17, 2010, 'Condenan a 10 años a ex soldado guatemalteco'

[316] *Prensa Libre*, March 1, 2010, 'Juez fija fianza de Q10 mil a militar sindicado en masacre las Dos Erres'. The bail of 10.000 quetzales is the equivalent of around 1200 US dollars.

[317] *Prensa Libre*, 9 September 2010, 'Tres van a juicio por caso Dos Erres'

[318] *Agencia Guatemalteca de Noticias*, January 31, 2011, 'Recursos de amparo generan impunidad en caso Dos Erres'

[319] I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala,* Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211, para. 129

[320] *Fundación de Antropología Forense de Guatemala*, June 2010, 'Las Dos Erres (Segunda Parte)'

[321] CEH (1999), *Guatemala: Memoria del Silencio*, Anexo I, Casos Ilustrativos, Numero 10 and Numero 14

[322] Note that this is even prior to the publication of the CEH-report.

was ordered. The second trial resulted in new death sentences for all three suspects in October 1999. The sentences were later appealed to fifty years imprisonment. Another five PAC-members were sentenced to 780 years imprisonment for murder in May 2008, of which they have to serve thrity years. Their trials had commenced in 1993,[323] before any statute of limitations could have become applicable. To date however, convictions in the Río Negro case have been limited to former PAC-members, all of whom are indigenous themselves. None of the military officials who planned, ordered or participated in the massacres have been sentenced. The Inter-American Commission presented a report about Guatemala's failure to comply with the Commission's recommendations to effectively investigate the Río Negro massacre on November 30, 2010.[324] Captain Solares, the military commissioner in command of the massacres, remains a fugitive for justice until today. One of the survivors of the massacre, Jesus Tecu Osorio, eleven years old when the massacre was perpetrated, has played an important role in bringing the perpetrators to justice and received the Roger N. Baldwin Medal of Liberty Award from Human Rights First in March 2010.[325]

Felipe Cusanero Coj

The CEH-report reported 6.159 victims of forced disappearance during the internal armed conflict.[326] The first conviction for enforced disappearance was passed on September 1, 2009. In a landmark ruling, ex-military Commissioner Felipe Cusanero Coj was sentenced to 150 years imprisonment for the disappearance of six Maya farmers in the Chimaltenango region.[327] The continuing nature of the crime of enforced disappearance was confirmed by the Constitutional Court. [328]

El Jute

The second instance of conviction for enforced disappearance came in December 2009, when Colonel Marco Antonio Sánchez Samayoa and the three military commissioners José Domingo Ríos, Gabriel Álvarez Ramos and Salomón Maldonado Ríos were sentenced to 53 years imprisonment for the enforced disappearance of eight people perpetrated in 1981 in the village of El Jute. The

---

[323] *Prensa Libre*, May 28, 2005, 'Tribunal dicta hoy sentencia en caso de masacre de Río Negro'

[324] *Prensa Libre*, December 10, 2010, 'Denuncian a Guatemala ante Corte Interamericana por caso Río Negro'

[325] http://www.humanrightsfirst.org/2010/03/24/Guatemalan-Genocide-Survivor-Wins-Roger-Baldwin-Award/

[326] CEH (1999), *Guatemala: Memoria del Silencio*, Capítulo II, Volumen 2, *'Las desapariciones forzadas*', paras. 384-537, para. 394

[327] *BBC News*, 1 September 2009, 'Guatemala sees landmark sentence'. The Sentencing Tribunal Judgment is available at http://www.impunitywatch.org/upload/UserFiles/file/Cusanero%20Case%20-%20Judgment%20Sentencing%20Tribunal%2007_09_09.pdf

[328] *Corte de Constitucionalidad de Guatemala*, Expediente 929-2008, available online at http://www.impunitywatch.org/upload/UserFiles/file/Cusanero%20Case%20-%20Decision%20Constitutional%20Court%2007_07_09.pdf, at pp. 5-6.

second instance of conviction for enforced disappearance, it was the very first instance of a high-ranking member of the military being convicted for the atrocities of the internal armed conflict. The ambassador of the United States to Guatemala, Stephen McFarland, was present when the Chiquimula Sentencing Tribunal delivered its sentence.[329]

These four instances of convictions, just like the progress made by CICIG in some cases, indicate that the Guatemalan justice system can be made to work. The convictions rendered, and most notably the conviction against Colonel Sánchez in the El Jute case in December 2009, are hopeful. However, given the overwhelming scale of the civil war atrocities, with an estimated total death toll of over 200.000, four successful trials with one army colonel the highest-ranking person convicted cannot be considered sufficient in fulfilling Guatemala's legal obligation to prosecute those bearing most responsibility for the crimes of the civil war. Not a single conviction for genocide has been rendered, notwithstanding the obligation to investigate the genocide recognized by Guatemala's Constitutional Court when it denied execution of Spain's arrest warrants.

The three probably most high-profile cases concerning crimes that were perpetrated in the 1990s in the context of the internal armed conflict merit special attention here as well: the murders of anthropologist and activist Myrna Mack in 1990 and of Bishop Gerardi in 1998, and the forced disappearance of former guerilla commander Efraín Velásquez Bámaca in 1992. These emblematic cases have had a big impact on Guatemalan society and are indicative of the way the Guatemalan justice system deals with the crimes of the civil war era.

Myrna Mack

Myrna Mack was an anthropologist who had done research on the hardships lived by the indigenous population during Guatemala's internal armed conflict. She was stabbed to death on the streets of Guatemala City on September 11, 1990. Myrna's sister, Helen Mack, pursued prosecution of the murderers of her sister. In the Guatemalan criminal proceedings, Helen Mack joined as a *querellante adhesivo* and proved a virulent co-prosecutor. In 1993 a sergeant was convicted as the material author of the murder of Myrna Mack. Cases against the suspected intellectual authors of the crime, one general and two colonels, were subsequently opened. Helen Mack was consistently denied access to documents she requested and encountered many more obstructions in her pursuit of justice. She had already brought the case to the Inter-American Commission on Human Rights in 1990. In 2000, the Inter-American Commission issued a Report in which it signaled numerous violations of the rights protected by the American Convention by the Guatemalan state. In 2003, the Inter-American Court ruled that Guatemala had violated the right to life and the right to fair trial and judicial protection.[330] One of the suspected colonels, Juan Valencia Osorio, was convicted to thirty years imprisonment in 2002, the other colonel and the general being

[329] *ElPeriódico de Guatemala*, December 4, 2009, 'Condenan a 53 años a 4 involucrados por desaparición forzada',

[330] I/A Court H.R, *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment of November 25, 2003, Series C No. 101, Operative Paragraphs 1 and 2

acquitted for lack of evidence. An Appeals Court acquitted Colonel Valencia in May 2003. When the Supreme Court revoked the acquittal and issued an arrest warrant in January 2004, Colonel Valencia had fled with the alleged help of the army.[331] He is currently still a fugitive. President Colom has appointed Helen Mack Special Presidential Commissioner for the reform of the National Civil Police in January 2010.[332]

Bishop Gerardi

Bishop Gerardi was in charge of the Archdiocese's Human Rights Office and led the truth commission installed by the Catholic Church, REMHI. The REMHI-report *Guatemala: Nunca Más* ('Guatemala: Never Again') presented on April 24, 1998, blamed the army for most of the crimes of the civil war and called various perpetrators by name. Bishop Gerardi was brutally murdered two days after the publication of *Nunca Más* in the bishopric, only two blocks away from the Presidential Palace.

President Arzú quickly declared that it was a case of common crime and not political crime. Scenarios offered by the authorities in the investigation of Gerardi's murder included that the bishop would have surprised a pair of gay men having intercourse in the garage who would subsequently have killed the bishop; that the bishop had discovered a ring of thieves stealing from the parish house; and that the dog of the assistant priest at the Church of San Sebastián, Father Mario Orantes, would have killed the bishop. The remains of the bishop were even exhumed to check for dog bites. None were found.[333]

While the case advanced, numerous witnesses died under unclear circumstances and threats to members of the Archdiocese's Human Rights Office, to prosecutors and investigators and to other people advocating justice in the Gerardi case were frequent. Yet, thanks to international pressure and the diligence of a number of individual investigators and prosecutors, finally three military officers - former intelligence chief Colonel Byron Disrael Lima Estrada, his son Captain Byron Miguel Lima Oliva and presidential bodyguard Sergeant Obdulio Villanueva - were accused and found guilty of the murder in June 2001. The special prosecutor in the case, Leopoldo Zeissig, went into exile in July 2001.

A series of appeals followed. The Appellate Court, the Supreme Court and the Constitutional Court all eventually upheld the sentences. Sergeant Villanueva was killed in a prison riot in 2003, but father and son Lima are still in prison. Their sentences were lowered from thirty years in prison to twenty years on appeal in 2005, because the military officers were found to be accomplices, not the "co-authors" of the crime.[334] This verdict acknowledged that others are also responsible for the crime, yet no one else has been tried so far.

---

[331] *Prensa Libre,* January 24, 2004, 'Negligencia en la fuga de Valencia'

[332] *La Hora*, January 15, 2010, 'Fue nombrada comisionada para reforma policial; Mack se fija cuatro meses para iniciar el cambio en la PNC'

[333] I draw on Fransisco Goldman's, 'The Art of Political Murder – Who killed the Bishop?' (Grove Press New York, 2007) for the account of the investigations into the murder of Bishop Gerardi.

[334] Goldman (2007), p. 316

Bámaca
Efraín Bámaca Vélasquez was one of the founders and leaders of the united guerilla command organization URNG. He was kidnapped in 1992 and has never been seen again. In 1991, he had married to Jennifer Harbury, a lawyer from Texas who had done research into the human rights violations suffered by Guatemala's indigenous population. As a result of Harbury's efforts to know about the whereabouts of her husband, then-President Clinton ordered declassification of secret archives relating to the Bámaca case and other Guatemalan human rights cases.[335] With progress in the Guatemalan criminal investigation into the disappearance of Bámaca not forthcoming, Harbury took the case to the Inter-American Court of Human Rights. The court ruled in 2000 that the state of Guatemala should order an investigation to determine the persons responsible for the violations of the human rights of Bámaca.[336] On November 18, 2010, the Inter-American Court ruled that the state of Guatemala did not comply with its 2000 ruling in the Bámaca case.[337] Nobody has been convicted for the disappearance of Bámaca and his remains have not yet been found. The case was reopened by Guatemala's Supreme Court on January 24, 2011.[338] On February 11, 2011, the case was suspended however by Guatemala's Constitutional Court.[339]

What the cases of Myrna Mack, Bishop Gerardi and Efraín Bámaca show is that, even with the relentless efforts of the likes of Helen Mack, of the Archdiocese's Human Rights Office and of Jennifer Harbury, and even in cases with a national and international high profile, justice is extremely hard to obtain in Guatemala. Myrna Mack, Gerardi and Bámaca were vocal opponents of the Guatemalan army and of the impunity for the crimes of the internal armed conflict. They were murdered for their opposition to impunity, and many of those responsible for their murders in turn also enjoy impunity. For the countless victims who do not have their sister, their employer or their wife push forward their cases, the prospects for justice are even slimmer.

The Public Prosecutor's Office, overburdened as it is with present-day crime, is not likely to change the status quo of impunity for the crimes of the

---

[335] The Intelligence Oversight Board published its 'Report on the Guatemala Review' on June 28, 1996. The report is available online at http://www.ciponline.org/iob.htm. The Report deals with eleven cases of CIA involvement in or knowledge of human rights violations in Guatemala, amongst which besides the case of Bámaca also the famous case of Michael DeVine. Mr. DeVine was an American innkeeper killed in June 1990. His murder and the subsequent failure to solve it on the part of the Guatemalan authorities led to a cutoff of military aid from the United States to Guatemala. Army captain Hugo Contreras was sentenced to twenty years in prison for his involvement in the murder of DeVine but escaped hours after his sentencing. He remains a fugitive today.
[336] I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, Operative Paragraph 8.
[337] I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*, Resolución de Supervisión de Cumplimiento de Sentencia (November 18, 2010) (only available in Spanish; at http://www.corteidh.or.cr/docs/supervisiones/bamaca_18_11_10.pdf)
[338] *Prensa Libre*, January 25, 2011, 'Cámara Penal de le CSJ ordena reabrir el caso Efraín Bámaca'
[339] *Prensa Libre*, February 14, 2011, 'Revelan presiones a CC en caso Bámaca'

internal armed conflict. The whole justice system faces a lack of capacity and of skilled staff. Moreover, there is a lack of political will to address past crimes. With Ríos Montt in Congress for the powerful FRG-party that he founded, political opposition to addressing impunity for past crimes is considerable, whereas poverty, unemployment and current rising crime are more pressing problems in the eyes of the public than the impunity for the internal armed conflict. Added to the lack of political opportunity comes the pressure, both from within the system through bribery and naming allies in favorable positions and from outside the system through intimidation and murder, by the clandestine security apparatuses, when efforts to address impunity are undertaken. The reasons why impunity for recent crimes is staggering are similar to the reasons why impunity for past crimes is so persistent. The efforts of individuals like Myrna Mack and Jennifer Harbury have resulted in some progress, yet the intellectual authors of the crimes against their beloved ones remain free. Efforts of the likes of Jesus Tecu Osorio and Rigoberta Menchú have resulted in convictions in the Río Negro case and arrest warrants in the genocide case before the Spanish courts. Yet, the status quo with regard to the intellectual authors of the genocide and other serious crimes of the internal armed conflict cannot be changed solely by the efforts of the survivors.

CICIG

It is the nature of CICIG 'to break the ice' and to move forward high impact cases that are stalled in the Guatemalan justice system. That is exactly what CICIG has done in the case against former president Portillo and in many other cases. When discharging its mission of fighting impunity in Guatemala, the international instruments to which Guatemala is a party and the international obligations arising from them are to be taken into account by CICIG[340] as are the obligations on the Guatemalan state arising from national law, in particular the Global Accord on Human Rights.[341] Article III(1) of the Global Accord on Human Rights of 1994 commits the State to act firmly against impunity.[342] The mandate of CICIG is explicitly targeted at illegal security bodies and clandestine security apparatuses, defined as groups that commit illegal actions to the effect of limiting the exercise of civil and political rights and that have direct or indirect relations with agents of the State, or have the capacity otherwise to generate impunity for their illegal actions.[343] CICIG is to collaborate with the State in order to promote investigation, criminal prosecution and punishment of the crimes committed by the members of those groups.[344]

---

[340] *Acuerdo entre la ONU y el Gobierno de Guatemala relativo al establecimiento de una CICIG,* December 12, 2006, Article 1(b)

[341] Id., Article 1(c)

[342] *Acuerdo Global Sobre Derechos Humanos,* March 29, 1994, Article III(1). Spanish original: "Las Partes coinciden en que debe actuarse con firmeza contra la impunidad. (…)"

[343] *Acuerdo entre la ONU y el Gobierno de Guatemala relativo al establecimiento de una CICIG,* December 12, 2006, Article 1(d). Illegal security bodies and clandestine security apparatuses is the literal translation of 'Cuerpos Illegales de Seguridad y Aparatos Clandestinos de Seguridad'

[344] Id., Article 2(b). See above, chapter 2, for an analysis of CICIG's mandate.

Nowhere in the Accord establishing CICIG is there an explicit reference to a temporal restriction of the mandate. Hence, if CICIG would argue that targeting those carrying most responsibility for the genocide and other egregious crimes of the civil war era forms integral part of targeting the illegal security bodies and clandestine security apparatuses, the current Accord might suffice to mandate CICIG to take action with regard to the civil war era crimes. Such a line of reasoning might prove hard to maintain however. There is considerable proof for the allegation that the parallel structures that CICIG is mandated to act against have evolved directly from the death squadrons that operated during Guatemala's internal armed conflict;[345] however, if the purpose of CICIG is to tackle the parallel structures that yield considerable control in the state of Guatemala today, targeting them for recent crimes provides for a more direct relationship between goal and means than targeting them for past crimes. Moreover, it was commonly understood when Guatemalan Congress approved CICIG's establishment that its mandate would not include the crimes of the civil war era, and involvement by CICIG in the cases of the internal armed conflict would arguably go against the intent of the Guatemalan state when it ratified the Treaty Establishing CICIG.

The debate about whether CICIG should investigate the crimes of the internal armed conflict or not seemed dormant until President Colom reopened it by declaring himself in favor of action of CICIG with regard to those crimes in March 2010.[346] Colom declared that to eradicate violence in Guatemala, the consequences of the internal armed conflict should also be eradicated.[347] His declaration was met with the criticisms that his intention was to overburden and weaken CICIG rather than strengthen it[348] and that his move to involve CICIG in investigations dating back to the internal armed conflict was directed primarily against General Otto Pérez Molina, the main contender of his wife Sandra Torres de Colom in the September 2011 presidential election.[349] At the occasion of the presentation of the report over the first three years of operations by CICIG, on September 9, 2010, Colom announced that he would request the United Nations to prolong the CICIG mandate for another two years but that he reached consensus not to widen the scope of the mandate.[350]

CICIG, after having concluded its first three years of operations in September 2010, finds itself confronted with a lot of critique.[351] Former

---

[345] Peacock and Beltran (2003), Briscoe (2009), Amnesty International (2002) and Ruhl (2005)

[346] *Prensa Libre*, March 25, 2010, 'Colom cree que la CICIG debe investigar el conflicto armado',

[347] Id.

[348] *La Hora,* August 31, 2010, '¿Ampliar el mandato o acabar con la CICIG?'

[349] Oscar Clemente Marroquín, 'Una apuesta peligrosa para la CICIG', in *La Hora*, Opinión, August 31, 2010,

[350] See the video 'Tres años de CICIG' by *Prensa Libre*, with Colom declaring that he will not widen the scope of the mandate at 02:30 http://www.youtube.com/watch?v=fcHDddB7Bqg&feature=player_embedded#

[351] *Prensa Libre*, September 10, 2010, 'Cicig llega a tres años en medio de apoyo y crítica'; Jorge Palmieri, 'La CICIG No es el "Santo Oficio", January 20, 2011, available online at http://jorgepalmieri.com/2011/01/20/la-cicig-no-es-el-santo-oficio/; Ruben A. Velásquez, 'Baltazar Garzón y Carlos Castresana, dos émulos de Torquemad', May 1,

members and allies of the Portillo administration (2000-2004) and the FRG party remain unabatedly critical towards CICIG, understandable in the light of the arrest of former president Portillo as a result of CICIG's efforts. Eduardo Stein, vice-president under Berger (2004-2008), had played a very important role in the creation of CICIG and was a strong proponent of CICIG.[352] After CICIG had turned on his political allies Giammattei and Vielman, Stein has changed from a proponent to an opponent of CICIG, accusing CICIG of 'going out of control.'[353] Hence, with members of the Portillo and of the Berger administration in custody because of charges pressed by CICIG, the political turmoil facing CICIG is considerable. Yet, political support from Congress and from the Executive is needed in order to implement the legislative reform agenda.

Broadening CICIG's mandate to comprise the crimes of the internal armed conflict is a politically controversial issue. Decisive steps in the genocide case would for sure provoke increased opposition with those directly involved, most notably Ríos Montt and his FRG party and Pérez Molina and his PP party. When CICIG made progress in the Portillo case, a campaign to discredit the Commission and the Commissioner was waged, eventually leading to the resignation of Commissioner Castresana. The suspects in investigations concerning the crimes of the internal armed conflict are powerful, and when their interests are affected they might be able to even further debilitate the Commission's position in Guatemala's political arena. But the fact that the subjects of criminal investigations into the internal armed conflict are so powerful could be taken as giving even more reason to pursue the cases.

The question here is whether involvement by CICIG in the cases dating back to the internal armed conflict would only provoke more opposition to CICIG, by FRG-members, PP-members and others who think the crimes of the past should remain within the realm of the past; or whether it would actually increase support, from other political leaders and from the population. President Colom has already declared himself in favor of a role for CICIG in the internal armed conflict cases. The political reaction of other parties and factions is uncertain to predict, as is the reaction of the public opinion. The a priori assumption that opposition from the FRG and the PP would pose an impassable obstacle to CICIG's involvement in the internal armed conflict cases lacks ground. General elections are scheduled for September 2011, and a Congressional majority in favor of CICIG's involvement in the internal armed conflict cases is a possibility, although the predicted electoral victory of the PP does make such a favorable majority problematic.

Some maintain that CICIG is overburdened as it is, with progress in many cases including the Musa case not forthcoming, and that including more crimes

---

2010, available online at http://www.revistalarazon.net/web/index.php?option=com_content&view=article&id=148%3Abaltazar-garzon-y-carlos-castresana-dos-emulos-de-torquemada&catid=34%3Aotros-articulos&Itemid=18; Estuardo Zapeta, 'CICIG vrs Zapeta', January 21, 2011, in *Siglo XXI*, Opinión; Jorge Jacobs, 'Dictamen ideológico', 20 January 2011, in *Prensa Libre*, Opinión.

[352] On 6 August 2010, only six days prior to the arrest of Giammatei, Stein declared himself proponent of a prolongation of CICIG's mandate. *La Prensa* (Nicaragua), August 6, 2010, 'Urgen prolongar por dos años el mandato de Cicig.'

[353] *Prensa Libre*, October 17, 2010, 'Stein: Cicig se desbocó al no ser supervisada.'

in the mandate would lead to overburdening and hence weakening the Commission.[354] A risk of overburdening the Commission is always present and careful prioritization of its work is called for. CICIG has acted as a *querellante adhesivo* in eleven cases and through UEFAC it has acted in another twenty-nine.[355] It is clear that CICIG carefully prioritizes and selects cases in which it thinks is has the best chance of success. CICIG does not have to redo the work of the CEH. Evidence for genocide, war crimes and crimes against humanity is available in abundance through the work of the CEH and the REMHI and proceedings before the Inter-American Court of Human Rights and the genocide case before the Spanish courts. There is no need for CICIG to institute proceedings against all low-ranking perpetrators of crimes in the 1979-1983 era. Just as CICIG chooses 'big fish' in its cases concerning present-day crime, CICIG can choose to prosecute only the state leadership and ministers of Defense of the 1979-1983 era. The eight defendants in the genocide case before the Spanish courts, including three former general presidents,[356] could function as a useful point of reference.

In fact, CICIG creates a unique window of opportunity to move forward the cases that have so long been stalled in the national judicial system. The national system has been paralyzed by the army. Cases would simply not be pursued by the Public Prosecutor's Office, Spanish arrest warrants were denied execution, and in the rare case of convictions the army would sometimes even intervene by aiding the convicted to escape.[357] Such a state of affairs, especially the victory of the rule of force over the rule of law when convictions are simply resisted by the army, is highly detrimental to the credibility of the rule of law. With CICIG, prospects look decisively better. After a long period of successfully having escaped justice, former president Portillo was finally arrested in January 2010. Accountability for a former president was something unthinkable to obtain in Guatemala, but CICIG made it happen. It led Commissioner Dall'Anese to paraphrase US President Obama in declaring "sí, se puede" ("yes we can") at the presentation of CICIG's report over the first three years of operations.[358] With accountability for corruption charges addressed at the president from 2000 to 2004 proven possible, accountability for genocide charges for the presidents of the 1979-1983 era also appears within reach.

The way in which CICIG combines national and international elements is well suited for moving forward the genocide cases and other cases dating back to the internal armed conflict. Purely national proceedings have proven to be ineffective. Purely international proceedings, like in the hypothetical form of a special International Tribunal for Guatemala to try the Guatemalan genocide, would deny the efforts of the Guatemalan state to reinforce its national legal system. CICIG can sustain higher levels of pressure than the Public Prosecutor's Office when it is to move forward cases from the internal armed conflict and can

---

[354] *La Hora,* August 31, 2010, '¿Ampliar el mandato o acabar con la CICIG?'
[355] CICIG (2010), containing information until September 2010
[356] Former president Lucas García died in 2006, but Ríos Montt and Mejía Victores are still alive.
[357] *Prensa Libre,* January 24, 2004, 'Negligencia en la fuga de Valencia'
[358] Francisco Dall'Anese, Commissionner of CICIG, September 9, 2010, at the presentation of the report 'Tres años de CICIG': "Sí, se puede." See http://www.youtube.com/watch?v=fcHDddB7Bqg&feature=player_embedded#!

assure constant progress, avoiding a standstill of proceedings. The success in the Portillo case and in other cases has shown that with CICIG involved, accountability can be attained through national institutions. With national judges rather than international judges sitting on the case, the potential for Guatemalan society to move forward in the process of reconciling with the past is better assured. The problem of witness security has, for lack of resources on the part of the judicial system to protect witnesses, been a pressing problem in cases against powerful accused. The international resources available to CICIG solve this problem and allow for accurate protection of witnesses.

It is not necessary that CICIG bring the prosecutions to a successful end by itself. If CICIG reopens the cases, it can push the Pubic Prosecutor's Office into action. If, then, CICIG's mandate expires and the Commission leaves the country with the cases not having been finished, the Public Prosecutor's Office can continue them. Prosecutorial discretion as to which suspects are to be prosecuted and which are not can also remain with Guatemala's Public Prosecutor's Office. The sovereign state of Guatemala enjoys prosecutorial discretion in fulfilling its legal obligations to ensure the rights entrenched in the American Convention on Human Rights and in fulfilling its obligations stemming from the Genocide Convention. When CICIG takes up the task of reopening or even co-initiating prosecutions with UEFAC or as *querellante adhesivo*, this would not be a denial of prosecutorial discretion, but rather an affirmation that the complete absence of prosecutions is indicative of the need of the Guatemalan state to receive assistance in upholding its obligations under international law as much as possible. If the Public Prosecutor's Office, aided by CICIG, successfully brings cases against accused that were considered untouchable, trust of society in the Office and trust of the Office in itself will receive a great increase.

There is a risk that the prosecutions would become politicized, with Álvaro Colom and Sandra Torres de Colom possibly pushing for prosecutions against presidential candidate and former general Otto Pérez Molina. If the prosecutions would be allowed to "become a pawn in the competition for power, the trials will lack credibility and damage the foundations of democracy."[359]CICIG can avoid the impression of politicization however by pointing out that it is a *querellante adhesivo* against former president Portillo, his former Defense Minister Eduardo Arévalo Lacs and his former Finance Minister Manuel Maza Castellanos, among other members of the Portillo administration (FRG, 2000-2004); against former Interior Minister Vielman, former head of penitentiary institutions Giammattei and other members of the Berger administration (GANA, 2004-2008); as well as against former Interior Minister Raúl Velásquez and other members of the Colom administration (UNE, 2008-2012). In fact, CICIG could be the best guarantee available in Guatemala to avoid the impression of politicization of the proceedings.

Courts are not widely respected in Guatemala. The esteem in which courts are held could be improved if courts are to successfully try the perpetrators of the genocide and other crimes of the 1979-1983 era. The same goes for the public esteem and the self-esteem of the Public Prosecutor's Office. Impunity is

---

[359] Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law – Beyond the Nuremberg Legacy*, New York: Oxford, 2001, p. 183; quoted in Davis and Warner (2007), p. 237

pushing Guatemala towards a situation of failed state proportions. Impunity however is not just a recent phenomenon. The present-day impunity, the eradication of which CICIG is created for, follows from an uninterrupted pattern of impunity, from the crimes committed by Carlos Castillo Armas in 1954 through the impunity for the Guatemalan genocide and other atrocities of 1979-1983 to the present day. In the words of an Amnesty International report: "Guatemala's failure to address its own recent history and bring past perpetrators to justice is unquestionably contributing to current human rights abuses in the country."[360] Impunity for the Guatemalan genocide is not a situation that should be accepted by Guatemala or by the international community. The national and international legal obligations to prosecute should be fulfilled. CICIG possesses the means to achieve that.

[360] Amnesty International (2002), p. 61

CONCLUSION

So far, signs for CICIG's success are hopeful. The fact that former president Portillo and the son of former president Ríos Montt are behind bars is an accomplishment with a symbolic value that is hard to overestimate. CICIG's approach and accomplishments are greeted with international enthusiasm. Recently, CICIG's mandate was prolonged for two more years[361]and United States Assistant Secretary of State for Western Hemisphere Affairs Arturo Valenzuela has expressed a plea for a Central-American region-wide 'CICIG'.[362]

Much of the success of CICIG's efforts has still to materialize as CICIG has only been functioning for slightly over three years. The Commission publishes a track of the progress of its legislative reform proposals on its website.[363] The cooperation with Guatemalan Congress has been difficult, as Congress has been malfunctioning.[364] The Executive and the Judiciary are not much better.[365] Nomination of judges to Guatemala's Supreme Court and Constitutional Court remains very problematic and with the fifth Interior Minister since January 2008 assuming office in March 2010, cooperation between CICIG and the Executive has been difficult too. It is hard to tell yet whether the leading-by-example through UEFAC and through acting as *querellante adhesivo* and training of personnel, combined with efforts at improving the nomination process of judges to Guatemala's highest courts and proposing legislative reforms, shall lead to the desired results in Guatemala. A lot still has to be done in terms of improving the effectiveness of Guatemala's institutions. However, CICIG seems a valuable innovation in the means available for the international community to aid failed or failing states.

From 1960 to 1996, Guatemala has suffered the most violent internal armed conflict of the region. An estimated 200.000 persons have died and convincing evidence for the perpetration of genocide on the Maya people exists. The persons bearing most responsibility for the genocide and for other grave human rights violations during the internal armed conflict remain unpunished until today. However, both international law and Guatemalan national law oblige the state of Guatemala to investigate, prosecute and sanction those perpetrators.

---

[361] CICIG, January 21, 2011, 'Comunicado de Prensa: Extienden el mandato de la CICIG', on www.cicig.org

[362] *Prensa Libre*, May 4, 2010, 'Valenzuela analiza una CICIG regional'

[363] CICIG, 'Estado actual de las reformas promovidas por CICIG', on http://cicig.org/index.php?page=reforma-legales

[364] Early 2011, it took Congress well over four weeks to pass a simple resolution needed for the state of Guatemala to be allowed to accept an international multi-million dollar donation to combat HIV AIDS and malaria. *Prensa Libre*, February 11, 2011, 'Congreso de la Républica aprueba aporte millonario a VIH y malaria"

[365] Early October 2010, the Executive and the Judiciary quarreled over the Judiciary's budget. The president of the Constitutional Court declared that the Court had to close its buildings and cease all operations in November and December 2010, as the Executive allegedly did not transfer the funds the Court needed to pay its bills. Eventually an embarrassing temporal closing of the Court was avoided. *Prensa Libre*, October 11, 2010, 'Entregan fondos a la CC para su funcionamiento,'

Efforts into prosecuting those bearing most responsibility for the genocide and other atrocities of the civil war have so far been with limited success. The Guatemalan genocide case before the Spanish courts, based on universal jurisdiction, has stalled. Judgments from the Inter-American Court of Human Rights do not address issues of individual criminal responsibility and moreover these judgments are systematically ignored by the Guatemalan state. Cases before the Guatemalan courts, brought by the Public Prosecutor's Office, have been limited in number, ineffective in ensuring convictions, and targeted more at low-ranking perpetrators than at high-level intellectual authors of the crimes. The Public Prosecutor's Office, which is incapable of bringing the case against the son of Ríos Montt on its own and needs the assistance of CICIG for it, could use the assistance of CICIG for bringing the case against General Efraín Ríos Montt himself.

CICIG is in fact the most apt tool for the state of Guatemala to uphold its legal obligation to prosecute genocide. In order for CICIG to fulfill its mission of fighting impunity in Guatemala, initiating prosecutions against those bearing most responsibility for the Guatemalan genocide should be a priority. The existence of CICIG provides a unique window of opportunity, in terms of access to justice in Guatemala and in terms of international cooperation for the state of Guatemala, which has been malign for so long[366] and is now finally benign. Let this unique window of opportunity not be lost.

[366] From the *Conquista* to the CIA-sponsored 1954 coup to the support of the Reagan administration towards Guatemala's military, foreign intervention has done more harm than good to Guatemala.

LITERATURE

Books

Arévalo, Juan José, *Escritos políticos*, Guatemala: Guatemala Nacional, 1945

CEH (Comisión para el Esclaracemiento Histórico), *Guatemala: Memoria del Silencio*, 1999. Available online at http://shr.aaas.org/guatemala/ceh/mds/spanish/toc.html

Cullather, Nick, *Secret History: The CIA's classified account of its operations in Guatemala, 1952-1954*, Stanford University Press, 1999

García, Julián López; Bastos, Santiago; Camus, Manuela (eds.), *Guatemala: Violencias Desbordadas*, Servicio de Publicaciones Universidad de Córdoba, 2009

Godoy, Angelina Snodgrass, *Popular Injustice – Violence, Community, and Law in Latin America*, Stanford University Press, 2006

Goldman, Fransisco, *The Art of Political Murder – Who killed the Bishop?*, Grove Press New York, 2007

Immerman, R. H., *The CIA in Guatemala: The Foreign Policy of Intervention*, University of Texas Press: Austin, 1982

Jonas, Susanne, *Of Centaurs and Doves – Guatemala's Peace Process*, Westview Press, 2000

Kinzer, Stephen and Schlesinger, Stephen, *Bitter Fruit: The Story of the American Coup in Guatemala*. Cambridge Massachusetts: Harvard University Press, 1999

ODHAG (Oficina de Derechos Humanos del Arzobispado de Guatemala), *Guatemala: Nunca Más. Informe del Proyecto Interdiocesano de Recuperacíon de la Memoria Histórica*, 4 vols., ODHAG 1998.

Sanford, Victoria, *Buried Secrets – Truth and Human Rights in Guatemala*, Palgrave Macmillan, 2003a

Saxon, Dan, *To Save her Life – Disappearance, Deliverance, and the United States in Guatemala*, University of California Press, 2007

Schirmer, Jennifer, *The Guatemalan Military Project: A Violence Called Democracy*, University of Pennsylvania Press, 1998

Serrano, Mónica and Popovski, Vesselin (eds.), *Human Rights Regimes in the Americas*, United Nations University Press, 2010

Journal articles

Arana, Ana, 'How the Street Gangs Took Central America', *Foreign Affairs* Volume 84 No. 3, 2005, 98-110

Basch, Fernando Felipe, 'The Doctrine of the Inter-American Court of Human Rights regarding States' Duty to Punish Human Rights Violations and its Dangers', *American University International Law Review*, Volume 23, 2007, 195-229

Cassel, Douglas, 'Lessons from the Americas: Guidelines for International Response to Amnesties for Atrocities,' *Law and Contemporary Problems,* Volume 59, No. 4, 1996, 197-230

Castresana, Carlos, 'The UN in the Battle against Impunity in Guatemala', published in *Papeles de Cuestiones Internacionales*, No. 87, 2004, available at www.cipresearch.fuhem.es

Davis, Jeffrey, and Warner, Edward H., 'Reaching Beyond the State: Judicial Independence, the Inter-American Court of Human Rights, and Accountability in Guatemala', *Journal of Human Rights* 6, 2007, 233-255

Donovan, Megan K., 'The International Commission Against Impunity in Guatemala: Will Accountability Prevail?', *Arizona Journal of International & Comparative Law*, Vol. 25 No. 3, 779-824 (2008)

Fletcher, Laurel E., and Weinstein, Harvey M., with Rowen, Jamie, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective', *Human Rights Quarterly* 31, 2009, 163-220

García, Fernando Silva, 'El caso Echeverría: ¿prohibición de genocidio *versus* irretroactividad de la ley?', *Cuestiones Constitucionales – Revista Mexicana de Derecho Constitucional*, Numero 14, 2006, 239-251

Glebbeek, Marie-Louise, 'Police Reform and the Peace Process in Guatemala: the Fifth Promotion of the National Civilian Police', *Bulletin of Latin American Research,* Volume 20, No. 4, 2001, 431-453

Gleijeses, Piera, 'The death of Francisco Arana: A Turning Point in the Guatemalan Revolution', *Journal of Latin-American Studies*, Vol. 22 No. 3, 1990, pp. 527-552

Heasley, Nathanael, Hurley, Rodger, Irwin, Kara E., Kaufman, Andrew H., Moustafa, Nadine, and Personna, Alain, 'Impunity in Guatemala: The State's Failure to Provide Justice in the Massacre Cases', *American University International Law Review,* Volume 16, 2001, 1115-1194

Hendrix, Steven E., 'Innovation in Criminal Procedure in Latin America: Guatemala's Conversion to the Adversarial System', *Southwestern Journal of Law and* Trade, Volume 5, 1998, 365-419

Hudson, Andrew, and Taylor, Alexandra W., 'The International Commission against Impunity in Guatemala – A New Model for International Criminal Justice Mechanisms', *Journal of International Criminal Justice* 8, 2010, 53-74

Isaacs, Anita, 'Guatemala on the Brink', *Journal of Democracy*, Volume 21, Number 2, April 2010, 108-122

Keller, Andrew N., 'To Name or Not to Name? The Commission for Historical Clarification in Guatemala, Its Mandate, and the Decision Not to Identify Individual Perpatrators', *Florida Journal of International Law*, Vol. 13, 2001, 290-319

Kemp, Susan, 'The Inter-Relationship between the Guatemalan Commission for Historical Clarification and the Search for Justice in National Courts', *Criminal Law Forum* 15, 2004, 67-103

Lehoucq, Fabrice, 'The 1999 General Elections in Guatemala', *Electoral Studies*, Vol. 21 No. 1, 2002, 107-114

Lundy, Patricia, and McGovern, Mark, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up', *Journal of Law and Society*, Volume 35, Number 2, 2008, 265-292

Orentlicher, Diane F., 'Settling Accounts: The Duty To Prosecute Human Rights Violations Of A Prior Regime', 100 *Yale Law Journal*, 1991, 2537-2615

Perlin, Jan, 'The Guatemalan Historical Clarification Commission Finds Genocide', 6 *ILSA Journal of International and Comparative Law*, 2000, 389-413

Popkin, Margaret, 'Guatemala's National Reconciliation Law: Combating Impunity or Continuing It?' *Revista IIDH* (Instituto International de Derechos Humanos) 24, 1996, 173-184

Preti, Alessandro, 'Guatemala: Violence in Peacetime – A Critical Analysis of the Armed Conflict and the Peace Process', *Distasters* 26(2), 2002, 99-119

Roberts, Anthea Elizabeth, 'Traditional and Modern Approaches to Customary International Law: A Reconciliation', *The American Journal of International Law*, Volume 95, No. 4, 2001, 757-791

Roht-Arriaza, Naomi, and Gibson, Lauren, 'The Developing Jurisprudence on Amnesty', *Human Rights Quarterly* 20, 1998, 843-885

Roht-Arriaza, Naomi, 'Making the State Do Justice: Transnational Prosecutions and International Support for Criminal Investigations in Post-Armed Conflict Guatemala' *9 Chicago Journal of International Law*, 2008, 79-106

Ruhl, J. Mark, 'The Guatemalan Military Since the Peace Accords: The Fate of Reform Under Arzú and Portillo', *Latin American Politics and Society* Vol. 47 No. 1, 2005, 55-85

Sanford, Victoria, 'The 'grey zone' of justice: NGOs and rule of law in postwar Guatemala', *Journal of Human Rights* Vol. 2 No. 3, 2003b, 393-405

Sanford, Victoria, 'From Genocide to Feminicide: Impunity and Human Rights in Twenty-First Century Guatemala', *Journal of Human Rights* 7, 2008, 104-122

Schweigert, T.E., 'Agricultural Wage Rates Under Forced and Free Labour: Pre-1944 and Post-1954 Guatemala', *Journal of Agrarian Change*, Vol. 4 No. 4, 2004, 532-552

Scott, Paul "Woody", 'The Guatemalan Genocide Cases: Universal Jurisdiction and Its Limits', 9 *Chicago-Kent Journal of International & Comparative Law*, 2009, 100-129

Seils, Paul. F., 'Reconciliation in Guatemala: The Role of Intelligent Justice', *Race & Class* 44, 2002, 33-59

Sieder, Rachel, 'Renegotiating 'Law and Order': Judicial Reform and Citizen Responses in Post-was Guatemala', *Democratization*, Volume 10, No. 4, 2003, 137-160

Sikking, Kathryn, and Booth Walling, Carrie, 'The Impact of Human Rights Trials in Latin America' *Journal of Peace Research*, Vol. 44, No. 4, 2007, 427-445

Simon, Jan-Michael, 'Justicia universal y el genocidio en Guatemala: perspectivas europeas', *Revista Centroamericana Justicia Penal y Sociedad,* Año 11-No.15, 2001, 79-98

Sosa, Edgar Corzo, 'Genocidio, imprescriptibilidad y retroactividad (comentario a la sentencia del recurso de apelación 1/2004-PS)', *Cuestiones Constitucionales – Revista Mexicana de Derecho Constitucional*, Numero 14, 2006, 229-237

Teitel, Ruti, 'Transitional jurisprudence: The role of law in political transformation', *Yale Law Journal* 106, 1997, 2009-2080

Tomuschat, Christian, 'Clarification Commission in Guatemala', *Human Rights Quarterly* 23, 2001, 233-258

Vanthuyne, Karine, 'Becoming Maya? The Politics and Pragmatics of "being Indigenous" in Postgenocide Guatemala', *Political And Legal Anthropology Review*, Vol. 32 No. 2, 195-217 (2009)

Wasserstrom, Robert, 'Revolution in Guatemala: Peasants and Politics under the Arbenz Government', *Comparative Studies in Society and History*, Vol. 17 No 4, 1975, 443-478

Wilk, Richard R., 'The Ancient Maya and the Political Present', *Journal of Anthropogological Research* 41 (3), 307-326

Wilt, Harmen van der, 'Genocide, Complicity in Genocide and International v. Domestic Jurisdiction – Reflections on the *van Anraat* case', *Journal of International Criminal Justice* 4, 2006, 239-257

Selection of reports, papers, public statements, press releases

Amnesty International (2002), *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, 2002

Amnesty International (2008), *Guatemala: The refusal to grant the extraditions requested by Spain for crimes under international law*, May 2008

Amnesty International, *Justice and Impunity: Guatemala's Historical Clarification Commission 10 Years On*, February 2009

Amnistía Internacional, 'El Salvador: El espectro de los "escuadrones de la muerte"' (El Salvador: The spectre of "death squads"), December 1996

Briscoe, Ivan, *A criminal bargain: the state and security in Guatemala*, FRIDE Working Paper, September 2009

CALDH (Centro para la Acción Legal en Derechos Humanos), *Ministerio Publico Obstaculiza Justicia por Genocidio*, June 2005

CALDH (Centro para la Acción Legal en Derechos Humanos), *Desaparición Forzada del Pasado, Hoy Debe Ser Juzgada,* July 2009

CALDH (Centro para la Acción Legal en Derechos Humanos), *Primera Sentencia por Desaparición Forzada: Una Puerta Abierta para Exigir Justicia por las Miles de Víctimas Desaparecidas durante el Conflicto Armado Interno*, September 2009

Castañeda, José Andrés Estrada, *Comisión Internacional Contra la Impunidad en Guatemala (CICIG) frente a la Soberanía del Estado*, Universidad del Istmo, Guatemala, May 2009

CEDECÓN (Centro para la Defensa de le Constitución), *Comunicado: Dictamen sobre la 'CICIACS'*, March 2004

CICIG (Comisión International Contra la Impunidad en Guatemala), *Un Año Después*, September 2008

CICIG (Comisión International Contra la Impunidad en Guatemala), *Dos Años de Labores: Un Compromiso con la Justicia*, September 2009

CICIG (Comisión International Contra la Impunidad en Guatemala), *Tercer Año de Labores*, September 2010

Comisión Internacional de Juristas, *Consideraciones de la Comisión Internacional de Juristas Sobre el Acceso a la Información y el Secreto de Estado en Casos de Genocidio*, Expediente 2264-2007

FIDH (Federación Internacional de Derechos Humanos), *La Corte de Constitucionalidad permite que un ex dictador sea candidato a la Presidencia*, July 2003

FMM (Fundación Myrna Mack), *Comisión Internacional contra la Impunidad en Guatemala: Herramiento indispensable para el combate de la violencia política en el país*, November 2006

FMM (Fundación Myrna Mack), *De una Guerra a la otra*, February 2009

FMM (Fundación Myrna Mack), *Análisis de las Propuestas de Reforma Constitucional*, August 2009

GAM (Grupo de Apoyo Mútuo), *La Desaparición forzada en Guatemala (Necesidad de esclarecimiento e investigación)*, Undated Publication

García, María Cristina Fernández, *Lynching in Guatemala – Legacy of War and Impunity*, Harvard University, June 2004

Impunity Watch, *Recognising the Past: Challenges for the Combat of Impunity in Guatemala*, November 2008

Impunity Watch and Convergencia por los Derechos Humanos, *La Persistencia de la Verdad, A diez años del Informe de la CEH*, February 2009

Kemp, Susie L. and Seils, Paul F., *Persecución Penal de Delitos Internationales en Guatemala. Observaciones, conclusiones y recomendaciones surgidas del programa de apoyo técnico ofrecido pr el Centro Internacional por la Justicia Transicional (ICTJ) a la Fiscalía de Casos Especiales*, International Center for Transitional Justice, 2003-4

Mack, Luis Fernando, and Erazo, María Alejandra, *Cuadernos de Informacion Política No. 4: El desempeño institucional de los partidos políticos en Guatemala*, Guatemala: FLACSO Guatemala, 2006

MINUGUA (United Nations Verification Mission in Guatemala) (1999), Tenth Report on Human Rights, 21 December 1999, A/54/688 (available at http://en.wikisource.org/wiki/MINUGUA_-_Tenth_report_on_human_rights)

Morales, Mariela Eulalia Hidalgo, *Análisis Jurídico de la CICIG y su Interferencia en el Derecho Penal Guatemalteco*, Universidad de San Carlos de Guatemala, Facultad de Ciencias Jurídicas y Sociales, May 2008

ODHAG, Presentación Violencia en Guatemala, 1 December 2010 (powerpoint presentation available at www.odhag.org.gt)

Peacock, Susan C. and Beltrán, Adriana, *Hidden Powers in post-conflict Guatemala: Illegal Armed Groups and the Forces behind them*, WOLA (Washingtin Office on Latin America), 2003

Roht-Arriaza, Naomi, *Prosecuting Genocide in Guatemala: The Case Before the Spanish Courts and the Limits to Extradition*, Project on Human Rights, Global Justice & Democracy, Working Paper No. 2, Spring 2009

Sugarman, Eli, *The International Commission Against Impunity (CICIG): A Case Study in Shared Sovereignty*, unpublished paper on file with author

WOLA (Washingtin Office on Latin America), *Activistas Contra la Impunidad – Un estudio de caso sobre la movilización por los derechos humanos en Guatemala*, December 2008

Selection of Legal Documents

Constitución Política de la República de Guatemala (1985)

Acuerdo Global Sobre Derechos Humanos, March 29, 1994

Acuerdo de paz firme y duradera, December 29, 1996

Ley de Reconciliación Nacional, Decreto No. 145-1996, December 27, 1996

Código Procesal Penal de Guatemala, *Decreto No. 51-92*

Código Penal de Guatemala, Decreto No. 17-73,

Acuerdo político entre el Ministro de Relaciones Exteriores de Guatemala y el Procurador de los Derechos Humanos sobre el establecimiento de una Comisión de Investigaciones de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ("CICIACS"), March 13, 2003

Acuerdo entre las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ("CICIACS"), January 7, 2004

Corte de Constitucionalidad de Guatemala, 'Opinión Consultativa sobre el texto del Acuerdo celebrado entre la Organización de las Naciones Unidas (ONU) y el Gobierno de Guatemala relativo al establecimiento de una Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala ('CICIACS')', Expediente No. 1250-2004, August 5, 2004

Acuerdo entre la Organización de Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión International Contra la Impunidad en Guatemala (CICIG), 12 December 2006

Corte de Constitucionalidad de Guatemala, 'Dictamen de la Corte de Constitucionalidad sobre el Acuerdo de CICIG', Expediente 791-2007, May 8, 2007

Convenio de cooperación bilateral entre el Ministerio Público y la Comisión Internacional Contra la Impunidad en Guatemala (CICIG), February 27, 2008

Convenio bilateral de cooperación entre el Ministerio de Gobernación y la Comisión Internacional Contra la Impunidad en Guatemala (CICIG), March 25, 2008

INDEX

Accord for a Firm and Lasting Peace, 16, 23, 38
Allende, Salvador, 13
Amatitlán, 31
American Convention on Human Rights, 5, 52, 55, 56, 60, 61, 64, 67, 78, 82, 89
amnesty, 62, 79, 86
amparo, 31, 32, 33, 34, 80
antejuicio, 32, 34
Arana Osorio, Carlos Manuel, 13
Arana, Francisco Javier, 10, 12, 26, 27
Arbenz Guzmán, Jacobo, 10, 11, 12, 23
Argentina, 10, 20, 55
Arzú, Álvaro, 16, 17, 19, 21, 49, 58, 83
Baja Verapaz, 44, 76
Balsells Tojo, Alfredo, 40
Bámaca, Efraín, 56, 76, 77, 78, 82, 84
Barrios, Justino Rufino, 8, 9
Belgium, 73
Berger, Óscar, 18, 19, 21, 25, 29, 31, 35, 65, 75, 77, 87, 89
Bhutto, Benazir, 38
Blake, Nicolas Chapman, 56, 60, 61, 76
Bosnia and Herzegovina, 36
Bouterse, 55, 67, 68
Cabrera, Manuel Estrada, 9
Cambodia, 34, 36
Canada, 79
Carías López, Carlos Antonio, 80
Carrera, Rafael, 8
Carter, Jimmy, 23
Castellanos, Manuel Maza, 89
Castillo Armas, Carlos, 4, 5, 12, 17, 27, 58, 90
Castresana, Carlos, 33, 35, 86, 87, 94
caudillo, 9, 12, 17
CEH, 4, 7, 14, 17, 23, 24, 27, 28, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 56, 62, 71, 73, 80, 81, 88
Central-American Parliament, 18, 29, 35
Cerezo, Vinicio, 15, 58
Chile, 13, 73
Chinchilla, María, 10
CIA, 12, 47, 58, 84, 93
CICIACS, 24, 25, 29, 30, 35, 65, 74
Clinton, Bill, 23, 84
Código Civil de Guatemala, 22
Código Penal de Guatemala, 64, 66, 68, 69, 70, 71, 80
Código Procesal Penal de Guatemala, 30, 70
Coj, Felipe Cusanero, 78, 81
Colom, Álvaro, 6, 19, 20, 21, 22, 29, 31, 33, 34, 35, 38, 83, 86, 87, 89
Communism, 11, 45
Comprehensive Agreement on Human Rights, 15, 16, 23, 70
Congress of Guatemala, 4, 6, 9, 15, 16, 18, 19, 22, 25, 28, 29, 31, 32, 34, 49, 85, 86, 87, 91
Conquista, 4, 23, 41, 92
Constitution of Guatemala, 10, 15, 17, 19, 21, 22, 25, 46, 55, 64, 65, 66, 67, 68, 69, 70, 74
Constitutional Court of Guatemala, 15, 19, 20, 21, 22, 24, 25, 29, 31, 33, 35, 65, 69, 71, 75, 81, 82, 83, 84, 91
Constitutional Court of Spain, 73, 74
corruption, 19
Costa Rica, 8, 9, 35
Cuba, 13, 24
Dall'Anese, Francisco, 35, 88
DeVine, Michael, 84
Dos Erres, 51, 67, 76, 78, 79, 80
Echeverria, Luis, 66
education, 9, 32
EGP, 47
Eisenhower, 11
El Jute, 79, 81, 82
El Salvador, 8, 9, 24, 26, 29, 34, 35, 42
European Court of Human Rights, 61

exile, 8, 10, 12
extradition, 69, 74
FAMDEGUA, 79
Federal Republic of Central America, 8
Fernando Ramírez, Héctor, 18
France, 8
FRG, 17, 18, 87, 89
Fujimori, Alberto, 15
fusiles y frijoles, 14
Gándara, Salvador, 37
gangs, 26
Gaza, 36
Geneva Conventions, 49, 52, 53, 54, 55
genocide, 5, 44, 45, 46, 47, 49, 52, 55, 56, 57, 60, 64, 67, 69, 74, 89
Gerardi, Bishop Juan José, 17, 27, 42, 43, 82, 83, 84
Giammattei, Alejandro, 19, 35, 87, 89
Gómez, Vinicio, 37
Granados, Miguel García, 8
Grupo Conjunto, 24, 25, 35
Harbury, Jennifer, 84, 85
Hariri, Rafik, 38
Honduras, 8, 9, 12, 56, 58, 61
Huehuetenango, 44
Human Rights Ombudsman, 15, 25, 40
humanitarian law, 53
ICC, 72
ICCPR, 55
ICJ, 52, 53, 54
ICTR, 46
ICTY, 46
impunity, 4, 6, 18, 22, 23, 27, 28, 39, 40, 89
Inter-American Court of Human Rights, 5, 40, 43, 50, 51, 56, 60, 61, 67, 71, 76, 77, 78, 79, 80, 82, 84, 88, 92
Iran, 12
Ixil, 44, 46, 47
Jímenez, Francisco, 37
Kirchners, 20
Kosovo, 36
Lacs, Eduardo Arévalo, 89
Laugerud García, Kjell, 13
Lebanon, 34, 36, 38
Léon Carpio, Ramiro de, 15
Liberal Revolution, 8
Lima, Byron Disrael Estrada, 83
Lima, Byron Miguel Oliva, 83
Lucas García, Romeo, 13, 55, 73, 80, 88
Lux de Cotí, Otilia, 40
Mack, Helen, 22, 82, 84
Mack, Myrna, 65, 76, 77, 78, 82, 84, 85
Madrid, 75
Managua, 13
mano dura, 18, 20, 22, 25, 26, 27, 30
Marxism, 10
massacre, 51, 67, 76, 79, 80
Matus, Álvaro, 31, 34
McFarland, Stephen, 82
Mejía Victores, Oscar, 15, 58, 73, 88
Menchú, Rigoberta, 73, 85
Menocal, Carlos, 21, 38
Mexico, 7, 8, 10, 12, 16, 18, 26, 66, 67
MINUGUA, 16, 17, 19, 23, 24, 78
Montenegro, Julio Cesar Méndez, 13
Mossadeq, 12
Musa, Khalil, 31, 87
Napoleon, 8
National Civil Police, 21, 27, 28, 31, 32, 33, 37, 78, 83
National Reconciliation Law, 4, 16, 58, 64, 65, 66, 68, 69, 71, 78
Nicaragua, 8, 9, 13, 31, 54, 87
Nuremberg Tribunal, 57, 63, 89
Obama, Barack, 88
October Revolution, 4, 10, 12, 58
ODHAG, 83, 84
Oslo Agreement, 42, 43
Pakistan, 38
Panama, 15, 18
Pavón prison, 31
Paz y Paz Bailey, Claudia, 33
Peace Accords, 4, 17, 24, 28, 41, 42, 58, 59, 65
Peralta Azurdia, Enrique, 13
Pérez Molina, Otto, 19, 20, 21, 22, 35, 73, 76, 86, 87, 89
Peru, 8, 15, 61
Pinochet, Augusto, 13, 73
Plan de Sánchez, 76, 77, 78
Plan Escoba, 25

Ponce, Federico, 10
Portillo, Alfonso, 4, 6, 17, 18, 19, 21, 25, 26, 31, 33, 34, 59, 85, 87, 88, 89, 91
Portugal, 8
Postulación, Comisiones de, 32, 33
Public Prosecutor's Office, 6, 16, 25, 30, 31, 32, 33, 34, 35, 37, 69, 71, 75, 76, 78, 84, 88, 89, 92
querellante adhesivo, 30, 31, 34, 35, 37, 38, 50, 82, 88, 89, 91
Quiché, 44, 46
Rabinal, 44, 80
Reagan, Ronald, 23, 92
Reina Barrios, José María, 9
REMHI, 17, 18, 28, 42, 48, 83, 88
RENAP, 37
Reyes, Conrado, 33, 34, 76, 80
Río Negro, 78, 80, 81, 85
Ríos Montt, Efraín, 4, 5, 14, 15, 17, 18, 19, 20, 22, 23, 25, 27, 31, 34, 45, 47, 49, 55, 58, 59, 62, 69, 70, 73, 74, 80, 85, 87, 88, 91, 92
Roman Catholic church, 8, 9, 17, 42, 83
Rosenberg, Rodrigo, 20, 21, 31, 35, 37
Rwanda, 34, 38, 48
Salguero, Espina, 15
Sánchez Samayoa, Marco Antonio, 81
Sandinistas, 13
Sandoval, Vicente Cerna, 9
Scorched Earth, 14
Serrano Elías, Jorge, 15, 16, 20, 21, 58
Sierra Leone, 34, 36, 62
Sinibaldi, Alejandro, 9
Solares, José Antonio, 81
Somoza, Anastasio, 13
South-Africa, 41
Soviet Union, 13
Spain, 4, 5, 7, 8, 9, 17, 19, 40, 41, 43, 44, 45, 54, 64, 66, 67, 69, 70, 71, 72, 73, 74, 75, 77, 82, 84, 85, 88, 92
Stein, Eduardo, 77, 87
Supreme Court of Guatemala, 15, 18, 19, 27, 32, 34, 55, 67, 68, 83, 84, 91
Supreme Court of Mexico, 66
Tecu Osorio, Jesus, 81, 85
Timor-Leste, 34, 35, 36
Tomuschat, Christian, 14, 23, 40, 42, 48
Toriello, Jorge, 10
Torres (de Colom), Sandra, 20, 21, 22, 86, 89
torture, 55, 63, 67
Ubico, Jorge, 10, 12
UEFAC, 30, 31, 34, 35, 37, 88, 89, 91
UNE, 29, 34, 35, 89
United Fruit Company, 9, 11
United Nations, 4, 6, 7, 16, 17, 22, 23, 24, 25, 26, 28, 29, 35, 36, 38, 40, 41, 42, 55, 86
  General Assembly, 16, 17, 19, 23, 36
  Human Rights Council, 36
  Security Council, 23, 36, 38
United States of America, 11, 12, 13, 18, 20, 23, 26, 31, 56, 57, 79, 82, 84, 91
universal jurisdiction, 73
URNG, 13, 16, 23, 42, 84
Valencia Osorio, Juan, 82
Valenzuela, Arturo, 91
Velásquez Rodríguez, 56, 61
Velásquez, Raúl, 37, 38, 89
Vielman, Carlos, 19, 75, 87, 89
Villanueva, Obdulio, 83
Ydígoras Fuentes, Miguel, 12, 13, 41
Yugoslavia, 34, 36, 38
Zacapa massacre, 31
Zacualpa, 44, 46
Zeissig, Leopoldo, 83