

# Violent Truths:

## The Politics of Memory in Guatemala

“Guatemala suffers from a mutilated official memory...as if remembering is dangerous, because to remember is to relive the past like a nightmare.”

*Eduardo Galeano,  
Guatemala City,  
July 1996.*

In recent years, ‘truth commissions’ have become standard post-war structures for publicly addressing unresolved issues arising from past human rights violations. They typically consist of an investigative team with a mandate to take testimonies, corroborate evidence, document human rights abuses and make recommendations regarding structural reforms and reparations. On one hand, truth commissions are technical, quasi-legal institutions which dispassionately document the grim facts of war. On the other, they either challenge or confirm mutilated versions of history, becoming part of an intense struggle in which all political groups engage, knowing that whoever defines the past might also control the future.

Two post-war political agendas on which truth commissions necessarily impact are establishing justice and consolidating democracy. These aims are often represented as ‘vengeance’ versus ‘reconciliation’ and as such can seem incompatible. There is another argument however which states that justice and democracy are complementary and mutually reinforcing; that breaking a regime of denial and challenging

impunity can only strengthen the rule of law which democratic institutions both foster and require.

### Lobbying for a Truth Commission

Due to the strategies of terror routinely employed by Guatemala’s successive military dictatorships, by the mid 1980s the Catholic Church was one of the few remaining civil society institutions with a popular base. Though at times threatened by the authorities, it nevertheless set up its own human rights office towards the end of the decade, which duly called for a commission to investigate state repression.

The other popular organisation to challenge the culture of silence at this time was the Mutual Support Group (GAM), formed by relatives of the ‘disappeared’ in June 1984. That same year, GAM led a 100,000 strong march on the National Police headquarters and the Metropolitan Cathedral. It also organised occupations of Congress and the Justice Ministry, calling for a commission of investigation into an estimated 38,000 disappearances.

**Marguerita, standing in front of the monument in Rabinal, Alta Verapaz which commemorates massacre victims, including her mother**



Julie Bubbers/CAFOD

In 1985, while orchestrating fierce repression of the organisation, the regime of General Mejía Víctores countered GAM's pressure by creating a tripartite commission to look into disappearances. The Commission comprised a well-known conservative Catholic bishop, a member of the military and an official of the Justice Ministry. After a period of inactivity – which involved no actual interviews with victim's families – it dissolved itself, making no formal report and stating it could not locate any of the hundreds of disappeared of whom it had been notified. In a similar vein, the Supreme Court appointed an 'Executorial Judge' in 1986 to look into all writs of habeas corpus. When GAM filed 1,367 such writs, however, the new civilian president, Vinicio Cerezo Arévalo, refused all further meetings with the organisation and cancelled plans for a new presidential commission on the disappeared.

In the late 1980s, the human rights movement became aware of the Argentine truth commission and began to lobby in earnest for an equivalent institution in Guatemala. Their position was quickly endorsed by the rebel Guatemalan National Revolutionary

Unity (URNG), and found its way onto the agenda for peace talks. This provoked strong opposition from army negotiators who helped obstruct dialogue for a number of years.

In March 1994, the issue was temporarily shelved to facilitate the signing of the Comprehensive Accord on Human Rights, but plans were fixed for another agreement to deal specifically with the establishment of a truth commission. GAM proposals for this additional accord were subsequently accepted by the Civil Society Assembly (ASC) and the URNG Political-Diplomatic Commission. The ASC even nominated GAM leader Nineth Montenegro to attend the negotiations in Oslo but in the event, civil society representation was to have little impact on the final agreement.

Signed in June 1994, the agreement which established the 'Commission for the Historical Clarification of the Violations of Human Rights and Acts of Violence which have Caused Suffering to the Guatemalan Population' turned out to be the shortest and weakest of all the Guatemalan accords. This weakness stemmed not only from the

The aim of the Commission for Historical Clarification is:

"To clarify with all objectivity, equity and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict."

*Page one, Accord on the Commission for Historical Clarification.*

lack of influence of civil actors, but also from the political debility of the URNG at that time and the poor communications between URNG commanders and their Political-Diplomatic Commission.

### **Shortcomings of the Commission for Historical Clarification Accord (CEH)**

The mere existence of the Commission is a tribute to the struggles and sufferings of the Guatemalan civic opposition. However, there are at least five clauses in the CEH accord which could seriously undermine its potential for challenging impunity and promoting the rule of law.

The first of these is the stipulation that only abuses 'linked to the armed conflict' should be investigated. The interpretation of this clause will undoubtedly cause a great deal of wrangling, but it clearly provides scope for the torture and/or killing of certain unaligned civilians (including journalists, researchers and US citizens) to be ruled outside the jurisdiction of the Commission.

Secondly, the Commission can operate for only six months with a possibility of extending its lifespan to a year. In this time, it must investigate violations over a 36-year period from the beginning of the armed conflict to its formal end in December 1996. In negotiations, the ASC-URNG position was to begin the investigation period from 1980 in the hope that a shorter time scale would furnish more results. In the event, it was the government view which won out, however, and the Commission has been granted an impossibly short time to investigate an inordinately long period of repression.

Thirdly, the results of Commission investigations are to be published in a report which will 'make objective judgements about events during the period under consideration.' As is to be expected, the question of interpreting 'objectivity' has polarising political implications. Independent observers are clear that the vast majority of abuses in Guatemala were carried out by the security forces. Nevertheless, there is strong support

within the government and the military for 'symmetrical narratives' on the violence which would attempt to accord equal blame to army and rebels.

Fourthly, popular sector groups were most angered by the lack of legal teeth for the Commission, which makes it the weakest of any truth commission in recent history. In contrast to the South African Truth and Reconciliation Commission, the Commission for Historical Clarification has no powers of search, seizure or subpoena.

While all these points are significant, perhaps the most crucial clause states that the work, recommendations and report of the Commission 'will not individualise responsibility, nor have any legal implications.' This means that no one can be named in the final report and that information obtained by Commission investigators cannot be employed in later prosecutions.

The prevailing view is that the Commission will produce little more than an abstract study that surveys the causes of the Guatemalan conflict, expressing a general moral sanction against institutions through which gross human rights abuses were committed. Such a report might help achieve 'reconciliation', but only in a minimalist sense, providing what Commission official Roberto Rodríguez has termed an 'escape valve' for the frustrations of surviving victims. More broadly, the absence of violators' names could mean that the eventual report will fail to satisfy popular conceptions of justice and could further shore up the wall of impunity that the Guatemalan army has thrown around itself for over three decades.

### **Reactions to the Accord**

The response to the CEH accord from the many groups dealing with human rights issues in Guatemala varied widely. On one hand, dominant thinking within MIN-UGUA, as expressed by Jaime Esponda, the Director of Human Rights Verification, supported the Commission process, arguing that in a very poor country with little media investigation, a mostly illiterate peasantry

## Naming Names

There are a number of good reasons why the Commission should name individual perpetrators of war crimes. On one hand, the Commission could serve a vital democratic function by breaching the iron-clad shroud of official denial, and formally confirming what members of the human rights community have known for decades about specific abuses. On the other, if the naming of perpetrators was based upon credible forensic work and corroboration, this would set a good example of investigatory practice, which could only strengthen the criminal justice system.

A truth commission must also be assessed, however, in terms of how it connects with the consciousness of those who experienced the war within affected communities. At this level, the reworking and recovery of social memories relating to deaths, disappearances and other human rights abuses typically takes the form of symbolic memorials. One such memorial is the cross on the hill at Sahakok in Alta Verapaz, which is surrounded by tablets with 916 names of people killed by the army in the early 1980s.

The act of community remembering is often not consolidated however until the perpetrators are also named. This fact, as well as the enormous lengths to which perpetrators will go to obstruct public attempts to remember the past, is demonstrated by the story of a large concrete memorial to the massacres at Rio Negro which was built outside Rabinal, Baja Verapaz in 1993. This memorial replaced a smaller monument which kept being destroyed by the perpetrators of the killings, a group of civil patrollers still living in a neighbouring village. Declaring boldly that more than 100 people were 'killed by civil patrollers of Xococ', it is constructed so as to be practically impervious to attack. Efforts continue to silence local narratives on violence: several civil patrollers from Xococ were found in 1996 to have tampered with an exhumed clandestine grave.

In short, if we examine community-based initiatives throughout the Mayan highlands, it becomes apparent that acts of social memory seek to begin with a thorough account of what exactly happened when, to whom, and at whose hands. Without such records, it appears, other discussions (such as what were the structural motivations for the violence) often cannot begin.

and a collapsed legal system, mass repression has left very few cases which are effectively 'justiciable'. Therefore, he suggested, a commission which individualises responsibility would not be feasible in Guatemala. In hostile opposition to this view, the Myrna Mack Foundation (FMM) took a maximalist position, demanding the truth commission produce evidence for a systematic programme of retributive justice against all human rights abusers.

Both these positions are problematic however. On one hand, Esponda's reasoning ignores the fact that the details of certain incidents, including large-scale massacres, have been credibly documented by human rights organisations and the Catholic Church. On the other, the FMM position fails to acknowledge that the criminal justice system is simply too battered by repression and compromised by its own past to systematically deliver retributive justice. Nevertheless, by upholding their principled ideals, groups such as the Mack Foundation have drawn attention to the huge gaps between the compromises of peace, popular aspirations for revenge, and international human rights law.

Between reactions of compromised resignation and principled hostility, the majority of Guatemalan civic groups greeted the accord with immense disappointment. This was exemplified by the ASC which, under the guidance of GAM, had submitted proposals, like civic representation on the Commission, which were more likely to have combated impunity. Nevertheless, a number of strategies emerged from popular groups to strengthen the Commission and maximise its limited impact. One was the 1996 publication by GAM of the results of its own research into violence in three areas of the country. A second initiative, the 'Recovery of Historical Memory' (REMHI) project of the Catholic Archbishop's Human Rights Office (ODHA) is far more substantial and provocative.

## Recovering Memory

Beginning in 1995, REMHI set up local offices in parishes across the country. With the support of popular and human

"We consulted with all base commanders who were happy that there will not be any legal dimensions to the Commission."

*Antonio Arenales Forno, COPAZ negotiator, personal interview 23 July 1996.*

"It was a very sad, poor accord, but we evaluated the situation and thought, if we attack the accord publicly, we'll slow down and undermine the peace process. Instead we decided to try and push a liberal interpretation of the accord and to try and gain a role in the formation and functioning of the Commission."

*Mario Polanco, GAM leader, personal interview 19 July 1996.*

rights organisations, 700 bilingual statement takers were then trained to conduct interviews, which addressed individual war crimes through the following seven questions:

- Who was the victim?
- What happened?
- Who did it?
- Why did it happen?
- What did you do to cope with the situation?
- What effect did the event have on you and your community?
- What needs to be done so that violation doesn't happen again?

The REMHI programme has been financially backed by international aid agencies and has amassed a wealth of information through the Catholic Church's extensive rural networks. Altogether, statement collectors have gathered 5,000 testimonies representing 25,000 victims. Importantly, REMHI has also identified more than 300 mass graves across the country, which the army had previously kept hidden. All this information will be handed over to the CEH, giving the Commission a substantial head start on its formidable task of investigating a 36-year period of repression.

While augmenting the likely impact of the Commission, the REMHI project will also serve to highlight its many shortcomings, and to help fulfil some of its neglected functions. Uniquely, the REMHI report will name both perpetrators and victims on both sides of the political divide. In addition, the project is working for a longer period than the Commission, and more closely with local communities.

Because of its intensive and local style of operating, REMHI has come face to face with an unfulfilled and frustrated desire for popular vengeance. In this context, where survivors perceive no institutional mechanisms to pursue retribution, REMHI takes on an even greater importance. While the project does not pursue punitive conceptions of justice, partly because it works within a Christian paradigm of forgiveness and reconciliation, it has encouraged a broad range of processes to deal with the past at local level, including legal investigations, symbolic acts of remembering and exhumations of clandestine cemeteries. The final REMHI report may not fulfil all the expectations vested in it. However, the project has already made an invaluable contribution to breaking public silences and resisting legal impunity.

### REMHI and MINUGUA in Pinares

In August 1982, the Guatemalan army, in conjunction with army-aligned civilians, massacred 21 villagers in the small community of Pinares near Cahabón in Alta Verapaz. The author visited this divided and bitter community in 1988, when victims and perpetrators lived side by side in an atmosphere of fear and hatred, attending the same church on Sundays, but not referring openly to the events of six years' previous.

Statement-taking by REMHI in Pinares opened up the space for victims' families to talk more freely about the past without reprisals. Once public secrets had emerged into the open, the victims and their families rapidly began to take the issue further. The massacre was, for the first time, formally denounced at a local branch of the Congressional Human Rights Office, as well as at the office of the Public Prosecutor. Villagers called for a judge to begin an investigation and contacted MINUGUA, which helicoptered in a forensic team to begin exhumations on a clandestine grave. The forensic team worked for eight days in May 1996 and then took the remains to the capital for investigation, before returning them for a proper burial in the community. The international presence of MINUGUA allowed the investigation to go ahead, even though the perpetrators angrily threatened victims' families.

This story has been repeated across the country. Seventeen mass graves were exhumed by forensic anthropologists in 1996, with 20 more sites due for exhumation in 1997.

"People don't want to go to the (national) tribunals because it all happened a long time ago, but the rancour still stays. Many of the families still hate one another"

REMHI statement taker, Salamá, Baja Verapaz

## The Role of MINUGUA

El Salvador and Guatemala are the only countries, so far, to address issues of post-war historical clarification through an officially independent and UN-sponsored truth commission. This institutional structure has both advantages and limitations.

On the positive side, MINUGUA has a proven record of combating impunity in Guatemala, underwriting the unprecedented freedom and effectiveness of national human rights organisations and rupturing the official regime of denial more effectively than any other institution in the country's history. MINUGUA's success is exemplified by its response to events at Xamán, Alta Verapaz in 1995, in which 11 returnee refugees were killed and 27 injured by a column of ill-trained soldiers. A MINUGUA team arrived in the community within hours of this atrocity, and began taking testimonies and collecting forensic evidence. A subsequent press release effectively refuted the army's story of armed provocation by the returnees but also found no evidence of prior planning by the military high command. By objectively weighing the stories of both the far right and left, MINUGUA instantly moved the discussion beyond the confines of counter-insurgency rhetoric, which for so long had obstructed any serious challenge to military impunity.

Despite these successes, MINUGUA's sponsorship of the CEH may also prove one of the Commission's main weaknesses. This is because MINUGUA's truth revealing role is potentially compromised by the UN's parallel function as mediator and verifier of the peace agreements. The potential contradiction between the pragmatic imperatives of peacemaking and a principled commitment to truth has already been exposed by the UN's apparent complicity in the so-called 'Mincho' case.

In October 1996, only weeks before the final peace accord was due to be signed, guerrillas of the URNG-affiliated Revolutionary Organisation of the People in Arms (ORPA) abducted an elderly woman from the



Paul Smith/Panos Pictures

Forensic scientists exhuming victims of an army massacre buried in a clandestine cemetery in Chichupaq, Baja Verapaz

Guatemalan elite. As a consequence, the government pulled out of talks and the final peace accord was nearly scuppered. Two members of the ORPA group, known as 'Isaias' and 'Mincho' were then captured in a government security operation and Isaias was subsequently exchanged for the kidnapped woman. Mincho (real name Juan José Cabrera Rodas), never reappeared, and was later presumed killed, reportedly by the Estado Mayor Presidencial, an elite section of the Guatemalan security forces.

The scandal which has blown up around this case includes the allegation that high-ranking MINUGUA officials, including its

director Jean Arnault, knew about the murder and were complicit in a cover-up, purportedly to avoid jeopardising the final peace agreement. Reporters have also alleged that Arnault was present at the meeting in which the parties agreed to keep quiet about Mincho's demise and that MINUGUA investigators were pulled off the case by orders from within the mission's hierarchy.

Understandably, this incident dealt a serious blow to MINUGUA's credibility in human rights verification and did not inspire confidence in its capacity to reveal truth in an unprejudiced manner.

### A New Amnesty

For the whole of 1995 and 96, the URNG had repeatedly rejected a new amnesty for wartime human rights abusers. After the experience of the Commission for Historical Clarification Accord, however, many civil groups mistrusted the rebels' intentions. To try and ensure the gathering momentum of peace did not completely overwhelm parallel demands for truth and justice, a number of Guatemalan human rights groups including GAM, ODHA and the Rigoberta Menchú Foundation, came together in mid-1996 to form the 'Alliance Against Impunity'. The purpose of this alliance was to propose enabling legislation for the reinsertion and demobilisation of the guerrillas, without sanctioning a general military amnesty.

The area of 'justice in transition' is often one where civil groups are least effective in shaping peace negotiations, partly because amnesties usually come at the very end of talks, when international donors shift their support to governments and the influence of 'civil society' wanes. Confirming the worst fears of the civic opposition, the URNG performed a spectacular U-turn in late 1996, agreeing a new amnesty with government negotiators that violated key anti-impunity clauses in the Comprehensive Accord on Human Rights. Legislation with the Orwellian title of 'The Law of National Reconciliation' (LRN) duly followed, coming into effect in January 1997.

While the LRN is not a blanket amnesty, unlike its 12 counterparts from 1982-88, the first individual applications submitted under its amnesty provisions came overwhelmingly from military personnel implicated in high-level political killings. This unleashed outrage among civic opposition groups, a response further intensified by the ease with which violators could choose compliant judges, and the complete absence of appeals procedures.

On a slightly more positive note, the LRN stipulates that to be eligible for amnesty, it must be proved at a hearing that a violation was linked directly to the armed conflict. This clause has allowed the families of victims some scope to contest amnesty applications, arguing that incidents such as the assassination of the anthropologist Myrna Mack were simply criminal acts, over which the amnesty law has no jurisdiction. However, even in these cases, the onus is on the families to prove the violation had no political link and to do so, moreover, within an extremely short time span.

The existence of the amnesty law has made the role of the Commission for Historical Clarification even more crucial. For human rights organisations working in conjunction with the UN, the challenge has become to facilitate Commission investigations and to integrate them more fully into their own challenges to impunity.

### Criminal Justice Reform

The Guatemalan legal system has typically dealt with human rights violations with a distinct lack of coherence and consistency. This is exemplified by the fact that at the end of 1996, the Supreme Court had still not defined the mechanisms and jurisdiction of the various amnesty laws of the 1980s. As the Law of National Reconciliation was being drawn up, some conservative lawyers claimed that its antecedents were still in effect, while three 1980s massacres were also being investigated in the courts. As it happened, the Justice Ministry's investigations had

proceeded so slowly that no formal accusations had yet been made against individuals. Prior to the publication of the LRN, however, no lawyer in the country was wholly clear whether the defence would be entitled to claim amnesty if and when charges were pressed.

In 1996, Guatemalan tribunals were also processing a number of prosecutions for human rights violations committed after the last amnesty decree of 1988. One of these cases, relating to the 1995 Xamán massacre, furnished landmark legal victories for human rights in Guatemala. The first of these victories came when the Xamán case was transferred from a military to a civilian court, a triumph compounded in May 1996 when the Constitutional Court overturned the decision of a weak civilian judge to free the eight defendants. While it created positive legal precedents, however, the Xamán case has also become emblematic of juridical stagnation. Like previous high-profile human rights cases, it has been dragged through all possible appeals procedures and has suffered interminably from legal inefficiency, lack of political will and an under-resourced Public Prosecutor's Office. By late 1996, it had lost all momentum and ground to a halt.

### **Guatemalan Prosecutions Under International Law**

In addition to local and national initiatives, a transnational avenue for addressing Guatemalan human rights violations is also being explored by legal NGOs such as the Centre for Human Rights Legal Action (CALDH). The centre is currently challenging amnesties concerning 1980s massacres at Dos Erres and Rio Negro through the Inter-American Commission of Human Rights in Washington. Their submissions call for reparations for survivors of these massacres and a formal censure of the Guatemalan government's amnesty laws, as occurred in the cases of Argentina and Uruguay. Such censure will provide an international legal challenge to amnesty in Guatemala, which in turn could lead to the cases being brought before official in-country tribunals.

The unresolved cases relating to the Xamán massacre and the assassinations of URNG commander Efraín Bámaca, centre-right politician Jorge Carpio Nicolle and anthropologist Myrna Mack and the torture of US nun Diana Ortiz demonstrate that the Guatemalan legal system is barely capable of prosecuting even a handful of low and middle-ranking military offenders. It is unlikely that this condition could be rectified in the near future and therefore, a maximalist 'Nuremberg option' for addressing war crimes is not even remotely possible in Guatemala. This is not to say that the legal route to justice should be abandoned altogether; it is clear that small triumphs remain possible. What is essential is that the limitations of the legal system be recognised so that the Commission and other initiatives can complement its work and fill in some of the gaps.

### **The Way Ahead**

The case of Guatemala seems to confirm the dismal observation that justice for the victims of human rights atrocities is a recurring casualty of negotiated settlements to war. Some form of amnesty has been promulgated in every Latin American country that has undergone a democratic transition in the last 20 years, and the Law of National Reconciliation continues this trend in Guatemala.

Like its counterparts elsewhere, the amnesty law will coexist with a national truth commission, the CEH. With the help of international and national human rights groups, the Commission may well fulfil some of the investigatory functions of which the legal system is currently incapable, providing essential information on the fate of the disappeared, and locating the remains of those killed. Crucially, it also remains, with the courts, the main arena for the ongoing struggle against official silence and legal impunity, a struggle which is central to strengthening the rule of law, which in turn is a precondition for democratic consolidation.



As outlined in the CEH accord, Guatemala's truth commission has limited investigatory powers, cannot name names, nor can its findings be employed in a court of law. While all this deeply weakens its challenge to official impunity, there are still substantial battles to be fought on all these fronts both within and on behalf of the Commission:

Firstly, on the question of individualising responsibility, the director of the Commission, Christian Tomuschat, has already indicated considerable flexibility, saying that "the institutional responsibility should be clearly stated...but if we simply say that it was the army or the URNG, that would be too little." Naming the battalion responsible for a massacre, it is suggested, and the commanding officer at the time, without explicitly attributing individual responsibility, might be one way to deal with this issue.

Secondly, it could prove difficult to enforce the principle of the non-legal status of Commission findings. Moreover, once information is in the public domain, it could provide leads for, and an impetus to, criminal prosecutions.

Finally, the legal status of both the Commission and its findings will depend ultimately on diverse and contradictory decisions taken within the legislative and justice systems in Guatemala, as well as in international courts. While the Commission lacks legal teeth in the original accord, there is no reason why this could not be altered in subsequent legislation under pressure from national or international actors.

The role of civic human rights groups has clearly had to adapt in the new post-war scenario, from monitoring violence during the peace talks towards advocating reconciliation and justice. Given endemic corruption in the Guatemalan state, there is also a new role for such groups in administering war reparations. The human rights confederation, the National Co-ordination of Human Rights in Guatemala (CONADE-HGUA), has already identified mechanisms to define victims and channel redevelopment funds to the neediest communities. To faithfully represent victims' rights and ensure that state institutions pursue justice and truth to the fullest extent possible, however, one traditional role that civil groups cannot afford to relinquish is that of government watchdog.

## Establishing the Commission for Historical Clarification

Due to a lack of finance, the CEH began its work seven months behind schedule in August 1997. During this extended delay, three Commissioners were chosen to head the organisation. Two of these, labour lawyer Balsells Tojo and indigenous educational expert Otilia Lux de Coti, were Guatemalans, but neither had a particularly high human rights profile. The third Commissioner and overall director was Professor Christian Tomuschat, a German who had been a UN independent human rights expert to Guatemala in the late 1980s.

Prior to its opening, a 12-month operating budget of close to \$8 million was put together. The budget allowed for the running of four offices with 60 staff. The Guatemalan government had originally pledged \$50,000 towards these costs, but increased their contribution to \$800,000 due to pressure from the international community. Foreign governments such as the United States, Canada and several European countries are to make up the shortfall.

It has been agreed that the Commission will be separated into two divisions – one to investigate violations during the war and the other to write a history. The staff – half foreigners, half nationals – includes 40 investigators who will take new testimony and review existing information gathered by REMHI and GAM.

The mere existence of a truth commission in Guatemala owes a great deal to pressure from civil society organisations such as GAM and the Catholic Church's human rights office. In the coming years, and especially after MINUGUA leaves the country, such groups can continue to make a significant contribution to peace-building by investigating violent acts, making amnesty difficult to obtain for offenders, urging criminal prosecutions where possible, and generally pursuing the creation of a 'state of right'.

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