

GUATEMALA

Breaking the Wall of Impunity: PROSECUTION FOR CRIMES AGAINST HUMANITY

AI and Impunity in Guatemala

AI's primary concern in Guatemala is the battle against the impunity which has so far prevailed in all but a handful of cases for the tens of thousands of human rights violations committed by the Guatemalan security services in the past three decades. These violations were exhaustively documented by AI as they occurred¹ and were compiled in great detail in two recent major human rights reports in Guatemala, the Guatemalan church's Recovery of Historical Memory Project, REMHI, *Proyecto de Recuperación de la Memoria Histórica*, and report prepared by the United Nations (UN)-sponsored Historical Clarification Commission, CEH, *Comisión de Esclarecimiento Histórico*, created under the Peace Accords².

The violations occurred on a gross scale, particularly during the years of the army's ferocious counter-insurgency policies in the largely indigenous Guatemalan highlands, and amongst the findings of the CEH was the conclusion that the Guatemalan army had committed genocide in four specific areas of the country.

Thus far however, despite the signing of the Peace Accords, which formally ended Guatemala's long-term civil conflict in December 1996, and the publication of the recommendations of the CEH in February 1999, there has been little or no justice for those who suffered abuses in the context of Guatemala's civil conflict and few of those responsible for past violations have been brought to justice. Instead, witnesses and others involved in the few legal proceedings initiated in order to seek justice for gross violations of human rights have suffered intimidation and attacks.

On taking office in January this year, Guatemala's new president, Alfonso Portillo announced his intention to make the fulfilment of the Truth Commission's recommendations a State undertaking, but there has thus far been little concrete indication that he intends to fulfill this promise.

AI believes that the fulfilment of the CEH recommendations are a vital step towards putting an end to impunity in Guatemala and continues to support efforts to bring to

¹ See for example *Massive Extrajudicial Executions in Rural Areas under the Administration of General Efraín Ríos Montt* (AMR 34/34/82) and *Guatemala: The Human Rights Record* (AMR 34/04/87).

² See AMR 34/05/99 regarding the CEH.

justice those responsible for past abuses in a number of ways: by continually pressing the Government to do so; by supporting efforts to exhume mass graves; by sending AI observers to key human rights trials; and by supporting anti-impunity initiatives.

AI is also supporting the continuing efforts of relatives to find their “disappeared” family members. New initiatives in Guatemala centre on the efforts of parents to find young children who “disappeared” during the conflict and may have been adopted, and on groups of adults who were children when their parents “disappeared” and who are now organising to demand that the fate of their parents be clarified and that those responsible be brought to justice.

Judicial Efforts to Confront Impunity

It is only in recent years that local NGOs, victims and their supporters have felt able to attempt to bring those responsible for these gross abuses to justice. To do so, they are following three principle paths:

- via suits filed abroad, for crimes in which universal jurisdiction is argued, (following the Pinochet example in Spain,) as in the Rigoberta Menchú Foundation charges filed before the Spanish High Court, Audiencia Nacional, in December 1999 against six military officials and two civilians on charges of genocide, torture, terrorism, murder and illegal detention;
- via the Inter-American system, which recently announced that it had come to “amicable settlements” with the Guatemalan Government in a number of cases;
- and via prosecutions in Guatemala, as has been done in a number of individual cases which AI has been following closely, such as regarding the extrajudicial execution in 1990 of Myrna Mack, the abuses carried out in Tululché by the former military commissioner there in the early 1980s, and the army-led massacres in the early 1980s at Dos Erres, Río Negro and Tululché.³

In addition to these individual suits on specific cases, a Guatemalan non-governmental organization, (NGO) , the *Centro de Acción Legal en Derechos Humanos*, (CALDH) Centre for Legal Action on Human Rights, one of the leading NGOs in Guatemala, has recently assisted a number of indigenous massacre survivors, grouped together in a new organization, the *Asociación Reconciliación para la Justicia*, Association Reconciliation for Justice, to file suit against a number of former officials from the administration of General Fernando Romeo Lucas García ((7 July 1978 - 23 March 1982) for large-scale massacres carried out during that period against their villages.

The *Asociación Reconciliación para la Justicia* / CALDH suit

³ See for example, AMR 34/18/98, AMR 34/32/98 and updates, AMR 34/13/99 and updates.

CALDH has been working with the *Asociación Reconciliación para la Justicia* over a period of three years to prepare the evidence for a legal suit aimed at bringing members of the Military High Command to justice for mass killings suffered by 9 specific indigenous communities in the Guatemalan highlands to justice.

The suit was announced at a public meeting in Guatemala City on 3 May 2000, at which the victims were also commemorated. It was formally filed before the Guatemalan Public Prosecutors' Office the same day by the Association for Reconciliation, supported by legal advice from CALDH. It named three people who formed the Military High Command of the Guatemalan military regime between October 1981 and March 1982 as responsible for genocide against the civilian Mayan population, crimes against humanity and violations of international humanitarian law. Those charged were Fernando Romeo Lucas García, President of the Republic of Guatemala from 7 July 1978 to 23 March 1982; Luís Rene Mendoza Palomo, Minister of Defence from 15 August 1981 to 23 March 1982; and Manuel Benedicto Lucas García, Chief of Staff of the Guatemalan Army from around 15 August 1981 to 24 March 1982.

The evidence which forms the basis of the accusations was collected with respect to ten massacres carried out against nine communities in four heavily indigenous regions of the country (Rabinal, Baja Verapaz; San Martín Jilotepeque, Chimaltenango; Ixcán, El Quiché; and Triángulo Ixil, El Quiché;) which took place in a four month period starting in December 1981. Over 800 indigenous civilians were killed in these massacres. Others suffered severe physical and mental injuries, torture including gang rape, wanton destruction of crops and houses, and the displacement and the destruction of their communities.

The massacres took place in the context of the scorched earth policy, counter-insurgency campaign launched by the Lucas García administration in the late 1970s and early 1980s aimed at the mass repression of the civilian population in order to annihilate the social

base of the guerrilla in the rural Mayan communities in the west and north-west of the country. In the course of this campaign, thousands of men, women, children and old people were the victims of extrajudicial executions, numerous massacres and torture including rape.

The CEH concluded that "agents of the State of Guatemala, within the framework of counterinsurgency operations carried out between 1981 and 1983, committed acts of genocide against groups of Mayan people which lived in the four regions analysed [North Huehuetenango, Ixil in Quiché, Maya-K'iche' in Quiché and Rabinal in Baja Verapaz].

The CEH recognised the need for trials to take place in Guatemala: "[...] Those crimes for whose commission liability is not extinguished by the said law (Law of National reconciliation), should be prosecuted tried and punished [...]".

Protection of the Witnesses

In the past, witnesses who have attempted to bring proceedings against those responsible for past violations have suffered threats and reprisals,⁴ and while this prosecution is ongoing, CALDH and the Association Reconciliation for Justice, are organising international accompaniment for the communities who have presented the complaint, in order to prevent reprisals against them.

AI's Support for the *Asociación/CALDH* suit and all anti-impunity initiatives

AI believes it is vital for those responsible for past human rights violations in Guatemala to be brought to justice, and it therefore supports all anti-impunity initiatives.⁵ In this context, it believes the *Asociación* law suit could become a key element in beginning to crack the wall of impunity in Guatemala:

- Firstly, this is the first time that members of the Military High Command are directly accused of crimes of genocide in Guatemala. Such a trial is possible because the National Reconciliation Law, approved by the Congress of the Republic in 1996 as a component of the Peace Accords (in effect an amnesty law), nonetheless established that: "[...] crime of genocide [...] are not subject to prescription or that do not allow the extinction of criminal liability [...]". If this trial is carried out in the national courts it will signify an enormous step towards combatting impunity in Guatemala and could strengthen a weak and corrupt legal system.

- Secondly, this is also the first time that the victims of massive human rights violations have brought a legal case against the intellectual authors of these crimes. If this claim is successful, most of the victims' demands for justice and reparation will be fulfilled, making a vital contribution to genuine reconciliation in the country.

- Thirdly, such a trial could have an enormous educative impact in Guatemala, informing Guatemalans about national and international human rights standards and their own history, and illustrating that the legal system can be used to obtain justice and seek redress for offences

The suit is also consistent with the European Parliament resolution on Guatemala of 18 May 2000, in which the Parliament " calls on the Guatemalan authorities to carry out a full investigation into the crimes against humanity which were committed in Guatemala

⁴ See for example AMR 34/32/98 and updates, and AMR 34/13/99 and updates

⁵ See for example AMR press releases issued to express AI's support for the suit initiated in Spain by the Rigoberta Menchú Foundation for the victims of the 1982-1990 genocide, torture, terrorism, murder and illegal



during the civil war and to bring those responsible for such crimes to justice" and "asks the Commission and the Members States to support the initiatives currently in progress with a view to bringing those responsible for crimes against humanity to justice in Guatemala [...]".

In order to express its support for this important initiative, AI delegates took part in the May 2000 event in which the Asociación and CALDH announced their suit against General Lucas García, Luis Mendoza Palomo and Manuel Lucas García. AI explained AI's position on impunity issues, and described the information which AI had collected regarding the human rights violations which took place during the relevant period and which therefore support the law suit.

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