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Policy Brief

NEW ATTEMPT TO GRANT AMNESTY IN GUATEMALA:
ANALYSIS OF BILL 5920

Guatemala, October 2021

Representatives from the political party Valor recently introduced a legislative initiative that seeks to grant amnesty for all crimes committed during the internal armed conflict (1960-1996)[1]. Valor is the party of Zury Ríos, the daughter of former dictator José Efraín Ríos Montt. The legislative initiative 5920 was introduced only a few days after 12 former members of the military and police were implicated in the forced disappearance, torture, and murder of 183 people from 1983 to 1985, all crimes that were recorded in the military intelligence document known as the "Death Squad Dossier"[2].

This is the second time that congressional representatives associated with the military have promoted total amnesty for atrocities committed during the armed conflict. In 2019, congressional representatives, led by Fernando Linares Beltranena, presented Bill 5377 in an effort to reform the National Reconciliation Law. The Constitutional Court suspended the legislative process, ruling that the bill violated national and international human rights law. The bill was also an imminent threat to the justice system, as the intent was to secure the immediate release of prisoners accused and convicted of crimes against humanity and other serious crimes[3]. This bill was archived by the Congress of the Republic on April 20, in compliance with the Court ruling[4].

The new legislative initiative, named Law for the Consolidation of Peace and Reconciliation, does not explicitly reform or overturn the National Reconciliation Law, but rather seeks to provide an "authentic interpretation" of it. According to the bill's sponsors, the law has not been applied correctly up to this point and the bill seeks to provide a particular interpretation of the law. In essence, the initiative seeks to release from any criminal liability those who committed "political" crimes during the internal armed conflict. The bill, however, is based on false premises and the manipulation of international instruments. The bill openly violates the Political Constitution, international treaties ratified by Guatemala, the jurisprudence of the Inter-American Court of Human Rights (IACHR), and rulings by the Constitutional Court, all of which prohibit amnesty for war crimes, crimes against humanity and genocide.

Legislative initiative 5920 once again violates the right to justice of the victims of the internal armed conflict. If approved, the law would release more than 50 prisoners who have been prosecuted and convicted of crimes against humanity, forced disappearance, sexual violence and other atrocities. Furthermore, the bill threatens more than 30 years of efforts led by survivors and human rights organizations in the struggle for justice for grave crimes, such as the genocide of the Ixil People, sexual violence against the women of Sepur Zarco, crimes against humanity against the Molina Thiessen

[1]The bill was presented on June 3, 2021 by legislative representatives Ana Lucrecia Marroquín Godoy de Palomo, Antonio Fernando Arenales Forno, José Francisco Zamora Barillas, Efraín Menéndez Anguiano, José Luis Galindo De León, Gerardín Ariel Díaz Mazariegos, Leopoldo Salazar Samayoa, Esteban Rubén Barrios Galindo and Sergio Leonid Chacón Tarot.

[2]The "Death Squad Dossier Case" or "Military Diary Case" refers to the forced disappearance of 183 people (24 women and 159 men) between the ages of 12 and 82 years old, occurring from August 1983 to March 1985, whose names were recorded in a military intelligence document that was leaked in May 1999, thanks to a journalistic investigation published by Harper's Magazine. The document is extremely relevant because it shows the systematic way in which the Guatemalan Army and National Police carried out forced disappearances during the internal armed conflict. The IACHR judgment condemned the State of Guatemala in the Case of Gudiel Álvarez et al ("Diario Militar"). The Court reminded the State of Guatemala that it should adopt necessary measures in order to ensure that the authorities in charge of the investigation have all the information they need in order to investigate the facts, clarify what happened, and determine the whereabouts of the victims.

[3]Constitutional Court, collected records 682-2019 and 1214-2019, sentence of "amparo" from February 9, 2021, pages 60 and 61.

[4]La Hora, "Tras sentencia de la CC, Congreso archiva Ley de Reconciliación Nacional, noticia del 20 de abril de 2021", available in Spanish at: https://lahora.gt/tras-sentencia-de-la-cc-congreso-archiva-ley-de-reconciliacion-nacional/.

family, the Dos Erres massacre, the Spanish Embassy massacre, and other emblematic cases in Guatemala.[5]

This document provides an analysis of the Bill 5920, referring to the Constitution, the National Reconciliation Law, the Peace Accords, and the jurisprudence of the Constitutional Court, as well as international treaties ratified by Guatemala and international standards on victims' right to justice and the prohibition of total amnesty.

1. The false premises of Bill 5920

In the explanatory memorandum for Bill 5920, a series of false assertions distort the meaning of the National Reconciliation Law, international instruments, and the applicable human rights standards. First, the memorandum claims that "in public international law there is no ban on amnesty"[6], because article 6 of Protocol II of the Geneva Conventions, "asks the States to grant the broadest amnesty to participants in an armed conflict"[7]. The bill's sponsors argue that this article prevails over the obligation to investigate and punish those responsible for human rights violations[8].

This assertion is false. The Geneva Conventions, as well as other international instruments and the jurisprudence of international courts, require the prosecution of serious breaches of international humanitarian law. This is particularly the case for violations of common article 3 of the Geneva Conventions, a "non-derogable" norm in international law that is applicable to non-international armed conflicts. Common article 3 prohibits, in any time or place, *"…(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…".* Guatemala has been party to the four Geneva Conventions since 1952[9], so the rules of common article 3 were in effect before the internal armed conflict.

Jurisprudence and the interpretation of tribunals and international bodies have all reinforced the prohibition of amnesty for grave crimes. In the case of Gelman v. Uruguay, the IACHR adopted the same interpretation of article 6.5 of Protocol II Additional to the Geneva Conventions as the International Committee of the Red Cross (ICRC), determining that amnesty laws cannot protect perpetrators of war crimes: "*…[w]hen it adopted paragraph 5 of Article 6 of Additional Protocol II, the USSR declared, in the reasoning of its opinion, that it could not be interpreted in such a way that it allow war criminals or other persons guilty of crimes against humanity to escape severe punishment...An amnesty would also be inconsistent with the rule requiring States to investigate and prosecute those suspected of committing war crimes in [non]-international armed conflicts …"*[10].

In the Case of the Massacres of El Mozote and nearby places v. El Salvador, the IACHR ruled that article 6.5 of Protocol II Additional to the Geneva Conventions is not an absolute rule, because international humanitarian law obligates States to investigate and prosecute war crimes. *"Consequently, 'persons suspected or accused of having committed war crimes,*

[5]On June 22, 2021, the National Platform of Victims of the Internal Armed Conflict released a statement rejecting Bill 5920, reading, "Bill 5920 violates national and international law. It is based on lies and distorts the meaning of the National Reconciliation Law and international human rights treaties. General amnesties are prohibited for those responsible for atrocities like genocide, forced disappearances, torture, sexual violence, and crimes against humanity. Amnesties do not take precedence over the rights of the victims and their families to truth and justice."

[6]Explanatory memorandum for Bill 5920, page 1.

[7]Loc. cit.

[8]Ibid., page 2.

[9]The Geneva Conventions were approved by Guatemala through legislative Decree 881 on April 16, 1952, then ratified April 21, 1952, and submitted to the United Nations on May 14, 1952.

[10]IACHR, Case of Gelman v. Uruguay, judgment of February 24, 2011, paragraph 210.

or who have been convicted of this" cannot be covered by an amnesty. Consequently, it may be understood that article 6(5) of Additional Protocol II refers to extensive amnesties in relation to those who have taken part in the non-international armed conflict or who are deprived of liberty for reasons related to the armed conflict, provided that this does not involve facts... that can be categorized as war crimes, and even crimes against humanity'"[11].

The two additional protocols to the Geneva Conventions[12] were created to complement the original conventions, not to annul or minimize their provisions. As stated in article 1 of Additional Protocol II, the intent was to develop common article 3 in the Geneva Conventions "without modifying its existing conditions of application." Article 4 reiterates the prohibition of acts such as homicide, torture or sexual violence against people that do not participate directly in internal armed conflicts.

Additional Protocol II could in no way promote the extinction of criminal liability for war crimes or crimes against humanity because the protocol was created as a complementary instrument to broaden the protection that the Geneva Conventions grant to people in armed conflicts and to reinforce the obligation of States to "search for persons accused of committing or ordering others to commit" war crimes and make them appear in court[13].

Clearly, article 6.5 of Additional Protocol II does not allow for amnesties for grave breaches to the Geneva Conventions. A holistic and harmonious interpretation of the conventions and their additional protocols can only lead to the exclusion of this release from responsibility for war crimes. In order to leave no doubt about the intent of these instruments, Rule 159 of customary international humanitarian law reiterates, "*The authorities in power must endeavour to grant the broadest possible amnesty…with the exception of persons suspected of, accused of or sentenced for war crimes"*[14]. This confirms the inapplicability of Bill 5920, since the proposed legislation seeks to grant amnesty for grave crimes, thus preventing the State of Guatemala from complying with the obligation to investigate, prosecute, and punish these crimes[15].

The IACHR has maintained that the extinction of criminal liability does not apply for crimes like genocide, forced disappearance, extrajudicial execution, torture, and sexual violence, among others. In the "Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala", the court reiterated this position. The judgment is one of the most recent rulings against the State for acts committed during the armed conflict. The IACHR affirmed that: *"considering the serious nature of the acts, [the State] cannot apply amnesty laws or provisions on prescription, nor argue supposed exclusions of responsibility, which serve only as a pretext to impede the investigation"*[16]. The judgment is one of nine against Guatemala in which the IACHR refers to the inapplicability of amnesty for serious human rights violations[17].

In the explanatory memorandum for Bill 5920, the sponsoring legislators state, "*For insurgents, amnesty is granted for acts categorized as crimes in specific articles of the Penal Code,*

[11]IACHR, Case of the Massacres of El Mozote and nearby places v. El Salvador, judgment of October 25, 2012, paragraph 286.
[12]Adopted on June 8, 1977.
[13]Article 146 of Geneva Convention IV.
[14]International Committee of the Red Cross (CICR in Spanish), El Derecho Internacional Humanitario consuetudinario, Volumen I: Normas, Argentina: CICR, 2007, page 691.
[15]Explanatory memorandum for Bill 5920, page 2.
[16]IACHR, "Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala", judgment of November 30, 2016, page 94, paragraph 285.
Cases include: Case of Myrna Mack Chang, Case of Carpio Nicolle et al, Case of Tiu Tojín, Case of the Massacre of Dos Erres, Case of Chitay Nech, Case of the Massacres of Río Negro, Case of Gudiel Álvarez et al (Diario Militar), Case of García and family members, and the Case of Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal.
[17]Explanatory memorandum for Bill 5920, page 2.

but for counterinsurgents, amnesty is for all crimes…"[18]. This assertion is completely false. In the Agreement on the Basis for the Legal Integration of Unidad Revolucionaria Nacional Guatemalteca (URNG), guidelines were established for a proposed amnesty law in the Congress of the Republic, yet always while "safeguarding the fundamental rights of the victims"[19] and "without neglecting the need to combat impunity"[20]. Furthermore, the Comprehensive Agreement on Human Rights included a commitment not to sponsor *"the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations"* [21].

In addition, the Agreement on the Basis for the Legal Integration of Unidad Revolucionaria Nacional Guatemalteca (URNG) included details about the political crimes and related common crimes that would be covered under the amnesty[22]. The Agreement clearly stated that: *"In respect of persons who were involved in the internal armed conflict owing to institutional mandates, the National Reconciliation Act shall contain specific provisions equivalent to those previously mentioned [extinction of criminal liability for political crimes and related common crimes], in that they shall extinguish criminal liability for common crimes perpetrated with the aim of preventing, thwarting, suppressing or punishing the commission of political crimes and related common crimes, where such crimes were directly, objectively, intentionally and causally related to that aim, unless it is demonstrated that there is no relationship between the criminal act and the stated aim…"*[23].

This confirms that during the peace process negotiation, the parties agreed that amnesty would be applied within certain parameters and in such a way that all crimes are not covered under the extinction of criminal liability for the counterinsurgency. The amnesty only covers crimes proven to have been committed with the intent to prevent or punish a crime of a political nature or a related common crime, and only as long as the crime is not subject to restrictions regarding amnesty[24].

The explanatory memorandum for Bill 5920 argues that the Congress of the Republic mistakenly *"added the inapplicability of amnesty for genocide, torture, and forced disappearance"*[25], because *"no act or behavior during the armed conflict included the elements needed to meet the legal definition of genocide"*[26], and the crimes of torture and forced disappearance were not designated in national legislation at the time of the internal armed conflict.

This is also false because Guatemala has been party to the Convention for the Prevention and Punishment of the Crime of Genocide since 1950.[27]. Article 1 of the convention states: "*The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.*" Consequently, this Convention not only obligates the State to criminally prosecute those responsible for the crime of genocide, but also recognizes the right of the victims to obtain justice. In Guatemala, the punishments for the crimes of genocide and incitement to commit genocide have been legally designated since 1973.[28] In any case, whether or not an

[18]Explanatory memorandum for Bill 5920, page 2.
[19]Agreement on the Basis for the Legal Integration of Unidad Revolucionaria Nacional Guatemalteca (URNG), paragraph 17
[20]Ibid., paragraph 20.
[21]Comprehensive Agreement on Human Rights, section III, paragraph 1.
[22]Ibid., paragraphs 21 (Political crimes) and 22 (Related common crimes). See: articles 2 and 4 of the National Reconciliation Law.
[23]Ibid., paragraph 23 (Other extinctions of criminal liability). See: article 5 of the National Reconciliation Law.
[24]Ibid., paragraph 24 (Restrictions). See: article 8 of the National Reconciliation Law.
[25]Explanatory memorandum for Bill 5920, page 3.
[26]Ibid, page 4.
[27]The Convention was approved by legislative Decree 704 on November 30, 1949, then ratified on December 13, 1949, published on January 6, 1950 in the newspaper of public record, and submitted to the UN on January 13, 1950.
[28]Articles 376 and 377 of the Penal Code.

act includes the necessary elements to meet the legal definition of genocide should be decided by a competent tribunal, not a group of congressional representatives.

With respect to torture, the crime was added to the Penal Code in 1995. Nevertheless, common article 3 of the Geneva Conventions explicitly prohibits the torture of civilians[29]. This prohibition has been in effect in Guatemala since 1952. The punishment for breaches of common article 3 was established in 1973 in article 378 of the Penal Code, which is the internal law that designates "crimes against obligations to humanity" or war crimes and crimes against humanity.[30] Therefore, it is false to say that torture was not *typified* in Guatemalan legislation.

With regards to forced disappearance, the crime was included in the Penal Code in 1996, but it is also considered a war crime and a crime against humanity, as well as a crime that is permanent in nature. Constitutional Court rulings have established this: *"The fact that the legislator has established permanence as a constitutive element of the crime of enforced disappearance does not translate into a violation to the principle of non-retroactivity enshrined in article 15 of the Political Constitution of the Republic, since the inherent continuity in time of said illegal action allows its commission to be extended until a time after the beginning of the temporary time period of validity of the provision that regulates it..."*[31]. Therefore, the crime of forced disappearance cannot be covered under the amnesty in accordance with national and international law.

2. The content of Bill 5920

Bill 5920 consists of 7 articles. Article 1 declares the extinction of criminal liability for "all crimes committed during the internal armed conflict", and considers these crimes "political in nature". This conflicts with articles 2 and 4 of the National Reconciliation Law,[32] which establish the political crimes and related common crimes that can be covered under the amnesty, while also considering the restrictive nature of amnesty, in accordance with the Political Constitution, the international treaties ratified by Guatemala, the jurisprudence of the IACHR, the rulings of the Constitutional Court, and other applicable international standards. Furthermore, qualifying all crimes as "political crimes" circumvents the law so as to include crimes like genocide, forced disappearance, extrajudicial execution, torture, and breaches of common article 3 of the Geneva Conventions under the amnesty. These particular crimes, however, are considered "grave crimes according to international

[29]Common article 3 of the Geneva Conventions: "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...shall in all circumstances be treated humanely...

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"

[30]Article 378 of the Penal Code: "Whoever violates or infringes upon humanitarian duties, laws or conventions with respect to war prisoners or hostages or the wounded during military actions, or whoever commits inhumane acts against the civilian population, or against hospitals or places designated for the wounded, will be punished with a prison term of twenty to thirty years".

[31]Constitutional Court, record file 1822-2011, ruling of unconstitutionality in concrete case (Case of Choatulum), July 7, 2009, page 5.

[32]Article 2 of the National Reconciliation Law: "The total release from criminal responsibility for political crimes committed during the internal armed confrontation is decreed, up to the date this law entered into effect, and will include the authors, accomplices and accessories to crimes against the security of the State, against institutional order and against the public administration, included in articles 359, 360, 367, 368, 375, 381, 385 to 399, 408 to 410, and 414 to 416 of the Penal Code, as well as those contained in title VII of the Arms and Ammunitions Law. In these cases, the Public Prosecutor's Office will refrain from taking prosecutorial action and judicial authorities will order definitive dismissal".

Article 4 of the National Reconciliation Law: "The total release from criminal responsibility for common crimes that, with this law, are connected to political crimes mentioned in the second article is decreed, up to the date this law entered into effect, for crimes that correspond to those designated in articles 214 to 216, 278, 279, 282 to 285, 287 to 289, 292 to 295, 321, 325, 330, 333, 337 to 339, 400 to 402, 404, 406 and 407 of the Penal Code".

law"[33] and jus cogens norms. This obligates States to investigate, prosecute and punish the perpetrators, and prohibits the granting of amnesty for these crimes[34].

Article 1 of Bill 5920 also conflicts with article 8 of the National Reconciliation Law, which states that the extinction of criminal liability *"does neither apply to crimes of genocide, torture and forced disappearance nor to the crimes which are not subject to limitations or which, in conformity with internal law or international treaties ratified by Guatemala, do not allow the release from penal responsibility".*

Article 2 of the legislative initiative states that the extinction of responsibility includes, *"all persons that have participated directly or indirectly in the internal armed conflict."* This fosters an extension of impunity that would allow for the release of individuals from both the Army and the insurgency who are currently serving time for a conviction for a common crime committed during the temporary period of the internal armed conflict. Bill 5920 fails to mention the requirement of the causal link in this case. The crime had to have been committed with the intent to prevent, impede, prosecute, or repress a political crime or related common crime. In this way, article 3 contradicts articles 2, 3, 4 and 5 of the National Reconciliation Law.

Article 3 of the legislative initiative states that the extinction of responsibility includes *"all acts committed with the intention of repressing or preventing insurgent or counterinsurgent action".* This article conflicts with article 5 of the National Reconciliation Law, which states that the authorities or members of state institutions or a force established by law shall receive amnesty for crimes committed for "the purpose of preventing, impeding, prosecuting, or repressing crimes referred to in articles 2 [political crimes] and 4 [common crimes related to political crimes] of this Law", as long as a "rational and objective relationship" between these ends and the crimes committed exists, which can only be assessed by a judge in each specific case.

Article 4 of the initiative defines time limits for penal action, in other words the power of the Public Prosecutor's Office to investigate, criminally prosecute, and accuse a person who has committed an act with any "relation direct or indirect with the insurgent or counterinsurgent struggle, whether of a material or personal nature." Consequently, this would amount to a statute of limitations for criminal liability for any crime. This contradicts article 8 of the National Reconciliation Law, which specifies the crimes that are excluded from the extinction of criminal liability.

Article 5 seeks to annul "any sentence, resolution, or law" that violates the provisions of the potential law, as well as secure the release of and lift any measures imposed on those who have been convicted or prosecuted. The Congress of the Republic does not have the authority to legitimately annul sentences or judgments that have been executed properly. This would interfere with the legitimate functions of the Judicial System, the only branch that has the power to annul a judgment according to law. For this reason, article 5 of the proposed initiative threatens the independence of judges that have issued verdicts with respect for due process and in full compliance with the duty of the State to investigate, prosecute, and punish serious human rights violations.

Article 6 states that any prosecutor or judge that violates the potential law, in other words by pursuing criminal prosecutions or holding hearings in criminal proceedings for grave human rights violations, would commit the crime of "contempt".

[33]According to the updated set of principles for the protection and promotion of human rights through action to combat impunity, grave crimes under international law include "serious violations included in the Geneva Conventions of August 12, 1949 and the Protocol Additional I of 1977 and other violations of international humanitarian law [such as]…: genocide, crimes against humanity and other violations of internationally protected human rights designated as crimes under international law and/or with respect to which international law requires States to impose penalties for crimes, such as torture, enforced disappearances, extrajudicial execution and slavery".
[34]ICRC, op. cit., page 694.

This provision would lead to the criminalization of judges and prosecutors, although the threat could not be fully carried out. In 2006, the Constitutional Court ruled that the crimes of "contempt of presidents of State Organisms" and "contempt of authority" were unconstitutional as defined in articles 411 and 412 of the Penal Code[35].

Finally, article 7 indicates that the law would enter into effect eight days after publication in the newspaper of public record, thereby violating the right to justice of the victims of grave crimes. The law would prevent victims from demanding investigations of those responsible. Furthermore, if more than 50 people tried and convicted of grave crimes were released, the situation would become critical, and reparations would become very difficult or even impossible. The prisoners' release could result in threats to the life and physical integrity of plaintiffs, witnesses, experts, lawyers, prosecutors and judges who were or are involved in criminal proceedings for emblematic cases.

As evidenced above, in addition to including false content, the initiative seeks to create a law that would obligate judges to interpret the National Reconciliation Law in a certain way. As such, the proposed legislation is a clear attempt to interfere in the judicial system. The sole purpose is to ensure impunity for those responsible for grave crimes committed during the internal armed conflict. This cannot be permitted in a democracy that upholds the rule of law.

3. Unconstitutionality of Bill 5920

The very origin of Bill 5920 is unconstitutional. Article 171, literal g), of the Political Constitution establishes the power of the Congress of the Republic: "to decree amnesty for political and related common crimes when required for public convenience". This helps prevent the promotion of bills with blanket amnesty provisions. In a judgment against Bill 5377, the Constitutional Court ruled that: *"… the scope of the power of the Congress of the Republic to grant amnesty is not unlimited and must be interpreted, as any other power granted to public authorities, in conformity with the body of constitutional law… Therefore, amnesty cannot be extended in all cases or to all categories of crimes. This is already demarcated in the Basic Law under the provision that grants this power, stating that it can only be exercised in the case of political or common related crimes and when public convenience so requires ".*[36] In other words, officials are only allowed to do what the law allows them, which is known as the "principle of legality in the exercise of public duties."

In the same judgment, the Court reiterated that the body of constitutional law consists of a set of principles and rules included in the Basic Law, as well as principles and rules that exist outside of the constitutional text yet develop or complement the catalogue of fundamental rights that are recognized by the formal Constitution[37]. The body of constitutional law requires a comparative analysis in order to verify whether or not the exercise of legislative functions is carried out in compliance with both the Political Constitution and the international human rights standards with obligations for the State of Guatemala[38]. Articles 44, 46, and 149 of the Political Constitution addresses this.

PFor this reason, the legal figure of amnesty should be analyzed according to the doctrine of the body of constitutional law (bloque de constitutionalidad). The American Convention on Human Rights[39] forms part of the body of constitutional law, so legislative actions should comply with the convention itself as well as the IACHR interpretation of the convention. Since

[35]Constitutional Court, record 1122-2005, judgment of general partial unconstitutionality, February 1, 2006, pages 7 and 8.
[36]Constitutional Court, accumulated records 682-2019 and 1214-2019, op. cit., page 45.
[37]Ibid., page 38.
[38]Constitutional Court, record 4358-2018, sentence of general unconstitutionality by omission of February 11, 2021, pages 14 and 15; record 3438-2016, sentence of partial general unconstitutionality of November 8, 2016, page 8; and record 1822-2011, sentence of "amparo" of July 17, 2012, page 15.
[39]Guatemala approved the Convention through Decree 6-78 of the Congress of the Republic, and filed the ratification instrument on May 25, 1978. Since March 9, 1987, Guatemala has accepted the competency of the IACHR through Governmental Agreement 123-87.

its judgment in the case of "Barrios v. Peru", the IACHR determined that: *"…This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights laws"*[40].

The Constitutional Court has converted the jurisprudence on amnesty of the IACHR to legal doctrine. In its ruling on Bill 5377, the Constitutional Court reaffirmed the prohibition on amnesty for serious crimes, basing that decision on: *"ii) the regional and universal cannons established by the jurisprudence of the Inter-American Court of Human Rights and imperative jus cogens norms, regarding the impossibility of granting amnesty related to crimes that involve serious human rights violations or crimes against humanity…; and, v) ...access to justice for people affected by the violations…"*[41].

4. The judgments of the IACHR

The IACHR has remained resolute in nine rulings against Guatemala that mention the inapplicability of amnesty for those responsible for serious human rights violations that occurred during the internal armed conflict. The most recent resolution was issued on October 14, 2019 when the court monitored compliance with 14 previous judgments against the State and reiterated the court's opinion on the initiative to reform the National Reconciliation Law: *"Upon analyzing the legislative initiative 5377, the Court determined that it seeks to ensure impunity, for even serious human rights violations, among them crimes against humanity, committed during the internal armed conflict in Guatemala. If approved, the law would be incompatible with articles 8 and 25 of the American Convention, and, for this reason, according to article 2 of the treaty and the established case-law of this Tribunal, the law would lack legal effect…"*[42].

The IACHR decided that, if legislative initiative 5377 was approved, the State would be violating 14 judgements of the court that ordered the State to investigate, prosecute and eventually punish serious human rights violations[43]. The State is in a similar position with legislative initiative 5920. The Valor representatives' actions disobeyed an explicit order of the IACHR that determined the inapplicability of total amnesty, as stated in its judgments on Guatemala and established case-law.

The Inter-American Court judgments are mandatory as stated in articles 67 and 68.1 of the American Convention. Additionally, legislative representatives are required to adjust their actions since the beginning of conventionality control, which obligates public officials to apply the American Convention, additional Protocols, IACHR jurisprudence, as well as other human

[40]IACHR, Case of Barrios Altos v. Peru, judgment of March 14, 2001, paragraph 41.
This judgment was reiterated in the Case of Gomes Lund et al v. Brazil, judgment of November 24, 2010; Case of Gelman v. Uruguay, judgment of February 24, 2011, and other cases.
[41]Constitutional Court, accumulated records 682-2019 and 1214-2019, op. cit., pages 60 and 61.
[42]IACHR, "Resolución de medidas provisionales y supervisión de cumplimiento de sentencia en el Caso de los Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal, el Caso Molina Theissen y otros 12 casos contra Guatemala," [Resolution on precautionary measures and supervision of compliance with the judgment in the Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, the Case of Molina Theissen and 12 other Cases against Guatemala], October 14, 2019, paragraph 45.
The other 12 cases are: Bámaca Velásquez, Myrna Mack Chang, Maritza Urrutia, Massacre of Plan de Sánchez, Carpio Nicolle et al, Tiu Tojín, Massacre of Dos Erres, Chitay Nech et al, Massacres of Río Negro, Gudiel Álvarez et al ("Diario Militar"), García and family members, y Coc Max y otros (Massacre of Xamán).
[43]Corte IDH, "Resolución de medidas provisionales y supervisión de cumplimiento de sentencia en el Caso de los Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal, el Caso Molina Theissen y otros 12 casos contra Guatemala," [Resolution on precautionary measures and supervision of compliance with the judgment in the Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal, the Case of Molina Theissen and 12 other Cases against Guatemala], March 12, 2019, paragraph 50.

rights treaties ratified by Guatemala, without an explicit order to do so, in order to uphold the State's commitment to protect human rights.[44] If the congressional representatives sponsoring Bill 5920 ignore this obligation, they can be held accountable.

According to this legal basis, the legislators sponsoring Bill 5920 are engaging in criminal acts. First, the introduction of Bill 5920 amounts to a crime of disobedience[45], because the proposed legislation contravenes numerous judgments, by a competent tribunal in Guatemala and the IACHR, prohibiting the approval of laws to grant total amnesty. Second, the introduction of the bill amounts to obstruction of justice[46], because the proposed law would prevent the victims from providing relevant information in criminal proceedings for serious crimes committed during the armed conflict by impeding the investigation and prosecution of these crimes. The legislation would also obstruct the ability of prosecutors and judges to comply with the obligation to investigate, prosecute and punish serious human rights violations, due to the threat of criminalization of those who take action in criminal proceedings.

Conclusion

Legislative initiative 5920 contains a proposal for total amnesty that is incompatible with the Constitution, international human rights treaties, and international standards that uphold the prohibition on amnesty for war crimes, crimes against humanity and genocide as a jus cogens norm. The State has the obligation to investigate, prosecute and punish these crimes. The Inter-American Human Rights System, the United Nations, and the Constitutional Court have reaffirmed this on numerous occasions.

The proposed legislative initiative seeks to guarantee impunity for those responsible for atrocious crimes, such as genocide, torture, forced disappearance, and sexual violence, which occurred during the internal armed conflict. Attempts to guarantee impunity for these crimes violate the rights of victims and family members to truth, justice and reparations. The legislators from the Valor party are disobeying court orders and engaging in obstruction of justice. The extensive body of jurisprudence of the Constitutional Court and the IACHR have established the obligation of the Guatemalan State to protect human rights, investigate human rights violations and refrain from "granting amnesty for crimes that amount to grave human rights violations"[47]. Furthermore, due to the actions of these legislative representatives, the State of Guatemala could be declared in contempt of court by the IACHR because the law would impede the progress of investigations for serious human rights violations addressed in 14 IACHR cases related to the internal armed conflict in Guatemala.

[44]IACHR, Case of Dismissed Congressional Employees (Aguado Alfaro et al) v. Peru, judgment of November 24, 2006, paragraph 128; Case of Gelman v. Uruguay, judgment from February 24, 2011, paragraph 239; and Case of Gudiel Álvarez et al ("Diario Militar") v. Guatemala, judgment of November 20, 2012, paragraph 330.
Constitutional Court, accumulated records 682-2019 and 1214-2019, op. cit., page 40.
[45]Article 420 of the Penal Code: "Public officials or employees commit the crime of disobedience when they fail to comply fully with sentences, resolutions or orders of a superior authority issued within the limits of their respective competencies and covered by formal legalities. Persons responsible for this crime shall be punished with a prison sentence of 1-3 years, a fine of Q5,000-Q20,000 and special disqualification."
[46]Article 458 BIS of the Penal Code: "Committing the crime of obstruction of justice is: "Any person that influences another person in order to prevent them from providing information or evidence to the competent institutions of the justice system. Any person that uses physical force, intimidation, threats, or coercion against any public official or employee that is a member of the Judicial System or auxiliary institutions in the administration of justice, including translator, interpreter, or expert witness, in order to obstruct compliance with their duties..."
[47]Constitutional Court, accumulated records 682-2019 and 1214-2019, op. cit., page 61.

International law recognizes the political usefulness of amnesty laws[48], and the National Reconciliation Law contributed to the end of the internal armed conflict. Nevertheless, the amnesty in effect in Guatemala is subject to the limitations established by the Constitution and international obligations assumed by the State, in particular the ratification of the American Convention on Human Rights.

The State of Guatemala has the obligation to guarantee the indisputable and inalienable rights of the victims and their families. Furthermore, the Constitutional Court has stated that promoting an initiative that includes total amnesty is "an inappropriate exercise of the power provided to the Congress of the Republic in article 171, literal g, constitutional"[49]. The Court further stated that continuing with the legislative proceedings represents "a lack of compliance with the duty to verify the constitutional and conventional compatibility of proposed legislation"[50]. For this reason, the Congress of the Republic should vote against Bill 5920 and archive the proposal, just as it did with Bill 5377.

[48]ICRC, op. cit., page 692.
[49]Constitutional Court, accumulated records 682-2019 and 1214-2019, op. cit., page 61.
[50]Loc. cit.

impunity watch

Impunity Watch is an international research, advocacy, and legal advice organization working in the fields of human rights and transitional justice to promote accountability for serious human rights violations in countries emerging from a violent past. The organization works closely with civil society organizations, particularly with women and victims of armed conflict, in the construction of peace and the rule of law.

In this document we analyze Bill 5920, which proposes a general amnesty for all crimes committed during the internal armed conflict (1960-1996). On June 8, 2021, the legislative initiative was introduced by representatives of the Valor party, which is the party of Zury Rios, the daughter of former dictator Rios Montt. The legislative proposal was introduced only a few days after 12 former members of the military and police were arrested and accused of forced disappearance and crimes against humanity against 183 victims that appear in the military intelligence document known as the "Death Squad Dossier". Based on a series of false premises about international law, the bill contravenes the Constitution and international human rights treaties ratified by Guatemala. The bill's approval represents an imminent danger to the right to justice of victims and survivors of the armed conflict, and would be considered in contempt of the judgments of the Constitutional Court and the Inter-American Court of Human Rights.

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