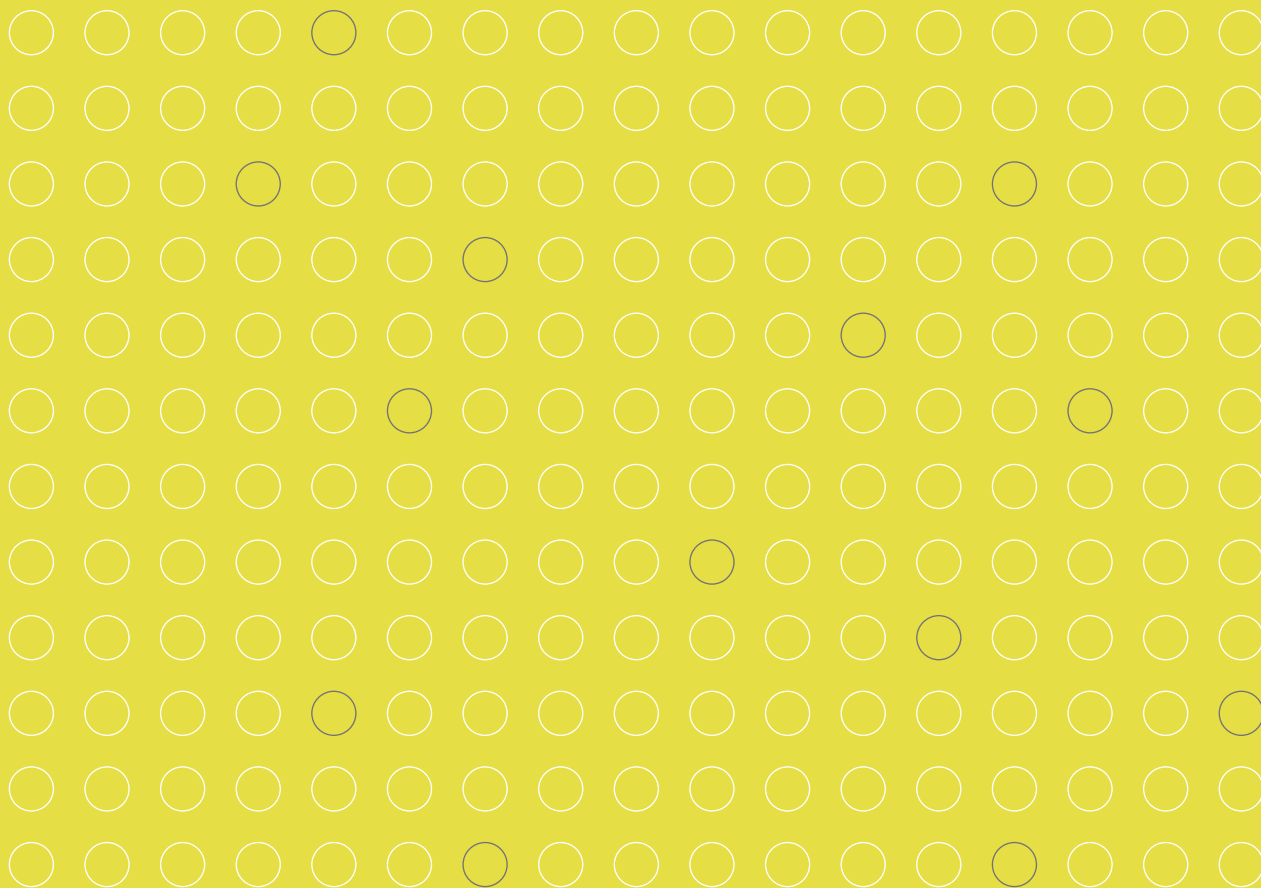
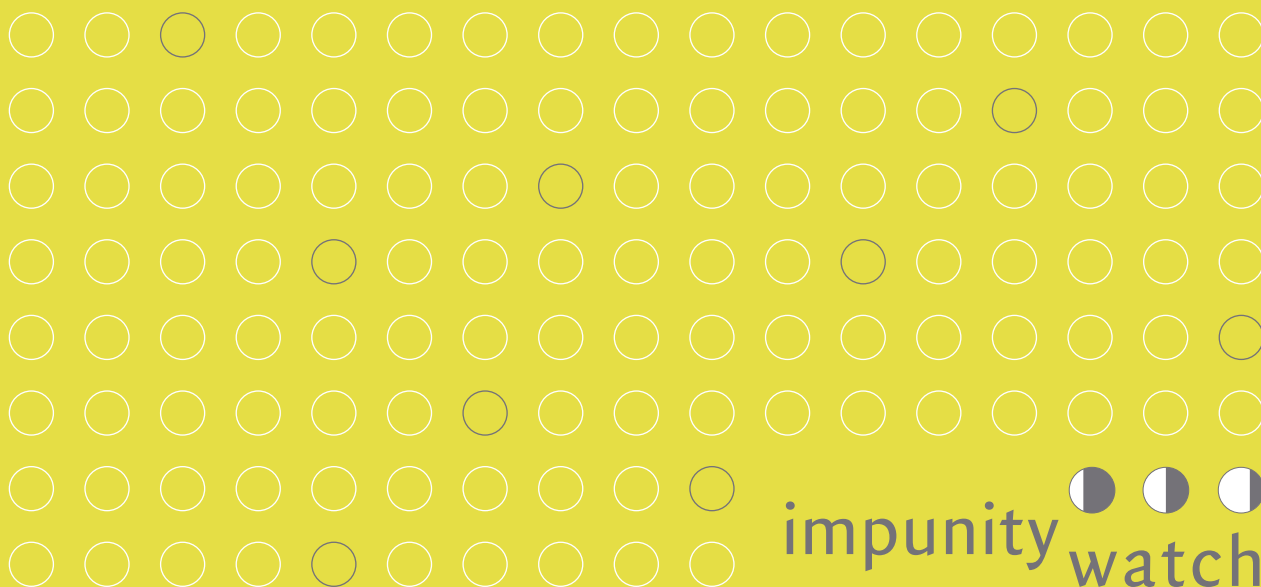




RECOGNISING THE PAST:

Challenges for the Combat
of Impunity in Guatemala

COUNTRY FOCUS SERIES



RECOGNISING THE PAST:

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Summary and Recommendations

RECOGNISING THE PAST:
Challenges for the combat of impunity in Guatemala

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PREFACE

Impunity Watch is an international research and policy initiative which seeks to contribute to the reduction of impunity for gross violations of human rights in post-conflict countries, where impunity constitutes a threat to sustainable peace and the (re)construction of the democratic rule of law.

Impunity Watch's work is composed of three distinct intervention strategies. The first is to research and rigorously analyse the factors that influence impunity, particularly in post-conflict countries, employing a specially designed methodology. Secondly, on the basis of its research findings, recommendations and public policy proposals are formulated in consultation with a wide-range of key actors involved in the topic. Lastly, Impunity Watch conducts lobbying and advocacy at national and international levels to promote the implementation of the recommendations proposed. The research findings also provide the basis for monitoring systems that measure advances and setbacks in the struggle against impunity and state compliance with legal obligations related to truth-seeking, justice, reparation and guarantees of non-recurrence.

In each of its strategies, Impunity Watch's main objective is to support and strengthen the work of civil society organisations engaged in the struggle against impunity. This is based on a conviction that, when it comes to the design and implementation of public policies and transitional justice processes, their voice is indispensable to ensuring that these better correspond to local realities and the real needs of victims. For this reason, its research methodology has adopted a collaborative approach that leads to the formation of interdisciplinary teams and exchange between international and national professionals.

Impunity Watch is currently running pilot projects in Guatemala and Serbia, where these different strategies are being implemented simultaneously. These apparently dissimilar countries were selected with the intention of demonstrating the global usefulness of Impunity Watch's methodology in different political and social contexts (post-conflict, post-military dictatorship and post-authoritarian communist regimes in the South and the North). In addition, working with similar methodological parameters in different contexts provides a foundation for exchange on diverse experiences of impunity and successful strategies used by state and civil society actors to combat it.

Guatemala was chosen because impunity for the gross violations of human rights committed there in the past has influenced and hindered the building of the democratic rule of law in the present. The armed conflict that took place in the country between 1962 and 1996 is undoubtedly one of the most terrible to have afflicted the American continent. The scale of the violence and brutality with which thousands of human rights violations were committed has left deep wounds on the victims and survivors, as well as on Guatemalan society as a whole. Although the Guatemalan state has made efforts since the signing of the Peace Accords to support the victims' rights to know, justice and reparation and to promote measures of non-recurrence, these have been incomplete and promoted without a comprehensive perspective, rendering their impact weak. Little progress has been made towards bringing to justice those individuals responsible for the most serious violations committed during the internal armed conflict, or implementing the institutional reforms needed to remove those suspected of involvement from public office. These failures have had a strong negative effect on the democratic transition. High-level military officials, economic elites and dominant politicians have maintained their control over an exclusionary, racist and discriminatory system, hindering chances of ending the impunity that reigns and overcoming the structural causes of the internal armed conflict.

Impunity Watch was founded in 2005 as a project of Dutch non-governmental organisation Solidaridad and became independent as the Impunity Watch Foundation in 2008. Solidaridad had worked for years in Guatemala to accompany civil society organisations in their struggle against impunity and support the voices of victims of the internal armed conflict. The expertise and experience of its Guatemalan partners played a central role in the founding of Impunity Watch, as well as in the definition of its intervention strategies and research methodology. Impunity Watch's work in Guatemala stems directly from this relationship with these organisations and the shared belief that Guatemala needs to comply more fully and efficiently with the victims' rights to know, justice, reparation and the need for guarantees of non-recurrence. This is crucial to achieving dignifying measures and reparation for the victims, but also to establishing a more solid basis on which to construct the democratic rule of law.

The project in Guatemala is composed of a consortium of the following organisations: the Centre for Human Rights Legal Action (CALDH), the Mayan Centre for Documentation and Research (CEDIM), the Guatemalan Institute for the Comparative Study of Criminal Law (ICCPG) and Impunity Watch; the Myrna Mack Foundation (FMM) participated in the research phase of the project. Between May 2007 and October 2008, this consortium conducted rigorous research, using the methodology designed by Impunity Watch, to identify the complex factors that contribute to impunity for serious crimes and massive human rights violations committed during the internal armed conflict. This report, *Recognising the Past: Challenges for the Combat of Impunity in Guatemala*, presents the progress, obstacles and challenges faced by the Guatemalan state and society regarding the rights of the victims to know, justice and reparation and measures to promote non-recurrence. This report also proposes recommendations to further this progress and contribute to the construction of the democratic rule of law in Guatemala.

The next phase of Impunity Watch's project in Guatemala begins in 2009, with the start of lobbying and advocacy activities to promote the implementation of this report's recommendations. Here, Impunity Watch considers it essential to support the creation of broad alliances among organisations, institutions and individuals committed to the struggle against impunity. The participation in these alliances of victims of the internal armed conflict and their organisations is fundamental because they are the heart of this study and Impunity Watch's principal motivation.

Furthermore, in 2009, organisations involved in Impunity Watch in Guatemala will also establish a system for periodic monitoring of progress and setbacks in the combat of impunity in Guatemala, as well as the degree of state compliance regarding the victims' rights to know, justice and reparation and measures to promote non-recurrence. It is hoped that the findings from this monitoring will serve as a useful tool in understanding and reviewing strategies to combat of impunity and in generating up-to-date information for all interested parties.

Impunity Watch recognises that the current situation in Guatemala complicates the task of rescuing the faltering transitional justice agenda. The serious problems of insecurity, organised crime, inequality, exclusion and racism, faced daily by the majority of citizens, have created a context in which the issues of the past are overlooked. Nonetheless, Impunity Watch considers that the recovery of this curtailed agenda is a significant challenge for the government of President Álvaro Colom, Guatemalan civil society and the international community. This challenge also implies making clear the link between impunity for past crimes and current impunity, presenting the factors that provoked the present crisis of insecurity and the persistent conditions in which impunity thrives. Impunity Watch Guatemala hopes that this study makes a contribution in this sense.

ACKNOWLEDGEMENTS

This report is a product of the efforts of many people, organisations and institutions. Impunity Watch thanks the careful and professional work of the technical research team during different phases of the process, particularly the young professionals, Mayling Orozco, Leily Santizo, Denise Phe Funchal, Liliana Parra and Jennifer Echeverría, as well as Rodolfo Muñoz. During the last months of work, María Antonieta Cerdón provided invaluable support as a researcher, especially in the compilation of data on cases relating to the internal armed conflict that are currently being investigated or have been brought to trial.

We also acknowledge the support of the Sociopolitical Studies Department of the Latin American Faculty of Social Sciences (FLACSO) Guatemala, led by Paola Ortiz and Juan Luis Velásquez and a multidisciplinary team of professionals who produced the information and analysis necessary to understand the financial resources allocated by the Guatemalan state to the prosecution system and other institutions pertaining to transitional justice. In addition, we thank Iduvina Hernández for her knowledge and analysis regarding the entrenched interests influencing impunity.

Directors and staff from the organisations that make up the Impunity Watch Guatemala consortium -- CALDH, ICCPG and CEDIM -- gave their time and knowledge to guide this work and revise the final product. Patricia González, Rafael Herrarte, Ramón Cadena, Alfonso Huet, Franz Kernjak and Héctor Soto collaborated as external readers and participants in different consultation and reflection activities. We thank the Community Studies and Psychosocial Action Team (ECAP) for its constant willingness to organise interviews and meetings with victims in the country's rural regions. Anabella Sibrian from the Dutch Platform against Impunity in Guatemala accompanied the entire process.

We thank all the public officials and justice operators who gave their time for interviews and are particularly grateful to those who took risks to speak to Impunity Watch on topics that continue to be dangerous in Guatemala. We particularly acknowledge the efforts of the new National Reparations Programme (PNR) authorities to respond to our multiple requests for information.

This work would not have been possible without the confidence shown by Solidaridad, which conceived the idea for it, started the project and encouraged other cooperation agencies such as Hivos and Cordaid to get involved. These agencies provided not only the funding necessary to make this idea a reality, but also continuous support during the entire research phase.

Research coordination was initially provided by Christine Beauchot and then taken up by Megan Thomas. Claudia Paz, Denis Martínez, Christine Beauchot, Megan Thomas and Marlies Stappers participated in the report's final writing. Marcie Mersky, Susan Kemp and Itziar Gonzalez Tanago read the final drafts and provided important suggestions to strengthen the content, conclusions and recommendations. Marlies Stappers, Impunity Watch's Executive Director, accompanied the process at all times, providing criteria, suggestions and constant encouragement to the report's research and writing team.

INTRODUCTION

In recent years, the international community has become aware of the serious challenge which impunity poses in countries with a long history of human rights violations and the need to unite efforts to combat it and support the process of building the democratic rule of law. The creation of the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC) is a powerful expression of this conviction. Another milestone in the international campaign against impunity is represented by the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, prepared in 1997 by the former United Nations Special Rapporteur Louis Joinet. These principles were updated by the independent expert, Diane Orentlicher, for the UN Commission on Human Rights in 2005¹. The novelty of these Principles is that they not only refer to impunity as a problem of the lack of justice, but also recognise victims' comprehensive rights to know, to justice, to reparation and the importance of guarantees of non-recurrence, based on the understanding that in a culture of impunity, systemic, specific and cumulative failures impede states' compliance with their obligations in these areas. These Principles shape a comprehensive transitional justice agenda that, when fully implemented, leads to an effective fight against impunity. It was precisely this comprehensive approach that motivated Impunity Watch to develop a research methodology around these Principles.

To contribute to the struggle against impunity in Guatemala from the comprehensive perspective established in the UN Principles, Impunity Watch undertook rigorous research to examine in detail the progress, obstacles and challenges that the Guatemalan state and society face regarding the rights of the internal armed conflict's victims to know, to justice and to reparation; as well as the guarantee of non-recurrence. The main institutions and bodies in charge of guaranteeing these rights were comprehensively analysed, paying particular attention to factors that explain the prosecution system's inaction against persons responsible for crimes during the internal armed conflict. Additionally, the political and social factors that contribute to or hinder the fight against impunity were examined. This study presents the main findings, conclusions and a series of recommendations as a roadmap for progress in this field and a contribution to the construction of the democratic rule of law in Guatemala.

The report consists of six chapters: 1) the right to know; 2) the right to justice; 3) the right to reparation; 4) measures to promote non-recurrence; 5) conclusions; and 6) recommendations. The first chapters consider the progress of and obstacles faced by, state institutions in complying with their obligations, as well as the role of victims, civil society and international actors in the promotion of victims' rights. Chapter 6 presents a series of recommendations that focus on the problems that, according to this study's findings, contribute to impunity. The recommendations are principally addressed to state institutions, Guatemalan civil society and international actors and will serve as a basis for Impunity Watch's monitoring and advocacy work during the project's next phase (2009-2010).

This summary does not include all of the study's systematised information, citations, references, tables and annexes. For more detailed consultation, the complete research report is available on the Impunity Watch website: www.impunitywatch.org. Impunity Watch's methodological instruments, its report on impunity in Serbia, archives of information collected for both country studies and other documents of interest on these issues shall also be made available there.

1 E/CN.4/2005/102(18.2.2005)

THE TRAGEDY OF THE INTERNAL ARMED CONFLICT

Between 1962 and 1996, Guatemala experienced one of the most violent and horrific armed conflicts in Latin American history. The Commission for Historical Clarification (CEH)², the country's UN backed "truth commission", in its 1999 report, *Guatemala: Memory of Silence*, estimated the balance of deaths and disappearances during the internal armed conflict at more than 200,000. The commission found that, as part of its counterinsurgency strategy, the Guatemalan state committed forced disappearances, extrajudicial executions, rape of women and genocide against indigenous Mayan groups. The CEH report explained that, as part of its strategy, the Guatemalan army identified Mayan communities as guerrilla allies and internal enemies and, "with the intention of destroying the indigenous groups", eliminated community leaders, committed massacres and engaged in criminal acts against men, women and children, as well as torture and cruel, inhuman and degrading acts to terrorise the population and destroy social cohesion. The following excerpt from the CEH report illustrates the magnitude and cruelty with which human rights violations were committed:

"The massacres were not limited to the massive elimination of individuals, but were committed using barbarous actions of such magnitude that in an initial reading might provoke disbelief. However, the witnesses' still vivid images of beheaded bodies, mutilated corpses, pregnant women's bellies cut open by bayonet or machete, impaled bodies, odour of flesh of people burned alive and dogs devouring abandoned corpses that could not be buried, correspond to what really occurred. The repetition of these occurrences in dozens of communities, told by thousands of people who gave their testimonies individually or collectively and gathered by the CEH from other fully documented sources, make them undeniable. In the same manner, exhumations in the case of massacres have provided important material evidence on the level of cruelty with which they were committed.

(CEH, Chapter II, Volume 3, page 704)

The CEH concluded that the Guatemalan state, which includes the army, paramilitary groups and other security forces, was responsible for 93% of the human rights violations that occurred during the internal armed conflict. The guerrilla was responsible for 3% and other unidentified groups for 4%. The commission established that the injustice and structural inequality which historically exist in the country, racism against the Mayan people, the increasingly exclusionary and anti-democratic nature of institutions and state reluctance to undertake substantial reforms capable of reducing structural conflicts, were some of the profound causes of the internal armed conflict. All of this occurred within the framework of the Cold War, anti-communism and the National Security Doctrine promoted by the United States government in Central America.

THE DEMOCRATIC TRANSITION AND THE PEACE PROCESS

The democratic transition in Guatemala formally began in 1985 with the enactment of a new constitution, the holding of general elections and the installation of a civilian government. These developments, however, took place under a military regime and during the still unresolved internal armed conflict. Although the new civilian authorities faced demands to clarify the truth, impart justice and make amends to the victims for the violations committed, the state response to these demands was minimal.

The Guatemalan state subsequently began negotiations with the guerrilla groups, which had organised themselves as Guatemalan National Revolutionary Unity (URNG), to put an end to the internal armed conflict. The international community and, at certain moments, various actors from Guatemalan civil society accompanied the negotiations. These resulted in a set of agreements on a series of issues, aimed at addressing the internal armed conflict's causes and achieving a firm and lasting peace. This global framework also included some strategies for responding to the massive human rights violations committed during it. Progress made towards meeting the first challenge clearly had an impact on addressing the second. However, distinct economic, political and social factors in Guatemala led

to partial compliance with the Peace Accords and influenced the extent of impunity for crimes and human rights violations committed during the internal armed conflict.

2 Translator's note: Unless an English-language equivalent is in common usage, this report shall use acronyms as they appear in Spanish.

After 23 years of democratic transition and 12 years since the signing of the Peace Accords, while progress has been made to reform and modernise the state, it is increasingly obvious that the democratic transformation foreseen in Guatemala's constitution and the Peace Accords has not been achieved. Studies and analyses of the sociopolitical situation since 1996 concur in concluding that the dominant economic, political, social and military elites in Guatemala survived the internal armed conflict largely unscathed, maintaining their sources of wealth without modifying their entrenched features. The result is a weak state which continues to respond to the minority's interests, while the majority of the population – the Mayan people most of all -- continue to live in precarious conditions, without the democratic rule of law or institutions able to guarantee life, security and well-being. Due to their opposition to any transformation of the structural factors that provoked and were maintained during the internal armed conflict, these elites bear significant responsibility for what occurred during that period. For this reason, their current interests are counterpoised against knowledge of the truth, the administration of justice and redress for damage caused, as well as the institutional and political reforms needed to achieve those rights. The space for political and social initiatives in favour of transitional justice continues to be conditioned by this context.

During the democratic transition and the period following the Peace Accords, no pertinent institutional reforms were implemented, nor were crimes of the internal armed conflict judged; this has led to the alarming extent of impunity in Guatemala today. Furthermore, the loss of this opportunity permitted the growth and consolidation of clandestine criminal apparatus which emerged during the internal armed conflict and now pervades state institutions. The infiltration of public institutions by criminal groups thwarts the efforts of the state and society to develop the democratic rule of law. The recent creation of the International Commission against Impunity in Guatemala (CICIG) was an emergency measure to support a weak state which has failed to carry out the institutional reforms necessary to combat impunity and corruption.

Since the end of the internal armed conflict, no decisive action has been taken to achieve the transition from a dysfunctional state, responsive to the interests of economic, political and military elites, to a functional one that responds to the interests of all its citizens. The primacy of interest groups, corruption and the utilisation of public goods for private benefit have meant that the dominant policy logic is not based on the design and implementation of policies, programmes and projects for the public good. This situation is aggravated by the recourse to violence for the defence of particular interests, principally by networks and groups tied to drug trafficking, smuggling and other types of organised crime.

PERSISTENT EXCLUSION, RACISM AND DISCRIMINATION

As with politics and the economy, social issues in Guatemala also show change, but maintain points in common with the past. In recent decades, indigenous professionals, academics and activists have been educated; the Mayan women's shift from the private to the public sphere is well-known. But the indigenous population, largely Mayan and more than half of the total population, continues to live in poverty and lacks significant representation in decision-making arenas at all levels and in all areas of national life. Indigenous culture and language continue to be considered marginal; the country's dominant identity, politics and wealth remain in hands of the ladino population.

The continuity between the power relations today and those of the conflict era is unacceptably strong, highlighting the superficiality of the transition to electoral democracy. The maps of poverty and social exclusion among the indigenous population maintain a territorial overlap with those for genocide and impunity. These conditions have tended to worsen, since these regions are also rich in natural resources – minerals, water sources that generate energy and land for export crops and biofuels -- which are increasingly appealing in the contemporary world. It is widely documented that Guatemala continues to come last among Latin American countries in terms of the distribution of domestically-generated wealth.

The persistent exclusion, marginalisation and poverty of the majority of the indigenous population has at its core the endurance of racism as a central factor entrenched in the dominant ideology. According to the CEH report, structural injustice, racism, exclusion and anti-democratic practices were, among others, the main causes of the internal armed conflict. Since they have not been resolved, they continue to generate conflict to this day. In this context, women, especially when they are economically impoverished and indigenous, have even fewer opportunities. Logically, state actions reflect and express the dominant ideology.

THE CURRENT CHALLENGES TO IMPUNITY

While important efforts have been made to clarify the truth about the past in the 12 years since the signing of the Peace Accords, the thousands of crimes committed against the civilian population during the internal armed conflict remain unpunished. The large majority of victims have not received redress and the state institutions implicated have not undergone adequate reform. The Guatemalan state has not officially recognised the CEH report and some of the persons alleged to be responsible for human rights violations, including genocide against the Mayan population, hold public office, the state having initiated no administrative or criminal measures against them. This state of impunity creates frustration and fear among victims and weakens the population's trust in state institutions.

In the field of justice, the criminal justice system has only sentenced individuals who physically perpetrated three of the 600 massacres documented in the CEH report. The Public Prosecutor's Office has since 2005 had a special unit -- the Historic Clarification Unit -- for investigating serious crimes committed during the internal armed conflict. After three years of existence, however, this unit has not presented a single indictment to the Guatemalan courts for any such crime. Yet impunity and the prosecution system's related inaction, are not limited to crimes from the internal armed conflict. The current effectiveness rate of the Guatemalan criminal justice system is alarming and disgraceful. According to official statistics, Guatemala has an average rate of 5,000 killings per year, while the criminal justice system is unable to shed light on or bring to trial even 5% of these cases.

As previously indicated, this study examines in detail the obstacles that contribute to the current state of impunity in Guatemala, as well as the advances made and measures taken by, the state which could potentially contribute to correcting the situation. This study is the first effort by Impunity Watch to identify the challenges that the state and Guatemalan society face in combatting impunity. It will serve as a basis for further studies and the promotion of public policies that guarantee the victims' rights to know, justice, reparation and measures to promote non-recurrence.

RESEARCH METHODOLOGY

To conduct this study, Impunity Watch developed a methodology based on the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, prepared by Louis Joinet and updated by Diane Orentlicher in 2005 for the UN and on state obligations under international human rights law and international humanitarian law. The principles refer to the victims' fundamental rights to know, justice and reparation, as well as to the issue of guarantees of non-recurrence of the atrocities suffered by them. These rights and guarantees have been named transitional justice rights.

In the first stage of its work, Impunity Watch examined the obstacles within processes related to the rights to know, justice and reparation and measures to promote non-recurrence, in pilot projects in two countries, Guatemala and Serbia. Six principal research areas were established for these studies:

1. National and international normative frameworks regulating the transitional justice process;
2. Resources and capacity of the institutions responsible for implementation;
3. Institutional independence and willingness;
4. Entrenched interests in power groups opposing or obstructing the processes;
5. Social factors that facilitate or hinder the processes; and
6. The state's political will to promote these processes.

These research areas were defined following a review of existing literature and documents relating to obstacles to eradicating impunity in post-conflict countries and consultations with experts on the topic, taking into account Impunity Watch's experience to date. Next, a research methodology was designed that included questions and suggestions for gathering information for each topic of study and each of the rights under consideration.

With regard to the guarantee of non-recurrence, three types of measures were prioritised: 1) disbandment of armed groups involved in the internal armed conflict and the reintegration of their members into civilian life, mainly children and minors; 2) lustration and removal from office of those alleged to be responsible for crimes and violations committed during the internal armed conflict; 3) vetting of persons who aspire to public office and preventive mechanisms prohibiting those who participated in human rights violations from occupying such positions. Additionally, attention was paid to other general measures to promote non-recurrence: a) the establishment of new definitions in the criminal code for crimes that constitute human rights violations in international law; b) the ratification of the Rome Statute; c) the introduction of regulations requiring schools to provide teaching about the tragedy of the internal armed conflict; d) the enactment of laws to prohibit or criminalise any form of discrimination; e) reform of the military code and intelligence system; and f) control of firearms.

A team of four researchers and one project coordinator conducted this study between May 2007 and November 2008. From 2008, a research coordinator was assigned to lead the team. The researchers were nominated by Impunity Watch's partners in Guatemala: CALDH, ICCPG, CEDIM and the FMM (the latter was involved in the initial phase of the project). Additionally, as the research progressed, the team was assisted by experts in research methodology and had the constant support of the Impunity Watch technical team in the Netherlands and the directors of the partner organisations in Guatemala.

INSTITUTIONS AND ORGANISATIONS STUDIED

Institutions and organisations pertinent to the research topic were studied to ascertain progress towards and obstacles to, achieving each right and to put in place measures to guarantee non repetition. With regard to the right to know, the CEH, whose establishment was a commitment made in the Peace Accords, was selected, along with the archives of the Ministry of Defence and National Police, which contain important information regarding human rights violations and three technical-forensic organisations that conduct exhumations in Guatemala: the Archbishop's Human Rights Office (ODHAG), the Centre for Forensic Analysis and Applied Sciences (CAFCA) and the Foundation for Forensic Anthropology (FAFG). This project was initially to include research into the exhumation work of the forensic institutions of the Public Prosecutor's Office and the judiciary and the recently created National Institute of Forensic Sciences (INACIF), until it became clear that these state institutions do not conduct exhumations related to crimes committed during the internal armed conflict.

With regard to the right to justice, three institutions from the criminal justice system were studied: the Public Prosecutor's Office, the National Civilian Police and the judiciary. In the Public Prosecutor's Office, more detailed study was made of the Human Rights Prosecutor's Office and the Unit for Historical Clarification due to the latter's particular competence to investigate cases of serious crimes from the internal armed conflict. In relation to the police, attention was focused on the Criminal Investigation Division (DINC), since it is the specialised unit which should support the Public Prosecutor's Office's investigative functions. The roles of other institutions which intervene in certain aspects of criminal proceedings, such as the Constitutional Court, the Office of the Ombudsman for Human Rights and the Presidential Commission for the Coordination of Executive Policy on Human Rights (COPREDEH), were also examined.

Analysis of the right to reparation centred around the official government institution designated to fulfilling it: the National Plan for Reparations, PNR. Due to its role in providing reparations to victims who have won cases at the Inter-American Court of Human Rights against the State of Guatemala, the Presidential Commission for Human Rights, COPREDEH, was also analysed. No specific institution or organisation was analysed in terms of the guarantee of non-recurrence. Rather, the study analysed all the state institutions that have a role in the implementation of these measures, as well as consulting specific state institutions, such as the Ministry of Education.

SOURCES OF INFORMATION

Information was requested on budget, human resources, materials, training and procedure manuals from all of the institutions and organisations studied. In the case of the Public Prosecutor's Office, information was also sought on cases arising from the internal armed conflict. Letters requesting information were sent, telephone calls were made and personal visits were conducted. However, since these often received no official response, it was not possible to obtain complete information from all of the institutions, making it necessary to approach directly the state offices and special units within them. In some cases, staff from these institutions stated that they did not have systematised the information requested by Impunity Watch and so much of it was obtained in interviews with officials. In other cases, information was obtained by consulting reports or previous studies. In some cases, it was impossible to locate the information required.

In an effort to analyse the political will of the Guatemalan state to promote the three rights and non-recurrence measures, the study examined the relevant initiatives and programmes of its executive branch, as well as the work and oversight of the legislature (Congress), particularly its Human Rights Committee.

In addition, this study involved consulting different documentary sources and interviewing a series of key interlocutors. The documentary sources reviewed include international human rights and humanitarian law applicable to Guatemala, the Guatemalan normative framework, the Peace Accords and UN reports on these issues, particularly those of the UN Mission in Guatemala (MINUGUA), the Office of the High Commissioner for Human Rights (OHCHR) and the UN special rapporteurs for human rights and judicial independence who conducted missions in Guatemala. Reports of the Inter-American Commission on Human Rights (IACHR) and other human rights reports, including independent research and previous work on the topic, were also consulted.

To understand the perceptions of these issues held by officials within state institutions, representatives of human rights organisations and associations of victims of the internal armed conflict, Impunity Watch commissioned FLACSO's Sociopolitical Studies Department to conduct in-depth interviews with these actors. Unfortunately, not all were willing to participate, particularly high-level officials. Interviews were conducted with 15 justice operators, including prosecutors, judges and police officers, 8 current and former officials from other institutions studied and 10 members of human rights and technical-forensic civil society organisations. Additionally, 35 victims of the internal armed conflict were interviewed in the regions of Alta Verapaz, El Quiché and Huehuetenango and in the sub-regions of Rabinal and Ixil. All of the interviews were recorded with the interlocutors' prior authorisation. FLACSO's report on the results has provided important input for this study.

To analyse the budgets and expenditure of state institutions in relation to the three rights, Impunity Watch hired a specialist in public expenditure. This study proved difficult due to the limited number of state institutions dedicated specifically to overseeing the fulfilment of the rights to know, justice and reparation. Further difficulties arose from the fact that it was not possible to obtain disaggregated budget information which would have allowed the identification of specific allocations to this area.

Another independent expert was hired to conduct a specialised study on the topic of entrenched interests. Similar difficulties were encountered in this area, in that there was no systematised information allowing the responsibility of specific individuals and institutions for obstructing access to the three rights to be documented. As a result of these constraints, it was not possible to do this part of the research in-depth, limiting the information provided here on this issue. Due to its political and social impact, this is undoubtedly a topic of great importance that will require further enquiry in the future.

1 THE RIGHT TO KNOW

According to the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005), the right to know includes: a) knowing the truth about human rights violations, which implies facilitating society's knowledge of these violations and the circumstances in which they occurred; b) the right to know about people killed or disappeared, which includes the right to access information revealing their whereabouts, locating them and giving their remains to their family members; and c) access to information (the duty to preserve memory), which refers to the preservation of and access to, archives and other evidence related to violations of human rights law and international humanitarian law (Principles 2, 3 and 4).

With regard to the right to know, Impunity Watch focused its research on: 1) the CEH; 2) the search for disappeared persons and exhumations of victims of the internal armed conflict; and 3) access to archives and documentary information that contributes to the clarification of the truth about the serious crimes committed then. The obstacles to truth-seeking are analysed at the end of this chapter.

The work of the CEH was selected since it represents a commitment made within the Peace Accords, notwithstanding the other important efforts which have also contributed to clarifying the events of the internal armed conflict. The Catholic Church's Inter-Diocese Project for the Recovery of Historical Memory (REMHI), which presented its report, Guatemala Never Again, in April 1998, is one of these. This extraordinary work documented the internal armed conflict and exposed its profound psychosocial impact. REMHI was presided over by Bishop Juan Gerardi, who was brutally killed two days after the report's presentation. Undoubtedly, the REMHI report and Bishop Gerardi's work have made a huge contribution to achieving historical truth and social justice in Guatemala.

The following sections present the main progress made and the obstacles and challenges faced by, the Guatemalan state in relation to the right of victims and society in general to know.

1. THE CEH REPORT

The CEH report, Guatemala: Memory of Silence, presented in 1999, is one of the most important contributions to knowledge of the human rights violations committed during the internal armed conflict and the circumstances in which they occurred. The CEH revealed and denounced the genocide of the Mayan people, showed the magnitude and seriousness of the human rights violations committed against the civilian population, estimated the balance of deaths and disappearances at more than 200,000 people, held the state responsible for 93% of the violations committed and explained the internal armed conflict's causes and consequences. The CEH also proposed a series of recommendations to preserve the memory of the victims, promote human rights and strengthen the democratic process. The following measures stand out among its recommendations: the creation of a reparations programme for the victims, the search for disappeared persons, an exhumation policy, the dissemination and teaching of the report, the protection of human rights defenders, the lustration of the army and the police and the strengthening of democratic institutions, particularly the judiciary. The CEH also recommended that a Foundation for Peace and Harmony be created to follow up on the report's recommendations.

The CEH did not have a mandate to consider the individualisation of responsibility for the crimes committed during the internal armed conflict or coerce state institutions to present information, nor did its findings have judicial effect. Furthermore, the CEH had only 18 months (from August 1997 to February 1999) to fulfil its mandate. Many victims did not have the chance to give their testimony to the CEH because they lived in distant communities, did not receive relevant information in a timely manner, feared reprisals and lacked sufficient protection guarantees from the state.

The commission was composed of a UN representative who coordinated it and two Guatemalan citizens and was supported by an office run by the UN Office for Project Services (UNOPS), where Guatemalan and foreign professionals worked. The CEH set up 14 offices in the regions most affected by the internal armed conflict to facilitate the victims' ability to give their testimonies. It had a budget of nearly US\$10 million, of which more than 90% came from international donations.

The Guatemalan state barely collaborated with the CEH study. The army refused to provide all the information requested from it and permitted only restricted access to certain documents. Despite the great importance of their archives, having been responsible for surveillance of alleged guerrillas and often planning counterinsurgency operations, the military intelligence services did not provide any documentary information to the CEH. The Ministry of Interior did not provide information requested on police activities. Since the CEH's mandate did not include coercive measures to oblige people and institutions to participate or provide information within the public domain, victims' testimonies and interviews given voluntarily by former government officials, military officers, civil patrollers, guerrilla members and other key informants were its principle sources.

Despite President Álvaro Arzú having requested forgiveness on behalf of the state for acts committed during the internal armed conflict, he personally refused to receive the CEH report for two months following its presentation. Upon its launch, his government merely issued a press release stating that the report made very little contribution to the clarification of human rights violations.

The CEH report has hardly been disseminated in Guatemala at all. Even though, between 1999 and 2000, the report's conclusions were translated into seven of the 20 Mayan languages, the complete report was published in Spanish only. It is currently difficult to obtain. In 2007, the National Curriculum for the country's education system included some content related to the internal armed conflict's causes, development and consequences. This incorporation is, however, insufficient, as the CEH and REMHI reports only appear in the curriculum for the sixth grade and receive only brief mention in secondary level lessons.

2. THE SEARCH FOR DISAPPEARED PERSONS AND EXHUMATIONS

The state has made little effort to clarify the whereabouts of the thousands of people disappeared during the internal armed conflict and, in the case of death, to deliver their remains to their family members. There is no unified information registry on disappeared persons. The information is scattered among different and incomplete registers. Specific measures for the search for disappeared persons have not been advanced. Although a law to create a Commission for the Search for Disappeared Persons was proposed in Congress in 2007, it has yet to be approved.

In the last 15 years, technical-forensic organisations from the civil society sector have conducted invaluable exhumation work. By June 2008, these organisations had conducted more than 900 exhumations for serious crimes committed during the internal armed conflict, recovered more than 5,000 skeletal remains and provided crucial evidence of what occurred. These exhumations have been conducted by CAFCA, FAFG and the ODHAG and financed primarily by international cooperation agencies. Since 2006, the PNR has also financed part of the exhumation work conducted by these organisations. The state support given to the exhumation process continues to be very limited and is generally interpreted as a symbolic act of reparation, rather than the first step towards taking judicial measures against those responsible for the crimes in question.

The work of these forensic organisations is generally accompanied by psychosocial support, given in coordination with other specialised organisations, for victims, their family members and the communities where the exhumations take place. These organisations also offer legal assistance to obtain state authorisation for the exhumations and in some cases provide victims with material aid.

One of the main difficulties faced by forensic organisations is the hostile environment in which they work. They have suffered threats and attacks by those who have no interest in elucidating the past. Furthermore, the country's universities do not offer an academic qualification in forensic science. Organisations have to instruct their own staff and facilitate training for prosecutors and justice operators so that they can interpret reports by forensic experts.

In all cases, the forensic organisations function as auxiliary bodies under the temporary authority of the Public Prosecutor's Office, following a request by victims or their family members. Applying to the Public Prosecutor's Office for authorisation to exhume is slow and bureaucratic process, requiring applicants to gather documentary evidence to support their case. In 2005, in order to accelerate the process, the Public Prosecutor's Office issued official guidelines on how to simplify the procedures for exhumations, reflecting proposals made by civil society forensic organisations. However, these guidelines are not always followed.

Despite the exhumation of more than 5,000 victims, the Public Prosecutor's Office has not fulfilled its legal obligation to begin *proprio motu* investigations on the cause of death. Only in cases where family members and/or victims' or human rights organisations have become formal parties to the prosecution (*querellantes*) has the Public Prosecutor's Office initiated judicial proceedings.

3. ACCESS TO PUBLIC INFORMATION: ARCHIVES AND REGISTERS

The Constitution and international treaties ratified by Guatemala protect the right of access to public information. Nonetheless, judicial authorities have encountered restrictions in obtaining information related to the army's activities during the internal armed conflict. The Ministry of Defence has repeatedly refused to provide information requested by the Public Prosecutor's Office and judicial authorities, arguing that it is confidential and that its release would threaten national security, despite never having specified what is at risk. The relevant authorities at the Ministry of Defence have never been subjected to administrative or criminal sanctions for such refusals. In September 2008, a law to regulate access to information was passed in Congress, which should now be tested in relation to the state archives pertinent to ascertaining the truth about the crimes of the past.

The General Archive of Central America

The archive system in Guatemala is deficient. The General Archive of Central America, founded in 1968, is the state institution responsible for preserving the archives of all other state institutions and making these publicly available. However, the archive does not have the resources or capacity to preserve, administer and provide access to this information. Furthermore, many state institutions do not comply with the legal obligation to deposit their archives once every ten years in the General Archive of Central America.

Military Archives

The Ministry of Defence is responsible for military archives. The army's Adjutant General Service is responsible for guaranteeing and preserving the Military Register of the institution's members and the army's General Archive. The Adjutant General Service is obliged to keep the military archives for ten years. However, during the course of this study, this archive's information was unavailable. On several occasions, the Ministry of Defence refused to provide information requested by Impunity Watch, arguing that it is only obliged to respond to official requests from the Public Prosecutor's Office or the judiciary.

Several of the military archives, such as those of the disbanded Presidential Guard (EMP), have been destroyed or deleted. The CEH documented that an EMP unit, known as the "Regional" or the "Archive", was in charge of the collection, analysis and systematisation of information about persons suspected of being state enemies. As the EMP was disbanded in 2003, the ODHAG and the Group for Mutual Support (GAM), two national civil society groups, appealed for legal safeguarding of these archives, which were later made available to the Human Rights Ombudsman. The latter showed that several documents had been destroyed and others intentionally removed. Despite clear evidence that the Archive had registered and processed information about the political opposition, such files were not found in the documents digitalized by the Ombudsman's office.

On 25 February 2008, in commemoration of the National Day for Victims' Dignity, President Colom offered to make public the army's archives and take the necessary steps to establish the truth about the people disappeared during the internal armed conflict. The President designated the Peace Secretariat (SEPAZ) to receive the archives, but did not issue any official decree at the time of writing this report. Seven months after President Colom's announcement, SEPAZ complained that the Ministry of Defence had not presented anything. Despite this, no administrative or criminal measures have been taken against it for disobeying presidential orders.

The National Police Archive

Since 2005, the archives of the former National Police have been under the protection of the Human Rights Ombudsman. The Project for the Recovery of the Historical Archive of the National Police (PRAHPN), completely financed by international cooperation agencies, is analysing and organising them. These archives were found by chance and legally belong to the Ministry of the Interior, which is responsible for the police. The archive contains registers dating back to the 19th century. However, PRAHPN has prioritised the analysis of documents from the most violent decade of the internal armed conflict, 1975 to 1985. It is hoped that the systematisation and analysis of this archive help to clarify cases of human rights violations committed then by security forces, particularly the police.

Registration of the disappeared and victims

Two efforts have recently got underway to create victims' registers: the Unified Register of Open Cases of Forced Disappearance and Other Forms of Disappearance (RUDFOR) of the Human Rights Ombudsman's office and the National Victims' Register (RNV) of the PNR. RUDFOR, created in 2007, contains information on forced disappearances during the internal armed conflict and is used for following up on cases investigated by the Ombudsman. By 2007, RUDFOR had registered 1,862 cases involving 1,894 events, of which 85% (1,622) were of individual forced disappearance, 14% (257) of collective disappearances and 1% (15) of other forms of disappearance.

The PNR is working to create the RNV, which will contain information on victims and survivors who request reparations from it. Both RUDFOR and the RNV are valuable efforts, still in their initial phases; access to information is very restricted and both have little staff and resources with which to conduct their work.

OBSTACLES TO THE RIGHT TO KNOW

Despite finding some progress towards fulfilling the right to know, this study identified a series of obstacles that limit the rights of victims and the general population to truth-seeking. Among these, the following stand out: 1) the lack of political acknowledgement and limited dissemination of the CEH report; 2) minimal state backing of the search for the disappeared and exhumations; and 3) reluctance of state institutions to cooperate in opening archives, particularly those of the army, which contain pertinent information regarding the internal armed conflict.

Lack of political acknowledgement and limited dissemination of the CEH report

None of the successive governments since the presentation of the CEH report has officially signed it or encouraged its dissemination, thus flouting the principles of the Peace Accords which created the commission. The CEH report is an essential historical instrument for preserving the country's memory of the tragic past. It is important that the victims, future generations and the general population learn the truth of what occurred during the internal armed conflict as a way of dignifying its victims and providing reassurance that these terrible events will not happen again.

State acknowledgement of the CEH report would not only imply that it accepts its responsibility for the crimes committed, but also that it admits the historical factors that gave rise to the internal armed conflict, including racism against the Mayan population and entrenched socioeconomic inequality. This acknowledgement would represent the first step towards honouring its commitment to transform the conditions that allow racism and inequality to persist.

Lack of measures to search for the disappeared

The search for disappeared persons is one of the areas in which the state has made practically no effort. None of the governments formed since the signing of the Peace Accords has promoted the creation of a unified data registry for disappeared persons. Congress has not passed a law which would create the Commission to Search for Disappeared Persons. The establishment of this commission could allow concrete steps to be made towards the creation of a unified data registry for disappeared persons, informing of family members and, in the case of death, return of victims' remains. Furthermore, it could contribute to the initiation of legal investigations and cases against those responsible for the crimes in question, as well as reparation measures for the people affected. The search for disappeared persons is a basic humanitarian act to help heal the wounds of victims' families and clarify the past. Since the state bears primary responsibility for the thousands of forced disappearances which took place during the internal armed conflict, it is of great importance that its institutions cooperate in clarifying the whereabouts of victims and promoting national reconciliation. The lack of will to clarify these events represents a serious violation of the right held by victims, their family members and society in general to know what happened during the internal armed conflict.

Lack of support and protection for exhumations

With regard to exhumations, the state has given very little support to those conducted by technical-forensic civil society organisations. The government has not offered adequate financial support for conducting exhumations, nor has it guaranteed the security of forensic technicians, victims and witnesses. The Public Prosecutor's Office has not secured a conviction in relation to any of the threats received and reported by these groups. Victims and the organisations that represent them often experience difficulties in following the procedures for requesting authorisation to exhume. Despite the evidence produced by exhumations, the Public Prosecutor's Office has not initiated any *proprio motu* criminal investigations as required by law.

The fact that there are no DNA laboratories in Guatemala further limits forensic investigations. Suspects in the common crime of homicide under Guatemalan law for example can only be indicted when victims have been identified. This means, for example, that if an exhumation corresponds to a massacre of one hundred people, but the remains of only two of its victims are identified, and the prosecutor wishes to rely on murder charges, an indictment can only be raised for two murders. The FAFG recently established a DNA laboratory with international support. However, this is a responsibility of the state, namely of the National Institute for Forensic Sciences of Guatemala, INACIF. However, as noted in the chapter on Justice, prosecutors are being encouraged to base charges on definitions of genocide, crimes against humanity and war crimes which have been in the Guatemalan criminal code (articles 376-378) since 1973.

Exhumations are emotionally and spiritually valuable for the families of victims and survivors of the violence, with the recovery of their loved ones' remains giving them the chance to bury them with dignity and visit their graves. Exhumations also pave the way for putting those responsible for the crimes they uncover on trial and creating a favourable environment for affected communities and the general population to understand and reflect on the internal armed conflict's tragic events.

Limited archival access and management and the lack of cooperation of the Ministry of Defence

Limited access to state archives, particularly those of the Ministry of Defence, represents one of the most serious obstacles to the right to know. The Ministry of Defence repeatedly refuses to provide information related to the army's activities during the internal armed conflict, even when it is obliged to do so by judicial or presidential orders.

It should be pointed out that the Public Prosecutor's Office has not started criminal proceedings against the Ministry of Defence for any of its refusals, nor has the President taken administrative action to ensure compliance with his instructions. While it is positive that the National Police archives are being put in order and analysed as part of a special project, the manner in which they will be preserved and public access ensured, remains unclear. Furthermore, current financial support is exclusively dependent on international cooperation. All of these factors place the archive's preservation and sustainability at risk.

The archives of state institutions contain information important for clarifying human rights violations committed during the internal armed conflict and facilitating judicial investigations of those responsible for them. In addition, this information should provide the state with the accurate evidence needed to take administrative measures to lustrate and remove from office those officials who were involved in such acts.

CONCLUDING REMARKS

It is important that the state take more decisive steps to ensure that victims, their families and society in general understand the facts of what happened during the internal armed conflict as a way of guaranteeing the right to know. Members of the families of the disappeared need to know the whereabouts of their loved ones; archives and other evidence related to human rights violations need to be preserved and made available to the public.

Impunity Watch considers that the government should take the fundamental steps of publicly acknowledging the state's responsibility for the horrors that occurred during the internal armed conflict, thus demonstrating its keen determination to transform the structural causes of the internal armed conflict and signing the CEH report. The upcoming ten-year commemoration of the presentation of the latter on 25 February 2009 offers the President an excellent opportunity to affirm, on behalf of the Guatemalan state, a commitment to the victims of the internal armed conflict, overcoming the aforementioned obstacles, strengthening processes already established regarding the right to know and actively initiating legal processes not yet underway.

2 THE RIGHT TO JUSTICE

The UN Office of the High Commissioner for Human Rights describes states as having the duty to “put an end to impunity and to prosecute or extradite, in accordance with their obligations under international law, those responsible for all violations of human rights and international humanitarian law that constitute crimes, including genocide, crimes against humanity and war crimes, in order to bring them to justice, promote accountability, respect for international law and justice for the victims, deter the commission of such crimes and fulfil the responsibility of states to protect all persons from such crimes”³

With regard to the right to justice, Impunity Watch focused its research on: 1) the normative framework for human rights in force in Guatemala; 2) the response of the criminal justice system to cases of serious crimes from the internal armed conflict, particularly the response of the Public Prosecutor’s Office, the police and the judiciary; and 3) the role of victims and the organisations that represent them in criminal proceedings. The following section presents the main progress, obstacles and challenges faced by the Guatemalan state in the struggle to end impunity and strengthen justice. The last portion of the chapter analyses the obstacles to justice.

1. THE NORMATIVE FRAMEWORK IN FORCE IN GUATEMALA FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

As of June 2008, Guatemala had ratified more than 30 international multilateral and bilateral human rights and international humanitarian law instruments, including the principal instruments of the UN and the Organisation of American States (OAS). The ratification of the following remains pending: the UN Convention on the Imprescriptibility of War Crimes and Crimes against Humanity (1968), the Rome Statute of the International Criminal Court (1998) and the International Convention against Forced Disappearances (2006). The first two have been waiting for congressional approval since 2006 and 2002, respectively.

In 1945, the Guatemalan State recognised the jurisdiction of the UN International Court of Justice (ICJ) and, in 1987, that of the Inter-American Court of Human Rights. The ICJ allows states to bring cases against other states. Until now, no state has instituted proceedings against Guatemala at the ICJ for the violation of international law in relation to its actions during the internal armed conflict, or its subsequent denial of justice for the crimes perpetrated therein. In the Inter-American system, individuals or legal institutions can denounce human rights violations at the InterAmerican Commission of Human Rights, which can then present such cases to the Inter-American Court of Human Rights. Through this procedure, the Inter-American Court has heard seven cases which correspond to the Guatemalan internal armed conflict and resulted in the findings against the state for the denial of justice. (See Annex 3, Cases Compensated via the Inter-American Court of Human Rights).

Another possible way to obtain justice is to present cases within the national jurisdiction of other states which claim extra-territorial jurisdiction to prosecute them, either because the victims or suspects of the crime are their nationals, their essential interests have been affected, or the principle of universal jurisdiction has conferred on their judicial system the competence to prosecute international crimes, such as genocide or crimes against humanity, despite their having no direct link to the crime. There are currently two cases related to Guatemala underway: one in Spain for genocide and one in Belgium for the murder of one Belgian priest (1980) and the disappearance of another (1982) during the internal armed conflict.

3 Office of the High Commissioner for Human Rights, Human Rights Resolution 2005/81, (21 April 2005).

The crimes of genocide, incitement to commit genocide, crimes against humanity and rape -- serious crimes under international law -- have been defined in the Guatemalan criminal code since 1973. Extrajudicial execution and torture were included in 1995. The crime of forced disappearance was added in 1996.

The crimes of extrajudicial execution, torture and forced disappearance, however, were not defined during the internal armed conflict. However the following conduct was prohibited in the 1973 criminal code: murder, assault, kidnapping, illegal detention, rape, sexual abuse. Certain crimes of international concern specifically war crimes, genocide and crimes against humanity were legally defined in the criminal code in force since 1973, and thus there is no legal impediment or justification that prevents the investigation and prosecution of the underlying conduct of sexual abuse, torture, disappearance and other inhuman acts being charged under the rubric of these international crimes.

2. THE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM TO CASES FROM THE INTERNAL ARMED CONFLICT

In the last 15 years, Guatemala has made significant progress in reforming and modernising its judicial system. It introduced a new criminal procedure code in 1992, which regulates the division of investigation, prosecution and judicial tasks among the Public Prosecutor's Office, police and judiciary. This legal framework provides basic procedural guarantees within the criminal justice system, such as the presumption of innocence, the obligation of courts and authorities involved in criminal proceedings to ensure human rights are observed and the manner in which testimony given in trials is provided and made public. This reform process has also contributed to fulfilling commitments made in the Peace Accords, the recommendations of the Commission on the Strengthening of Justice, created in 1997 as part of those accords, the CEH recommendations and those made by UN special rapporteurs on human rights and justice.

The following stand out among the main changes and advances made within the judicial system: the establishment of the Public Prosecutor's Office as an autonomous institution (1993); the removal of military jurisdiction for common crimes committed by army members (1996); the creation of the National Civilian Police and the Public Defender's Office (1997); the creation of the Coordinating Body for the Modernisation of the Justice Sector (1997); the creation of judicial and civil service professions within the judiciary (1999); the passage of the Penitentiary System Law; the creation of the National Institute for Forensic Sciences (2006); and the territorial expansion of the Public Prosecutor's Office, the police, the judiciary and the Public Defender's Office. The latter has increased public access to these services mainly in indigenous regions where they had been absent in the past. The creation in some regions of Administration of Justice Centres, providing a single location for the various institutions involved in the criminal justice system, has also been part of this process.

Much of this progress has been achieved thanks to economic support and technical assistance from international cooperation agencies, as well as the constant monitoring and proposals of Guatemalan civil society organisations. The World Bank, the Inter-American Development Bank, European countries and the United States stand out as the principal partners in the reform and modernisation of the judicial system. Technical cooperation has been channelled via programmes and projects facilitated by the UN, primarily MINUGUA and the United Nations Development Programme (UNDP) and by the United States Agency for International Development (USAID). The international cooperation agenda has mainly followed the commitments made in the Peace Accords. The CICIG's current strengthening of the administration of justice is indispensable.

Nevertheless, despite advances made in the reform and modernisation of Guatemala's judicial system and the normative framework for human rights, there has been very little prosecution or conviction of those responsible for serious crimes committed during the internal armed conflict. Of more than 600 massacres documented by the CEH, the criminal justice system has sentenced those individually responsible for only three of these. Since 2005, the Public Prosecutor's Office has a special unit to investigate serious crimes committed during the internal armed conflict, the Unit for Historical Clarification. In its three years of existence, this unit has not raised a single indictment for the more than 160 cases it has been investigating.

Resources and capacities to investigate cases from the internal armed conflict

Since 1994, the Public Prosecutor's Office has shown slow yet considerable institutional development. Its current structure consists of three departments: prosecution, investigation and administration. The prosecution department is made up of 56 district and municipal prosecutors spread throughout the country's regions and 25 prosecutor's offices dedicated to particular types of crimes, known as sectional prosecutor's offices. (There are only 35 municipal prosecutor's offices in the country's 333 municipalities.) Some of these district and municipal prosecutors have offices which are permanently open to the public, including a special section for dealing with victims' complaints. The investigation department is overseen by the Criminal Investigations Office (DICRI), which is responsible for gathering, analysing and studying evidence to help clarify events under investigation by district and sectional prosecutors. The administration department is comprised of a series of secretariats, departments and sections that provide administrative, financial and logistical services to the prosecution and investigation departments.

In 2005, the Public Prosecutor's Office created the Unit for Historical Clarification to investigate cases from the internal armed conflict. This is a small unit within the Prosecutor's Office for Human Rights. As of June 2008, this office had 37 members of staff led by a section prosecutor. Staff was distributed in the following manner: 7 in the Unit for Crimes against Justice Operators, 6 in Unit for Crimes against Human Rights Activists, 9 in the Unit for Crimes against Journalists and Trade Unionists, 8 in the Unit for Historical Clarification and 8 in the general management of the office. This contrasts with the structure and quantity of staff assigned to other sectional prosecutor's offices. The Crimes against Life Office, which investigates killings, assassinations and assaults, has 20 branches in Guatemala City, each with 20 prosecutors, 4 assistants and 2 officials, making a total of 26 staff per branch and an overall total of approximately 520 staff.

Between July 2005 and June 2008, the Unit for Historical Clarification received 166 complaints, of which 163 were for serious crimes committed during the internal armed conflict and 3 for crimes against justice operators. The majority of these complaints were for crimes from the internal armed conflict that were provisionally defined as forced disappearance (130), murder (5), extrajudicial execution (3) and genocide (4). In July 2008, the National Reparation Plan, PNR, presented the Unit for Historic Clarification with 1,460 cases, documented through victim testimony it had received, in order for it to start *proprio motu* investigations into these crimes from the internal armed conflict.

For its part, the judiciary has extended its services throughout the country. Until 2007, there were 352 Juzgados de Paz (local courts presided over by a 'justice of the peace') covering nearly all of the country's municipalities, 49 Juzgados de Primera Instancia Penal (trial courts), 42 Tribunales de Sentencia Penal (sentencing courts), 12 Appeals Courts and 11 courts for children and adolescents. Additionally, a number of Administration of Justice Centres and Mediation Centres were created in several regions to facilitate the population's access to judicial services. The judiciary does not have special courts to deal with cases of serious crimes from the internal armed conflict, but rather deals with these in common courts.

With respect to cases of human rights violations committed during the internal armed conflict, the criminal justice system generally has too few resources and an insufficient budget to fulfil its role efficiently. The Public Prosecutor's Office dedicates barely 1% of its annual budget to investigating and prosecuting human rights cases and has only a small prosecution unit of eight staff to respond to the hundreds of violations which occurred during the internal armed conflict. Furthermore, the staff in charge of investigating these cases lacks the necessary expertise and capacity and this unit does not have protocols or specific work plans. It is important to emphasise that, without proper resources and sufficient and qualified staff, progress in dealing with cases from the internal armed conflict is very difficult to achieve.

The autonomy of the Public Prosecutor's Office and the independence of the judiciary

The President appoints the Attorney General (the head of the Public Prosecutor's Office) from a list of six candidates proposed by a nomination commission, which is composed of the president of the Supreme Court of Justice, the deans of the universities' law schools, the president of the board of directors of the Guatemalan College of Lawyers and Notaries and the president of the latter's Court of Honour. The Attorney General has the same high ranking and immunity as Supreme Court of Justice judges and can only be replaced by the President of the Republic. According to the Ley de antejuicio ⁴, Congress determines if this option is available to the Attorney General.

⁴ The law regulating the procedure under which the constitutional protections of public officials accused of criminal conduct can be exercised and adjudicated.

The Attorney General presides over the governing body of the Public Prosecutor's Office: this council is composed of three district prosecutors elected by their peers and three members chosen by Congress from the list of candidates proposed for the office of Attorney General. The prosecutorial profession is regulated by the Law on the Organisation of the Public Prosecutor's Office and in the internal regulations of its council.

With regard to the judiciary, the constitution charges it with the administration of justice and requires that it act independently from the other branches of the state. No decision of any court, including the Supreme Court of Justice, can be reviewed by any other internal or external body, other than upon the presentation of a legal appeal challenging a ruling.

The Supreme Court of Justice is comprised of 13 judges, while the Appeals Courts employ more than 75 judges. Congress appoints the judges of both for a period of five years from a list of candidates proposed by a nomination commission, which is composed of a representative of the rectors of the country's universities (presiding), the deans of the country's law schools, an equivalent number of representatives elected by the General Assembly of the Guatemalan College of Lawyers and Notaries and an equal number of elected representatives of the judges of the Appeals Courts and other courts. To be elected, a candidate must receive the vote of at least two-thirds of the commission's members.

All judges have the right to pre-trial privilege. For Supreme Court judges, this is determined by Congress, while the Supreme Court considers cases concerning Appeals Court judges. The criteria and procedure for the selection, nomination, promotion and disciplining of judges is established by the Law on the Judicial Profession.

At normative and procedural levels, therefore, the selection and nomination of justice operators and the development of their functions, are regulated by principles which seek to guarantee the judiciary's independence and the autonomy of the Public Prosecutor's Office. These are limited, however, by the constant threats received by justice operators, as well as different types of political pressure levied during candidate selection and criminal proceedings.

The role of other institutions in criminal proceedings

Guatemala's legal framework allows for the intervention of other institutions in some phases of criminal proceedings. The Human Rights Ombudsman has the authority to conduct judicial research via a special investigation process and to act as a querellante adhesivo⁵ in criminal trials. It has a small Special Investigation Unit with a staff of four people. By June 2008, this unit had investigated 14 cases of forced disappearance during the internal armed conflict and requested that for one of these cases an army colonel and three former military commissioners under indictment and being held in pre-trial detention be put on trial. In general, the Ombudsman's investigations are time-consuming and last several years. Despite the law stipulating that these investigations take place within a 90-day period, this can be renewed indefinitely upon request.

According to Guatemala's constitution, the Constitutional Court is composed of five judges and their respective substitutes. Judges are appointed for a five-year period, with the Supreme Court, Congress, the President, the Executive University Council of the University of San Carlos of Guatemala and the College of Lawyers each nominating one. Appointments and substitutions are made at the same time by Congress. The Constitutional Court's economic independence is guaranteed by the allocation of a percentage of the judiciary's budget.

The Constitutional Court is competent to hear appeals for legal protection (amparo) presented by parties to criminal proceedings and to rule on petitions of unconstitutionality. As described in the section below on obstacles to justice, the Constitutional Court accepts numerous dilatory petitions, thus violating the principle of swift and effective justice.

Lastly, COPREDEH represents the state and provides follow-up in cases against the State of Guatemala in the Inter-American system and other international jurisdictions.

5 In relation to certain crimes, the person affected or their representative can ask for prosecution or become a party to a prosecution already initiated by the MP. This right can be exercised by any citizen or association of citizens against public officials or employees who are alleged to have directly violated their human rights in exercise of their function or by reason of that function or where the crime occurred through an abuse of their position.

3. THE PARTICIPATION OF VICTIMS AND CIVIL SOCIETY ORGANISATIONS IN CRIMINAL PROCEEDINGS

Fear and mistrust in the judicial system impede the majority of victims and their families from using it. Given the characteristics of the counterinsurgency policy, whereby the civilian population was involved in paramilitary activities, victims in many communities continue to live alongside the suspected perpetrators of serious crimes committed during the internal armed conflict. They often fear reprisals from these individuals and groups. Threats and attacks against victims and witnesses who use the judicial system but do not receive any sort of protection from the Public Prosecutor's Office or the police, compound this fear.

In spite of this, some victims, individually or through victims' or human rights organisations, have used the Guatemalan criminal justice system in their quest for justice. These organisations include the Association for Justice and Reconciliation, AJR, the Association of Family Members and Friends of the Disappeared of Guatemala, FAMDEGUA, and the above mentioned organisations GAM, the FMM, the Rigoberta Menchu Foundation and CALDH. These organisations have denounced specific cases of extrajudicial execution, massacres and forced disappearance which occurred during the internal armed conflict, acted as querellantes and presented evidence in cases against former high-ranking military officers for genocide, crimes against humanity and war crimes committed between 1980 and 1983. Alongside these organisations, the technical-forensic civil society organisations provide essential forensic evidence in criminal proceedings.

As querellantes, the victims, their family members and the organisations which support them play an important role in criminal proceedings. In the majority of cases, they propose witnesses and documentary evidence and monitor the performance of justice operators during trial. The cases involving querellantes are practically the only cases of violations from the internal armed conflict which move forward in the criminal justice system. However, the participation of victims and supporting organisations comes at a high cost: they may invest years and resources in a single trial and suffer harassment, threats and attacks from groups who have no interest in the elucidation of the crimes in question, or justice for them. With such trials lasting for years, many organisations also lack sufficient economic resources and capacity to sustain the professional staff needed to litigate them.

OBSTACLES TO THE RIGHT TO JUSTICE

This study has presents a series of obstacles that contribute to impunity for crimes from the internal armed conflict and weaken the criminal justice system. Among them, the following stand out: 1) unwillingness within the criminal justice system to investigate and judge crimes from the internal armed conflict; 2) the limited resources and capacity of the criminal justice system to investigate cases from the internal armed conflict; 3) the abuse of procedures to delay and obstruct criminal proceedings; 4) the limited independence of the judiciary and the prosecution system; 5) the persistence of racism within the criminal justice system; 6) the lack of efficient mechanisms to evaluate and supervise performance within the criminal justice system; and 7) the inadequate protection offered to witnesses, human rights defenders and justice operators. Citizens' mistrust in the judicial system and the limited capacity of civil society organisations to litigate cases can be added to these.

Unwillingness within the criminal justice system to investigate cases from the internal armed conflict

There is little evidence of willingness within the criminal justice system to investigate and judge crimes from the internal armed conflict. Although obliged to do so by law, the Public Prosecutor's Office has not initiated a single *motu proprio* investigation for crimes committed during the internal armed conflict. All of the cases currently open in the Public Prosecutor's Office are based on charges brought by victims or human rights organisations.

The Public Prosecutor's Office does not investigate high-level officials or other intellectual authors of the crimes of the internal armed conflict. For example, although the investigation of the former head of state, Efraín Ríos Montt (1982-1983), began in 2001, the Public Prosecutor's Office has not once summoned him to make a statement in response to the allegations facing him. It has also failed to follow criminal procedure when a state institution or official has refused to cooperate with an investigation, as in the case of the repeated refusals of the Ministry of Defence to provide information related to the army's activities during the internal armed conflict.

In some cases, high-level officials from the Public Prosecutor's Office exert internal influence over proceedings when prosecutors are investigating serious crimes from the past. Impunity Watch received information that some Public Prosecutor's Office officials give "verbal instructions" to the prosecutors responsible not to follow procedures for certain cases or not to request information from the Ministry of Defence.

The police force does not have a special investigative unit for serious crimes from the internal armed conflict and its criminal investigation system is in general deficient. According to Guatemalan law, the police should act on the orders of the Public Prosecutor's Office when it comes to conducting criminal investigations. However, the investigative staff of the DINC is barely professional and has itself been alleged to have been involved in human rights violations, acts of corruption and criminal activities. Lastly, the police force is not always efficient when it comes to executing arrest warrants for those charged with serious crimes, thus facilitating their flight.

The judiciary and the Constitutional Court rule extremely slowly on the multiple appeals lodged by the defence lawyers of persons accused of serious crimes from the internal armed conflict, delaying trials for months and even years. Furthermore, in several cases, judges have reduced charges and handed down mild judgements and sentences, instead of reaching verdicts appropriate to the crimes in question.

To achieve progress in the struggle against impunity, it is important that the institutions involved in criminal proceedings correct the current deficiencies and investigate and judge the most serious crimes of the internal armed conflict: genocide, massacres, forced disappearance and rape. The criminal justice system bears enormous responsibility towards the victims and society in general to punish those responsible for serious crimes in Guatemala and to demonstrate to future generations that the state is committed to the non-recurrence of those offences.

Limited resources and capacity within the prosecution system

The criminal justice system dedicates very little resources and capacity to investigating serious crimes from the internal armed conflict. As previously mentioned, the Public Prosecutor's Office has the small Unit for Historic Clarification to investigate such crimes. This prosecutor's unit has few staff in comparison to its caseload. There are only eight people to attend to hundreds of cases. Furthermore, the staff in this unit are not specialists, nor do they have sufficient training to perform their work. The Unit for Historic Clarification is centralised in Guatemala City despite the fact that the majority of victims reside in rural areas. It does not have bilingual staff or interpreters, even though the majority of victims are indigenous and in many cases non-Spanish speakers. The unit lacks protocols and specific investigation strategies for the different procedural phases. It rarely coordinates investigations with the district prosecutor's offices that manage cases of serious crimes from the internal armed conflict or with other specialised investigation units of the Public Prosecutor's Office.

Impunity Watch instructed an independent expert on public expenditure to estimate the Public Prosecutor's Office's investment in the investigation of human rights cases. The findings showed that this institution dedicates barely 1% of its budget to the Prosecutor's Office for Human Rights, the department in which the Unit for Historical Clarification is located. Moreover, according to the 2008 report *State of the Region*⁶ the criminal justice system in Guatemala has the lowest budget in Central America: in 2006, it was only US\$6.90 per capita compared to US\$23.70 in El Salvador.

The abuse of procedures to delay and obstruct criminal trials

Amparo, a provision guaranteeing the protection of human rights, has been manipulated by the many lawyers who repeatedly lodge all manner of legal appeals in an effort to delay trials indefinitely. In many trials, defence lawyers request that their clients qualify for the National Reconciliation Law, despite its inapplicability in the majority of cases. This practice is also employed to delay trials. Furthermore, the judiciary and the Constitutional Court take months to rule on legal appeals, thus causing criminal procedures to extend for years and discouraging the victims and querellantes.

This situation has been condemned, not least in the judgment of the Inter-American Court of Human Rights in the case of the murder of the anthropologist Myrna Mack: "The judicial authorities are responsible for this unjustifiable delay due to their indifferent handling of the proceedings, which has led to frivolous appeals being heard and their failure to respect procedural deadlines by attempting to detach themselves from the proceedings through alleged queries on competence. [...] the Guatemalan courts have allowed abusive use of the amparo remedy. While the

6 Programa Estado de la Nación. "Informe Estado de la Región 2008". Costa Rica, 2008

law allows the amparo remedy to be invoked against court rulings, its interpretation by the courts in this case has enabled the parties to submit amparo appeals that have caused unjustifiable delays and permanent discontinuity in the proceedings.”⁷

The limited independence of the judiciary and the prosecution system

Congressional and executive manipulation of nominations is one of the factors affecting the independence of the judiciary and the autonomy of the Public Prosecutor’s Office. Congress has the authority to appoint judges to the Supreme Court of Justice, the Appeals Courts and half the members of the Council of the Public Prosecutor’s Office. Congress also decides on the budgets allocated to these institutions. The President is responsible for the appointment and dismissal of the Attorney General. Even though the selection processes for these positions are based on a list of candidates proposed by a nomination committee, decisions are often influenced by political interests rather than made exclusively on the basis of criteria of excellence and professional experience. As a result, candidates who are closer to certain political parties or current powerful groups benefit and client relationships are formed, affecting the principle of the independence of public authorities.

In addition, powerful groups with interests in keeping crimes unpunished, particularly when it comes to serious crimes committed during the internal armed conflict, constantly harass, threaten and attack justice operators. Furthermore, the Office for the Protection of Witnesses and Persons Subject to Trial Proceedings of the Public Prosecutor’s Office does not offer appropriate protection measures and lacks the resources and capacity to fulfil this task.

The persistence of racism within the criminal justice system

The vast majority of operators and officials working within the criminal justice system are ladino men. Many of them express racist attitudes towards indigenous victims and witnesses, particularly when they are women. Within the institutions that make up the criminal justice system, there are very few indigenous staff and only a small number of interpreters to facilitate access to justice for victims and witnesses in their own language. Bearing in mind that 83% of the victims of the internal armed conflict were indigenous, according to the CEH, this racism presents a particularly serious barrier to achieving justice for the most affected population.

Similarly, the Unit for Historical Clarification is centralised in Guatemala City and does not have regional offices in the indigenous regions where the massacres and majority of human rights violations occurred. This situation reveals the minimal importance given to indigenous peoples’ access to justice.

The lack of efficient evaluation and supervision mechanisms within the criminal justice system

The lack of efficient mechanisms for evaluating and supervising the performance of justice operators is a serious problem within the criminal justice system and public administration in general. Despite the regulation of prosecutors and other offices in the judicial system, the criteria for selection, promotion, evaluation and dismissal of justice operators are in many cases not observed, thus giving those in charge within the Public Prosecutor’s Office and judiciary a margin of discretion. In the case of the Public Prosecutor’s Office, the disciplinary system is insufficient and does not allow for the consistent evaluation of prosecutors’ performance. There is no link between the offence committed and the sanction applied; this remains at the discretion of the sanctioning authority.

Inadequate protection for witnesses and justice operators

The Public Prosecutor’s Office and the police provide limited protection to witnesses, querellantes and justice operators during criminal proceedings. Although the Law for the Protection of Persons Subject to Trial Proceedings and Engaged in the Administration of Criminal Justice was approved in 1996, the Public Prosecutor’s Office did not implement its provisions on the creation of the Office for the Protection of Witnesses and Persons Subject to Trial Proceedings until 2007. This delay points to the reduced interest that previous administrations within the Public Prosecutor’s Office had in attending to an essential aspect of criminal proceedings: the protection of witnesses and justice operators. Furthermore, this office does not have sufficient resources or specific strategies to guarantee the protection of witnesses and others involved in trial proceedings relating to cases from the internal armed conflict.

In the first seven months of 2008, at least seven justice operators were murdered. These murders add to the numerous cases of threats and intimidation experienced -- although seldom reported due to fear of death -- by justice operators. According to inventories and information held by the judiciary’s security office and the Association of

7 Myrna Mack Chang vs. Guatemala. Sentence from 25 November 2003

Judges, there have been more than 20 cases of violence against justice operators in 2008. It is very difficult to apply justice in an effective manner when those involved in trial proceedings risk their lives in the process.

Citizen mistrust in the judicial system and limited social demand for justice in cases related to the internal armed conflict

The vast majority of the population does not trust state institutions and particularly mistrusts the judicial system. This is partially due to the historic absence of state institutions in many regions of Guatemala and the state security forces' repression of the civilian population during the internal armed conflict. The criminal justice system's current loss of prestige due to its poor results in the battle against crime and impunity and the involvement of public officials in criminal acts and corruption, compound this situation.

The population's general apathy, evident in the lack of societal support for these cases and the little resonance they have in the mass media, is an additional factor that weakens the efforts of victims and human rights organisations to obtain justice. The lack of social demand surrounding these issues stems from the continued prevalence of fear in affected communities and widespread racism against poor indigenous people who constitute the majority of victims, along with the persistently high levels of insecurity and violence that currently preoccupy the authorities and the general population.

The limited capacity of civil society organisations to litigate cases

Human rights and victims' organisations, without whose efforts and support the results of the criminal justice system would be even less, have little economic resources and capacity to litigate cases. Since criminal proceedings extend for years, organisations have to invest much in the way of time and resources in them and are hard-pressed to find qualified lawyers willing to litigate the type of case which puts their security at risk.

Many of these organisations have received international support in the form of financing or technical or legal aid. Nevertheless, it is difficult to retain this type of support during the long trial process when there are few tangible results. It is practically impossible for victims, a section of the population with generally few economic resources, to contribute even a minimal portion of what is necessary to initiate proceedings. As previously noted, cases in the criminal justice system do not advance without the impetus of a querellante. It is indisputably evident that the judicial system excludes and discriminates against victims due to their economic position, thus violating the principles established in national and international norms of equality before the law and non-discrimination.

CONCLUDING REMARKS

The Guatemalan criminal justice system has made significant progress in terms of the normative framework for human rights and international humanitarian law, as well as in the reform and modernisation of institutions within the criminal justice system. A series of problems persist, however, obstructing justice for victims of the internal armed conflict and citizens in general. At the level of transitional justice, it is of concern that authorities and justice operators within the criminal justice system demonstrate an unwillingness to investigate and judge those responsible for the serious crimes committed during the internal armed conflict. The fact that the criminal justice system barely investigates the crimes against humanity committed in the country's recent past, including the genocide against the Mayan people, massacres, forced disappearance, extrajudicial executions and rape, is extremely serious. It is even more significant since the majority of these crimes affected the most vulnerable sections of the population -- indigenous people and women -- whose circumstances demand additional state protection.

In its failure to investigate and prosecute the most serious crimes of the internal armed conflict, the criminal justice system not only violates victims' fundamental rights regarding access to swift and effective justice, but also permits the perpetrators to continue acting with complete impunity. This situation becomes even more serious when suspected perpetrators are holding public office. The lack of justice also favours the omnipresence of impunity in the public imagination: if the state tolerates the most serious crimes, how can one expect justice for other types of crime? In turn, this situation further promotes the general population's apathy, mistrust and sense of vulnerability.

Impunity Watch deems it essential that the Guatemalan criminal justice system seriously address the obstacles identified here and prioritise the investigation and prosecution of some of the most serious cases from the internal armed conflict already opened by the Public Prosecutor's Office, in order to break with current inaction and pave the way for justice.

The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005) states that any victim of a human rights violation has the right to reparation. In addition, the UN General Assembly in 2005 approved further principles and basic guidelines on the rights of victims of violations of international human rights norms and serious violations of international humanitarian law to seek legal remedies and obtain reparations. These principles stipulate that states should provide reparation to victims of state actions and omissions that constitute violations of international human rights norms or serious violations of international humanitarian law. These reparations should include restitution, indemnity and rehabilitation, as well as satisfaction and guarantees of non-recurrence. They should be proportionate to the seriousness of the damage caused and the violations perpetrated.

With regard to the right to reparation, Impunity Watch focused its research on the National Reparations Programme, PNR since it is the state institution responsible for providing victims of the internal armed conflict with reparations. The role of COPREDEH was also examined in relation to reparations sought from the State of Guatemala in cases brought within the Inter-American Human Rights system. At the end of this chapter, the obstacles to reparation are analysed.

1. THE NATIONAL REPARATIONS PROGRAMME

In 2003, President Alfonso Portillo of the Guatemalan Republican Front (FRG) political party issued a governmental decree to create the PNR. This programme was given the mandate of providing “individual and/or collective reparation to the civilian victims of human rights violations and crimes against humanity during the internal armed conflict.” The PNR is formally part of SEPAZ, although it has its own budget and separate management system. The PNR has an annual budget of 300 million quetzals (approximately US\$40 million).

The National Reparations Commission (CNR) is responsible for managing the PNR. Between 2003 and 2005, this commission was composed principally of representatives of victims’ and human rights organisations. However, due to their constant disagreements on different issues, the decree which created the PNR was in 2005 amended by then-President Oscar Berger of the Grand National Alliance (GAN) political party. This amendment established that the CNR should be composed exclusively of representatives of state institutions and that an Auxiliary Council, composed of representatives of civil society organisations, should be created. The Auxiliary Council has yet to be formed.

The mandate of the PNR is to provide reparation in documented cases of forced disappearance, extrajudicial execution, physical and psychological torture, forced displacement, forced recruitment of minors, sexual violence, crimes against children, massacres and “other violations not previously considered” to be heard and decided upon by the CNR. The reparation measures at its disposal include measures to dignify victims, cultural reparation, psychosocial reparation and rehabilitation, material restitution and economic reparation. Until now, the PNR has prioritised economic reparation measures. While extreme poverty has led the victims to accept this policy, they demand more comprehensive measures to honour the memory of victims and dignify family members and survivors.

The results of the National Reparations Programme

By the end of 2007, the PNR had concentrated mainly on providing individual compensation to victims, which at times took place in public ceremonies with high-level government officials attending. The amounts established for economic reparation are 20,000 quetzals (approximately US\$2,700) for torture and sexual violence, 24,000 quetzals (approximately US\$3,200) for extrajudicial execution, death in a massacre or forced disappearance and up to 44,000 quetzals (approximately US\$5,900) for families with more than one fatal victim or against whom several crimes were

committed. Between 2005 and 2007, the PNR distributed approximately 275 million quetzals (US\$37 million) in economic reparation in the form of individual payments. In other words, it was not able to spend its annual budget of 300 million quetzals (approximately US\$40 million). By early 2008, the new PNR authorities indicated that they had 38,000 cases on file, of which 27,700 had not yet been decided. Thus, the new authorities informed Impunity Watch that reparations have been provided in relation to approximately 23% of the total number of case files compiled.

The cases for which reparations were provided in 2006 and 2007 involve 12,623 internal armed conflict-era human rights violations. (The PNR did not provide data from 2005.) Reparations were most commonly obtained for forced disappearance followed by extrajudicial execution. The least common violations for which reparations have been provided are death in a massacre, torture, sexual violence and forced displacement. The PNR has prioritised reparations for widows, aged persons and rural indigenous victims. Its data shows that most victims are located in the regions of El Quiché, Chimaltenango and Baja Verapaz in the Rabinal municipality. This data corresponds to the CEH findings.

With regard to exhumations, between 2006 and 2007, the PNR provided financial support for technical-forensic civil society organisations to conduct exhumations. In this period, the PNR supported 228 exhumations in which the remains of 540 victims were located. Since the PNR does not have sufficient capacity to do so, civil society organisations have accompanied these processes by providing legal and psychosocial assistance.

The PNR recently launched an initiative to establish the National Victims' Register, RNV, based on the case files it holds in relation to the reparation of victims. As previously mentioned, the PNR presented 1,460 case files to the Public Prosecutor's Office on 4 July 2008 to contribute to the initiation of *proprio motu* investigations of the crimes involved.

Resources and capacity of the National Reparations Programme

The PNR's annual budget of 300 million quetzals (approximately US\$40 million) is the result of long negotiations prior to the programme's creation between the government on one side and victims' and human rights organisations on the other. On several occasions, these funds have not been readily available, influencing the PNR's plans. The programme can allocate only 10% of its budget to administrative costs; this percentage was established without any prior analysis of the costs involved in setting up and running the programme. Furthermore, since it is a part of SEPAZ, the PNR cannot implement infrastructure projects, thus limiting its ability to provide more comprehensive reparation, such as housing to victims from razed communities or memorials dignifying victims.

The PNR has coordinated little with other state institutions, such as the ministries of health, education and agriculture, to promote reparation. This has partly been due to the bureaucratic nature of state institutions. In 2006, after initial problems were encountered in handling the programme's reparation fund, the United Nations Development Programme, UNDP took over its administration.

The PNR has its headquarters in Guatemala City and 16 offices in the regions most affected by the internal armed conflict (See Annex 2, Map of PNR Offices and Distribution of Human Rights Violations). Until now, however, the PNR has acted passively and reactively, in that its staff waits until victims come to its offices and does not promote the programme's services. Nor has the PNR made efforts to officially request that municipal civil registries, district courts and prosecutor's offices provide the documents and certificates needed by victims to support their requests for reparation.

Even though the PNR should ease the process for victims and ensure that it is conducted in their native language, victims and external PNR evaluators agree that the procedures for accessing economic reparation are slow, trying, bureaucratic and, at times, onerous. There have been cases when local organisations have required beneficiaries to hand over a percentage of their economic reparations to pay for procedural costs.

Constant turnover in staff has been another weakness of the PNR. Since 2003, the programme has had four executive directors and each new appointment has been accompanied by a changeover in operational staff. Representatives of international donors who support the PNR's work estimate that more than 60% of the PNR staff was replaced in early 2008. The programme does not have internal regulations for its employees.

2. COPREDEH AND CASES IN THE INTER-AMERICAN SYSTEM

The State of Guatemala, via COPREDEH, follows up on the cases of human rights violations dealt with in the Inter-American system and by other international bodies. In general, compliance with such resolutions and judgments is slow and partial, since COPREDEH has to coordinate with other state institutions whose intervention is needed to ensure this, such as the Ministry of Finance, the Ministry of Defence, the Ministry of Education, the National Audit Office and the judiciary, among others. In the majority of cases, COPREDEH administers the economic compensation due to victims, but does not oversee resolutions related to the administration of justice in Guatemalan courts.

In several settlements with the IACHR and Inter-American Court of Human Rights judgments, the State of Guatemala has accepted responsibility for the violations committed during the internal armed conflict, requested forgiveness and offered reparations to the victims.

By mid-2008, the Inter-American Court had issued seven judgments against the State of Guatemala for human rights violations committed during the internal armed conflict (see Annex 3, Cases Receiving Reparations in the Inter-American Court of Human Rights). Compliance with Inter-American Court judgments is obligatory for Guatemala. The amount of economic reparation set by the Court is quantitatively superior to that provided by the PNR in Guatemala, which at times creates dissatisfaction among those victims receiving redress from the latter, since the victims then deem their cases to have been inadequately compensated. In some cases, the IACHR and the Inter-American Court have requested that the state take measures to dignify victims, such as producing and disseminating a documentary film, naming a street after a victim, or putting up a commemorative plaque. As previously mentioned, such measures have offended other victims since, as of November 2008, the PNR has never sponsored this type of activity.

OBSTACLES TO THE RIGHT TO REPARATION

The legal weakness of the PNR limits the implementation of a comprehensive reparation policy

The PNR's current legal foundation limits the comprehensive development of its work and puts its stability at risk. The programme is based on a governmental decree which can be modified at any moment by the President, without the need to consult or request authorisation from any state body. Since its creation in 2003, the PNR decree has undergone three substantial modifications, revealing its legal fragility and the need to approve a reparations law to provide the programme with a more firm legal basis.

As a result of those amendments, the PNR has gone from being led almost exclusively by civil society organisations to one whose policy directorate, the CNR, is composed entirely of officials from the executive: the Presidency of the Republic, the Ministry of Public Finances, SEPAZ, the Presidential Secretariat for Planning and Programming (SEGEPLAN) and COPREDEH. The failure to constitute the Auxiliary Council of victims' organisations, as provided for in the recent PNR reform, has made it more difficult for the victims' voice to be better heard in the design of reparation measures and policies.

A proposed reparations law is currently before Congress, but the PNR authorities have not been sufficiently involved in its review, or in lobbying for it to provide the legal support required for the programme's independence, decision-making and budget.

Constant staff changes

The PNR's managing body is composed of high-level representatives from the executive, which favours its decisions having more support and political weight. On the other hand, this also generates more instability, since changes in government lead to changes in staff, from the executive director, appointed by the managing body, to those with high-level authority and operational staff in regional offices. According to this study's findings, 60% of the PNR's staff was replaced when the latest government was installed.

This over-frequent turnover of staff impedes the establishment of the relationships of trust with victims and their organisations which are essential to developing reparation measures. This is particularly important in cases of sexual violence. Staff changes also undermine the strengthening of capacity within the programme and improvement of performance that come when knowledge is accumulated and lessons learned through experience. The

programme does not have staff with specialisations in psychosocial reparation, monuments and exhumations, among others, nor in administrative affairs. Moreover, the constant staff changeover does not encourage them to develop such specialisations.

Burden of proof

The PNR does not take institutional responsibility for the “burden of proof”, rather victims are obliged to demonstrate their circumstances by gathering documentation proving their case, to gain approval for reparation. The PNR does not provide support to victims and their organisations which could help them to obtain this documentation and reduce the expenses they incur in the process.

In the same way, the PNR has not coordinated sufficiently with municipal authorities to gain their support for and facilitation of, the procedures that victims and their organisations have to follow. The new Law for the National Register of Persons (RENAP) transforms responsibility for the civil registry, previously decentralised to municipal level, by assigning it to a unified national registry. It is important to achieve effective inter-institutional coordination between the PNR and the civil registry in order to give special attention to the more than 20,000 identified victims who have yet to receive reparations.

Lack of comprehensive reparation measures

Although the PNR mandate covers comprehensive reparation measures, in practice it has been limited to providing individual economic reparations and financial support for exhumations. Researchers and supporters of victims agree that, while the victims have accepted financial payment, they have not necessarily received redress. The delivery of payments after the completion of lengthy paperwork draws certain comparisons with other programmes that make direct cash payments, such as the compensation given to former Civil Defence Patrols (PAC). Since 2003, the government has provided monetary payments to PAC members active during the internal armed conflict. By the end of 2007, the Guatemalan state had invested nearly five times more in compensating former PAC members than in providing reparation to the victims of the internal armed conflict.

The state's lack of a comprehensive transitional justice policy is the biggest obstacle to the right to reparation for the damage caused during the internal armed conflict. While the PNR exists, it does so as a specific executive initiative, cut off from the rest of the state structure and lacking coordination with the legislative and judicial branches. Thus, reparations have been limited to certain gestures towards victims, who find it difficult to link their right to reparation with their rights to know, justice and measures to promote non-recurrence. This contradicts the commitments made by the Guatemalan state, as well as the expectations of the victims, who tend to see reparation as something more comprehensive.

CONCLUDING REMARKS

In the field of reparation, the Guatemalan state took a positive step in creating the PNR and a National Day for the Dignity of the Victims of the Internal Armed Conflict (25 February). Nonetheless, the reparations programme lacks a firm legal basis to allow it to implement comprehensive reparation measures and ensure their stability. It is important to note that the right to reparation should extend to all damage and harm experienced by the victims. As established in international human rights law, it should include restitution measures, compensation, rehabilitation and satisfaction.

To implement reparation measures efficiently, the PNR and COPREDEH should coordinate with other state institutions, such as the ministries of health, education and culture and the criminal justice system. It is imperative that state institutions understand the importance of their role in reparation and demonstrate willingness to cooperate in the provision of reparation measures for the victims of the internal armed conflict. In this regard, the President is responsible for promoting the process and encouraging coordinated inter-institutional work.

The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005) declares that states should promote measures so that victims do not again suffer violations of their rights. “States must undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights and restore or establish public trust in government institutions.” (Principle 35).

Impunity Watch focused its research on three types of measures to promote non-recurrence: 1) the disbandment of armed groups implicated in serious crimes under international law and their reintegration into civilian life; 2) administrative measures to lustrate state institutions and remove from office those alleged to have committed serious crimes during the internal armed conflict; and 3) vetting of persons who aspire to public office to prevent those suspected of committing crimes and violations during the internal armed conflict from occupying such positions.

Impunity Watch also reviewed another series of specific measures to promote non-recurrence, including the ratification of the Rome Statute to recognise the jurisdiction of the ICC over Guatemala, the enactment of laws to prohibit or criminalise any form of discrimination, reforms in military doctrine and the effective control of firearms.

Impunity Watch considers these to be important preventive and symbolic measures for restoring citizens' trust in state institutions, promoting respect for human rights and facilitating judicial investigations into the alleged actions of officials implicated in past violations. At the end of this chapter, the obstacles to guarantees of non-recurrence are analysed.

1. DISBANDMENT OF ARMED GROUPS

Disbandment of guerrilla groups

The disbandment and reintegration of guerrilla groups took place according to a process established by the Peace Accords. In 1997, the Special Reintegration Commission was formed to coordinate the reintegration programme and decide on the allocation of funds to its subgroups and sub-programmes; the Guillermo Toriello Foundation was created to ensure the participation of its beneficiaries in the process. Since then, a large part of the sub-programmes and projects has been implemented, as foreseen in the Agreement on the Basis for the Legal Integration of the URNG. The URNG became a political party in 1998 and some former guerrilla commanders have since run for the country's Presidency, while others have served as congressional deputies. Since the signing of the Peace Accords, there have been no attempts by demobilised members of the URNG to reorganise armed groups with political objectives.

The dissolution of the Civil Defence Patrols

In 1996, Congress repealed the legality of the Voluntary Committees for Civilian Defence, known as Civil Defence Patrols or PAC. The army was responsible for the PAC disbandment process. 2,643 committees with 270,906 members were demobilised and 14,000 firearms were collected. MINUGUA observed the process. Its reports state that the army collected only war-calibre firearms, while many of the civilian-use firearms which the patrollers used during the internal armed conflict were not returned. There are indications that some of these firearms have been used to commit crimes to this day.

In 2003, as a result of pressure from organised groups of former civil defence patrollers demanding state compensation for services rendered during the internal armed conflict, the government and Congress, then controlled by the FRG party, agreed to pay individual financial compensation to the former members of the PAC. This announcement was perceived as a political manoeuvre by the governing party to appeal to the potentially important electoral base

formed by the patrollers. During the government of President Portillo, the amount to be given to each patroller and its payment in three instalments were determined. The government provided the first payment a few months before calling a general election. Following the first payment and after several appeals by different groups, the Constitutional Court declared this measure inadmissible.

Since 2003, the possibility of obtaining compensation has encouraged the reorganisation of former patrollers in many regions and repeatedly caused political tension in the country as a whole. In 2004, Congress approved the payment of compensation to former civil patrollers from funds allocated to the peace and justice agenda. The Supreme Court declared this decision unconstitutional. Faced with legal turmoil and strong opposition from a large section of the population, the government of President Berger created an alternative programme to justify the compensation given to former patrollers -- “Woods and Water for Harmony” -- in which 30,000 hectares would be reforested throughout the country. The programme expected more than 500,000 former patrollers to plant and protect 30 million trees and receive individual compensation of 5,200 quetzals (approximately US\$700) in three instalments. In this way, the government would not be compensating former patrollers for “services rendered during the internal armed conflict” but rather for a current service.

To this day, taking into account the different payments made by the Portillo and Berger governments, the state has spent more than 1,500 million quetzals (approximately US\$200 million) to compensate these paramilitary forces. This amount is five times greater than that spent by the state to provide reparations to victims of human rights abuses.

The combat of illegal groups and clandestine security apparatus

The Peace Accords acknowledged the existence of illegal groups and clandestine security apparatus and the government’s willingness to combat these groups. Different human rights reports have found that these groups have ties to drug trafficking, kidnapping, murders with “social cleansing” characteristics, smuggling, large-scale robbery and, in particular, attacks and threats against human rights defenders, justice operators, witnesses, journalists, trade unionists and other social groups. Even though their actions are autonomous and not part of any state policy, as was the case with the human rights violations committed during the internal armed conflict, information publicly available points to links between these groups and government authorities and members of the police and the judicial system which facilitate their illegal behaviour and ensure their impunity.

In 2007, the government took an important step to fight these groups with the creation of the International Commission against Impunity in Guatemala; CICIG. This UN-supported commission works with the state to dismantle these groups and promote the investigation, criminal prosecution and punishment of the crimes of their members. It also provides policy recommendations to the state to eradicate illegal groups and prevent their reappearence, including the necessary judicial and institutional reforms to achieve that objective. The commission has been given an initial two-year period to fulfil its mandate, with the possibility of extension if necessary.

The CICIG mandate does not specifically include the investigation of serious crimes from the internal armed conflict, but victims and human rights organisations hope that its investigations encompass the former military and government officials implicated in those violations who are currently suspected of forming part of the country’s criminal network.

The restructuring of the army

The government has complied with the commitment to reduce army ranks, exceeding the 33% cut proposed in the Peace Accords. However, it has not yet complied with the commitment to restrict the army’s role to the protection of the country’s sovereignty and borders.

The reduction of the army occurred in two periods. The first cuts were made between 1997 and 1998, when the 46,900 members active in the last phase of the internal armed conflict were reduced to 31,423. Although the Mobile Military Police (PMA) was dissolved and troop numbers reduced, high-ranking officials were not affected. On the initiative of the Berger government, the second reduction took place between 2004 and 2006, cutting the armed forces down to 15,500 troops, approximately one third of those in active service when the internal armed conflict ended. The voluntary retirement of high-ranking officials in exchange for very generous retirement benefits, which represented a high cost for the Guatemalan state, was part of the second reduction.

A number of former army members were easily incorporated into other state institutions, such as the police and the penitential system, or created or joined private security companies. The latter have proliferated since the signing

of the Peace Accords, with many acting illegally and without state control. Furthermore, due to the violence and insecurity which has afflicted the country since the end of the internal armed conflict, each of the four governments since the signing of the peace agreement has used the army for public security actions instead of strengthening the capacity of the police. These governments have made very little effort to redefine the army's role to one limited to protecting Guatemala's sovereignty and national territory.

President Colom recently stated his intention to increase the number of army troops tasked to fight the drug trafficking and organised crime which plagues Guatemala. This plan is worrisome as the army is the institution principally responsible for the serious crimes committed against the civilian population during the internal armed conflict and has never undertaken any lustration of the individuals implicated in them.

The restructuring of the police

In 1997, Guatemala fulfilled the commitment made in the Peace Accords to create a National Civilian Police force. However, members of previous police bodies identified as having participated in human rights violations during the internal armed conflict—the National Police and the Interior Guard—were incorporated into the new institution. Time has shown that this was an erroneous decision; many of the former members of the earlier police bodies are suspected of having resumed their engagement in acts of corruption and human rights violations.

2. LUSTRATION OF STATE INSTITUTIONS

No institutional lustration process or administrative measures have been taken that include the removal of public officials from their posts because of their suspected participation in serious crimes or human rights violations during the internal armed conflict. The Peace Accords did not contemplate such measures and no laws or specific regulations on this issue exist.

In 1999, the CEH, Guatemala's "truth commission", recommended that the Guatemalan government create a civilian commission to examine the conduct of army officials and those of other state security bodies active during the internal armed conflict, within the framework of international human rights and humanitarian law. Depending on the magnitude and seriousness of their disregard for human rights, the government should initiate administrative measures, including the removal of individuals from office. This commission, however, was never formed. The CEH also recommended the lustration of the police through a process open to the scrutiny of the Human Rights Ombudsman and the public. Not only was the commission never formed, but there has been no lustration whatsoever of officials involved in serious crimes during the internal armed conflict.

In Guatemala, it is well known that many former members of the military, government officials and some guerrilla commanders implicated in serious crimes and human rights violations have occupied and continue to occupy public positions of varying seniority. There are even some officials involved in ongoing criminal proceedings who continue to hold public office. One of the best known cases is that of Ríos Montt: two criminal proceedings for genocide are ongoing against him – one in Guatemala and one in Spain -- yet he continues to serve his second term (2008-2011) as a congressional deputy. Ríos Montt benefits from the relative criminal immunity conferred by the Ley de antejuicio, which can permit dignitaries and high-level officials to be exempted from investigation, detention or trial while in public office.

Different laws and regulations, depending on the public office held, establish the criteria and procedures for the removal of public officials. In general, this is regulated by laws relating to the civil service, while certain decentralised and autonomous institutions, such as municipal authorities, Congress and the Public Prosecutor's Office, have their own civil service rules. However, there is no civil service law that provides for background checks on officials in relation to their suspected participation in crimes and human rights abuses during the internal armed conflict.

3. BACKGROUND CHECKS ON OCCUPANTS OF PUBLIC OFFICE

In Guatemala, the criteria and procedures for selecting public officials are established in different laws and regulations. These depend on the particular position or public office. For example, the eligibility criteria for elected office (President, Vice-President, congressional deputy and mayor) are included in the Electoral and Political Party Law.

This law establishes the following impediments: current service as a high-ranking member of the military, loss of Guatemalan nationality and possession of a criminal conviction. Suspected participation in crimes and human rights violations during the internal armed conflict does not constitute an impediment. The Supreme Electoral Court is responsible for scrutinising candidates to ensure their compliance with the legal requirements.

The legal framework establishes different requirements and procedures for discretionary appointments (minister, deputy minister, secretary, head of police, ambassador and other official positions), appointments proposed by a nomination committee (Attorney General, judges of the Supreme Court of Justice, Appeals Courts and Supreme Electoral Court and Human Rights Ombudsman), institutionally appointed positions (Constitutional Court judges) and posts based on merit-based exams or previous studies (judges, prosecutors and police officers). The legal framework also names the body or commission responsible for supervising each of these processes. However, none of the revised laws and regulations have included the candidate's suspected participation in crimes or human rights violations during the internal armed conflict as an impediment to holding public office.

In state institutions, review of the applications and backgrounds of candidates aspiring to public office is generally the responsibility of the human resources department or an administrative staff unit. Usually, the selection process is aimed at ensuring candidates meet the requirements of the position and does not involve investigating their background or the possibility of their participation in human rights violations or illegal activities. The recent case of the President of Congress's private secretary is one well-known example of state deficiency in reviewing public officials' backgrounds and selecting appropriate staff: in February 2008 this official, along with other congressional employees, transferred 82 million quetzals (approximately US\$11 million) of congressional funds to a financial institution without the authorisation of Congress's Board of Directors (the bureau assisting the President of Congress in its management). The Public Prosecutor's Office is now attempting to locate him. A background check showed that he had been sued several times before for tax fraud, fraud and use of false documents and been held in pre-trial detention in Guatemala City. Following this scandal, the President of Congress, Eduardo Meyer, who temporarily resigned, confirmed that he did not know anything about his private secretary's background; he had thought he had "a lot of experience".

4. OTHER GUARANTEES OF NON-RECURRENCE

When it comes to other measures to promote non-recurrence, the inclusion of the crime of discrimination in the criminal code and approval of several international treaties against discrimination should be mentioned. In relation to the country's educational curriculum, topics relating to the culture of peace, human rights and the internal armed conflict have been included. However, as will be further discussed, these efforts have been limited and more decisive state action is required.

Regarding the control of firearms, several draft laws have been presented in Congress, proposing to modify the Law on Firearms and Munitions so as to restrict their use and improve their control by the state. By September 2008, however, no reform law had been passed. Nor had Congress ratified the Rome Statute, recognising the jurisdiction of the ICC, despite Guatemala having signed it in 1999. As discussed below, the limited nature of state action on these issues represents a serious obstacle to measures to promote non-recurrence.

OBSTACLES TO GUARANTEES OF NON-RECURRENCE

Lack of lustration and background checks

The state has not made efforts to build victims' trust in the security forces, particularly in the army and the police, nor to investigate the actions of members of these institutions during the internal armed conflict and remove from office those who participated in human rights violations. Since the army is the institution principally responsible for the crimes committed against the civilian population, it is particularly alarming that people who participated in these crimes continue to work within it. Furthermore, there is a risk that these members could reproduce the counterinsurgent ideology within the institution and commit new human rights violations.

With regard to the police, it is significant that former members of now-defunct police bodies have been easily incorporated into the current force after just three-months of training. This has contributed to the discrediting of the police as an institution. After more than ten years of existence, the National Civilian Police continues to be

a weak institution. The lack of a clear citizen security policy, the constant change of authorities in the Ministry of Interior and National Civilian Police Directorate, the insufficient resources assigned by the government to the institution and limited police skill and education, particularly in the intelligence and criminal investigation units, are among the most salient factors. The police force has also been affected by infiltration by organised crime groups and the involvement of many of its members in corruption, illegal activities and human rights violations, deepening the population's distrust.

The state has not adopted measures to review the background of those who aspire to public office, nor to impede individuals identified as having participated in human rights violations from holding popularly-elected positions (President, Vice-President, mayor and congressional deputy) or public office. This has meant that people responsible for human rights violations have been able to maintain positions of power within the state, or exercise parallel power to obstruct justice and keep their actions unpunished. Selection and hiring processes for public officials are inadequate, with appointments often based on candidates' contacts instead of their skill and professional experience. Constant changes in leadership and staff weaken state institutions and discourage interest in public sector careers, seriously weakening Guatemala's public administration.

The persistence of illegal power groups

The persistence of illegal groups and clandestine security apparatus is currently one of the most serious challenges to the democratic rule of law. These groups, a legacy of the internal armed conflict, have proliferated in recent years and maintain influence over public institutions. The state has acknowledged its inability to combat these groups and took a positive step in requesting UN support in this struggle. The CICIG undoubtedly represents the first step in a very large and lengthy effort, which the state must maintain, to combat these groups and lustrate institutions. In order to advance towards this goal, it is essential that the three branches of the state provide their maximum support and cooperate with the CICIG.

The reorganisation of the former Civil Defence Patrols

The financial compensation provided to former civil patrollers encouraged their reorganisation in many regions in the country, reaffirmed identities that divide the population and generated political tension and fear in the rural communities that suffered human rights violations committed by them during the internal armed conflict. Payment of the former PAC has created unease among victims', human rights and other organisations. It has been perceived as though the state has more interest in compensating paramilitary bodies accused of human rights violations than their more vulnerable victims. This has also contributed to the victims' lack of trust in the state and maintained fear of power structures generated by community-level repression.

The limited control of firearms

As of September 2008, Guatemala had yet to enact a new Arms and Munitions Law. The Peace Accords established that the existing 1989 law should be amended to stem the proliferation of firearms to individuals and give the state more control over their acquisition. The accords suggested making firearm possession more restrictive, improving the registration of firearms in circulation, identifying their owners and transferring the firearms registry from the army to the Ministry of Interior. Since the signing of the Peace Accords, however, five different initiatives to reform the law have been presented and not one has been approved. Effective firearms and munitions control continues to be a challenge for the Guatemalan state. It is estimated that more than a 1.5 million firearms are in circulation, the large majority illegally.

Limited teaching in schools about the tragedy of the internal armed conflict

Despite the Ministry of Education's framework for revising the curriculum to include the concepts of a culture of peace and human rights, teaching of the causes of the armed conflict, development and consequences is not sufficiently integrated within the course requirements of all Guatemala's schools. This represents a serious weakness in the measures to promote non-recurrence, since it denies future generations the opportunity to learn about the tragedy of the internal armed conflict.

The Ministry of Education, universities and teachers bear responsibility for teaching future generations about the country's history and facilitating reflection on the tragedy and causes of the internal armed conflict. This education could stimulate critical thinking and consciousness among children and young people in relation to the seriousness of inequality, racism, violence and impunity. Furthermore, it would contribute to improving solidarity within society.

Insufficient steps taken to combat racism and inequality

Formally, the state has adopted legal measures to combat racism and discrimination. The crime of discrimination was legally defined and included in the criminal code, the Law on Promoting Education to Combat Discrimination passed and the International Conventions on the Elimination of All Forms of Racial Discrimination and of All Forms of Discrimination against Women ratified. These steps, however, are insufficient to challenge the racism and discrimination entrenched in the country's dominant culture.

In the political sphere, the state has not promoted the more equal participation of indigenous people and women in popularly-elected offices at the national level, or as high-level state officials. The current government's cabinet, for example, has only one indigenous minister and one female minister. Of the 158 deputies in Congress, no more than 20 are indigenous people. In the economic and social spheres, the state has done very little to reduce poverty and facilitate access to education, health, land, justice and other state services. Despite clear evidence that the lack of access to these services contributed to the exclusion and vulnerability of the majority of the population -- the structural causes of the internal armed conflict -- this situation continues. Racism and discrimination persist as daily features of Guatemalan social relations. The highest concentrations of poverty, unemployment and low education are found among indigenous people and women.

The non-ratification of the Rome Statute

Congress has yet to ratify the Rome Statute. The approval process has been delayed there since 2002, despite the Constitutional Court having ruled in favour of ratification in a March 2002 advisory opinion. The ICC provides the possibility of trying individuals accused of crimes against humanity outside Guatemalan jurisdiction. Although the principle of retroactivity prevents the ICC from judging past crimes, the acceptance of its jurisdiction is an important dissuasive measure when it comes to the recurrence of serious human violations and impunity for them. The ratification of the ICC treaty would show Guatemalan society and the international community that the state was committed to ensuring that the terrible events of the past do not happen again or remain unpunished.

CONCLUDING REMARKS

As mentioned in the introduction to this report, with the promulgation of a new constitution in 1985, the Guatemalan state started an important process of reform and modernisation of the state. A series of commitments in the Peace Accords also contributed to the development of these reforms. However, formal reform of the state has not resulted in any substantial transformation of Guatemala's unequal economic, political and social structure. The state remains exclusionary and the large majority of the population, particularly the indigenous communities affected by the violence of the internal armed conflict, continues to be marginalised and live in conditions of extreme poverty. The country's economic elite, maintaining influence over state institutions, continually refuses to accept taxation reform that would increase its contribution and provide the state with the resources to combat inequality and social exclusion.

It is of serious concern that, following the end of the internal armed conflict, the state has yet to conduct institutional lustration or adopt administrative measures to remove from office public officials suspected of having participated in serious crimes or human rights violations during the internal armed conflict. It is equally alarming that former military officials, government officials and guerrilla commanders implicated in these also run for popularly-elected positions, such as President, Vice-President, congressional deputy and mayor. This situation promotes the population's further mistrust in the judicial system and other state institutions.

The state has not established criteria or explicit procedures for investigating the backgrounds of candidates for public office, nor does it impede any person identified as having participated in serious crimes and human rights violations during the internal armed conflict from holding such positions.

The lack of a stable and comprehensive approach in the national curriculum to the internal armed conflict's causes, development and consequences limits knowledge within the state and the general population of what occurred. The guarantee that these terrible acts do not recur in the future is hindered by a collective memory of the internal armed conflict that is insufficiently internalised, particularly among the 60% of the population that is composed of children and young people.

5 CONCLUSIONS

Significant efforts have been made in Guatemala to promote the rights of the victims of the internal armed conflict to truth, justice and reparation, as well as measures to promote non-recurrence. The report of the Commission for Historical Clarification, exhumations conducted by forensic civil society organisations and the several initiatives to create victims' registers and facilitate access to public information and archives, stand out as the principle advances. The right to justice has progressed with the ratification of international human rights instruments, the legal definition of the crimes of forced disappearance, torture and extrajudicial execution in the criminal code and in the reform and modernisation of the judicial system. The right to reparation has moved forward with the creation of the National Reparations Programme and the establishment of a National Day for the Dignity of the Victims of the Internal Armed Conflict. Regarding measures to promote non-recurrence, the guerrilla groups have been demobilised, the Civilian Defence Patrols dissolved, the number of army members reduced, a new police force created and the International Commission Against Impunity in Guatemala set up to combat illegal groups and clandestine security apparatus, many of which have their origin in counterinsurgent structures.

Nonetheless, it is of serious concern that, despite the crimes against humanity committed during the internal armed conflict, well documented in various reports and confirmed by forensic evidence, the Guatemalan state has yet to fully acknowledge the magnitude and gravity of the tragedy that has affected mainly the indigenous Mayan people. The state has yet to fully adopt appropriate measures so that these crimes can be judged, compensated and prevented from recurring.

It is also unfortunate that the few transitional justice measures to date have been implemented partially and in a disjointed manner and without a comprehensive state vision involving the four components of transitional justice, weakening their impact. For example, the response to the recovery of the remains of men, women and children in exhumations of massacre sites has been mainly limited to returning them to their families. The Public Prosecutor's Office does not start proprio motu investigations to clarify the facts and prosecute those responsible for the crimes involved. Families of the victims receive no compensation. The state does not use these events to inform and educate the community and general population about, nor encourage their reflection on, the tragedy of the internal armed conflict so as to help preserve the historical memory of it; nor does it adopt preventive measures for its non-recurrence.

State bodies and institutions generally act separately and do not coordinate or complement their efforts. Often, when the executive promotes an initiative such as the PNR, Congress does not provide the legal or economic support necessary to ensure its stability and continuity. The Public Prosecutor's Office fails to take responsibility for starting proprio motu investigations of cases presented to it by the PNR. Moreover, some prosecutors do not even understand why the PNR sends them their case files and provides reparations to victims before the criminal justice system has investigated the case in question and issued a sentence.

The state lacks effective mechanisms to oversee the implementation of its programmes and evaluate the performance of public officials. This deficiency fosters practices and attitudes among public officials that are contrary to the idea of public service and, at times, border on negligence. The state does not implement effective measures to oversee and control the functioning of its institutions, nor to sanction failure to fulfil responsibilities or acts of corruption.

In the six areas investigated by Impunity Watch for this study, it found a series of obstacles that contribute to impunity and represent enormous challenges for Guatemala's state and society. Among these are the following: 1) limited state reform and the persist influence of elite groups; 2) misuse of and non-compliance with, the law by public officials; 3) limited state resources, capacity and control mechanisms; 4) the limited independence and willingness of the prosecution and judicial systems; 5) the persistence of racism and inequality in the Guatemalan state

and society; and 6) the state's lack of political will to combat impunity for the serious crimes of the internal armed conflict and promote a transformation within the state.

LIMITED STATE REFORM AND THE PERSISTENCE OF ELITE GROUPS

The institutional reforms needed to build the democratic rule of law in Guatemala have not been made. Although the 1985 Constitution and the Peace Accords established a series of changes necessary to reform and modernise the state and introduced some elements of formal democracy, these developments were not sufficient to alter the exclusionary nature of the Guatemalan state, nor to affect the interests of the country's economic, political and military elites. The fact that Guatemala continues to be one of the most unequal countries in Latin America and that no high-ranking military official has been judged in a civilian court or dismissed from the army for serious crimes committed during the internal armed conflict, are signs of this.

The 1985 Constitution and the Peace Accords did not even establish administrative measures for ensuring that officials identified as having participated in human rights violations would be dismissed or prohibited from holding public office. This has permitted former high-level military and other officials allegedly responsible for human rights violations to occupy public office to this day and take advantage of their position to influence state institutions, thus maintaining impunity for crimes committed during the internal armed conflict.

MISUSE OF THE LAW AND NON-COMPLIANCE

Although Guatemala's legal framework for dealing with human rights and crime is sufficient for investigating and judging persons responsible for crimes of the internal armed conflict, it is often not fulfilled, or is interpreted in a discretionary way by prosecutors, judicial authorities and Constitutional Court judges, so as to protect the interests of those responsible for human rights violations. Criminal trials are delayed for years by the number of amparo and other appeals made by defence lawyers and the extremely slow manner in which they are dealt with by the courts in question.

At international level, Guatemala consistently fails to fulfil its commitments, revealing the lack of seriousness with which they are assumed. The reports of the UN's special rapporteurs and the IACHR point out the state's repeated failure to comply and to adopt corrective measures. Meanwhile, the perception that the law is a formality which is not respected, or only serves to protect the interests of the rich and powerful, is increasingly widespread.

The Public Prosecutor's Office's failure to initiate proprio motu investigations based on concrete evidence gathered in exhumations represents a serious case of non-compliance with the law. The Ministry of Defence does not comply with its duty to provide information related to the army's activities during the internal armed conflict upon the request of the Public Prosecutor's Office or judicial authorities. However, no administrative or criminal sanctions for non-compliance with the law have been imposed on any official in any of these cases.

LIMITED STATE RESOURCES, CAPACITY AND CONTROL MECHANISMS

Limited economic resources constitute one of the principle weaknesses of the Guatemalan state. Its budget is reduced as a result of its tax base being less than 12% of GDP, one of the lowest in Latin America and its inability to control tax evasion. This affects the budget allocated to different institutions, such as those within the criminal justice system, which in 2006 received only US\$6.90 per capita, the lowest in Central America according to the 2008 State of the Region report. Although successive governments have tried to promote a tax reform that would allow the state to increase its income, the country's economic and business elites have systematically opposed any significant increase. This situation leads to reduced social spending and limits the budgets allocated to state institutions responsible for security and justice.

State institutions have not been capable of taking advantage of the country's qualified personnel to offer responsible and efficient public administration. In many cases, professional capacity and experience are scorned, contributing to the constant turnover in leadership and staff. With each change of government, new officials are nominated and new staff hired on the basis of their political party sympathies or affiliation with the government, instead of criteria of professional excellence or reviews of their human rights background.

In the Public Prosecutor's Office, prosecutors have secure positions but are rotated without clear reason, which impedes them from accumulating experience in highly specialised fields, such as the investigation of human rights violations during the internal armed conflict. The National Reparations Programme, PNR, having had four different executive directors during its four years of existence and 60% of its staff replaced, further exemplifies this problem.

Bureaucratic processes that encourage negligence among officials are still in place in state institutions. In the Public Prosecutor's Office and the police, for example, more importance is given to processing reports and case files than to investigating crimes or treating victims with respect. There are rarely any consequences for non-compliance or inefficiency, or incentives for achieving results, because these institutions work without specific plans, objectives and goals, or clearly stated results and maintain minimal or very weak monitoring, evaluation and oversight systems. Such working conditions and highly politicised contexts encourage employees to focus more on maintaining good relationships with their superiors than on fulfilling their assigned functions and serving the public or victims of crimes. Another example from the Public Prosecutor's Office highlights this situation: there have been no consequences for the clear lack of investigation of the cases assigned to the Unit for Historical Clarification.

LIMITED INDEPENDENCE AND WILLINGNESS OF THE PROSECUTION AND JUDICIAL SYSTEMS

The lack of impartiality of some public officials when it comes to interpreting and applying the law is partially due to the political system's involvement, particularly in their nomination to the Public Prosecutor's Office and the judiciary. The highest-level officials of these two institutions have, on occasion, been selected on the basis of their political affinity or shared interests with those who nominated them. The law allows for their selection to be made irrespective of their professional career to date. This compromises their decision-making when it comes to resolving cases which affect the interests of the individuals or political parties responsible for their nomination.

Harassment, threats and attacks against justice operators also cause some to neglect their obligation to investigate and prosecute those responsible for crimes of the internal armed conflict. Furthermore, the Public Prosecutor's Office and the police do not offer effective protection to justice operators. This also has a negative impact on the population's willingness to use the judicial system.

THE PERSISTENCE OF RACISM AND INEQUALITY IN THE GUATEMALAN STATE AND SOCIETY

Since the end of the internal armed conflict, some measures have been adopted to combat racism and discrimination, such as the legal definition of discrimination in the criminal code and the ratification of international conventions on indigenous people's rights. These measures are, however, insufficient to eradicate racism. Racism, a colonial legacy, was one of the causes of the internal armed conflict, as documented in the CEH report. The state must show the Mayan people, against whom genocide was committed, that it is taking clear action as part of its historical responsibility and ethical and political duty.

Most Mayan victims live in majority-indigenous communities and regions, where the discriminatory and exclusionary nature of the Guatemalan state is accentuated. Many studies have shown the problems that indigenous victims face when it comes to obtaining the documents and following the procedures needed to receive reparations, as well as accessing justice, security, health and education services and public administration in general, in their own language. Furthermore, it is the victims who are responsible for providing the documentation and fulfilling the bureaucratic procedures required to determine reparations. The majority of people interviewed by Impunity Watch considered gender, ethnic identity, socioeconomic position and geographical origin to be factors that negatively determine access to justice and state institutions in general.

THE STATE'S LACK OF POLITICAL WILL TO COMBAT IMPUNITY

Of the three branches of government, the executive has demonstrated the most political will to promote initiatives regarding truth and reparation for crimes of the internal armed conflict. However, the impact of these efforts is frequently lost due to a lack of continuity in pursuing them. For example, the executive supported the establishment of the Guatemalan 'truth commission', CEH, but did not acknowledge the content of its report or duly support

the implementation of its recommendations. The executive also created the National Reparations Plan, PNR, but has not done enough political work in Congress to guarantee legal support for it, nor to ensure its independence and sustainability. Executive initiatives have often been taken in response to sustained pressure from victims' and civil society organisations and the political influence of international cooperation.

Congress has demonstrated less determination to support truth, justice and reparation for crimes of the internal armed conflict. It has approved almost no relevant legislation and given practically no support to executive initiatives in this field. The lack of political will in Congress is partially due to it being composed of a large number of small political parties with little commitment to the peace process. Some political parties are even composed of former military and other officials suspected of having participated in human rights violations during the internal armed conflict. Victims' and human rights organisations have little chance of influencing congressional decisions due to their limited communication with congress persons, who anyway have little interest in these topics.

The judiciary and Public Prosecutor's Office demonstrate little willingness to clarify and judge serious crimes from the time of the internal armed conflict. Cases sit for years in the Public Prosecutor's Office without any investigative progress. This office does not investigate high-level public officials or intellectual authors of serious crimes of the internal armed conflict and often deliberately understates charges. The negligence of prosecutors is rarely sanctioned. The judiciary takes months to rule on the multiple appeals placed by defence lawyers. The Constitutional Court, as well as delaying criminal trials, has issued judgments that clearly contradict international human rights law.

Furthermore, state bodies lack efficient mechanisms for overseeing the implementation of their programmes and evaluating the performance of public officials. In this regard, Congress does not fulfil its responsibility to scrutinise public activities and guarantee the accountability of officials.

THE ROLE OF VICTIMS' AND CIVIL SOCIETY ORGANISATIONS

Victims and human rights organisations in Guatemala have contributed significantly to the promotion of truth, justice and reparation. They have consistently denounced crimes committed during the internal armed conflict, supported exhumations, presented charges, assisted in trials, monitored state institutions and formulated proposals for improvements. International cooperation agencies have accompanied and frequently financed them. In many cases, victims' and human rights organisations have suffered harassment and persecution as a result of their work. However, civil society organisations show limitations in their ability to work together. Their alliances are fragile and their political and institutional differences often cause division. Their advocacy work in relation to Congress, political parties and society in general is limited. Coordination between organisations in Guatemala City and those in the country's interior, particularly Mayan organisations, continues to be a challenge.

THE ROLE OF INTERNATIONAL COOPERATION

International cooperation has provided significant support to the Guatemalan peace process via technical assistance programmes, economic aid and political assistance. Here, it is important to highlight the valuable work of MINUGUA, which, between 1994 and 2004, advanced many of the commitments made in the Peace Accords, including the rights of victims to truth, justice and reparation. It is also important to acknowledge international support given to victims', women's, indigenous rights, human rights and technical-forensic civil society organisations.

International cooperation agencies, however, have not developed a deliberate and coordinated strategy that takes into account the magnitude of the above – mentioned obstacles in Guatemala. Following the signing of the Peace Accords, they did not define substantial long-term objectives to face and combat the obstacles and promote more decisive democratic reforms. Each cooperation agency has designed and financed its own technical assistance programmes without coordinating sufficiently with other relevant actors. While these programmes have made a valuable contribution, they have had very little influence on institutional policies and substantial state reform. Their impact has also been negatively affected by the lack of political support and assistance regarding many of these efforts, especially in the fields of judicial and institutional reform.

6 RECOMMENDATIONS

With the aim of contributing to the struggle against impunity, Impunity Watch presents the following recommendations to the Guatemalan state and society and international cooperation agencies. The recommendations are based on the obstacles identified in this study and inspired by international humanitarian law and human rights instruments, the UN's Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, the Commission for Historical Clarification report, the Peace Accords and a series of human rights reports from international and national institutions committed to the peace process and the combat against impunity in Guatemala.

To formulate these recommendations, Impunity Watch conducted a series of group discussions in September and October 2008 with societal actors involved in fields related to transitional justice. These group discussions were used to present the study's principle findings and gather participants' recommendations on the issues identified in relation to obstacles to truth, justice, reparation and guarantees of non-recurrence. There were six groups of participants: victims of the internal armed conflict, members of human rights and civil society organisations, operators and officials involved in the administration of justice, congressional deputies and officials, the executive and other state institutions and representatives of international cooperation agencies. The discussions with victims took place in Alta Verapaz and El Quiché and with the remaining groups in Guatemala City. More than 60 people participated in these meetings. (See Annex 4, Participants in Group Discussions to Formulate Impunity Watch Recommendations).

In an attempt to prioritise and organise the proposals made, Impunity Watch presents three types of recommendations: 1) measures to strengthen transitional justice efforts already begun by the Guatemalan state and society; 2) measures to promote justice and lustration; and 3) steps to promote a comprehensive approach in state policies related to truth, justice, reparation and measures to promote non-recurrence.

A. STRENGTHEN TRANSITIONAL JUSTICE EFFORTS ALREADY BEGUN

Guatemala must do its utmost to build on and strengthen efforts already begun in relation to truth, justice and reparation for crimes from the internal armed conflict, as well guarantees of their non-recurrence. To this end, Impunity Watch recommends:

To the President of the Republic

1. On the occasion of the tenth anniversary of the presentation of the CEH report (25 February 2009), the President, on behalf of the Guatemalan state, should acknowledge before all of Guatemalan society the content of that report and accept the state's responsibility for the gross human rights violations committed by the army and other state security forces during the internal armed conflict.
2. Issue a government decree for the Ministry of Defence to order all institutions within the armed forces to furnish the Peace Secretariat with their archives from the time of the internal armed conflict.

To the Ministry of Education

3. Issue a special decree for the content of the CEH report to be adequately incorporated within the national curriculum and included in all textbooks in Spanish and Mayan languages, so that children and young people can learn about and reflect on the internal armed conflict's tragedy, causes and consequences.

To the Ministry of Defence

4. Facilitate access to the army's archives so that human rights violations from the internal armed conflict can be clarified and comply with requests from the judicial system in the investigation of cases from the internal armed conflict.

To the National Reparations Programme

5. Provide consistent strategic support for the exhumations conducted by technical-forensic civil society organisations, offer appropriate financing to these organisations and seek provision of the necessary security for the staff of these organisations and the victims who benefit from their work.
6. Build the National Victims Register, plan for the human and financial resources needed for its implementation and regulate its operation so as to guarantee its preservation and access to it for the public.
7. Improve the system for managing requests for reparations in order to make the process easier for victims to follow and ensure that the public is informed that processes within the PNR are free for victims. That information campaign should be established principally in the regions most affected by the internal armed conflict.
8. Promote the specialisation of the programme's staff and train it to deal with cases of sexual violence; establish appropriate protocols for such cases and deal with them in a comprehensive manner.
9. Manage the normative changes needed for the programme to better coordinate with other state institutions, such as the ministries of health, education, agriculture, culture and sports, the Secretariat of Agricultural Affairs and the Public Prosecutor's Office, among others. Maintain communication and coordinate actions with victims', women's and human rights organisations to help further the comprehensiveness of reparations.

To the Congress of the Republic

10. Issue a legislative decree to acknowledge the content of the CEH report and acknowledge state responsibility for human rights violations committed against the civilian population, particularly the Mayan people.
11. Approve a law on archives to regulate the registration, classification, protection, consultation and dissemination of archives containing information within the public domain, particularly those of the army.
12. Approve a law to strengthen the PNR's legal and institutional status.
13. Approve the creation of a National Commission for the Search for Disappeared Persons.
14. Ratify the Rome Statute of the ICC and the UN Convention against Forced Disappearance.

To Guatemalan Civil Society

15. To universities: incorporate the content of the CEH report into the curricula for each course of study at all the country's universities, as part of the country's recent history. Promote scientific research, debate and formulation of proposals on topics that contribute to historical clarification and the promotion of a culture of peace.
16. To the media: fulfil your role responsibly to objectively inform and educate the population about the events of the internal armed conflict and promote respect for human rights.

B. MEASURES TO PROMOTE JUSTICE AND LUSTRATION

The Impunity Watch study showed that the right to justice and the lustration of state institutions were the areas with the least advances and most obstacles. Based on the obstacles identified in this study, Impunity Watch recommends that state institutions, particularly the Public Prosecutor's Office, police and judiciary, adopt more decisive measures and strategies to fulfil their roles. Furthermore, Congress should guarantee that the criminal justice system and justice operators have the necessary legal framework and sufficient resources to fulfil their functions impartially, swiftly and efficiently. Similarly, the executive should guarantee the conditions needed for justice operators to pursue their work in a secure manner. On this basis, Impunity Watch recommends:

To the President of the Republic

17. Comply with the recommendation of the CEH to create a commission, under your authority and immediate supervision, to examine the conduct of army officials and those from the other state security forces and institutions active during the internal armed conflict, with the task of analysing their observance of the minimum norms established in international human rights and humanitarian law instruments.
18. Adopt the pertinent administrative measures, based on the research of the CEH, to remove from office those officials suspected of having committed human rights violations during the internal armed conflict.

To the Public Prosecutor's Office

19. Create a prosecutor's unit for serious crimes from the internal armed conflict with state-wide authority to investigate and prosecute those crimes according to international law. This unit should consist of an interdisciplinary team of qualified professionals and have sufficient resources to fulfil its mission swiftly and efficiently. Furthermore, public accountability mechanisms should be created to ensure results are achieved. This unit should replace the current Unit for Historical Clarification which, after three years of existence, has demonstrated total inefficiency. The unit for serious crimes from the internal armed conflict should prioritise the investigation of the gravest cases under international law, such as genocide, extrajudicial execution, forced disappearance and rape. The Public Prosecutor's Office should establish appropriate investigation strategies and plans to examine these types of crimes and promote the prosecution of their intellectual and material authors.
20. Comply with its legal obligation to initiate proprio motu investigations of crimes committed during the internal armed conflict, particularly those based on exhumations conducted by forensic civil society organisations.
21. Strengthen the Office for the Protection of Persons Subjected to Trial Proceedings and Individuals Involved in the Administration of Criminal Justice. This office should have sufficient qualified staff and resources to fulfil its functions. It is important that the office establish strategies based on risk analyses to guarantee the security of witnesses and justice operators involved in cases of serious crimes from the internal armed conflict. Furthermore, it should coordinate its work with the Ministry of Interior and the police.
22. Improve the performance evaluation system and internal controls to ensure that prosecutors meet professional excellence criteria. Improve the Public Prosecutor's Office's disciplinary system and strengthen it by dedicating more staff and resources to oversight.

To the National Civilian Police

23. Support investigations led by the Public Prosecutor's Office and comply swiftly and efficiently with warrants for the arrest of those indicted for serious crimes from the internal armed conflict.

To the Judiciary

24. Strengthen the judicial profession and the system for evaluating its members' performance.

25. Implement existing procedural regulations relating to criminal courts in order to simplify trial procedures and in particular speed up the appeals process. With respect to the National Reconciliation Law, facilitate an application process which permits the immediate rejection of inappropriate requests.
26. Cooperate swiftly and efficiently with foreign and international courts dealing with cases of human rights violations committed during the Guatemalan internal armed conflict.

To other state institutions involved in criminal proceedings

27. Have the Constitutional Court introduce mechanisms for dealing efficiently with requests for legal protection (amparo).
28. Have the Human Rights Ombudsman designate more resources and staff to the Unit for Special Investigation in order to facilitate the investigation of cases for which it is responsible and respond appropriately to victims and querellantes.
29. Have the Presidential Commission for Human Rights, COPREDEH, continue its follow-up activities in relation to cases from the internal armed conflict dealt with in the Inter-American Human Rights system and coordinate appropriately with other state institutions, particularly the PNR, in order to ensure rapid, appropriate and complete compliance with Inter-American Court judgments and Inter-American Commission settlements.

To the Congress of the Republic

30. Approve amendments to the Law on the Organisation of the Public Prosecutor's Office in order to reform and strengthen the profession of prosecutor. The amendments should include a clear and efficient system for regulating the professional admission, promotion, transfer and dismissal of prosecutors, as well as the disciplinary system and ongoing evaluation mechanisms for the distinct positions occupied by prosecutors within this institution.
31. Regulate the functioning of the committees which select the Attorney General and Supreme Court of Justice and Appeals Court judges so as to make their procedures more transparent. This regulation should establish precise qualification criteria and their relative value when it comes to candidate evaluation. In the case of career officials, the institution in question should conduct periodic performance evaluations according to clearly defined standards. Election to these posts must be based on criteria related to candidates' careers and professional excellence and not on their affiliations with political or interest groups.
32. Approve reform of the Law on Seeking Legal Protection to simplify procedures relating to the amparo remedy and provide judges with the power to decide immediately to overrule this protection based on Constitutional Court jurisprudence. In addition, this reform should restrict the cases in which the amparo remedy is available so as to maintain its exceptional nature.
33. Approve the necessary reform of the Civil Service Law to permit appropriate background checks on individuals who aspire to public office. Staff selection criteria should establish that those suspected of having participated in human rights violations may not occupy posts in public administration or run for popularly elected office until the judicial system resolves accusations made against them.
34. Approve the creation of a criminal investigations police force as an institution within the Ministry of Interior, separate from the National Civilian Police and under the authority of the Public Prosecutor's Office. This institution should have a defined professional career path, ongoing training and internal and external control mechanisms, as well as appropriate equipment and resources.
35. Approve an Arms and Munitions Law that restricts the use of firearms by private individuals, establishes more strict requirements to carry arms and limits the number of arms and munitions that one person can acquire. The system of arms registration, authorisation and control should be transferred to the Ministry of Interior.
36. Endorse other laws proposed by the CICIG with the aim of promoting justice and institutional reform.

C. PROMOTE A COMPREHENSIVE APPROACH IN STATE POLICIES

Lastly, it is important that the state guarantee the comprehensiveness of measures to promote victims' rights to truth, justice, reparation and ensure guarantees of non-recurrence. This study has shown that transitional justice efforts have so far been made in isolation from one another. These efforts must be articulated if they are to have a real and lasting impact. It is important to take into account the role of state institutions, civil society organisations and international cooperation agencies in developing this process and building the democratic rule of law. With these considerations, Impunity Watch recommends:

To the President of the Republic

37. Establish a comprehensive state policy that guarantees the rights of victims of the internal armed conflict to truth, justice, reparation and measures to guarantee non-recurrence. The President should request that SEPAZ and the National Council for the Peace Accords, CONAP, design, promote and oversee this policy. These institutions should present periodic reports to the President containing recommendations for improving state institutions' performance and prioritising measures to be implemented.

To the Congress of the Republic

38. Allocate the economic resources needed to fulfil a comprehensive transitional justice policy and issue pertinent legislation to guarantee this policy's implementation.

To the Human Rights Ombudsman

39. Verify compliance with the rights of victims to truth, justice, reparation and measures to guarantee non-recurrence and issue periodic reports with recommendations for the state, civil society and international community.

A CALL TO GUATEMALAN CIVIL SOCIETY AND INTERNATIONAL COOPERATION AGENCIES

Impunity Watch acknowledges the efforts of victims and human rights organisations to promote truth, justice and reparation and encourages them to continue with these activities. Nonetheless, it recommends that they attempt to coordinate initiatives and advocacy aimed at building the democratic rule of law, leaving aside potential divisions and overcoming their differences. Likewise, Impunity Watch calls on them to communicate and coordinate with state institutions as required.

Impunity Watch encourages international cooperation agencies and the international community to continue supporting the development of the democratic rule of law in Guatemala and not abandon the combat of impunity for the crimes committed during the internal armed conflict. Impunity Watch also asks them to support civil society organisations in the specialisation and professionalisation of their efforts, monitoring and scrutiny of state institutions, litigation of cases of human rights violations committed during the internal armed conflict and generation of policy proposals regarding victims' rights. Here, the OHCHR's technical assistance in the design, implementation and compliance with transitional justice policy is important.

The financial support and technical aid of international cooperation agencies should be more coordinated so as to monitor programmes effectively and supervise and support projects based on a comprehensive transitional justice policy. Equally, it is important that all the cooperation initiatives and programmes are accompanied by political backing and diplomacy in order to guarantee their comprehensiveness and sustainability.

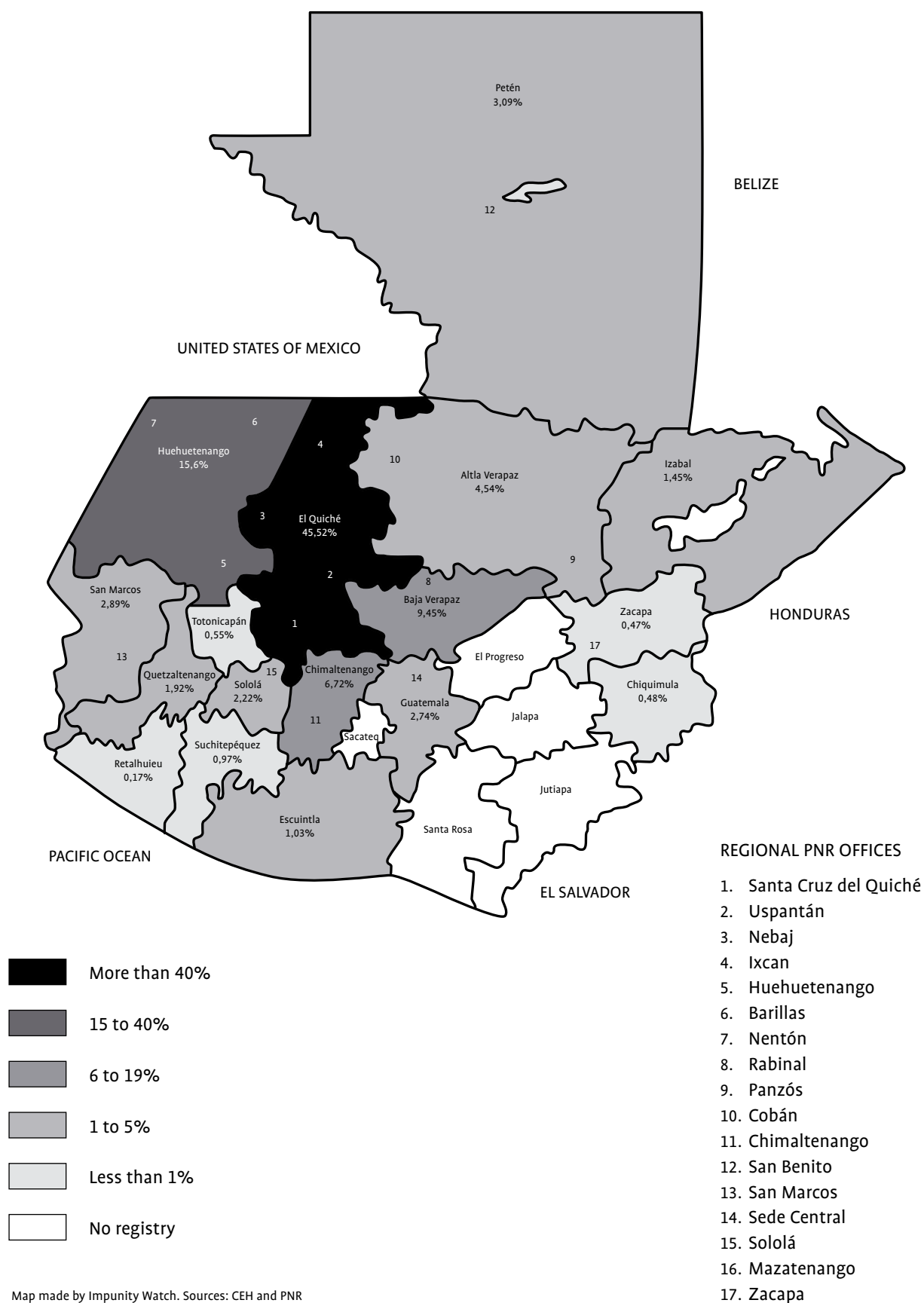
ANNEXES

ANNEX 1 GLOSSARY

AJR	Association for Justice and Reconciliation (Asociación Justicia y Reconciliación)
CAFCA	Centre for Forensic Analysis and Applied Sciences (Centro de Análisis Forense y Ciencias Aplicadas)
CALDH	Centre for Legal Action in Human Rights (Centro de Acción Legal en Derechos Humanos)
CAS	Advisory Security Council (Consejo Asesor de Seguridad)
CEDIM	Mayan Centre for Documentation and Research (Centro de Documentación e Investigación Maya)
CEG	Guatemalan Studies Centre (Centro de Estudios de Guatemala)
CEH	Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico)
CICIG	International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad)
IACHR	Inter-American Commission on Human Rights (Comisión Interamericana de Derechos Humanos)
CNR	National Reparations Commission (Comisión Nacional de Resarcimiento)
COPREDEH	Presidential Commission for the Coordination of Executive Policy on Human Rights (Comisión Presidencial Coordinadora de la Política Ejecutiva en Materia de Derechos Humanos)
DEMOS	Central American Institute for Social Democracy (Instituto Centroamericano para la Democracia Social)
DICRI	Directorate for Criminal Investigations (Dirección de Investigaciones Criminalísticas)
DINC	Criminal Investigation Division (División de Investigación Criminal)
EG	Encounter for Guatemala
ECAP	Community Studies and Psychosocial Action Team (Equipo de Estudios Comunitarios y Acción Psicosocial)
EMP	Presidential Guard (Estado Mayor Presidencial)
FAFG	Guatemalan Foundation of Forensic Anthropology (Fundación de Antropología Forense de Guatemala)
FAMDEGUA	Association of Family Members of Detained and Disappeared of Guatemala (Asociación Familiares de Detenidos y Desaparecidos de Guatemala)
FLACSO	Latin American Faculty of Social Sciences (Facultad Latinoamericana de Ciencias Sociales)
FMM	Myrna Mack Foundation (Fundación Myrna Mack)
FRG	Guatemalan Republican Front (Frente Republicano Guatemalteco)
FRMT	Rigoberta Menchú Tum Foundation (Fundación Rigoberta Menchú Tum)
GAM	Group for Mutual Support (Grupo de Apoyo Mutuo)
GAN	Grand National Alliance (Gran Alianza Nacional)
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPG	Guatemalan Institute for the Comparative Study of Criminal Law (Instituto de Estudios Comparados de Ciencias Penales de Guatemala).
ICMSJ	Body for the Coordination and Modernisation of the Justice Sector (Instancia Coordinadora para la Modernización del Sector Justicia).
ICTJ	International Center for Transitional Justice
ICJ	International Court of Justice

ICTR	International Criminal Tribunal for Ruanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IEPADES	Institute of Teaching for Sustainable Development (Instituto de Enseñanza para el Desarrollo Sostenible)
INACIF	Guatemalan National Institute of Forensic Sciences (Instituto Nacional de Ciencias Forenses de Guatemala)
MINUGUA	United Nations Verification Mission in Guatemala (Misión de Verificación de las Naciones Unidas en Guatemala)
OAS/ OEA	Organisation of American States/Organización de Estados Americanos
OHCHR	United Nations Office of the High Commissioner for Human Rights (Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos)
ODHAG	Guatemalan Archbishop's Human Rights Office (Oficina de Derechos Humanos del Arzobispado de Guatemala)
PAC	Voluntary Committees for Civilian Defence (Patrullas de Autodefensa Civil)
PMA	Mobile Military Police (Policía Militar Ambulante)
PN	National Police (Policía Nacional)
PNR	National Reparations Programme (Programmea Nacional de Resarcimiento)
PRAHPN	Project for the Recovery of the Historical Archive of the National Police (Proyecto de Recuperación del Archivo Histórico de la Policía Nacional)
REMHI	Inter-Diocese Project for the Recovery of Historical Memory (Proyecto Interdiocesano para la Recuperación de la Memoria Histórica)
RENAP	National Register of Persons (Registro Nacional de Personas)
RNV	National Victims' Register (Registro Nacional de Víctimas)
RUDFOR	Unified Register of Open Cases of Forced Disappearance and Other Forms of Disappearance (Registro Unificado de Atención a Casos de Desaparición Forzada y Otras Formas de Desaparición)
SAA	Secretariat for Agricultural Affairs (Secretaría de Asuntos Agrarios)
SEDEM	Security in Democracy (Asociación Seguridad en Democracia)
SEGEPLAN	Presidential Secretariat for Planning and Programming (Secretaría de Planificación y Programación de la Presidencia)
SEPAZ	Peace Secretariat (Secretaría de la Paz)
UN/ ONU	United Nations (Organización de las Naciones Unidas)
UNDP	United Nations Development Programme (Programa de las Naciones Unidas para el Desarrollo)
UNOPS	United Nations Office for Project Services
URL	Rafael Landivar University (Universidad Rafael Landivar)
URNG	Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca)
URNG-MAIZ	National Revolutionary Unit of Guatemala and wide left movement (Unidad Revolucionaria Nacional Guatemalteca y Movimiento Amplio de Izquierda)
USAID	United States Agency for International Development

ANNEX 2 MAP OF THE NATIONAL REPARATIONS PROGRAMME OFFICES AND DISTRIBUTION OF HUMAN RIGHTS VIOLATIONS



ANNEX 3 CASES COMPENSATED VIA THE INTER-AMERICAN COURT FOR HUMAN RIGHTS

Case	Date of the Petition to the Inter-American Commission	Date Accepted to the Inter-American Court	Date of the Reparation Sentence	Victims	Accused	Charged	Result of the Reparation Process	Compliance of the Sentence
White Van (Paniagua Morales and others)	1994	1995	2001	Ana Elizabeth Paniagua Morales, Julian Salomón Gómez Ayala, William Otillo González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, Augusto Angárata Ramírez, Doris Torres Gil, José Antonio Montenegro, Oscar Vásquez, Marco Antonio Montes Letona	State of Guatemala	Kidnapping, arbitrary detention, inhumane treatment, torture, assassination	\$499.376	Payment completed (2007).
Chapman Blake	1993	1995	1999	Nicholas Chapman Blake and Griffith Davis	State of Guatemala	Forced disappearance	\$16.100	Payment completed (2003). Other measures remain to be fulfilled.
Bámaca Velásquez	1993	1996	2002	Efraín Bámaca Velásquez	State of Guatemala	Kidnapping	\$248.000	Payment completed (2004). Other measures remain to be fulfilled.
Myrna Mack	1990	2001	2003	Myrna Mack Chang	State of Guatemala	Extrajudicial assassination	\$779.000	Payment completed (2005). Other measures remain to be fulfilled.
Plan de Sánchez	1996	2002	2004	268 Victims	State of Guatemala		Different reparations between \$5.00 and \$20.000 for the victims, for a total amount of \$14.610.000 and other collective reparations measures	Remain to be fulfilled. The State has been ordered to pay at least 66% (2008).
Maritza Urrutia	1992	2002	2003	Maritza Urrutia	State of Guatemala	Kidnapping	\$64.000	Payment completed. (2005).
Molina Theissen	1998	2003	2004	Marco Antonio Molina Theissen	State of Guatemala	Kidnapping	\$698.000	Payment completed. Other measures remain to be fulfilled (2004).

The articles which support this request in the Commission are 50 and 51 of the American Convention on Human Rights and article 26 and beyond of the Rules of Procedure of the Convention. Guatemala is a State Party to the Inter-American Convention on Forced Disappearances of Persons since 25 February 2000. The Court is competent, in terms of articles 62 and 63.1 of the Convention to decide reparations, costs, and expenses in the present case given that on 25 May 1978 the Republic of Guatemala ratified the American Convention and on 9 March 1987 acknowledged the Court's contentious competence.

ANNEX 4 PARTICIPANTS IN THE DISCUSSION GROUPS TO FORMULATE IMPUNITY WATCH RECOMMENDATIONS

Victim's Discussion Group A – 11 September 2008

1. Felicitá Romero Ramírez
2. Francisca Ortiz Ordoñez
3. Aura Francisca Pérez Gimenez
4. Hugo Evaristo Ramírez
5. Pablo Ivel Mo
6. Abel Cajbom
7. Erwin Rolando Caal Macz
8. José Teni
9. Hermelindo Choc Ché, ICCPG

Victim's Discussion Group B -18 September 2008

1. Tomás Quino Mejía
2. María Grave Xon
3. María Lares Calva
4. Sandra María Tojtoj
5. Felipe López Molina
6. Guadalupe Aguilar Raymundo
7. Anselmo Juan Ramón
8. María Morales Tecún
9. Josefa Quino Calij
10. María Canay Teraza
11. Josefa Morales Xun
12. Manuel Salvador Salvador
13. Roselia López Aguilar
14. Manuela Marinela Rosdiaz
15. Sergio Ismael Jiménez
16. Juan Jiménez, ECAP
17. Diego Tadeo Nicolás

Representatives from civil society organisations – 23 September 2008

1. Claudia López David, Universidad Rafael Landívar
2. Sandino Asturias, CEG
3. Patricia González, IEPADES
4. Luisa Cabrera, psychologist
5. Judith Erazo, ECAP
6. Leily Santizo, FMM
7. Frank La Rue, Instituto DEMOS
8. Guadalupe Salinas Valle, Sinergia No'j
9. Claudia Paz, ICCPG

Representatives from international cooperation agencies – 25 September 2008

1. Joanna Crandall, Justice Department, United States Government
2. Christina Laur, Project Counselling Services
3. Andrea Bolaños, Consultant, International Center for Transitional Justice (ICTJ)
4. Sebastián Porras, Dutch Institute for Multiparty Democracy
5. Nathalie Boesch, Head of Cooperation, Embassy of Switzerland in Guatemala
6. Ulrich Heer, Embassy of Switzerland in Guatemala
7. Anabella Sibrián, Dutch Platform against Impunity in Guatemala
8. Lucy Turner, OHCHR
9. Mónica Mazariegos, European Commission
10. Anna de Ruiter, Embassy of the Kingdom of the Netherlands in Guatemala

Representatives from the justice sector – 30 September 2008

1. Yassmín Barrios, Sentencing Judge
2. José Luis Samayoa, School for Judicial Studies
3. Hugo Vidal Requena Beltetón, Executive Secretary, Body for the Coordination and Modernisation of the Justice Sector (ICMSJ)
4. Nancy Lorena Paiz, Public Prosecutor's Office, Prosecutor's Office for Human Rights, Unit for Historic Clarification
5. Morelia Ríos, Sentencing Judge
6. Albert Clinton Whyte Bernard, Public Prosecutor's Office, Chimaltenango
7. Eduardo Cardona Carrera, Auxiliary General Directorate, National Civilian Police
8. Mauricio Yax Solís, Auxiliary General Directorate, National Civilian Police
9. Alejandro Rodríguez, Public Prosecutor's Office, Criminal Policy Office
10. Saúl Orlando Álvarez Ruiz, Judiciary

Representatives from the Congress of the Republic – 2 October 2008

1. Miguel Ángel Sandoval, Parliamentary Aide, URNG
2. Walter Félix, Parliamentarian URNG-MAIZ
3. Gerson Sotomayor, Parliamentary Aide, EG

Representatives from the Executive and the Office of the Human Rights Ombudsman– 7 October 2008

1. Ruth del Valle, COPREDEH
2. Orlando Blanco, Secretary, SEPAZ
3. Sonia Anckermann, Aide, PNR
4. Conrado Martínez, Director of Studies, Analysis and Research, Office of the Human Rights Ombudsman
5. Carmen Rosa de León, CAS

Representatives from Human Rights Organisations – 9 October 2008

1. Iduvina Hernández, SEDEM
2. José Suasnavar, FAFG
3. Héctor Soto, CAFCA
4. Benito Morales, FRMT
5. Nery Rodenas, ODHAG
6. Patricia González, IEPADES
7. Estuardo Galeano, GAM
8. Alberto Fuentes, PRAHPN

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