

# ANNEX 2: MECHANISM IN THE AMERICAS

## ARGENTINA

### Conflict Background and Political Context

In 1976, a military junta deposed President Isabel Perón, beginning a military dictatorship that lasted until 1983. The collapse of the economy, coupled with Argentina's military defeat by Great Britain in the Malvinas-Falklands War, led to democratic elections in 1983. During its rule, the military junta engaged in enforced disappearances, widespread killings, systematic torture, and abductions by death squads. These crimes were perpetrated within the larger context of *Operación Cóndor*, a coordinated effort implemented by the right-wing dictatorships of Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay to combat alleged terrorists and subversives.

In the name of rooting out left-wing ideology among opposition groups, the military often gave abducted children, as well as children born to imprisoned women, to families with links to the military or security forces to raise as their own. The regime operated over 300 secret detention centers throughout the country; thousands of the disappeared have never been fully accounted for. A truth commission, the *Comisión Nacional sobre la Desaparición de Personas* (CONADEP) investigated the atrocities committed between 1976 and 1983 during the military junta. In its report *Nunca Más*, it stated there were 8,960 reported disappearances but estimated the real numbers to be around 10,000 to 30,000 cases, attributing underreporting to fear of reprisal.<sup>1248</sup>

### Existing Justice-Sector Capacity

Argentina has a well-developed judicial system. At the federal level, it traditionally had an inquisitorial system of criminal prosecution. A 1991 reform introduced a mixed system, which combined an initial inquisitorial phase (in writing and before an investigating judge) followed by a trial phase (before an oral tribunal).<sup>1249</sup> In 2014, Argentina introduced a new fully accusatorial system,<sup>1250</sup> whose implementation has been gradual. Most of the crimes against humanity cases have followed the 1991 procedure.

Argentina fully relied on its existing justice-sector capacity to undertake crimes against humanity cases. However, the judicial system did not have experience investigating and prosecuting mass atrocities. For example, judicial operators and the system as a whole did not have experience in grouping multiple incidents for joint prosecution.

In addition, there is no prioritization of criminal prosecutions according to the Argentine legal tradition. Any attempt to select or prioritize cases would not have been well received by human rights activists and victims' associations who backed the cases. However, a strict application of the principle according to which all cases must be prosecuted (*ejercicio obligatorio de la acción penal*) has led to overlaps and a big backlog.

### **Existing Civil Society Capacity**

As early as 1977, civil society began reacting against the military dictatorship. Argentinian mothers trying to find their missing children formed the *Asociación Madres de Plaza de Mayo* (Mothers of Plaza de Mayo). These women, who have used public marches to bring attention to disappearances, outlasted the military dictatorship despite brutal suppression tactics. Another group, the *Asociación Civil Abuelas de Plaza de Mayo* (Grandmothers of Plaza de Mayo), was formed to track down illegally adopted children, and their efforts have seen the prosecution of kidnappers and complicit adoptive parents.<sup>1251</sup>

The Argentine nongovernmental organization Center for Legal and Social Studies (CELS) was created in 1979 and became active in the last years of the military dictatorship. Its goals of preserving memory, seeking prosecution, and increasing public awareness of the human rights violations committed in Argentina aligned with those of Mothers and Grandmothers of Plaza de Mayo. Both actively pushed for accountability and devoted resources to providing evidence. CELS was instrumental in the effort against the Full Stop (*Punto Final*) and Due Obedience (*Obediencia Debida*) laws, which were intended to shield junta members from criminal accountability, filing lawsuits that would help find them unconstitutional.<sup>1252</sup>

The violence in Argentina and reaction against it led to a paradigm shift within local human rights that carried through to seeking justice against the military governments (*juntas*) and had an international impact. In the 1960s and 1970s, international human rights organizations were concerned with immediate physical harm or rectifying imprisonment, influenced by the UN's division of rights between, on the one hand, the civil and political and, on the other, the economic, social, and

cultural spheres. Argentine organizations such as the Mothers of Plaza de Mayo felt that scope had to broaden to include truth, justice, and accountability. The rallying cry, *juicio y castigo a todos los culpables*, or “justice and punishment for all those culpable,” led to trials of junta members, and in the early 2000s, overturned the amnesty laws that thwarted accountability.<sup>1253</sup>

## Creation

Argentina did not create a separate structure to prosecute crimes committed during the 1976–1983 military dictatorship. Instead it used its existing judicial structure. The road to justice took over 30 years, partly due to the initial instability of the democratic governments that followed the military dictatorship and partly due to a series of legal measures (e.g., the amnesty laws) that were adopted in the early days of democracy that took a long time to overturn. Persistent advocacy by victims, victims’ associations, and human rights activists played a central role in making the trials possible.

After the fall of the military dictatorship in 1983, the democratic government proved unable to sustain prosecutions of crimes committed by the military junta.<sup>1254</sup> However, important prosecutions did take place, complemented by an innovative truth commission.

Three days after his inauguration, President Raúl Alfonsín issued a decree ordering the prosecution of nine top officials of the three juntas that governed the country between 1976 and 1983. The decree ordered trial for the crimes of murder, illegal detention, and ill-treatment.<sup>1255</sup> The trial began in the *Consejo Supremo Militar*, the military court, with provisions that, should it fail to come to a verdict within six months, either prosecution or defense could appeal to the *Cámara Federal*. The Cámara, a civilian court, could then either grant an extension or decide to try the case *de novo*. The military court found that all orders issued by the junta leaders were unobjectionable, so they could only be tried for their failure to control their subordinates. The Cámara subsequently took over the case and a landmark trial against key junta officials began 18 months after the fall of the regime. The “Trial of the Juntas” received intense national attention, and over 800 witnesses were presented.<sup>1256</sup> The defendants were charged with “various crimes, including torture, illegal detention, robbery, and murder, but not genocide or crimes against humanity.”<sup>1257</sup> Nine members of the military juntas were convicted of gross violations of human rights in 1985.<sup>1258</sup> Evidence for the prosecutions was

drawn in part from the investigations of a national truth commission, CONADEP, a quasijudicial body that was required to refer cases with sufficient judicial information to the courts for prosecution.<sup>1259</sup>

These early prosecutions provoked several military uprisings against President Alfonsín's democratic government. In 1986, Alfonsín issued a law imposing a deadline for bringing charges against military officers, known as the Full Stop law.<sup>1260</sup> In 1987, the president issued an amnesty, known as the Due Obedience law because it was "founded on the premise that personnel of the lower ranks were following orders" and therefore immune from prosecution.<sup>1261</sup> In 1989, the military leaders convicted in the Trial of the Juntas received presidential pardons from President Carlos Menem, "under the alleged need of pacification."<sup>1262</sup>

Throughout this turn away from accountability beginning in the mid-1980s, Argentinian human rights activists, jurists, and civil society organizations became increasingly sophisticated and coordinated at the national, regional, and international levels. When domestic politics stymied their efforts for accountability, they turned outward and brought actions before the Inter-American Commission of Human Rights (IACHR), which ruled in 1992 that the impunity laws and presidential pardons violated the American Convention on Human Rights.<sup>1263</sup> The ruling prompted Argentina's Congress to grant victims the right to reparations, leading to thousands of petitions in the early 1990s.<sup>1264</sup> In 1996, victims filed cases in Spanish courts under universal jurisdiction, leading to arrest warrants and extradition requests.<sup>1265</sup> (In 2012, Argentinian human rights lawyers reversed the roles and brought lawsuits in Argentinian courts, under universal jurisdiction laws, for crimes committed in Spain during the civil war and the 1939–1975 Franco dictatorship).<sup>1266</sup> Argentine rights groups also brought domestic actions in the 1990s regarding the military regime's abduction of children of imprisoned mothers<sup>1267</sup> and increasingly also directly challenged the Due Obedience and Full Stop laws. Argentinian federal courts conducted "truth trials" throughout the early 1990s, a "judicially created procedure to obtain official information about the fate of victims before criminal courts in the absence of the legal possibility to impose criminal sanctions."<sup>1268</sup>

## **Legal Framework and Mandate**

The development of international legal norms during this period, through regional human rights mechanisms and universal jurisdiction, "played an important role in enabling [Argentina] to overcome otherwise insurmountable barriers to

prosecution.”<sup>1269</sup> These efforts at the regional and domestic level slowly bore fruit. A lower federal court ruled in 2001 in the *Simon* case that the Full Stop and Due Obedience laws were unconstitutional.<sup>1270</sup> Congress annulled both laws in 2003.<sup>1271</sup> In 2005, federal judges struck down pardons issued by President Menem in 1989–1990 as unconstitutional, a decision upheld by the Appellate and Supreme Court in 2006 and 2007.<sup>1272</sup> The Supreme Court also upheld the *Simon* case in 2005, opening the door for the most recent wave of prosecutions, including some annulled cases that have been reactivated. In 2004, the Supreme Court, citing jurisprudence of the AICHR on the state’s responsibility to prosecute and punish serious human rights violations, ruled that the statute of limitations was inapplicable to crimes against humanity cases.<sup>1273</sup>

Political developments in the country also had an impact on enabling prosecutions. In 2003, Néstor Kirchner was elected president of Argentina and ruled from 2003 to 2007. His wife, Cristina Fernández de Kirchner, succeeded him and was the president between 2007 and 2015 (Néstor Kirchner died in 2010). The Kirchners actively promoted prosecution of crimes committed during the military dictatorship, as part of their progressive human rights policy.<sup>1274</sup> Since President Mauricio Macri took over the presidency in late 2015, he has been criticized for not providing such significant political support to the cases.<sup>1275</sup>

## Location

Federal District and Appellate Courts across Argentina have heard grave crimes cases.

## Structure and Composition

According to Argentina’s Constitution, the judiciary is composed of the Supreme Court and such other lower tribunals as established by law.<sup>1276</sup> The Supreme Court is composed of five judges appointed by the president.<sup>1277</sup> Other tribunals established by national law are “federal tribunals” and they have jurisdiction over matters concerning the constitution, federal laws, international law, relationships with other countries, and disputes between provinces.<sup>1278</sup> In addition to the federal tribunals, provinces can establish other (called “ordinary”) tribunals. The crimes against humanity cases fall under federal jurisdiction.

Since the higher court decisions between 2005 and 2007 paved the way for prosecutions, serious crimes have been prosecuted in ordinary criminal courts,

with support from specialized units created within the Attorney General's Office. Those included a unit for assistance on cases concerning human rights violations committed during the military dictatorship (created in 2004) and a unit for coordination and follow-up on human rights violation cases (created in 2007). The latter worked with federal prosecutors to "analyze strategic problems, propose general guidelines for advancing the cases and to ensure that links in connected cases are made"<sup>1279</sup> and was upgraded to a *procuradoría* (*Procuradoría de Crímenes de Lesa Humanidad*) in 2013.<sup>1280</sup> In addition, a special unit on child kidnapping (*Unidad especializada para casos de apropiación de niños durante el terrorismo de Estado*) was created in 2012.<sup>1281</sup> The Supreme Court established a "superintendence unit"<sup>1282</sup> and a commission to "coordinate policies with the other branches of government."<sup>1283</sup>

No specialized chamber has been granted jurisdiction over the prosecution of crimes during the military dictatorship; rather, the cases can be heard by any of Argentina's federal District or Appellate Courts.<sup>1284</sup> However, a specific federal court, the Federal Oral Criminal Tribunal No. 1 for La Plata, "has jurisdiction over a large number of ... cases because the military juntas conducted a disproportionate amount of their repressive activities in its [territorial] jurisdiction."<sup>1285</sup> This tribunal has conducted many of the proceedings and has played a significant role in developing atrocity crimes jurisprudence in Argentina, through specific cases discussed in the *Prosecutions* section, below. Cases have also been brought before tribunals in Mar del Plata (Buenos Aires), Rosario (Santa Fé), Paraná (Entre Ríos), Córdoba (Córdoba), and Tucumán (Tucumán), among other jurisdictions.<sup>1286</sup>

Granting general jurisdiction to ordinary courts, rather than forming a specialized tribunal or even a dedicated domestic chamber along the lines of, for example, the Bosnian War Crimes Chamber, has inevitably led to delays. The Argentine judiciary must keep up with advances on crimes against humanity cases from 1976 to 1983 at the same time as it carries out its functions with respect to any other cases within its jurisdiction. The dictatorship crimes caseload has outstripped the capacity of the judicial system, as a prosecutor within the specialized unit noted:

The justice process currently underway ... is very ambitious ... to prosecute an enormous quantity of crimes committed throughout the country. ... Furthermore, this is occurring in the same courts responsible for investigating other types of crimes. Argentina chose not to create special tribunals to judge these types of crimes, which has been important because it grants these trials unquestionable legitimacy; special tribunals can always be suspected of bias. But this also presupposes the additional difficulty of involving a large number of

legal figures in trials taking place all over the country; managing that is no simple task.<sup>1287</sup>

Argentina's legal system permits limited participation by autonomous victim-plaintiffs, or *querellantes*. This has allowed Argentine human rights organizations, as *querellante* lawyers, to push for the charges to be characterized as grave crimes, rather than ordinary crimes under the criminal code.<sup>1288</sup> *Querellantes* are represented by their own attorneys and may intervene in proceedings<sup>1289</sup> to "present their own witnesses, make motions, and cross-examine any witnesses presented by the defense."<sup>1290</sup>

## Prosecutions

A large number of cases and prosecutions have been brought before Argentine courts, although human rights and victims' organizations decry the slowness of the proceedings. In March 2017, the Procuradoría de Crímenes de Lesa Humanidad stated that 593 files had been opened for crimes committed during the military dictatorship: 175 (29%) had reached a judgment, 16 (3%) were at the trial phase, 118 (20%) had been committed to trial, and 284 (48%) were at the investigation phase.<sup>1291</sup> The same report informs that those cases concern 2,780 defendants, of whom 750 (27%) have been convicted and 77 (3%) acquitted. As of March 2017, 411 (14.5%) had been charged and 794 (28%) were facing trial.<sup>1292</sup>

Some argue that the prosecutorial strategy was articulated early on as seeking to "achieve the highest number of 'significant trials' in the shortest period of time possible."<sup>1293</sup> However, initial cases focused on specific incidents and perpetrators, and lacked a comprehensive approach to prosecution of mass atrocities, which has been one of the reasons for a significant caseload and delays.<sup>1294</sup>

Other reasons for delays included slow proceedings before Appeals and Cassation Courts, a problem which congress sought to address through a legal reform.<sup>1295</sup> The nature of the criminal proceedings in Argentina also explains slow progress on cases: a slow and extremely formal investigation process providing plenty of opportunities for delaying tactics.<sup>1296</sup> Finally, some have pointed to a shortage of judicial and prosecution staff possessing the specific expertise needed to deal with crimes against humanity cases.<sup>1297</sup>

In 2012, the head of the specialized prosecutions unit indicated that prosecutions would also proceed by grouping incidents at detention centers:

Our basic goal at the Attorney General's Unit is to concentrate the investigations by common denominators. For example, all the acts committed in the same detention center would be investigated in a single inquiry, and this inquiry would produce one trial. This method obviously has its strengths and weaknesses, and these trials showcase the best and the worst of the justice system.<sup>1298</sup>

More recently, cases for crimes committed in the same detention center have been grouped into *megacausas* (mega-cases).

In a document with instructions to prosecutors, the Procuraduría de Crímenes de Lesa Humanidad acknowledged a need to prioritize cases. In doing so, it recognized that the law might not favor any type of prioritization but that establishing priorities is necessary in practice, considering the huge number of facts and perpetrators and the broad temporal and geographical span. It also recalled that many of the defendants are aging and that some have died before cases reached a judgment. Initial lack of guidance in this respect led to some accused, who have been tried several times and sentenced to the maximum penalty, continuing to face other prosecutions, while other alleged perpetrators have not been investigated. Mindful of the need to maximize available resources, the Procuraduría offered some basic “rational criteria” to prioritize cases, namely: to prioritize cases against accused who have not been convicted, or who were not convicted to the maximum penalty; or against elderly accused who have not yet been tried; or relating to victims who have not yet accessed justice for the crimes they suffered (the Procuraduría keeps a registry of victims whose cases have been heard, which can be accessed by prosecutors for reference).<sup>1299</sup>

The convictions in 2006–2007 for crimes against humanity against police official Miguel Etchecolatz and priest Christian Von Wernich established important judicial precedents for the prosecution of other “Dirty War” criminals. The court stated *in dicta* that “these crimes were ‘committed in the context of genocide,’” but did not answer whether the Dirty War was in fact genocide.<sup>1300</sup> The judgments marked “a beginning of a shift in Argentine courts toward greater reliance on international law in prosecuting Dirty War crimes.”<sup>1301</sup> However, most of the judgments considered that the crimes were crimes against humanity, not genocide. Argentina did not have a provision covering crimes against humanity in its Criminal Code at the time of the commission of the crimes.<sup>1302</sup> The courts, therefore, tried the accused for ordinary crimes (kidnapping, torture, and murder) and relied on customary international law<sup>1303</sup> to establish that those had been committed as crimes against humanity.<sup>1304</sup>



Prosecutors have steadily expanded their scope to target not only military officers, but “civilians who contributed in diverse ways to the crimes, including priests, judges, and former ministers.”<sup>1305</sup> In March 2011, a federal court sentenced an army general to life imprisonment in the first case against participants in Operación Cóndor, suggesting a broader direction for prosecutions.<sup>1306</sup> In 2015, CELS presented a report on corporate responsibility for crimes committed during the military dictatorship.<sup>1307</sup> To date, there have been no prosecutions against corporate actors.<sup>1308</sup>

Crimes committed at a clandestine detention and torture center operating at the Navy Mechanics School (ESMA) received intense attention in Argentina and abroad.<sup>1309</sup> The ESMA mega-cases concern 12 investigations, which have been committed to trial in four parts. In November 2011, in the second ESMA case, a federal court convicted 16 of the officers of crimes against humanity after a two-year trial that included testimony from over 150 witnesses.<sup>1310</sup> Another prominent complex investigation involved crimes committed in Campo de Mayo,<sup>1311</sup> a military area 30km outside Buenos Aires that hosted the largest clandestine detention center. That investigation has been committed to trial in five parts.<sup>1312</sup>

An April 2010 conviction of former military president General Reynaldo Bignone for kidnapping and torture stands as one of the highest-profile cases against top leadership of the military juntas.<sup>1313</sup> Bignone has also been tried in other cases, including a significant one concerning Operación Cóndor, resulting in convictions.<sup>1314</sup> Jorge Rafael Videla, another top military commander and former president, was one of the co-accused in the same case, but he died before the case was completed. Videla had been convicted in other cases, including for systematic kidnapping of babies and children.<sup>1315</sup>

Matters related to fair trials and balancing the rights of the accused against the gravity of the crimes have also attracted significant attention. One such matter has been the right of the accused to home detention or home imprisonment due to advanced age or illness. Considering the time elapsed since the crimes were committed and age of the accused, the matter has given rise to a significant number of requests and reviews, including before the Supreme Court. The court has balanced two opposing arguments: the exceptional nature of crimes against humanity and nonapplicability of benefits afforded to those accused of ordinary crimes as opposed to equality before the law and humanitarian considerations for accused persons whose health conditions may deteriorate significantly if imprisoned. Some judgments have also considered the accused persons’ capacity to exert pressure on others despite their advanced age and the state’s international

obligations to ensure investigation, trial, and punishment of those accused of crimes against humanity and human rights violations.<sup>1316</sup>

In addition, there has been debate around the application of an old law that allowed convicted persons to have the time spent in pretrial detention count double for the purpose of sentence execution.<sup>1317</sup> This so-called “2-for-1” law had been passed in 1994 and was repealed in 2001. But in 2017, the Supreme Court ruled that the benefit was applicable to an individual who had been in detention since 2007 on grounds of application of the law most favorable to the defendant and equality before the law (no specific exception had been established in law for those convicted of crimes against humanity).<sup>1318</sup> The judgment brought society into turmoil, as it potentially opened the door for hundreds of convicted persons to apply to have their sentence significantly shortened, a benefit that some considered equal to a “virtual amnesty.”<sup>1319</sup> In the days following the judgment, activists and human rights organizations issued statements condemning application of the 2-for-1 benefit to those convicted of the most serious crimes.<sup>1320</sup> Hundreds of thousands of Argentines demonstrated against the judgment.<sup>1321</sup> After just two days of debates and only nine days after the judgment, congress almost unanimously passed a bill that barred application of the 2-for-1 benefit in any other grave crimes case.<sup>1322</sup>

## Legacy

Some observers have criticized Argentina’s court system for delays in processing the burgeoning atrocity crime caseload.<sup>1323</sup> In part, delays reflect a judicial under-capacity to handle the sheer number of cases, including, for example, a lack of courtrooms in Buenos Aires.<sup>1324</sup> While policymakers have taken measures to address delays and backlogs, problems persist due to the sheer number of crimes, victims, and perpetrators. In some respects, courts are racing against time to complete investigations.<sup>1325</sup> As of March 2017, over 450 people accused of crimes committed during the dictatorship had died before being brought to justice.<sup>1326</sup> Argentina can be commended for having handled cases through its existing judiciary mechanisms and without creating a separate structure, although it would have been important to consider establishing prioritization guidelines from an early stage. Some have also raised concerns about gaps in witness protection and security, noting, for example, the disappearance of a former torture victim before the final days of a trial.<sup>1327</sup>

Victims’ and advocates’ persistence in their quest for justice made the trials possible. The Mothers and Grandmothers of Plaza de Mayo played a central role, and their

legacy extends beyond Argentina. They are known and respected worldwide, and their actions have inspired movements in other parts of the globe. In addition, the Mothers of Plaza de Mayo association has been active on human rights issues other than those related to crimes committed during the military dictatorship.

Committed to find their grandchildren, the Grandmothers of Plaza de Mayo contributed to the creation of a National Genetic Data Bank in 1987. They have conducted impressive outreach campaigns to sensitize those who were abducted and given to other families. Victims abducted at such a young age may have been oblivious to their family background for several decades, as they grew up with a false identity. To date, more than 120 cases of stolen children have been resolved—most through DNA tests via the Genetic Bank—but several hundred remain unaccounted for.<sup>1328</sup>

Finally, CONADEP, the truth commission established very shortly after the military dictatorship, was one of the first of its kind. In addition to collecting and recording evidence used in trials 30 years later,<sup>1329</sup> and which might have otherwise been lost, it served as a reference for other truth commissions created in Latin America and around the world.

## **Financing**

Given the lack of a specific discrete structure, resources for the crimes against humanity cases were provided along with the other resources for the judiciary in the public sector budget. The material and human resources assigned to the cases have been insufficient to process a very large number of cases in a timely manner, as shown by delays and backlogs. Both the Attorney General's Office and the Supreme Court took targeted measures to address some of the structural shortcomings, including creation of specialized units, appointment of judicial officials and limited expansion in the number of staff. Other limitations included insufficient courtroom availability and limited digitalization of proceedings.<sup>1330</sup>

Donor funding has enabled civil society groups' involvement in the cases, including their provision of support and legal representation to victims, as well as in monitoring and advocacy.

## Oversight and Accountability

There have been two forms of oversight in Argentina: first, a formal oversight built into the country's judicial system, and second, an informal mechanism via domestic and international civil society and social pressure.

The Council of Magistrates (*Consejo de la Magistratura*),<sup>1331</sup> which is involved in the selection of judges, has oversight functions with regard to judges' performance and can undertake administrative proceedings for misconduct.

Cases have been heard in Trial and Appeals Courts. Access to an Appeals Court is granted through ordinary appeal proceedings and Appeals Courts can review both the determination on the facts and application of the law. In addition, the parties can apply to have proceedings reviewed by a Court of Cassation, which can be accessed only via extraordinary applications seeking an interpretation of the law. Finally, in even more limited circumstances, and after a ruling by the Court of Cassation, the parties may be granted access to the Supreme Court, Argentina's highest judicial body.

National and international civil society organizations have made a significant contribution to informal forms of oversight. CELS, in particular, has consistently conducted research, advocacy, and monitoring of proceedings related to crimes committed during the military dictatorship for almost 40 years.<sup>1332</sup> The Argentinian section of Amnesty International has also done research and conducted specific advocacy campaigns in relation to topics of interest.<sup>1333</sup> The International Center for Transitional Justice published a series of briefing papers between 2005 and 2009,<sup>1334</sup> and has regularly reported on the trials since 2011.<sup>1335</sup>

Finally, Mothers of Plaza de Mayo and Argentinian society have contributed to an informal system of checks and balances through peaceful demonstrations and social pressure.<sup>1336</sup>

# COLOMBIA

## Conflict Background and Political Context

Colombia has faced prolonged internal armed conflict among paramilitary groups, guerrilla groups, and the national army for over 50 years. The conflict has been marked by extreme violence committed by all parties, including massacres, torture, forced disappearance, forced displacement, sexual violence, and other grave crimes. In recent years, Colombia has adopted a transitional justice strategy to help bring an end to the conflict and provide justice for victims. In 2016, the Colombian government and the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, or FARC) signed a historic peace agreement, bringing a formal end to the conflict with that guerrilla group. As of October 2017, peace talks with another armed group, the National Liberation Army (*Ejército de Liberación Nacional*, or ELN), were ongoing.

The Colombian conflict originated in an era known as *La Violencia*, a violent struggle between liberals and conservatives during the 1950s. In 1958, in an attempt to resolve the conflict, Colombia established a power-sharing agreement called the National Front. However, far-left groups were excluded from the political process and formed small armies of guerrilla soldiers in remote regions of the country. The largest of these groups included the FARC and the ELN.<sup>1337</sup> In the 1970s, to protect their interests from expropriation by the guerrillas, wealthy landowners and drug lords formed their own private armies with the assistance of the government and military.<sup>1338</sup> Eventually, these paramilitary groups joined forces under the umbrella organization of the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, or AUC).<sup>1339</sup>

The conflict evolved into a battle for land, money, and control over drug routes. Although all parties committed grave crimes, paramilitary groups—often working in close cooperation with the state and military—are responsible for a large majority of the human rights abuses committed during the conflict.<sup>1340</sup>

During the height of the conflict, the government inconsistently fluctuated between offers of amnesty and use of military power to fight the leftist guerrillas, with very limited success.<sup>1341</sup> Colombia signed the Rome Statute of the International Criminal Court (ICC) in December 1998 and deposited its instrument of ratification in August 2002, triggering its entry into force in November 2002. The state has been under

preliminary examination by the ICC Office of the Prosecutor since June 2004.<sup>1342</sup> Since then, the Colombian government has actively developed transitional justice legislation to pursue justice and has begun conducting national trials for grave crimes.

In spite of the various peace agreements signed by Colombia in recent years, violence and serious human rights abuses by state and nonstate armed groups remain a problem. “Successor” organized armed groups, known variously as *bandas criminales* (BACRIM), organized crime groups, or “post-demobilization paramilitary groups,” emerged following the demobilization of the AUC and FARC. They frequently target civilians and engage in narco- and human-trafficking, as well as other criminal activity.<sup>1343</sup>

A number of the recent developments in Colombian transitional justice legislation have been subject to intense political debate. In particular, the approach of President Juan Manuel Santos toward the peace process with the FARC has been widely criticized by his predecessor, former President Álvaro Uribe. Uribe has mobilized significant political power against Santos’s efforts, to the extent that a public referendum on the peace agreement failed in October 2016.

External pressure for accountability has come from the Inter-American system, the UN, and the ICC. For example, the Inter-American Commission of Human Rights (IACHR) has issued findings that security forces committed or collaborated in the commission of human rights violations, including torture, disappearances, and extrajudicial killings.<sup>1344</sup> The UN Commissioner for Human Rights and the ICC Office of the Prosecutor have characterized extrajudicial killings perpetrated by the Colombian security forces as possible crimes against humanity.<sup>1345</sup> The UN’s Office of the High Commissioner for Human Rights also has a monitoring and technical assistance program in Colombia and is closely involved in monitoring the FARC peace process.

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## **The Role of the United States in Colombia**

The United States has a long history of involvement in the Colombian conflict, from training counter-insurgents in the 1950s and 1960s to a massive military and counternarcotics program launched in 2000, called Plan Colombia. America invested some US\$10 billion in Plan Colombia over the course of 16 years and has proposed additional funding to help secure peace.<sup>1346</sup> Some credit Plan Colombia as marking a turning point in the conflict.<sup>1347</sup> The United States has been the largest

and most active donor to the domestic judicial system since the early 1990s. The U.S. Department of Justice has provided legal advisers, investigators, and prosecutors through the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Prosecutorial Development, Assistance and Training (OPDAT). These advisers also provided limited assistance on human rights prosecutions to the Human Rights Unit of the Colombian Prosecutor General's Office and the Prosecutor's Justice and Peace Unit.<sup>1348</sup> Top drug traffickers and paramilitary leaders are sometimes extradited to the United States, a controversial practice among Colombian jurists and civil society.<sup>1349</sup>

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## Existing Justice-Sector Capacity

Since the adoption of the 1991 constitution, the Colombian justice sector has undergone significant reforms, including the passage of a revised criminal procedure code in 2004. The 1991 constitution introduced important reforms to the institutional judicial framework, including creating a separate Public Prosecutor's Office with oversight over investigations and enshrining "the right to a subsidized defense, setting the basis for the creation of a Public Defender's Office."<sup>1350</sup> The rule of law and domestic judicial-sector capacity in Colombia is still weak overall, especially in conflict areas, but has made enormous improvements since the height of the insurgency in the 1990s. The judiciary is persistently overloaded, infamously slow, and historically underresourced and understaffed.<sup>1351</sup> In remote areas, which make up the large majority of the state, the judiciary has been weak and either unwilling or unable to enforce legal contracts.<sup>1352</sup> Judges, witnesses, and prosecutors have faced bribery, threats, and attacks. According to the World Justice Project's May 2016 Rule of Law Index, Colombia ranked 19th out of 30 countries in Latin America and the Caribbean, and 71st out of 113 countries globally. With respect to its criminal justice system, it ranked 20th of 30 in Latin America and the Caribbean, and 91st of 113 globally.<sup>1353</sup>

However, according to some, Colombians' "level of confidence in their justice system is among the highest in the region" and has been increasing in recent years.<sup>1354</sup> A 2010 USAID report noted that caseloads are "modest, if fairly unevenly distributed, but clearance and congestion rates remain poor."<sup>1355</sup> Colombia's Constitutional Court has gained a strong reputation around the world.<sup>1356</sup>

Nevertheless, the judiciary faces significant hurdles. Colombia's already strained judiciary faces an entrenched criminal nexus among drug traffickers, armed paramilitary groups, and corrupt political elements, all of which contribute to

widespread human rights abuses. In addition, Colombia still has thousands of internally displaced peoples from the decades of conflict. Colombia's legislature continues to pass laws and reforms to address the crimes committed during the conflict and provide some form of justice and restitution to victims. The judicial sector's willingness to tackle these interrelated problems and entrenched politico-criminal elements reflects its increasing independence and technical capacity, but the rule-of-law framework is severely stressed.

## **Existing Civil Society Capacity**

Colombia's civil society is strong and technically proficient on justice issues. Organizations have been active despite facing significant threats, including persecution by the state intelligence service. Especially when faced with political blockages in prosecuting military abuses, civil society organizations have engaged in domestic litigation and sought the opinion of the IACHR concerning Colombia's obligations under the American Convention on Human Rights.<sup>357</sup> A number of civil society organizations closely monitor and conduct advocacy in relation to transitional justice issues in Colombia, including legislation and trials. The *Movimiento de Víctimas de Estado* (MOVICE) has been one of the organizations that has been effective in organizing victims.

Colombia has also received support from a number of international human rights organizations, who have applied pressure, written *amicus* briefs for the Constitutional Court, provided capacity building, and assisted in peace negotiations with the FARC.

## **Creation**

The complex legal framework for transitional justice in Colombia has developed in stages and is still evolving. Colombia's transitional justice efforts began in earnest with the demobilization of the paramilitaries and passage of the Justice and Peace Law (JPL) in 2005. In 2011, the Santos government passed comprehensive legislation on victims' reparations, the right to truth, and land restitution. The following year the government and FARC began peace talks, which culminated in the 2016 peace agreement and resulting transitional justice legislation. The peace agreement with the FARC added significant new elements, including the Special Jurisdiction for Peace (SJP). In October 2017, the Constitutional Court made a landmark decision guaranteeing the legal stability of the peace agreement until 2030 and approving the constitutionality of the resulting transitional justice legislation.<sup>358</sup>



## ***Justice and Peace Law***

After a number of failed peace agreements, the Colombian government and the paramilitary groups signed the Santa Fe de Ralito Accord in 2003.<sup>1359</sup> In 2005, in an attempt to provide accountability for crimes committed by paramilitary leaders, the Colombian government passed Law 975 of 2005, also known as the Justice and Peace Law.<sup>1360</sup> The Constitutional Court modified the text of the law through a series of rulings, in particular Sentence C-370 of 2006. Congress reformed the law in 2012 with Law 1592.

The Ralito Accord provided for collective demobilization for the AUC as well as other armed groups. The JPL, in turn, established a legal framework for integrating combatants into civilian life and offered a reduced criminal sentence for those who disarmed and confessed to human rights abuses. According to the Colombian government, by 2016, approximately 58,161 combatants had demobilized.<sup>1361</sup> By 2015, some 4,410 paramilitaries had applied for benefits under the JPL.<sup>1362</sup>

Relatedly, Law 1424 of 2010 establishes the framework for reintegrating demobilized paramilitary members who were not covered by the JPL process. Under Law 1424, members of illegal armed groups accused of low-level crimes, such as simple or aggravated conspiracy or illegal possession of arms, receive judicial benefits, including suspension of arrest warrants and the conditional suspension of sentences, in exchange for contributing to the truth.<sup>1363</sup>

The process established by the JPL is ongoing. Members of paramilitary groups who have demobilized fall under the jurisdiction of the JPL or ordinary courts, and thus will not be subject to the jurisdiction of the SJP. However, the SJP will have jurisdiction over those who collaborated with or financed paramilitary groups.

## ***Accountability for Military and Other State Actors***

The JPL did not specifically provide accountability for military and state actors who committed or facilitated the commission of grave crimes related to the armed conflict. Colombia has made various attempts to reform the military justice system for crimes related to acts of military service and expand military jurisdiction.<sup>1364</sup> Some suggest that these attempted reforms aimed to transfer cases from civilian to military courts, although the language that would have allowed this was eventually removed from the proposed reform.<sup>1365</sup> The government passed a reform in 2015 modifying the constitution to specify that the investigation and prosecution of crimes committed by the armed forces in the context of an armed conflict would be

judged according to international humanitarian law.<sup>1366</sup> Accountability for members of the armed forces was also part of the peace agreement signed with the FARC and will be part of the new SJP.

### ***Victims' and Land Restitution Law***

In 2011, the Colombian government passed Law 1448, or the “Victims and Land Restitution Law,” a historic development for victims of the Colombian conflict. The law focuses on providing truth, justice, and reparations for victims.<sup>1367</sup> Under the law, victims of disappearances, murder, displacement, and other human rights violations can receive damages, restitution, social services, and legal protection. For those who have been displaced, the law created a special land restitution program.

Law 1448 also provides for the creation of a national day of memory and the collection of victim testimony. The Victims' Law in turn created the National Commission of Reparation and Reconciliation and the National Historic Memory Center. It also established the Victim Assistance and Reparations Unit, responsible for coordinating the National System for Assistance and Reparations for Victims as well as the Victims Registry, humanitarian aid efforts, victim compensation, and individual and collective reparations plans.

The Land Restitution Unit, which began work in January 2012, is charged with creating a registry of stolen or abandoned land, reviewing victims' claims for land restitution, and presenting their cases to a land judge. If restitution of land is not possible, the state will pay due compensation for land theft and displacement. In its first five years, the law provided for the compensation of 590,000 victims. However, the law has faced significant implementation challenges.<sup>1368</sup>

### ***Legal Framework for Peace***

In mid-2012, the Colombian government passed legislative Act 01 of 2012, the Legal Framework for Peace. This framework, included in a constitutional amendment, lays out various transitional justice measures, including the creation of extrajudicial justice mechanisms, as well as criteria for prioritizing and selecting cases, suspending sentences, and dropping cases, including those of state agents and guerrillas convicted of atrocities. Human rights groups widely condemned the framework as providing impunity for grave crimes.<sup>1369</sup> The prosecutor of the ICC also sent a letter to the Constitutional Court saying that suspending sentences for crimes within the ICC's jurisdiction would violate Colombia's international law obligations.<sup>1370</sup> The Constitutional Court altered the amendment in 2013,<sup>1371</sup> helping

to set the stage for an agreed approach to criminal justice mechanisms during peace negotiations with the FARC.

### ***Peace Negotiations with FARC and Other Guerrillas***

Peace negotiations with leftist guerrillas have been a contentious issue in Colombia. Talks with the FARC started in November 2012, and talks with the ELN began in February 2017. After nearly four years of negotiations with the FARC, the government and the FARC signed a comprehensive peace agreement on August 24, 2016. The agreement included terms for a bilateral ceasefire, a process for the FARC to lay down arms and integrate into society, and justice processes for victims of the conflict. It also included agreements on comprehensive rural reform, battling the illicit drug trade, and the political participation of the FARC. In particular, the agreement provided for the establishment of the Special Jurisdiction for Peace (SJP), a system designed to provide justice for the crimes committed during the conflict by guerrillas as well as members of the armed forces and others who financed or collaborated with armed groups.

After months of vehement protest from members of the political opposition, the agreement narrowly lost a nationwide plebiscite in October 2016. With only a 37 percent turnout for the vote, the “yes” vote lost by only one-half of one percent. The government and FARC renegotiated a new agreement, which was passed by congress at the end of November 2016. The new agreement included many proposals put forth by the opposition and significant revisions, including regarding the SJP. However, the new agreement lacks a stable political base, and in late 2017, it appeared that its implementation could depend on the results of presidential elections in 2018.

### ***Integral System of Truth, Justice, Reparation and Non-repetition***

In April 2017, as part of the fast-track legislation passed to implement the peace deal signed with the FARC, Colombia passed amendments to the constitution creating the Integral System of Truth, Justice, Reparation and Non-repetition (the “Integral System” framework).<sup>1372</sup> As of October 2017, the Constitutional Court was reviewing the legislation, and it was subject to change. Many national and international groups expressed criticism of the law and concerns about its implementation.<sup>1373</sup>

The framework is intended to focus less on retribution and more on establishing the truth about the past, creating mechanisms for victims’ reparations, and guaranteeing nonrepetition. It involves several components, including the SJP, the Unit for the

Search of Missing Persons, and a Truth Commission. It is innovative in that it incorporates both restorative and retributive goals, including penalties as well as repairing damage to victims caused by the conflict.<sup>1374</sup>

## Legal Framework and Mandate

### *Justice and Peace Law*

In 2002, President Álvaro Uribe's administration began negotiations with an umbrella group of paramilitary organizations, the AUC, in a process that culminated in the JPL of 2005. The JPL includes provisions for prosecuting international crimes with the possibility of reduced sentences within the domestic criminal system. Design flaws of the JPL, criticized by justice advocates as providing only partial justice, have been compounded by poor implementation and underfunding.

The JPL offers a range of legal immunities and benefits in exchange for surrender by individual members of armed groups. These immunities are conditioned on the individuals' contribution to national peace, collaboration with the justice system, reparation for victims, and the persons' adequate resocialization.<sup>1375</sup> In specially created JPL courts, magistrates hear voluntary confessions of demobilized paramilitaries (*postulados*). Other steps of this legal process include an indictment, investigations, formalizing charges, a reparations hearing, and reading the sentence against the accused. Those who are found guilty under a JPL prosecution receive full sentences, which are then suspended and substituted with reduced conditional sentences of between five and eight years.<sup>1376</sup> Everyone who participates in the JPL process is eligible for a reduced sentence; it is not predicated on the gravity, context, quantity, or scale of crimes committed nor on the rank or role of the accused.<sup>1377</sup>

Under the normal legal framework, sentences for similar crimes run from 50 to 60 years of imprisonment.<sup>1378</sup> The Colombian Constitutional Court has held that the large gap between "normal" and JPL sentences does not violate the right to justice and should not be considered an amnesty or pardon because the normal sentences are merely suspended, not replaced, by the reduced sentence.<sup>1379</sup> Although the JPL sentences are "less rigorous," the court noted that they depend on the cooperation of the accused with the justice system and victims, making the sentences conditional.<sup>1380</sup>

If individuals decide not to participate in the process of voluntary confessions, they may face full criminal charges. Prosecutions under ordinary criminal jurisdiction are brought under provisions of the Rome Statute, which were

domesticated in the Colombian criminal code in June 2002, but are procedurally conducted under the JPL.<sup>1381</sup>

The procedural features of prosecutions under the JPL law are significantly different from ordinary criminal proceedings in Colombian law.<sup>1382</sup> It is based on an inquisitorial model and relies on the confession of the accused. Under the JPL, investigations and prosecutions should focus on patterns of war crimes and crimes against humanity, structural and organizational aspects of the paramilitary groups, and external support provided to the paramilitaries. According to an October 2012 directive from the attorney general, investigators must prioritize investigations of crimes committed by large criminal organizations and individuals most responsible for the crimes.<sup>1383</sup>

A December 2012 reform of the JPL echoed the prioritization of investigating those “most responsible” for crimes,<sup>1384</sup> leading to an increase in investigations of paramilitary leaders.<sup>1385</sup> This reform also made it more difficult for demobilized paramilitaries to be released from jail. This reform provided that if the state determined that the accused had not told the complete truth, cooperated with the judicial system, or compensated their victims by 2014, their case would be transferred to the normal court system, where their conditional sentence could be lifted. This reform also required victims to seek reparations under the new Victims Law, rather than under the JPL.<sup>1386</sup>

The JPL also included provisions for victim participation and restitution. To participate, victims were granted the right to attend all stages of the criminal proceedings, to directly question the accused about crimes that affected them, and to demand reparations. Reparations include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Decree 1290, which entered into effect in 2009, set out the administrative compensation for victims of illegal armed groups. Under this decree, some 18 million pesos have been awarded to victims of violations of the rights to life, physical integrity, physical and mental health, individual freedom, and sexual freedom. The decree does not provide compensation measures for victims of state agents.

### ***Integral System of Truth, Justice, Reparation, and Non-Repetition***

Part of the Integral System framework adopted in 2017 involves the establishment of the SJP. The SJP will have exclusive jurisdiction over those who have directly or indirectly participated in the armed conflict, including members of the FARC, state agents, and third parties who have financed or collaborated with armed groups, among others. Paramilitary fighters who have demobilized or participated in the JPL

process or whose cases are being heard in the ordinary judicial system are not within the jurisdiction of the SJP. The SJP will also have exclusive jurisdiction over crimes committed in relation to the armed conflict, especially crimes against humanity, genocide, and war crimes. It will have one Justice Chamber and one Tribunal for Peace. The SJP establishes three tracks: an amnesty for political crimes, judgment and reduced sentencing for those who confess, and trials for those who fail to confess. The SJP has a 10-year mandate, with a possible extension of five years.

The SJP includes the possibility of an amnesty or pardon for political or politically related crimes (such as rebellion, sedition, and illegal possession of arms or military uniforms).<sup>1387</sup> Military and state agents are not eligible to benefit from the amnesty. However, the peace agreement provides that all parties must receive comparable treatment, leaving open the possibility of commuted sentences for those who are ineligible for amnesty.

As of July 2017, some 7,400 former FARC members had received amnesty: 6,005 by decree and another 1,400 were released from jail by the judiciary.<sup>1388</sup> The amnesty is part of the process of reintegration for those who identify members of the organization; lay down their arms; sign an agreement that they will not rise up against the government and will comply with the Integral System; and are accredited by the Office of the High Commissioner for Peace. The accreditation is also necessary for these former combatants to benefit from other reintegration programs.

Those who confess their crimes are eligible for reduced sentences as long as they lay down their arms and reintegrate into civilian life (in the case of FARC combatants); recognize their responsibility; and contribute to victims' rights to truth, reparation, and nonrepetition. Those who confess early in the process will be eligible for reduced sentences involving a restriction of liberty for five to eight years in the most serious cases, or two to five years in other cases.<sup>1389</sup> This "restriction of liberty" requires residing in a designated demobilization zone, but not necessarily a prison. They may also face additional penalties including reparations to victims or restorative measures. Those who confess later during a trial, but before a final judgment is delivered, may be sentenced to five to eight years in prison. Those who fail to confess can be sentenced to 15–20 years in prison.

Individuals within the SJP jurisdiction cannot be subject to extradition for crimes within its jurisdiction. Being sanctioned by the SJP does not prohibit participation in Colombian politics, including while serving a sentence. (This had been a contentious issue during the peace negotiations.) The accused have the right to a defense and to appeal any decisions of the SJP.

The Office of the Prosecutor is currently tasked with collecting evidence to pass on to the SJP and is grouping potential cases according to gravity and symbolic value. Priority crimes include sexual violence, mass murder, displacement, enforced disappearances, use of child soldiers, and environmental crimes.<sup>1390</sup>

The Integral System law also provides measures for reparations. It creates explicit incentives for members of the FARC to declare their assets to the government to be used for reparations. Offenses related to any assets discovered later that were not declared by FARC combatants will be subject to normal criminal prosecution.

According to the Integral System, crimes committed by members of the armed forces will be subjected to a separate regime based largely on Colombian law. The Integral System rules are considered *lex specialis*. International observers have expressed concern about rules pertaining to military prosecutions, in particular about the Integral System's narrower definition of command responsibility than that provided for in Article 28 of the ICC Rome Statute.<sup>1391</sup> Some argue that under the Colombian construction of command responsibility it will be difficult, if not impossible, to convict commanders based in Bogotá for crimes committed by their subordinates on the ground in remote regions of the country.<sup>1392</sup>

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## **The Integral System's Other Transitional Justice Provisions**

### **Truth Commission**

The Truth Commission aims to contribute to the narrative of the conflict, including with a recognition of the victims and the responsibility of those who contributed to the conflict. It will be an extrajudicial body with a six-month preparation period and a three-year mandate. It will be tasked with holding public hearings throughout the country, where those impacted by the conflict can be heard, including those who participated or contributed to the conflict. The Truth Commission will create a final report and undertake outreach programs to distribute it. It will also create an oversight body to ensure its recommendations are implemented.

### **Unit for the Search for Disappeared Persons**

This is a high-level and independent extrajudicial unit charged with establishing the truth about what happened to persons disappeared during the conflict. It will present its findings to other units, including the Truth Commission and Tribunal for Peace, if requested. However, the information produced by this unit cannot be transferred to judicial authorities for the purpose of assigning responsibility or as evidence in trials.

## **Peacebuilding and Reconciliation Measures**

All parties to the conflict will participate in formal public acts that recognize their responsibility and apologize for crimes committed during the conflict. The FARC will also undertake infrastructure construction projects and programs including removing land mines, searching for missing persons, coca crop substitution programs, and reforestation programs. The Colombian government will also undertake rural development programs, collective reparation programs, measures for psychosocial rehabilitation, processes for the return of displaced persons, and the restitution of land and programs to help facilitate political participation for victims.

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## **Location**

The Higher Tribunals of Bogotá, Barranquilla, Bucaramanga, and Medellín have Justice and Peace courtrooms to implement the JPL legal framework. The military tribunal is located in Bogotá. As of October 2017, it was not yet clear where the SJP courtrooms would be located.

## **Structure and Composition**

Prosecutions are brought by a specialized Justice and Peace Unit within the Prosecutor General's Office, and another unit at the Attorney General's Office. The Justice and Peace Unit of the Attorney General's Office is responsible for investigating and charging demobilized paramilitaries. In 2012, the attorney general created a special unit for analysis and context (*Unidad de Análisis y Contexto*),<sup>1393</sup> whose primary purpose was to help build cases involving systemic and organized crime, but which has also been relevant to establishing the contextual elements of war crimes and crimes against humanity.<sup>1394</sup> The Justice and Peace section of the Inspector General's Office is tasked with representing society and ensuring the respect of fundamental constitutional rights. In addition, the National Ombudsman's Office's free legal aid section provides demobilized paramilitaries with public defenders and legal representation for victims. The sub-committee for the protection of victims and witnesses was charged with witness protection and support issues. This was eventually superseded by the creation of the National Protection Unit.<sup>1395</sup>

To help implement victims' rights, the JPL created the National Commission for Reparation and Reconciliation (CNRR). It was composed of government representatives, oversight bodies, and civil society organizations. Created in 2005,



it was tasked with designing and implementing a victims' reparation model. Under this mandate, it held workshops for victims on their rights and JPL procedures, published reports, and designed an outreach strategy. The CNRR closed in 2011 after passage of the Victims Law.

Related to the CNRR, the Historical Memory Group (HMG) was created in 2005 to develop a narrative of the Colombian conflict. Composed primarily of academics from Colombian universities, the HMG wrote several reports on how the conflict was experienced in various parts of the country. After the Victims Law was passed in 2011, the HMG's mandate was passed on to the National Historical Memory Center.

### *Special Jurisdiction for Peace*

The SJP, adopted in 2017, will be composed of five judicial bodies and an Executive Secretariat:

1. The Chamber for the Recognition of Truth and Responsibility and Determination of Facts. This chamber will be responsible for receiving all information and confessions. It will decide whether the case is within the jurisdiction of the SJP, identify the most serious and representative cases, and present its findings to the other units.
2. The Chamber for Amnesty and Pardon. This unit manages the amnesty provisions of the Integral System law.
3. The Chamber for the Definition of Legal Situations. This chamber defines the legal status of those who are not subject to an amnesty or pardon or other SJP special processes. This chamber can decide to terminate proceedings or waive judicial action against these persons.
4. The Investigation and Indictment Unit. This unit investigates and charges those individuals who do not confess. It also decides on victim and witness protection measures. It will have a technical forensic research team and special investigation team for cases involving sexual violence.
5. The Tribunal for Peace, which will be composed of five sections:
  - (i) First-instance section for cases involving confessions;
  - (ii) First-instance section in the cases without confessions;
  - (iii) Appeal section;
  - (iv) Review section; and

- (v) Stability and efficacy section, which will follow up on cases and sentences upon the conclusion of Tribunal for Peace proceedings.

The Executive Secretariat will be in charge of the administration and management of the SJP under the guidance of the Presidency of the SJP.

The SJP will be staffed by primarily Colombian magistrates who are chosen through a comprehensive and public selection process.<sup>1396</sup>

## Prosecutions

According to the Colombian government, by 2015, some 4,410 paramilitaries had applied for benefits under the JPL.<sup>1397</sup> The JPL process resulted in 47 sentences condemning 195 accused, about eight percent of the paramilitaries who attempted to participate in the JPL process. The sentences deal with 5,401 criminal acts and 26,788 recognized victims, representing only 6.65 percent of the 82,114 crimes attributed to the paramilitaries and 12.7% of the 211,013 associated victims.<sup>1398</sup> Moreover, nearly all of the compensation ordered for victims was paid for from the national budget as opposed to the assets of the accused—a breach of the conditions of participating in the JPL process.

Overall, the special process for prosecutions under the JPL has yielded few convictions for human rights violators and war criminals, including those falling within the jurisdiction of the ICC. Between 2008 and 2009, 29 high-level paramilitary leaders were extradited to the United States on drug-related charges.<sup>1399</sup> This extradition came just after they had started to reveal close links between the paramilitaries and state agents, including elected officials.<sup>1400</sup> In 2014, some 400 former paramilitary members were released from detention without having gone through the JPL process because they had already been detained for longer than the maximum eight-year sentence.<sup>1401</sup> Indeed, the process suffered from a critical backlog of cases, which prosecutors tried to alleviate with collective confession hearings.<sup>1402</sup>

During confessions of some paramilitary leaders participating in the JPL process, details emerged of crimes committed by state agents. In what became known as the “parapolitics” scandal, congressional representatives, public officials, military, police, and private entities were implicated in colluding with paramilitary groups to commit grave crimes. The Supreme Court, which is empowered to investigate public officials, opened over 500 investigations.<sup>1403</sup> Courts convicted some public officials

on charges of committing violent crimes such as murder, enforced disappearances, kidnapping, and torture, and others on conspiracy charges related to their links with paramilitaries.<sup>1404</sup> As of early 2017, more than 60 members of congress had been convicted.<sup>1405</sup>

Other trials have proceeded against members of the military, in particular in relation to the “false positives” scandal. Between 2002 and 2008, members of the military killed civilians and counted them as combat deaths in exchange for rewards such as vacation time, medals, and promotions.<sup>1406</sup> These extrajudicial killings left over 4,000 victims.<sup>1407</sup> As of 2016, prosecutors had investigated over 2,000 cases of extrajudicial killings allegedly committed by military personal and had convicted 961 members of the armed forces, most of them low-ranking soldiers.<sup>1408</sup>

However, human rights groups argue that there is significant evidence that senior military personnel were responsible for many killings.<sup>1409</sup> The ICC has reportedly warned the Colombian government that it must open cases against 29 military commanders—23 generals and six corporals—for the extrajudicial killing of over 1,200 civilians. If they are not tried by national authorities, the ICC could open its own investigations into the military leaders.<sup>1410</sup>

## Legacy

In practice, the JPL has meant that many former combatants have received low sentences (of between five and eight years) in low-security prisons, with little emphasis on full prosecution even for those who fail to confess fully and accurately, as required by the law.<sup>1411</sup>

Moreover, victim participation was generally low. As of November 2016, some 537,861 victims had submitted petitions under the JPL. However, participation in the judicial confession procedures was low, with only 94,461 victims able to participate, due in part to the difficulty of accessing the trials.<sup>1412</sup> Hundreds of thousands of victims who lived in remote areas of the country—where most victims are located—lacked the resources to travel to attend the trials and therefore could not participate in the *versiones libres* (the confession hearings under the JPL) and question the confessor.<sup>1413</sup>

According to a study done by the Contraloría of Colombia, the poor outcomes are the result of the limited capacity of the judicial system, which had no time to adequately prepare and adjust its investigation, trial, and judicial procedures for a

transitional justice model, especially considering the extremely high numbers of victims and criminal acts falling under the JPL process.<sup>1414</sup>

## **Financing**

In order to help reduce congestion and facilitate judicial processes related to the new transitional justice legislation, in 2017 the government transferred 5 billion pesos (approx. US\$1.7 million) to the judiciary budget, transferred some 110 civil servants to judicial offices, and announced additional training for judges and prosecutors.<sup>1415</sup>

Key donors have provided justice-sector assistance. Beginning in 2009, the Inter-American Development Bank funded three large projects to reorganize the Prosecutor's Office, modernize the Inspector General's Office, and improve court management at the high courts.<sup>1416</sup> The World Bank has also supported court administration projects, and the European Union runs a program for strengthening the rule of law, victim protection frameworks, and investigative capacity.<sup>1417</sup>

According to a study done by the Contraloría of Colombia, as of 2015 the JPL had cost \$11.1 billion pesos (approx. US\$2.9 million). The reparations fund for victims was also partially financed by recovering illegal assets and from donations from individuals. It is estimated that the SJP could cost as much as 2 billion pesos (approx. US\$667,000).<sup>1418</sup>

President Santos has said that he expects the international community to donate \$3.3 billion pesos to the peace process.<sup>1419</sup> The High Counselor for Post-Conflict, Human Rights and Security is hoping to create a fund for peace in Colombia to receive international donations to support the peace process. The largest donors to Colombia are Sweden, Switzerland, Spain, Canada, Germany, the EU, the United Kingdom, the World Bank, and the United States.<sup>1420</sup>

## **Oversight and Accountability**

The magistrates of the JPL courtrooms are elected by the Plenary Chamber of the Supreme Court of Justice. Lists of candidates are sent by the Administrative Chamber of the Superior Council of the Judiciary; a Constitutional Court decision from 2013 required that candidates be subject to a public and objective selection process based on their merits.<sup>1421</sup> The selection of magistrates for the SJP was

conducted through a public process wherein all sectors of society, including victims' organizations, were able to nominate candidates. A five-person selection committee evaluated these nominations and elected 51 magistrates. As with all judicial mechanisms in Colombia, the legal framework that shapes the JPL, and the SJP in Colombia is subject to oversight by the Constitutional Court.

There is also significant informal oversight on the work of the JPL tribunals and the SJP. Colombian civil society is very active in monitoring proceedings and developments, as are many international organizations. There is additional oversight from the UN and the IACHR. In addition, the ICC has actively overseen developments in Colombia's transitional justice legislation, including by highlighting crimes or prosecutions that remain unaddressed by the domestic judiciary, naming certain officials it considers should be investigated, and providing guidance on interpreting provisions of the Rome Statute.<sup>1422</sup>

# **GUATEMALA: INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA**

## **Conflict Background and Political Context**

Guatemala is an elite-dominated state that as of 2017 was more than 20 years into a process of political change. The economic and political elite's disproportionate control of economic resources and a regime of state discrimination against the indigenous population that makes up a majority of citizens were underlying causes of Guatemala's 36-year armed conflict (1960–1996).<sup>1423</sup> The armed forces backed the elites and reinforced the system by repressing dissident political forces. In a Cold War environment that instinctively labeled movements for political change as “communist” and “revolutionary,” the United States threw its support behind this systemic repression.<sup>1424</sup>

After a U.S.-supported coup ousted a democratically elected leftist government in 1954, a succession of right-wing military governments ruled Guatemala for more than 40 years. Civil war began following a failed leftist uprising in 1960, with military regimes seeking to crush armed leftist groups emerging from impoverished indigenous and peasant communities.<sup>1425</sup> By 1981, the conflict had escalated to an alarming degree, as the military systematically targeted entire indigenous communities, causing vast loss of life.<sup>1426</sup> The rule of General Efraín Ríos Montt from March 1982 to August 1983 marked the bloodiest period in Guatemala's history, resulting in thousands of civilian deaths, rampant sexual violence, and enforced disappearances. Overall, estimates indicate more than 200,000 civilians died during the conflict.<sup>1427</sup>

Following the Cold War's end, UN-led peace negotiations finally resulted in a peace accord in 1996. However, neither the end of armed conflict nor the efforts of the UN and donor organizations resulted in immediate amelioration of state weakness. Institution building proved difficult, and organized crime groups—many emerging from right-wing paramilitary organizations—expanded their already-extensive influence.

At the urging of Guatemalan human rights organizations, the UN responded to the renewed security crisis in 2003, when it proposed the creation of the International Commission against Illegal Groups and Clandestine Security Organizations (CICIACS). The proposal collapsed in 2004 as a result of widespread opposition in Guatemala and unfavorable constitutional review. However, CICIACS was reborn at the end of 2006 as the International Commission against Impunity in Guatemala (CICIG) with a more constitutionally and politically palatable model.

Guatemala remains a state of concern for its high-level corruption and violence, drug-trafficking, and street gangs.<sup>1428</sup> However, following its establishment, CICIG successfully conducted investigations that helped to establish its credibility, while also focusing on facilitating systemic reforms and strengthening the capacity of the Attorney General's Office.<sup>1429</sup> An empowered Attorney General's Office increasingly collaborated with CICIG on combating organized crime. Then in 2012, the Attorney General's Office brought genocide charges against Ríos Montt and his then-military chief of intelligence for atrocities committed in the early 1980s.<sup>1430</sup> This paved the way for additional grave crimes trials.

In 2015, under the leadership of Commissioner Iván Velásquez, CICIG's investigation into a multimillion-dollar customs fraud resulted in the arrests of some 200 people and brought down the government of then-President Otto Pérez Molina. Other high-profile cases have started to erode Guatemala's system of impunity and organized crime. Ongoing investigations have also implicated the brother and son of the current president, Jimmy Morales, who have been arrested and are awaiting trial on corruption charges.

CICIG's renewed vigor did not come without consequences.<sup>1431</sup> President Morales began a campaign to oust Velásquez and debilitate CICIG after Velásquez and Attorney General Thelma Aldana announced an investigation into illegal campaign contributions related to an opposition party. In August 2017, Morales complained to the UN that Velásquez was overstepping his mandate and should be investigating gang-related crimes instead of corruption. Morales then ordered Velásquez's expulsion from Guatemala. Citizens rallied in support of Velásquez, and the Constitutional Court ruled in favor of Velásquez, ordering state agencies to desist from attempts to remove him from the country.

At the same time, Velásquez and Aldana began efforts to lift Morales's presidential immunity in order to proceed with an investigation against him for illicit campaign contributions during the 2015 presidential campaign. Congress voted on two separate occasions against lifting his immunity. In September 2017, congress passed legislation altering the criminal code so that accountants, rather than general secretaries of political parties, are liable for illicit campaign contributions. The new legislation also commuted prison sentences for 400 different crimes, including extortion. Critics claimed that this was an attempt to legalize impunity in Guatemala. Massive citizen protests led congress to revoke the legislation the following day.

## **Existing Justice-Sector Capacity**

Alarming levels of corruption, violence, and clientelism dominated Guatemala's post-conflict justice system. Following the 1996 peace accords, the UN attempted to help rebuild and restructure the state. However, even the large donor endeavors proved futile: organized crime groups continued to expand their influence.<sup>1432</sup>

The commencement of CICIG's work brought a degree of hope for the country. After several years of struggling against entrenched impunity structures and corruption, CICIG has spurred significant progress within the justice sector. This has been critical to Guatemala's ability to conduct credible proceedings for grave crimes and grand corruption cases.<sup>1433</sup> First, CICIG helped to ensure a more credible process for the election of magistrates and the attorney general, which strengthened the independence of the justice system and the rule of law. Second, CICIG has strengthened the Attorney General's Office's independence and technical capacity to conduct complex investigations. Third, CICIG proposed the creation of a centralized system of high-risk courts to adjudicate especially sensitive cases related to organized crime and corruption in order to provide greater safety for magistrates and their families, as well as witnesses and the lawyers litigating these cases. All of these efforts have empowered reformers within Guatemala's justice institutions and given them the tools to tackle the illicit parallel power structures that have so long dominated the country.

## **Existing Civil Society Capacity**

Civil society actors have been actively engaged in the developments taking place in Guatemala. The initiation of peacebuilding activities commenced with NGOs publicizing military atrocities at the national and international level. Organizations such as the Myrna Mack Foundation, established shortly after the conflict, aimed to target impunity and lobby for social change; the conservative business lobby, called the Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), has at times joined the effort to support CICIG in tackling entrenched corruption.<sup>1434</sup>

Civil society advocated for the creation of an investigatory commission, which ultimately resulted in CICIG's establishment. Additionally, civil society played a critical role in bringing Ríos Montt and his military intelligence director Mauricio Rodríguez Sánchez to trial. The Center for Legal Action on Human Rights in



Guatemala (CALDH), together with the Association for Justice and Reconciliation (AJR), a victims' group, were the first to press charges of genocide in the Guatemalan courts. These and many other legal and victim organizations have played key roles in advocacy and victim representation in relation to the grave crimes cases. Massive youth-led citizen protests helped bring down the Pérez Molina government in 2015 and push congress to revoke controversial legislation concerning campaign finance in 2017.

## Creation

In the years following the peace accords, Guatemala saw the number of reported threats and attacks against human rights defenders mushroom to 374 (including 49 killings); a period of intense political turmoil following the release of the truth commission reports; the failure of the 1999 peace accords referendum; and the election of a populist, anti-elite President Alfonso Portillo.<sup>1435</sup> In response, NGOs began to discuss the possibility of setting up an ad hoc investigatory commission, capable of investigating the structures menacing human rights defenders and threatening to capture the state. The NGOs persuaded the United States and other international embassies to support the initiative, which the Human Rights Ombudsman announced in January 2003. International pressure, corruption scandals, criminal violence, and an economic crisis eventually lead the Portillo government to support the proposal.<sup>1436</sup>

After evaluating the proposal, the UN concluded that it focused on a set of war-related dynamics (intelligence structures harassing NGOs) that had been superseded by a greater hazard to the state (political-criminal networks tied to transnational organized crime) and was too weak to effectively address the issues. Thus, the UN proposed the creation of an autonomous UN-run prosecutorial agency with the capacity to carry out investigations and prosecute cases in Guatemalan courts independent from the Guatemalan attorney general.<sup>1437</sup> The negotiations with the Portillo government ended in January 2004, and the parties signed an agreement to create the International Commission against Illegal Groups and Clandestine Security Organizations (CICIACS).<sup>1438</sup>

However, this process coincided with a period of political turmoil as well as both presidential and congressional elections. The newly elected president, Oscar Berger, and a majority of the conservative congressional parties were skeptical about CICIACS. Two congressional committees, Human Rights and Interior,

recommended its rejection on the basis that it unconstitutionally usurped the attorney general's authority in prosecuting crimes and undermined Guatemala's sovereignty. Then, the Constitutional Court—still controlled by appointees elected under the Portillo government—concluded in an advisory opinion that the agreement did not constitute a human rights treaty. Therefore, the court concluded, it would be unconstitutional to grant CICIACS independent investigative and prosecutorial powers and privileges or grant immunities to Guatemalan citizens.<sup>1439</sup>

In the end, ratification of the CICIACS failed for two substantial reasons.<sup>1440</sup> First, the agreement enjoyed only a narrow national support base of human rights NGOs, the Human Rights Ombudsman, a handful of deputies and administration ministers, and a few media outlets. Second, Guatemalan conservatives portrayed the involvement of the U.S. embassy and other international actors as another attempt to maintain international control over Guatemala, and this successfully entrenched opposition to CICIACS among Guatemalan elites.

In late 2005, the Berger administration initiated renewed talks about international assistance. Observing the scale and severity of political corruption and criminal violence, the government saw a definite need for international assistance.<sup>1441</sup> In December 2005, Vice President Eduardo Stein turned to the UN with a proposal to create a new model of CICIACS, taking account of the Constitutional Court's objections to that model. Discussions with the UN focused on four primary issues: (1) the ability of a new CICIACS to retain a prosecutorial role, even if modest or in support of the attorney general; (2) the inclusion of organized crime within the CICIACS mandate; (3) providing Guatemalan staff with privileges and immunities protections; and (4) the status of the commission as an independent or UN body. The parties agreed to the following: (1) allow a prosecutorial role and preserve a human rights-focused mandate; (2) include a government guarantee to protect Guatemalan staff but without privileges and immunities; and (3) create the commission as a UN body (although it ended up as a UN-backed independent entity).<sup>1442</sup> The parties called it the International Commission against Impunity in Guatemala (CICIG) and provided it with a budget fully financed by donors with a small, in-kind contribution from Guatemala.

On December 12, 2006, the United Nations and the government of Guatemala signed the Agreement to Establish the International Commission against Impunity in Guatemala.<sup>1443</sup> After the Constitutional Court issued a favorable advisory opinion in May 2007, congress ratified the agreement on August 1, 2007. As a result, CICIG was established as an independent, international body designed to support

the Attorney General's Office, the National Civil Police (PNC), and other state institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures.<sup>1444</sup>

The initial mandate of the commission entailed two years of work; however, the Secretary-General extended it four times at Guatemala's request. First, in March 2009, Guatemala's minister of foreign affairs requested, through a personal letter addressed to the Secretary-General, the extension of CICIG's mandate for an additional two years; the extension was confirmed on April 15, 2009. The second extension was granted by the Secretary-General on January 13, 2011, the third extension was granted in April 2015, and the fourth in February 2017. As of late 2017, CICIG's mandate was set to expire in September 2019.

## **Legal Framework and Mandate**

CICIG is a hybrid criminal justice mechanism created through a bilateral agreement between the UN Secretary-General and the government of Guatemala. The UN Secretary-General appoints the CICIG commissioner. However, the commission itself is not a UN body. Its general mandate entails promoting individual prosecutions and institutional reforms in Guatemala.<sup>1445</sup> The commission differs from UN hybrid tribunals through its mandate to dismantle organized crime and its ability to conduct criminal proceedings in national courts.<sup>1446</sup>

The objectives set out in the agreement include three categories of jurisdiction. First, CICIG should investigate the existence of illicit security forces and clandestine security organizations that commit crimes affecting the fundamental human rights of the citizens of Guatemala. It should identify the structures of these illegal groups as well as their activities, operating modalities, and sources of financing.

Second, CICIG should help the state to disband clandestine security structures and illegal security groups, and promote the investigation, criminal prosecution, and punishment of the crimes committed by the members of such groups.

Third, CICIG should make recommendations to the State of Guatemala regarding public policies to be adopted—including necessary judicial and institutional reforms—to eradicate and prevent the re-emergence of clandestine security structures and illegal security forces.

In order to implement these duties, CICIG can investigate any individual, official, or private entity. It is authorized to promote and carry out criminal investigations by filing criminal charges with the relevant authorities.

## **Location**

The CICIG office is located in Guatemala City; however, individuals willing to address the commission are expected to submit their application to the *Oficina de Atención Permanente del Ministerio Público* (Assistance Bureau of the Attorney General's Office).

## **Structure and Composition**

The first year of CICIG's work was completely dedicated to start-up tasks and challenges, namely, identifying and organizing the mission's organizational and management structures. The effort to install administrative systems, recruit staff, and obtain specialized equipment and supplies hit an unanticipated obstacle. Because CICIG had been formally established as a non-UN organ, the UN concluded that the Secretariat had no legal basis to provide security, administration, finance, or security resources for the start-up phase.<sup>1447</sup> Thus, CICIG was forced to build its administrative systems largely from scratch. However, by mid-2008 a functioning core of professional staff was in place, enabling the commission to commence its work.

CIGIG is composed of a commissioner, who is appointed by the UN Secretary-General and is the legal head and representative of the organization. The commissioner is also responsible for recruiting international and national personnel and submitting periodic reports of CICIG's activities to the Secretary-General.<sup>1448</sup>

The commission is structured around six functional units: Political Affairs; the Department of Investigations and Litigation, including police, legal, and financial investigation sections; the CICIG Department of Information and Analysis; the Department of Administration; the Department of Security and Safety; and the Press Office. The commission's secretary is in charge of everyday administrative and executive functions.<sup>1449</sup>

As of 2013, the commission was comprised of 162 national and international officials, 72 of whom performed substantive tasks (45%), 62 worked in security (38%), and 28 performed administrative duties (17%).<sup>1450</sup> In compliance with the commission's mandate, CICIG signed a bilateral cooperation agreement with the Attorney General's Office that created the Special Prosecutor's Office (originally known as the Special Prosecution Unit Assigned to CICIG, or UEFAC; now called the Special Anti-Impunity Prosecutor's Bureau, or FECI).<sup>1451</sup> FECI investigates high-impact cases selected by CICIG and the Attorney General's Office. Cases falling within CICIG's mandate are transferred to FECI by the attorney general, based on whether they fulfill the requirements in the CICIG mandate and the agreement of the attorney general. The office has four main functions: case investigation, coordination of prosecutors and auxiliary prosecutors' work and activity, institutional strengthening, and training.

### ***Case Investigation***

The initial case selection for transfer to FECI is conducted through a mutual agreement by the attorney general and CICIG's commissioner. FECI's main function is to support investigation on those preselected cases.<sup>1452</sup>

### ***Coordination of Prosecutors and Auxiliary Prosecutors***

FECI Coordinator's Office provides legal and logistical support to investigations carried out by FECI's prosecution offices. The Coordinator's Office is involved in monitoring personnel from the Attorney General's Office, the Criminal Investigation Office, and the National Civilian Police who serve within FECI.<sup>1453</sup>

### ***Institutional Strengthening***

The Coordinator's Office also cooperates with the Attorney General's Office in the development of special investigative methods to enable it to more effectively combat crimes, especially those committed by organized criminal organizations. This includes supporting the definition, implementation, training, launching, and assessment of the wiretap system and other special investigative methods.

### ***Training***

In this area, the FECI Coordinator's Office sets up trainings to strengthen criminal investigation and train staff in specific investigative tools, as well as establish a general normative and legal framework. FECI also participated in broader trainings provided for the Attorney General's Office, the National Civilian Police, judges,

and magistrates on issues ranging from wiretapping to the right to privacy and due process in criminal investigations.<sup>1454</sup>

## Prosecutions

The Agreement between the UN and the government of Guatemala leaves it up to the commission to determine the criteria for selection of cases with due regard to CICIG's general mandate. Selection criteria used early in CICIG's mandate included: the likelihood of links with illegal groups and clandestine security organizations; the short and long-term political impact of the case on the fight against impunity; and the probability of success in advancing the case in the criminal process.<sup>1455</sup> Initially, CICIG faced criticism for lacking a coherent case-selection strategy.<sup>1456</sup>

The first investigations included events only tangentially related to the mandate—a shootout between two narco-trafficking groups in Zacapa, a band of police extortionists (Mariachi Locos), the death of the child of a human rights defender, the drugs-related killing of 15 riders on a bus from Nicaragua, an epidemic of femicides—and much more relevant cases pointing to parallel security structures inside the PNC and Interior Ministry (Parlacen, Victor Rivera) and obstruction of justice in the Public Ministry (Matus).<sup>1457</sup>

From 2009, CICIG took on cases that were more prominent. That year, it solved the bizarre case involving the death of the high-profile lawyer Rodrigo Rosenberg Marzano, who left behind a YouTube video implicating the sitting president in his purported murder.<sup>1458</sup> CICIG established that Rosenberg had arranged for his own killing in order to bring down the government, and thus defused a major political crisis. Commissioner Carlos Castresana's public, detailed description of the forensic techniques used to solve the crime silenced most doubters, and CICIG's public profile grew.<sup>1459</sup>

On July 15, 2010, nine individuals were convicted of murder, illicit association, and possession of firearms. As a result of CICIG's work with the Attorney General's Office, two organized criminal networks were dismantled in Escuintla and Guatemala departments, composed of active and retired members of the PNC and ex-soldiers.<sup>1460</sup>

CICIG investigated former Guatemalan President Alfonso Portillo Cabrera for alleged corruption. Although Guatemalan trial and appeals courts acquitted Portillo of the charges,<sup>1461</sup> he was extradited to the United States, where he pled guilty to related charges and was sentenced to nearly six years in prison.<sup>1462</sup>

A CICIG investigation of 2006 killings at a prison resulted in allegations against former senior government officials who allegedly ran a parallel security structure within the Interior Ministry that carried out extrajudicial killings, “social cleansing” operations, money laundering, drug trafficking, extortion, and drug thefts.<sup>1463</sup> The case ultimately resulted in several acquittals, but also seven convictions in Guatemala, as well as the conviction and life sentence of former Guatemalan national police chief Erwin Sperisen, following his trial in Switzerland.<sup>1464</sup>

Despite these and other significant successes, some observers noted a lack of strategy in CICIG’s early cases.<sup>1465</sup> This changed significantly in 2015, when CICIG and the Attorney General’s Office announced bombshell accusations against officials including Guatemala’s sitting vice president, Roxana Baldetti, and the case grew to directly implicate the sitting president, Otto Pérez Molina. Known as the *La Linea* (“The Line”) case, the investigation revealed an enormous alleged corruption scheme in the Customs Service involving the tax administration and National Civil Police. CICIG, with the attorney general’s support, discovered a network of low-level “fixers” trading drastically reduced customs duties to importers in exchange for “commissions.” The CICIG investigation revealed a large, hierarchical structure reaching the vice president’s office. In August 2015, the public prosecutor announced that evidence showed that Pérez Molina and Baldetti were “without a doubt” the leaders of the scheme. When CICIG went public with the results of its investigation in early 2015, protests erupted calling for the resignation of the vice president and then the president. In May 2015, Baldetti resigned. Pérez Molina resigned on September 2, 2015, and was arrested, arraigned, and imprisoned the following day. Following extensive pretrial proceedings that included the presentation of evidence, in October 2017 a judge sent the case to trial.<sup>1466</sup>

The *La Linea* case was a watershed moment for CICIG and the Attorney General’s Office. The commission later brought allegations implicating many other senior administration officials, including the new president’s son-in-law, and ex-vice minister of energy, the former head of the tax administration, members of the PNC, and members of congress.<sup>1467</sup>

### ***CICIG and Domestic Grave Crimes Trials***

Beyond cases directly related to its mandate, CICIG has had a profound impact on Guatemala’s willingness and ability to pursue grave crimes cases related to the 36-year armed conflict. It has played a role in ensuring the appointment of conscientious attorneys general, emboldened and built the capacity of the Attorney General’s Office, and improved judicial independence through the creation of

“High Risk Courts” and the investigation of judicial corruption.<sup>1468</sup> (See further discussion under *Legacy*, below.)

### ***The Rios Montt Trial***

In January 2012, former head of the state Jose Efraín Rios Montt and his then chief of military intelligence Jose Mauricio Rodríguez Sánchez were charged with genocide and crimes against humanity allegedly committed during Rios Montt’s presidency during 1982 and 1983.<sup>1469</sup> The charges arose from systematic massacres of the country’s indigenous population carried out by Guatemalan troops and paramilitary forces during this phase of the country’s long and brutal civil war, as well as the related mass forced displacement. The first genocide charge against Rios Montt and Rodríguez Sánchez came in relation to 15 massacres against the Ixil population living in the Quiche region during his rule between March 1982 and August 1983. These charges allege that Rios Montt was the intellectual author of 1,771 deaths, the forced displacement of 29,000 people, sexual violence against at least eight women, and torture of at least 14 people. They allege that Rodríguez Sanchez implemented military plans responsible for the killing of civilians in the Ixil areas of Nebaj, Chajul, and San Juan Cotzal, in Quiche. In a second genocide charge, introduced in May 2012, Rios Montt was charged in relation to the deaths of 201 people in Dos Erres (Petén) in December 1982.<sup>1470</sup>

In May 2013, the judges in High Risk Tribunal A convicted Rios Montt and sentenced him to 80 years in prison for genocide and crimes against humanity. However, Rodríguez Sánchez was acquitted of both charges. The court’s judgment represented the first-ever domestic conviction of a former head of state for genocide. However, 10 days later the Constitutional Court annulled the verdict on procedural grounds in a confusing and contentious decision.<sup>1471</sup>

After several attempts to re-launch the case, a re-trial of Rios Montt and Rodríguez Sánchez for the Ixil genocide began in October 2017.<sup>1472</sup> Because Rios Montt suffers from dementia, his trial was being heard behind closed doors, and he would not be sentenced if found guilty. Rodríguez Sánchez was being tried publicly. He was also facing genocide and crimes against humanity charges in the Dos Erres case.

### ***Sepur Zarco Case***

In February 2016, High Risk Tribunal A found Lieutenant Colonel Esteelmer Reyes Girón, former commander of Sepur Zarco military base, and former military commissioner Heriberto Valdez Asig, guilty of crimes against humanity, sentencing



them to 120 and 240 years, respectively.<sup>1473</sup> The two were accused of crimes including sexual violence and sexual and domestic slavery against 14 women. The court also found Girón guilty of the murder of three women, and Asig guilty for the enforced disappearance of seven men who were husbands of the victims in this case. The High Risk Appellate Court upheld the judgment in July 2017. This was the first national case involving sexual violence related to Guatemala's 36-year civil war.

### ***Spanish Embassy Fire***

In January 2015, a High Risk Tribunal sentenced Pedro Garcia Arredondo, former head of a special investigations unit of the PNC, to 40 years in prison for murder and crimes against humanity committed in relation to the siege and fire at the Spanish Embassy in 1980.<sup>1474</sup> He was also convicted and sentenced to 50 years in prison for the killing of two students at the funeral for victims of the siege. Dozens of indigenous and student activists and diplomats were killed during the siege and fire at the Spanish Embassy, and this was the first time anyone had been tried for those crimes. The court found that Arredondo played a leadership role in the siege, noting that he let the protesters and hostages burn to death while preventing emergency intervention.

### ***CREOMPAZ***

Beginning in 2012, investigators from the Attorney General's Office and the Forensic Anthropology Foundation of Guatemala exhumed 565 bodies from 85 graves located within what is now called the CREOMPAZ military base.<sup>1475</sup> The base was used during the civil war as a center of military coordination and intelligence. Fourteen military officers were arrested on January 6, 2016, in relation to the case. In June 2016, a judge ruled that eight retired officers, including former army chief Benedicto Lucas Garcia, must face public trial for their role in the forced disappearances. Another accused, who has mental health issues, should face trial under special provisions, the judge found. The judge dropped the charges against two defendants. However, since then, the trial stalled. As of late 2017, the proceedings remain tied up in a series of appeals and other legal motions.

### ***Molina Theissen***

In 2017, five retired senior military officials went on trial charged with the enforced disappearance of 14-year-old Marco Antonio Molina Theissen and the illegal detention, torture, and rape of his sister Emma.<sup>1476</sup> Two of the accused are heavily decorated generals previously believed to be untouchable by the courts: Benedicto Lucas Garcia, former army chief of staff, and Manuel Callejas y Callejas, former head of military

intelligence and the presumed leader of the Cofradía organized crime syndicate. The other three accused include Francisco Luis Gordillo Martínez, commander of Military Zone No. 17 where Emma was detained in Quetzaltenango in 1981; Edilberto Letona Linares, former second commander of Military Zone No. 17; and Hugo Ramiro Zaldaña Rojas, former “S-2” intelligence official of the chief of staff. In October 2017, pretrial judges in High Risk Court C scheduled the trial to begin on March 1, 2018.

## Legacy

### *Impact on Political Change*

CICIG has had leeway to act as an independent protagonist within Guatemala’s political/legal framework, making it a new and experimental form of international justice mechanism.<sup>1477</sup> CICIG’s early difficulties were not a surprise; nor was it a surprise that its first commissioner, Carlos Castresana, resigned in frustration in 2010. For most of its existence, CICIG faced significant opposition from parts of Guatemalan society, including members of the justice sector, congress, economic elites, and many whose interests were threatened by the commission’s work. The commission struggled to make an impact, and occasionally strayed from its primary mission. However, even in its early years, CICIG saw some important victories, including the resolution of the Rosenberg case, which proved that President Álvaro Colom had not committed murder; its participation in the conviction of former President Alfonso Portillo for corruption; and its help in revealing an illegal security operation carrying out targeted killings run by President Óscar Berger’s interior minister, Carlos Vielmann. CICIG’s second commissioner, Francisco Dall’Anese, likewise faced resistance from the Guatemalan government—especially around the Rios Montt trial—and he too resigned in frustration in 2013.

When Iván Velázquez took over as commissioner, it appeared that CICIG would close down soon and with few significant cases to its name. Under the leadership of Velázquez, however, CICIG returned to its core mission of targeting the relationship between political corruption and criminal activity in Guatemala’s state institutions. Under Velázquez, CICIG scored a number of important victories, including revealing the massive *La Línea* corruption scheme that helped bring down President Pérez Molina and Vice President Baldetti. The huge protests that forced out Pérez Molina and Baldetti upended the country’s political order, uniting the left with elements of the right for the first time in the country’s history and motivating a new generation of social activists. The protests may also have offered a glimpse of a future Guatemala that is less corrupt and truer to the rule of law.

CICIG ultimately has had a significant impact on Guatemalan government, justice, and society. It offers an important model for other countries struggling with endemic corruption, organized crime, and compromised state institutions. It has played a fundamental role in shaping and strengthening the country's justice system, empowering judicial operators, and building capacity in the Attorney General's Office. It has expanded prosecutorial capacity in corruption and organized crime cases, as well as grave crimes cases stemming from the civil war. This can be seen in the Rios Montt, Sepur Zarco, CREOMPAZ, Spanish Embassy, and Molina Theissen cases.

### ***Impact on Partners***

The early encounters between the commission and the Attorney General's Office were initially fraught.<sup>1478</sup> CICIG staff viewed national prosecutors as plodding through cases within a clientelistic and hierarchical culture, and responding to the whims of attorneys general, including sometimes closing cases for political reasons.<sup>1479</sup> In turn, Guatemalan prosecution officials claimed that the quality of CICIG's lawyers varied greatly, complained that internationals did not trust Guatemalan counterparts with confidential information in high-profile cases, and were unwilling (or unable to see the need) to learn the subtleties of local legal rules and judicial practices. Many legal setbacks in major cases, they suggested, were due to the failure to manage them properly, in line with Guatemalan practice.<sup>1480</sup>

The two institutions, however, managed to struggle through their differences. Guatemalan prosecutors learned from CICIG, gained access to technology, developed new forensic capabilities, and scored successes in cases in which CICIG was not a party. The nature of the relationship shifted, and the Attorney General's Office began to assert a leading role in selecting and managing CICIG-related cases. CICIG also supported the attorney general's efforts to strengthen institutions, helping to establish a new special unit to investigate human trafficking and violence against women in 2011, and transferring CICIG's Analysis Unit to the Attorney General's Office in 2012.

CICIG has had less success dealing with the Interior Ministry and police. Police officers, from directors to new recruits, had been accused and convicted of stealing drugs, running extortion rackets, moonlighting for organized crime cartels, acting as hired killers, or serving as the implements of "social cleansing." Officers are generally poorly educated, trained, supervised, and equipped.

The judiciary also created much of the trouble regarding CICIG's work: judges rejected crucial evidence without any legal basis or released defendants on

bail in inappropriate circumstances; weak case management was magnified by accomplished dilatory practices; and there were dysfunctional oversight and disciplinary procedures as well as a pervasive culture of informal clientelistic practices.

The commission's ongoing public battle with the judiciary, particularly over senior appointments, succeeded in exposing to public view the influence-peddling machinations hobbling the institution's independence and performance. Its highly visible role supported an unusually broad civil-society, multisector effort to reduce the influence of political and economic interests in judicial selections. The major umbrella organizations, *Convocatoria Ciudadana* and *Guatemala Visible*, have continued to function but have lost momentum in the absence of clear, pending institutional challenges, and have yet to demonstrate an ability to tackle issues surrounding the willingness of the country's elites to subject themselves to broader rule-of-law reforms.

CICIG significantly influenced the judicial sector in three ways. First, CICIG helped establish new election procedures for magistrates and the attorney general. This strengthened the independence of the justice system and facilitated the election of two independent and very competent attorneys general: Claudia Paz y Paz (2010–2014) and Thelma Aldana, who was elected in 2014 and, as of late 2017, still held that post. Both have dedicated themselves to accountability for grave crimes in Guatemala.

Second, CICIG strengthened the Attorney General's Office's independence and capacity for conducting complex investigations and prosecutions as well as building effective victim and witness protection programs. CICIG has built domestic capacity in part through extensive trainings and through joint investigations and criminal prosecutions. In addition, CICIG facilitated the creation of specialized units within the Attorney General's Office, including the Human Rights Violations Unit, the Analysis Unit for complex investigations, a special police force for criminal investigation, and a Police Information Platform, and it also strengthened the Special Investigation Methods Unit. Thanks to this institutional strengthening, the newly professionalized Attorney General's Office is able to take the lead role and conduct more solid investigations into networks of corruption and impunity.

Third, CICIG proposed the creation of a system of High Risk Courts to adjudicate sensitive cases related to organized crime and corruption in order to provide more safety for magistrates, witnesses, and lawyers involved in the cases.<sup>1481</sup> The courts only have competency to hear cases involving specific crimes such as genocide, torture, crimes against humanity, and crimes related to organized crime laws such as money laundering, drug trafficking, and the financing of terrorism.<sup>1482</sup> With more

security, judges can more easily assert their independence. The High Risk Courts are located in Guatemala City and have jurisdiction over the whole country. They have heard complex cases of organized crime, corruption, and serious violations of human rights. The success of this system has helped generate new popular confidence in legal institutions and the rule of law.

## **Financing**

Although CICIG began operations with borrowed funds, intense fundraising efforts in late 2007 and early 2008, assisted by the UN, produced commitments for 90 percent of CICIG's two-year budget by mid-2008.<sup>1483</sup> The initial budget, estimated at US\$10 million per year, quickly grew to US\$20 million by 2009 before financial crisis-induced reductions to US\$15 million near the end of 2011.

CICIG is a financially independent institution that receives funds from voluntary contributions from the international community, with the United Nations Development Programme managing a trust fund. Donations have come from Canada, Denmark, Spain, Finland, Germany, Ireland, Italy, the Netherlands, Norway, Sweden, the United Kingdom, the United States, and the European Union. In-kind support, such as human resources, has come from Argentina, Chile, Colombia, France, Sweden, and Uruguay.<sup>1484</sup> The U.S. Department of State announced in June 2016 that the United States has invested US\$36 million in CICIG since 2008.<sup>1485</sup>

## **Oversight and Accountability**

### **Oversight and Accountability**

According to Article 5 of the agreement concluded between the UN and the government of Guatemala, the commissioner is only required to submit periodic reports to the Secretary-General of the United Nations. The legal status of CICIG as an international organization independent of the UN produced difficult management and oversight problems.<sup>1486</sup> Legally, the UN's only connection to CICIG was the appointment of the commissioner, which has resulted in CICIG's having relatively little interaction with UN headquarters in New York.

CICIG staff were barred from direct communications with the Secretariat. Thus, while the UN had no control over CICIG's activities, and almost no influence on

its work, it would have been held responsible for any scandal or management or operational failures.<sup>1487</sup>

CICIG's legal independence undoubtedly provides strong advantages: it is able to move creatively and quickly in an area distant from UN experience; use funds for intelligence purposes; work efficiently with other governments to share information; arrange for witness protection or procure arrests; and react nimbly and boldly to political developments. However, the Guatemala experience reinforces the need for oversight. The risks of leaving the CICIG's commissioner with unchecked authority over operations present a risk and affect central strategy issues, management of personnel and finances, and the relationships between the entity and state actors and criminal organizations.

# HAITI

## Conflict Background and Political Context

Jean-Claude “Baby Doc” Duvalier ruled Haiti as president from 1971 to 1986, succeeding his father, “Papa Doc” Duvalier, whose regime from 1957 to 1971 was notorious for its brutality. Jean-Claude’s regime was characterized by institutional violence and state-sponsored repression enforced by a network of security forces that answered directly to the president, including the brutal “Tontons Macoutes” (“Bogeymen”), a private armed group, in addition to the official military and police forces. Human rights organizations documented abuses including: disappearances and political killings; torture; and repression of the press and political dissent.<sup>1488</sup> A harsh prison system housed hundreds of political dissidents in long-term detention, often without trial, in which many died.<sup>1489</sup> Duvalier amassed a fortune and maintained a lavish lifestyle despite presiding over one of the poorest countries in the world.

Jean-Claude Duvalier went into exile in France in 1986 after months of unrest and protests over economic conditions and political repression. The new government established a commission to investigate financial corruption under Duvalier and later instituted criminal proceedings against Duvalier and other members of his government for financial crimes and for crimes against persons. When Duvalier returned to Haiti two-and-a-half decades later, in January 2011, these proceedings were immediately reinstated, and within two days, he was being investigated for both financial crimes and human rights abuses.<sup>1490</sup> Rights groups called for accountability.<sup>1491</sup> Outgoing Haitian President René Préal displayed limited support for the case. During presidential elections in May 2011 between Préal and Michel Martelly, both made public statements about the case fraught with political implication. President Préal, however, accepted the offer by the UN’s Office of the High Commissioner for Human Rights (OHCHR) to assist and share expertise with Haitian judicial authorities in the months after Duvalier’s return.<sup>1492</sup> Until early 2012, Duvalier appeared at official events, social events, and public memorials for earthquake victims, flouting a judicial order in early 2011 placing him under limited house arrest. These ambiguous political signals, especially during the election season, may have dissuaded some witnesses and victims from emerging at the preliminary investigations stage. Such concerns also highlighted the need for an independent judicial process and the development of a victim and witness protection program. After winning the election, President Martelly appointed

many Duvalier supporters and former officials to his administration, suggesting the deep involvement of Haiti's political class in the crimes of the Duvalier regime. Powerful political elements of the government were averse to pursuing genuine accountability, preferring not to uncover old networks.

Following the dismissal of the human rights charges by Investigative Magistrate Carves Jean in January 2012, some steps were taken to facilitate accountability. The Haitian judiciary accepted a visit by U.S. lawyers to advise on regional and international human rights and accountability frameworks in February 2012, and the attorney general signaled his intention to contest the dismissal of the human rights charges. The OHCHR, the UN independent human rights expert, and the Secretary-General all publicly supported accountability for Duvalier and facilitated limited technical assistance behind the scenes. The UN made these efforts in the context of its wider post-earthquake reconstruction role, led by the UN Stabilization Mission in Haiti (MINUSTAH), under the Secretary-General.<sup>1493</sup>

### **Existing Justice-Sector Capacity**

Haiti has “a weak, under-funded judiciary that is neither independent nor accountable to the Haitian people.”<sup>1494</sup> The judiciary has no literature on jurisprudence, most judges lack legal texts, and underpaid judges are frequently unaware of changes to laws or the existence of relevant treaty law.<sup>1495</sup> Haiti lacks a legal framework or structures for the protection of victims and witnesses.<sup>1496</sup> The combination of extensive executive and elite control over judicial matters and a broad range of technical deficiencies has created problems across the board: from the fair and effective enforcement of judicial orders to respect for fair trial rights.<sup>1497</sup> The state routinely fails to investigate and prosecute major crimes.<sup>1498</sup>

### **Existing Civil Society Capacity**

Haitian human rights organizations, lawyers, and activists have long been active in bringing complaints to the UN human rights bodies and the Inter-American Commission on Human Rights (IACHR), as well as domestic criminal cases including the judicial proceedings against Duvalier. For instance, they lodged complaints with the state prosecutor on behalf of Duvalier-era victims that formed the basis of instructions to investigating judges.<sup>1499</sup> A civil society organization, the Citizen's Collective for Prosecuting Duvalier, aimed at increasing public awareness



of the case. However, those involved in cases considered politically sensitive—including the cases against Duvalier—reported receiving threats and intimidation throughout the period of the Duvalier proceedings.<sup>1500</sup> Attorneys involved in legal challenges to corruption felt the need to request protective measures from the IACHR.<sup>1501</sup>

## Creation

Human Rights Watch suggested in 2011 that the international community, in addition to funding “behind the scenes” international assistance for proceedings against Duvalier, could consider “funding or seconding a temporary complement of international staff to work alongside Haitian staff,”<sup>1502</sup> acknowledging the limited technical expertise of the Haitian judiciary regarding international criminal law and the potential for political interference. International experts took on no formal role in the justice system, but alongside local advocates, international bodies and civil society organizations nevertheless played important roles in the proceedings.

In May 2011, the IACHR issued a statement responding to petitions by a coalition of plaintiffs and human rights advocates. It noted that “as a State Party to the American Convention, the Republic of Haiti has an international obligation to investigate and where necessary, punish those responsible for the gross human rights violations committed during the regime of Jean-Claude Duvalier.”<sup>1503</sup> The statement cited rulings from the International Court of Human Rights that statutes of limitations cannot bar prosecution for serious human rights violations.<sup>1504</sup> Justice advocates saw the IACHR’s 2011 statement as a useful tool, but also one that revealed the judiciary’s weak understanding of and unwillingness to enforce its obligations as a member of the IACHR. International human rights organizations, including Human Rights Watch, the Open Society Justice Initiative, the International Center for Transitional Justice, Amnesty International, and the Boston-based Institute for Justice and Democracy in Haiti (IJDH) assisted a coalition of national groups in filing briefs to the IACHR and petitions before the Haitian court on the case, and generally supported legal and advocacy efforts.<sup>1505</sup> The Justice Initiative filed an *amicus curiae* brief, and IJDH submitted draft questions to the *juge d’instruction*.<sup>1506</sup>

Following the investigative judge’s decision in January 2012 not to pursue charges of serious human rights violations against Duvalier (see *Prosecutions*, below), the IACHR released a statement expressing concern over the declaration of the statute of limitations, signaling it would remain involved.<sup>1507</sup>

## **Legal Framework and Mandate**

Haiti is a former French colony, and its judicial system is based largely on the civil law system used in France.

When Jean-Claude Duvalier returned to Haiti in January 2011, the minister of justice and the national prosecutor announced that the charging instruments would include “crimes against persons,” as well as financial crimes.<sup>1508</sup> Under Haiti’s Penal Code, “crimes against persons” comprise murder, torture, enforced disappearances, and “sequestration” (analogous to false imprisonment).

A coalition of national and international organizations organized a multipronged campaign to advocate that Duvalier be held accountable. At least 22 individuals filed criminal complaints in relation to the human rights charges, and other victims filed civil charges.<sup>1509</sup> Under Haiti’s civil law system, the matter passed through several investigative and prosecutorial offices. The technicality of the proceedings, the limited understanding among local judicial personnel of Haiti’s international legal obligations, and Haiti’s inadequate legal framework for atrocity crimes made it more difficult for rights groups to intervene.<sup>1510</sup> Rights groups criticized the investigation and noted instances of intimidation of victims who came forward to testify.<sup>1511</sup>

## **Location**

The proceedings against Duvalier and other members of his government were ordered by the state prosecutor in Port-au-Prince, Haiti’s capital.

## **Structure and Composition**

The state prosecutor instituted the Duvalier proceedings, and the prosecutor appointed investigating judges to carry out investigations of financial crimes and crimes against the person. The proceedings went through the regular criminal courts and the Appellate Court in Port-au-Prince.

## **Prosecutions**

In January 2012, after a yearlong investigation, the investigating judge ruled that Duvalier would only face trial on corruption and embezzlement charges, not for

rights abuses. The judge found the legal grounds to include human rights charges and crimes against humanity insufficient, citing the statute of limitations under Haitian law barring prosecutions. Observers and activists criticized the ruling for not taking into account IACHR jurisprudence.<sup>1512</sup> Both Duvalier and victims who had been accepted as civil parties appealed the ruling. The appeal hearings began in February 2013 in the Court of Appeal and concluded in May 2013. Duvalier and eight victims gave testimony. In January 2014, Amnesty International and Human Rights Watch claimed that the proceedings had stalled and that the Haitian authorities displayed no intention of carrying out thorough investigations into abuses from the Duvalier era.<sup>1513</sup>

On February 21, 2014, the Appeals Court of Port-au-Prince issued its decision, overturning the judgment and declaring that the acts of which Duvalier was accused constituted crimes against humanity. The court found that these crimes are not subject to any statute of limitations and ordered a new investigation to establish whether he should be prosecuted.<sup>1514</sup>

Later the same year, on October 4, 2014, Duvalier died suddenly of a heart attack, aged 63, in Port-au-Prince. Human rights groups called for the legal process to continue, on the basis that complaints were not aimed solely at Duvalier and that there were thousands of victims who deserved justice.<sup>1515</sup> The proceedings appear to have stalled, however. In March 2017, the UN Independent Expert on Haiti, Gustavo Gallon, expressed concerns regarding the lack of progress in the trial of Duvalier's associates. Gallon stated that there would need to be new resources and political support to realize victims' right to justice for serious crimes committed during the Duvalier dictatorship.<sup>1516</sup>

## Legacy

Duvalier's sudden death frustrated victims who wished to see accountability for crimes during his regime. Victims and civil society organizations called for the continued prosecution of Duvalier associates and even the establishment of a truth commission.<sup>1517</sup> As of late 2017, there were no apparent further significant developments with regard to criminal accountability or other transitional justice measures in relation to the Duvalier era.

The effort to prosecute Duvalier included the provision of technical assistance to justice sector officials and civil society organizations, perhaps boosting

domestic capacity to prosecute grave crimes. The OHCHR, the IACHR, and other international organizations offered specialized trainings and technical assistance to domestic judicial personnel.<sup>1518</sup> In August 2011, MINUSTAH reported that it had “worked with State authorities to advance efforts in response to long-standing cases of violations, including those committed during the regime of Jean-Claude Duvalier.”<sup>1519</sup> The OHCHR, the UN Secretary-General, and the UN Independent Expert on Human Rights in Haiti also offered to facilitate limited technical assistance to Haitian prosecutors, investigators, and other judicial authorities.<sup>1520</sup> The UN Independent Expert publicly supported efforts by victim groups to appeal the January 2012 ruling.<sup>1521</sup> The U.S. State Department also coordinated technical assistance and, in February 2012, dispatched a team of international legal experts to meet with members of the Haitian judiciary.<sup>1522</sup>

## **Financing**

The proceedings were financed as a regular part of the domestic criminal justice system, supported by technical assistance from the outside.

## **Oversight and Accountability**

The justice sector in Haiti “lacks oversight capacity.”<sup>1523</sup> Critics charge that a Superior Council of Judicial Power established in 2012 to professionalize the judiciary has become just another instrument of executive control.<sup>1524</sup>

Monitoring by the IACHR and other international and civil society organizations appears to have been significant in bolstering the government’s willingness to pursue the case against Duvalier. The IACHR conducted several public hearings during the course of the proceedings. In May 2011, it issued a “Statement on the Duty of the Haitian State to Investigate the Gross Violations of Human Rights Committed during the Regime of Jean-Claude Duvalier” following a public hearing on impunity for human rights during the Duvalier dictatorship.<sup>1525</sup> In May 2014, the IACHR again intervened, welcoming the Haitian Court of Appeals to reopen the investigation on the grounds that statutes of limitations did not apply to crimes against humanity, later calling on Haiti and other states to release official documents that could serve as evidence of the violations committed under Duvalier.<sup>1526</sup>

## **MEXICO: INTERDISCIPLINARY GROUP OF INDEPENDENT EXPERTS**

### **Conflict Background and Political Context**

On September 26, 2014, in the Mexican state of Guerrero, armed men attacked a group of more than 100 students from Raúl Isidro Burgos Rural Teachers' School (*Escuela Normal Rural Raúl Isidro Burgos*) of Ayotzinapa. The attackers intercepted the students as they attempted to leave the small city of Iguala in commandeered buses to attend protests in Mexico City. In a series of incidents, the attackers, who included local police, opened fire, leaving six civilians killed and dozens more injured. The tortured body of one of the students, Julio César Mondragon, was found in the street hours later. Another 43 students were rounded up, arrested, and disappeared. For 10 days, the federal government refused to open a criminal investigation, stating that it was a matter for Guerrero state authorities.

Within Mexico and internationally, the case and the government's reaction sparked intense public outrage, leading to massive protests and diplomatic pressure. The incident occurred in the context of a wave of atrocities in Mexico that began in 2005, when the federal government deployed the military domestically on a large scale to combat organized crime. The Ayotzinapa disappearances illustrated the shocking severity of Mexico's crisis of atrocity and impunity, and it followed other high-profile scandals that had eroded the credibility and reputation of the federal government and that of the state of Guerrero.<sup>1527</sup>

As the pressure mounted, in November 2014 the federal government announced that it had reached an agreement with the Inter-American Commission on Human Rights (IACHR) and the families of the missing students to invite an Interdisciplinary Group of Independent Experts (*Grupo Interdisciplinario de Expertos y Expertas Independientes*, GIEI) selected by the IACHR to bring technical assistance to the investigation.

Before the GIEI took up its work in March 2015, Mexican Attorney General Jesús Murillo Karam called a press conference to reveal the results of the federal investigation: what he termed "the historical truth" about what happened to the students. According to this, local police launched the attack on the orders of the Iguala mayor and turned over the disappeared 43 to the *Guerreros Unidos* crime organization, with which the mayor and police were colluding. The 43 students had been executed at a garbage dump outside a nearby town, and their bodies had been incinerated and ashes dumped in a river.

The families of the disappeared students rejected this story, and over the following months, the GIEI's work and that of other outside experts cast severe doubt on its veracity. The outcome of the GIEI's technical assistance revealed a federal investigation marred by incompetence, planted and manipulated evidence, claims of fire that were forensically disproved, a failure to pursue significant leads, and the torture of scores of detainees to support the government's official narrative of the crime.

## **Existing Justice-Sector Capacity**

Mexico's federal judiciary is a three-tiered system with a Supreme Court, circuit courts, and district courts; criminal activity in Mexico falls under either federal or state jurisdiction. While the Mexican judiciary is reasonably independent at the federal level, one significant difficulty with the system is that many jurisdictions have inadequate definitions of crimes or none at all.<sup>1528</sup> Federal and state officials have also exploited the lack of clarity in the laws establishing jurisdiction to manipulate the treatment of cases, obstruct investigations, and avoid the prosecutions of serious crimes.<sup>1529</sup> Official victimization surveys routinely show that over 90 percent of crimes in the country were not investigated or reported to authorities, and less than 10 percent of criminal investigations end in a conviction.<sup>1530</sup>

In 2008, the Mexican Congress amended the country's constitution to establish a new criminal justice system that would scrap the "inquisitorial" approach heavily based on written evidence presented by a prosecutor, in favor of a more transparent "adversarial" model where lawyers argue their cases orally before a judge.<sup>1531</sup> The new system would also incorporate the presumption of innocence and establish other basic rights for defendants.<sup>1532</sup> Mexico remains several years away from fully implementing the adversarial model, which has been heralded as a needed step to counter the entrenched problems of corruption and to put an end to the use of poor and abusive investigative methods. However, cases related to organized crime are excepted from this transition. And even for other cases, those started in the old system will continue to be processed under the "inquisitorial" model, and even where the new model is in force, judges often continue to admit evidence obtained through torture. Meanwhile, the Mexican military has continued to exercise de facto control over some of the most egregious cases of civilian killings, creating parallel investigations in civilian and military courts, which are often more politicized.<sup>1533</sup>

## Existing Civil Society Capacity

Mexico has an active civil society working to expose and end corruption and impunity in the country. International NGOs are supporting the efforts of local NGOs and other civil society groups challenging the Mexican government's failed war against organized crime. Groups involved in promoting and contributing to the national discourse include well-established academic institutions, independent research centers, human rights organizations, public interest law firms, victims' groups, and students, as well as international NGOs operating locally within Mexico. In 2017, 20 Mexican organizations, three international organizations, and over 50 individual human rights advocates joined efforts toward shared goals with the creation of a unified Platform Against Impunity and Corruption (*Plataforma Contra La Impunidad y Corrupción*).<sup>1534</sup>

Among the most influential human rights entities in Mexico is the Miguel Agustín Juárez Human Rights Center in Mexico City (known as Centro Prodh), which has worked since its inception in 1988 to demand justice for gross human rights violations and promote higher standards in public security, accountability, and criminal justice reform.<sup>1535</sup> It has represented witnesses and survivors of abuse in cases raising constitutional challenges against the federal government. In the case of Ayotzinapa, Centro Prodh has collaborated closely with the Guerrero-based Tlachinollan Human Rights Center, and both organizations have represented victims.

The lives of human rights advocates and journalists have come under frequent threat. Mexico is considered one of the most dangerous places in the world to be a journalist.<sup>1536</sup> Since 2000, at least 104 journalists have been murdered while 25 others have disappeared. Out of more than 800 serious cases of harassment, assault, or homicide against members of the media in the last six years, the government has only convicted two suspects.<sup>1537</sup>

## Creation

The GIEI was created on November 12, 2014, through an agreement between the IACHR, the Mexican government, and the representatives of the disappeared students from Ayotzinapa following the issuance of IACHR precautionary measures for the families and their representatives.<sup>1538</sup> The president of the IACHR not only viewed the historic agreement as a mechanism for directly addressing the case of the disappeared 43 students, but also stressed that its creation represented

“a key opportunity to advance in solving a structural issue that Mexico has been experiencing for years.”<sup>1539</sup> Rising domestic and international pressure for an adequate response to the Ayotzinapa disappearances within the context of thousands more cases of disappearances likely facilitated the Mexican government’s agreement to allow an international body within its jurisdiction for additional support and oversight. As part of its investigation surrounding the Ayotzinapa disappearances, many expected the GIEI’s efforts would lead to steps that would resolve the underlying structural problems giving rise to widespread disappearances in the country.

The Memorandum of Agreement (MoA) made official an oral agreement reached on October 29, 2014, at a meeting of the students’ families with President Enrique Peña Nieto.<sup>1540</sup> The parties established that Mexico would receive IACHR technical assistance for the investigation of the events of September 26 and 27, including the search for the missing 43 students. The MoA originally set the GIEI’s mandate for a six-month period, but foresaw the possibility of granting extensions for the completion of its objectives with the agreement of the IACHR and the parties. Under the MoA, Mexico accepted technical assistance from an interdisciplinary group of independent experts selected by the IACHR. The objective of the technical assistance offered by the GIEI would be to determine the whereabouts of the 43 students with the aim of finding them alive. It further tasked the group of experts with investigating the victimization of other civilians and students involved in the events and ensuring that measures were in place for their protection. More generally, the MoA tasked the GIEI with making policy recommendations regarding disappearances in Mexico. This included recommendations for Mexico to conform to international standards of forensic investigations and best practices. The MoA also empowered the GIEI to advance lines of investigation and to determine criminal liability for the perpetrators. Finally, the MoA tasked the GIEI with providing technical analysis of the Mexican government’s assistance to victims of the September 26 and 27 attacks.

Under the MoA, Mexico agreed to several obligations to facilitate the work of the GIEI. These included granting the GIEI access to investigation files, case documents, and other public information retained by the government. Mexico agreed to grant the GIEI the necessary resources and logistical accommodations to carry out its mandate. Mexican authorities were furthermore obligated to designate a high-level, cross-institutional group of officials with the capacity to work with the GIEI and implement its final recommendations. Finally, under the MoA, Mexico agreed to cover all the costs incurred from the GIEI’s operation.



The IACHR selected five individual experts to form the GIEI on January 18, 2015. The GIEI held its first meeting at the IACHR on February 11–12, 2015, to discuss its internal norms and procedures and to adopt an action plan for the fulfilment of its mission.<sup>1541</sup>

## Legal Framework and Mandate

The stated purpose of the agreement to establish the GIEI was four-fold: (1) to provide Mexico with an independent body of experts for a period of six months to address structural problems contributing to enforced disappearances in Mexico generally; (2) more specifically, to advance leads for the search of the disappeared 43 students with the assumption that they are still alive; (3) to provide technical expertise in the investigation surrounding their disappearance and determine any criminal liability; and (4) to lend technical analysis on the government’s “Plan for the Attention to the Victims of the September 26 and 27 Events.”<sup>1542</sup>

The GIEI operated from February 2015 to April 2016. It held its first meeting in February 2015 and began its formal activities on March 2, 2015.<sup>1543</sup> It was initially expected to conclude its mandate in October 2015, but after interim results of the investigation were obtained, the IACHR extended the GIEI’s mandate for six months at the request of the families of the victims.<sup>1544</sup> The GIEI presented its final findings in late April 2016 and ended its mandate at the end of that month.

During the course of its mandate, the GIEI issued a total of 14 monthly progress reports and two major reports on its findings. The first major report, released on September 6, 2015, was titled, “Ayotzinapa Report: Research and initial conclusions of the disappearances and homicides of the *normalistas* of Ayotzinapa.” The second report, released on April 24, 2016, was titled: “II Ayotzinapa Report: Progress and new conclusions about the investigation, search, and attention to the victims.”

On April 16, 2016, the IACHR announced that it would not renew the GIEI’s mandate because of the Mexican government’s refusal to allow the group to continue its work.<sup>1545</sup> Despite the valuable contributions and advances it made in the investigation of the case, Mexico’s refusal to extend the GIEI’s mandate left the ultimate objective of its mission unfulfilled. While the IACHR and the representatives of the victims’ families advocated for the work of the GIEI to continue until the case was solved, Mexico’s consent was required under the terms of the MoA. In light of this, on July 29, 2016, the commission established a special

monitoring mechanism to follow-up on Mexico's progress with the implementation of the recommendations made in the two reports.<sup>1546</sup> For its part, the Mexican government affirmed that it would continue with its investigation and ensure that those responsible would be sanctioned.

Under the legal framework of the MoA and the follow-up mechanism, the ultimate responsibility for delivering justice to the victims has always rested with the Mexican government.

## **Location**

The GIEI first convened in Washington, D.C., where the Organization of American States (OAS) is currently headquartered, and also met there thereafter.<sup>1547</sup> It undertook its mandate through a series of in situ visits to Mexico and the state of Guerrero between March 1, 2015, and April 30, 2016, and maintained permanent representation in Mexico throughout its mandate.

## **Structure and Composition**

The IACHR selected the GIEI's five independent experts from a list of recommendations made by the Mexican government and the representatives of the missing students. The selected experts formed a diverse group of professionals distinguished for their years of work in advancing independent human rights work: Carlos Martín Beristain, a national of Spain and a doctor of medicine and psychology; Angela Buitrago, a Colombian lawyer with a specialization in criminal law and criminology; Francisco Cox Vial, a Chilean lawyer and professor of constitutional law; Claudia Paz y Paz, Guatemala's first female attorney general and a former judge; and Alejandro Valencia Villa, a Colombian human rights lawyer and professor of human rights, humanitarian law, and transnational justice.<sup>1548</sup>

## **Prosecutions**

The GIEI itself did not have a prosecutorial mandate. But its investigations shed light on the events in Iguala, as well as indications of a federal investigation featuring criminality, incompetence, and the manipulation of evidence.

The GIEI's work was essential in disproving the so-called "historic truth" that the Mexican government attempted to impose on the investigation just four months after the disappearance of the students. The Mexican government's assertion that the students were killed and cremated at a trash dump contradicted facts uncovered in the GIEI's investigation, as well as the scientific studies of a world-renowned fire expert and the internationally recognized Argentine Forensic Anthropology Team (*Equipo Argentino de Antropología Forense*, EAAF). Both forensic studies concluded that there was no scientific basis to support the government's theory. They found that multiple fires had occurred at the trash site, but none large enough to incinerate 43 bodies, and no evidence that a fire took place at all on the night the students were supposedly killed and cremated. The studies found the charred remains of 19 individuals, but none that matched the DNA of the missing 43 students; rather, some of the remains definitively were not those of any of the disappeared students.<sup>1549</sup>

The experts helped advance other more credible lines of investigation, including a possible motive for a large-scale attack against the students. They concluded that on the night of the attack, the students commandeered a fifth bus, which was intercepted by federal police who offloaded the students and escorted the bus away from Iguala. The federal government omitted this bus from its investigation despite testimony from students regarding its existence, video footage of the bus, and its inclusion in an initial investigation handled by Guerrero state authorities. The bus that authorities later presented to the GIEI to examine did not match the bus seen on the surveillance video and described by students. The experts hypothesized that the missing bus could have contained hidden drugs or money belonging to the *Guerreros Unidos* criminal organization. Lending strong support to the experts' hypothesis, another U.S. Department of Justice case concerning drug distribution in the United States found that individuals working on behalf of the *Guerreros Unidos* used commercial passenger buses to conceal and transport drugs from Guerrero, Mexico, to Chicago, Illinois.<sup>1550</sup>

The GIEI's investigation also revealed strong evidence that implicated several Mexican authorities. The experts concluded that security forces from all three levels of government were present during different attacks on the students, including municipal, state, and federal police. It found that the military was also aware of the attacks on the students and present at some of the crime scenes. According to testimonies, a group of soldiers entered the police station and searched the cells where the students were supposedly detained. The experts noted that in spite of the awareness of the prolonged attacks against the students, no security force intervened to protect them. Yet military agents reported their observations over the government's C-4 communication system and took photos and video on a

mobile phone. The military refused to collaborate fully with the group of experts by denying them access to the phone video and the C-4 communications from the specific periods during the night of the attacks. In addition, Mexican authorities repeatedly denied the GIEI's access to the soldiers based in Iguala, who likely witnessed all stages of the attack leading to the disappearance of the students. The GIEI concluded that the operation against the students had to have been centrally coordinated, given its sustained nature and the involvement of several patrols from at least two jurisdictions (Iguala and Cocula).

The group of experts faced a number of obstacles in carrying out their mandate that stemmed from the government's unwillingness to collaborate fully with the investigation, including possible obstruction of justice and attempts to undermine or discredit its work and findings. Although the group of experts were able to directly interview federal, state, and municipal authorities, they were not allowed to interview soldiers directly, through surrogates, or be present when the federal prosecutors conducted the interviews with soldiers. In addition, the GIEI complained in both reports that the government frequently did not provide requested information necessary for carrying out its mandate in a timely manner.

The GIEI's findings indicate that government authorities obstructed justice during the course of the investigation. Their findings revealed that nearly 80 percent of suspects detained by authorities had injuries indicative of torture or mistreatment.<sup>1551</sup> The experts analyzed the cases of 17 of the detainees whose testimonies aligned with the government's theory and found signs that all had been tortured.<sup>1552</sup> The allegations include abuses of men and women subjected to sexual violence, electrical shocks to the genitals, penetration, beatings, asphyxiation, and threats of physical harm to their close family members.<sup>1553</sup> The GIEI concluded that there is a high likelihood most confessions obtained by authorities were coerced in order to align with its own version. In addition, the coerced confessions may have been part of a calculated misinformation campaign. Part of detainees' testimonies supporting the government's "historic truth" about the trash dump were suspiciously leaked to the media at a time when the government's theory was being scientifically disproven.<sup>1554</sup> Further, some of the leaks did not correspond with what was actually said in testimonies. The GIEI pressed the government in its reports to conduct internal investigations into sources of the leaked information and possible crimes committed against detainees.

More evidence of possible obstruction of justice by authorities arose with the government's tampering of evidence at the San Juan River crime scene, where the government supposedly uncovered trash bags containing charred remains of

some of the missing students. The government falsified the date in which the bags of remains were officially recovered, made apparent only after photo and video evidence provided by journalists from Guerrero revealed that federal investigators from the federal Office of the General Prosecutor (*Procurador General de la República*, PGR) had been at the scene a full day prior. The head of the Agency for Criminal Investigations was there himself, together with an accused suspect who subsequently showed signs of torture. The group of independent forensic experts from Argentina working on the case were not informed when the government uncovered the bags, and none of the activity from the day before the bags were officially reported as found, including the suspect's presence, was documented in the government's case files.

Even after the findings of the GIEI and those of the group of independent forensic experts both disproved the government's theory of the case, Mexican authorities refused to abandon their version of events and continued to resist new lines of investigation advanced by the GIEI. Beginning in September 2015, the group of experts pressed Mexican authorities to open lines of dialogue with U.S. authorities to investigate the use of Mexican buses traveling from Guerrero to Chicago to carry narcotics across the border. The PGR moved slowly, initiating those contacts several months later, in February 2016. The experts found that contrary to the Mexican government's assertions, the students' cell phones showed activity in the hours and days after they disappeared. The experts urged the Mexican authorities to investigate cell phone data of the missing students and of suspected perpetrators to track their movements on the night of the attack. The government failed to explore these additional lines of investigation while the GIEI remained in operation.

Another matter complicating the work of the GIEI occurred in mid-March 2016, when a criminal complaint was filed in the PGR against Emilio Álvarez Icaza Longoria, the executive secretary of the IACHR, for the alleged crime of fraud related to US\$2 million—the same amount the Mexican government paid the IACHR to cover the costs of the GIEI investigation. The complaint attacked the GIEI's integrity and demanded an immediate end to its work. The complaint echoed a media campaign attacking the reputation of three individual members of the GIEI.<sup>1555</sup> The IACHR categorically rejected this as a smear campaign and expressed its dismay that the PGR opened a preliminary inquiry based on a complaint it found “reckless and unfounded” and which “does not contain any fact that would constitute a crime.”<sup>1556</sup> The PGR announced in April 2016 that it would not pursue any criminal action against Icaza.

## Legacy

On January 27, 2015, Attorney General Jesús Murillo Karam stood in front of television cameras and declared that the government had concluded its investigation into the case of the missing 43 students from Ayotzinapa. Four months had lapsed since the night of their attack. Over a year later, the government had still not located the disappeared students, and the experts had uncovered numerous inconsistencies, investigative failures, and institutional deficiencies in the federal government's investigation. In the process of searching for the missing students, by mid-2015, over 60 clandestine graves in the state of Guerrero containing dozens of bodies and human body parts were discovered.<sup>1557</sup> The results of the GIEI's investigations were not only a judgment on the government's false conclusions about the Ayotzinapa case, but on the state's failure in bringing justice to thousands of disappeared civilians over the past decade. On the day that the group of experts presented their final report to the public, the representatives of the Mexican government were notably absent from the front row that had been reserved for them.<sup>1558</sup>

Hours after the GIEI presented its final report, the PGR issued a public statement that both affirmed the work of the experts while simultaneously rebutting every recommendation identified in the report. The PGR claimed to have allowed the group of experts full access to the information they requested, declared that it had carried out their requests in pursuing the new lines of investigation, or directly challenged the experts' findings by asserting it found no evidence relevant to the case. The PGR effectively shut down a line of investigation linking the attacks to a possible transnational drug trafficking operation by claiming it had examined the fifth bus, found no irregularities, and that the bus's route was limited to travel between Guerrero and a neighboring state.

In its statement, the PGR attempted to revive its theory that the students had been killed and incinerated at the dump site by releasing the results of a third forensic study. The additional study took place at the government's insistence and under a signed formal agreement with the GIEI on the conditions of the analysis. The government broke the terms of its agreement by holding a press conference on April 1, 2016, to release preliminary findings that appeared to support its theory of a large fire in the dump site. In reality, the stated evidence did not add to or disprove the original findings of the first two scientific studies. The study failed to link evidence of a fire to the night of the attack and failed to match the remains of the 19 people found at the trash site.

The PGR's statement was an attempt to both justify and emphasize its own role in the investigation while making no mention of the multiple flaws in how it handled the case. It cited as one of the major benchmarks of its success the arrest and detention of 123 people allegedly linked to the students' disappearance. The remarks positioned the Mexican government to later reject the continuation of the GIEI's work.

On July 29, 2016, the Inter-American Commission implemented a Follow-up Mechanism after it became clear that further international supervision would be necessary to protect the families of Ayotzinapa victims and to monitor the implementation of the GIEI's recommendations. Although the mechanism will not participate directly in the case's investigation, its specific objectives outlined in its work plan are as follows: (1) monitor the progress of the investigation; (2) provide advisory assistance and support to the process to search for the disappeared; (3) ensure that comprehensive attention is given to victims and their relatives; and (4) promote any structural measures that may be appropriate to resolve this matter and ensure that such an event does not happen again.<sup>1559</sup> The mechanism would authorize four official visits and four technical visits in coordination with Mexican authorities from November 9, 2016, through November 2017. Official visits are led by the coordinator to the Follow-up Mechanism and the rapporteur for Mexico and accompanied by technical staff assigned by the IACHR Executive Secretariat. Technical visits are carried out by staff of the Executive Secretariat in order to compile any information and documents necessary to meet the objectives of the mechanism. The mechanism allows for specialists from other disciplines to accompany the staff as needed. In addition, the Follow-up Mechanism authorizes the IACHR to meet with relatives of the 43 disappeared students and other victims, hold meetings with other international bodies and civil society organizations to shed light on the case, hold high-level meetings and roundtables with representatives of state institutions, hold working meetings to implement the precautionary measures, and hold public hearings on the objectives of the Follow-up Mechanism during IACHR sessions. Through the mechanism, the IACHR is empowered to submit any requests for information and may issue preliminary observations, reports, and/or press releases on its findings.

As of September 2017, the IACHR had conducted a total of three official visits, three technical visits, and two public hearings since the start of the Follow-up Mechanism. In the first public hearing in March 2017, over a year after the GIEI's presentation and final report, the Mexican authorities continued to defend their "historical truth."<sup>1560</sup> During the IACHR's second official visit in April 2017, members expressed "concern about the slow pace in coming to conclusions, both in the

search activities and in the effective clarification of the various lines of investigation indicated by the Inter-Disciplinary Group.”<sup>1561</sup> The IACHR recognized that among many of the concrete recommendations made by the GIEI for moving forward with the investigation, Mexican authorities had taken administrative steps to contract Light Imaging Detection and Ranging (LIDAR) technology for the search of mass graves and had made progress with the investigation of telephone communication. Following its third visit in August 2017, the IACHR reported little progress and noted that the government’s insistence on one version of events, “which has already been ruled out by the GIEI, places a hurdle between the victims and their family members and jeopardizes the quest for truth and justice in this case.”<sup>1562</sup>

In June 2017, the IACHR held its second public hearing during its 163rd session, where civil society representatives noted the state’s continued lack of progress.<sup>1563</sup> The commission expressed its concern over explosive allegations that implicated the state in acts of espionage against representatives of the relatives of the students and members of the GIEI using Pegasus spyware. The spyware, used to threaten journalists and human rights activists, potentially added to the disruption of the GIEI’s efforts during the critical span of its mandate.<sup>1564</sup>

In the months following the GIEI’s mandate, more evidence has surfaced that Mexican authorities withheld key evidence from the group of experts. Evidence in a case against a gang leader suggested that the head of state’s Criminal Investigation Agency had ties to the *Guerreros Unidos* criminal organization.<sup>1565</sup> The case further revealed that the military had detained another suspected leader of the crime group a few months prior to the attack against the students. The military was aware in that operation that the *Guerreros Unidos* had a practice of using commercial passenger buses to transport drugs to the United States, and a book seized from a drug trafficker linked to the case contained phone numbers of various authorities—information and documents that were deliberately withheld from the GIEI.

As of September 2017, Mexican authorities had arrested 131 people in connection with the case, although some of these were charged with organized crime offenses and kidnapping not directly tied to the students. A majority of the arrests were of municipal police officers and alleged cartel members. Many of those being prosecuted have alleged they were tortured by officials. Other arrests include that of the former mayor of Iguala and his wife. It is unclear whether the PGR has followed through with the GIEI’s recommendation that it investigate officials responsible for leaking information to the media during its mandate. When an internal investigation appeared to be preparing criminal charges in relation to manipulation of evidence



in the case, the PGR's inspector general was removed from office. The head of the Agency for Criminal Investigation, who was personally suspected of evidence tampering, resigned, but was swiftly appointed by President Peña Nieto to a position on the powerful National Security Council.

Although the GIEI was unable to locate the disappeared students, it represented an unprecedented model of international cooperation in Mexico and demonstrated that an independent body of technical experts could shine new light on a complex case, even amidst a system plagued by corruption, torture, and politicization. The GIEI's work sustained domestic and international attention on an important case and expanded the circle of Mexicans who believe that further international involvement could help to address the country's broader crisis of atrocity and impunity.

## **Financing**

The Mexican government funded the GIEI's operational costs for a total contribution of US\$2 million by its Foreign Ministry to the IACHR.<sup>1566</sup> Mexico disbursed its first US\$1 million contribution in November 2014 and made a second series of disbursements totaling another US\$1 million by March 2016.<sup>1567</sup> The financial support was considered a voluntary contribution from Mexico to the IACHR and administered by the OAS. The IACHR depends on funding by OAS member states and others through regular contributions. For the years in which Mexico contributed funds for the operational costs of the GIEI, it did not make additional contributions for the daily operation of the IACHR.

## **Oversight and Accountability**

The GIEI was an independent body created by agreement between the IACHR—an autonomous organ of the OAS—and the Mexican government. The agreement established an oversight role for the IACHR over the adoption of precautionary measures related to the Ayotzinapa case and the GIEI's recommendations. Members of the GIEI were to enjoy “privileges and immunities as are necessary for the exercise of its functions” under the agreement, in accordance with international standards.<sup>1568</sup> Similar to the immunities enjoyed by representatives of member states under OAS procedures, the members of the GIEI were to enjoy immunity from personal arrest or detention and from seizure of their personal baggage. With respect to words spoken or written and all acts done in their official capacity, the

GIEI was given immunity from legal process of every kind. In addition, all papers and documents belonging to the GIEI were to receive the privilege of inviolability.

## Notes

1248. CONADEP, *NUNCA MÁS* 209, 1984.
1249. Code of Criminal Procedure, Congress Law 23,984, August 1991.
1250. Code of Criminal Procedure, Congress Law 27,063, December 2014.
1251. Marc Becker, “2 Madres de la Plaza de Mayo,” *The Oxford International Encyclopedia of Peace*, 655–56, available at: [www.yachana.org/research/plazamayo.pdf](http://www.yachana.org/research/plazamayo.pdf).
1252. See [www.cels.org.ar/web/en/presentacion/](http://www.cels.org.ar/web/en/presentacion/).
1253. Karen Ann Faulk, *supra* at 47.
1254. See Diane F. Orentlicher, “‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency,” *The International Journal of Transitional Justice*, 1 (2007): 10–22. Orentlicher uses the term to describe several Latin American countries that underwent cycles of impunity and accountability after military regimes in the 1970s and 1980s.
1255. Presidential Decree No. 158, December 13, 1983.
1256. Leonardo Filippini, *Criminal Prosecutions for Human Rights Violations in Argentina*, International Center for Transitional Justice Briefing Paper, November 2009, 2.
1257. Margarita K. O’Donnell, “New Dirty War Judgments in Argentina: National Courts and Domestic Prosecutions of International Human Rights Violations,” *NYU Law Rev.* 84, (2009): 346–47. Before relinquishing power, the military granted itself immunity from prosecution and decreed the destruction of documents. Kathryn Sikkink and Carrie Booth Walling, “Argentina’s Contribution to Global Trends in Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena 2006).
1258. Leonardo Filippini, *Criminal Prosecutions for Human Rights Violations in Argentina*, 1, ICTJ Briefing Paper, November 2009 (hereinafter: ICTJ Briefing Paper).
1259. For a full discussion of CONADEP, see No Peace Without Justice, *Closing the Gap: The Role of Non-judicial Mechanisms in Addressing Impunity*, 2010, 103–7.
1260. Full Stop Law of 1986, Law No. 23492, Dec. 24, 1986, [1986-B] A.L.J.A. 1100, available at: [www.nuncamas.org/document/nacional/ley23492.htm](http://www.nuncamas.org/document/nacional/ley23492.htm).
1261. Due Obedience Law of 1987, Law No. 23521, June 8, 1987, [1987-A] A.L.J.A. 260, available at: [derechos.org/ddhh/arg/ley/ley23521.txt](http://derechos.org/ddhh/arg/ley/ley23521.txt); No Peace Without Justice, *Closing the Gap*, 102. The law “created an affirmative defense and irrefutable presumption that military and police officers acted under orders that they were unable to question.” O’Donnell, “New Dirty War Judgments in Argentina,” 348.
1262. ICTJ Briefing Paper.
1263. IACHR Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.390, 10.311, October 2, 1992, available at: [www1.umn.edu/humanrts/cases/28%5E92arg.pdf](http://www1.umn.edu/humanrts/cases/28%5E92arg.pdf).
1264. ICTJ Briefing Paper.
1265. No Peace Without Justice, *Closing the Gap*, 100–110.

1266. Marcela Valente, “Argentine Court Forges Ahead in Franco-Era Human Rights Crimes Cases,” *Inter Press Service*, April 10, 2012, available at: <http://www.ipsnews.net/news.asp?idnews=107382>.
1267. The Full Stop and Due Obedience laws did not cover child abduction.
1268. ICTJ Briefing Paper. These trials were criticized by some victims’ groups who sought full justice, and opposed by defendants who viewed them as contrary to the immunity laws.
1269. Orentlicher, “‘Settling Accounts’ Revisited,” 10–22.
1270. ICTJ Briefing Paper.
1271. ICTJ Briefing Paper; Congress Law 25,779, August 2003.
1272. ICTJ Briefing Paper. See also Human Rights Watch, *World Report 2012: Argentina Country Summary*, January 2012.
1273. Argentine Supreme Court, Case No. 259, “Arancibia Clavel,” Judgment, August 24, 2004.
1274. “Qué ganó y qué perdió la Argentina durante el Kichnerismo,” *BBC*, October 27, 2015, available at: [https://www.bbc.com/mundo/noticias/2015/10/151022\\_elecciones\\_argentina\\_kirchnerismo\\_vs](https://www.bbc.com/mundo/noticias/2015/10/151022_elecciones_argentina_kirchnerismo_vs).
1275. Proceso, “Con Macri, perdón y olvido a los crímenes de la dictadura,” August 25, 2016 available at: [proceso.com.mx/452375/macri-perdon-olvido-a-los-crimenes-la-dictadura](http://proceso.com.mx/452375/macri-perdon-olvido-a-los-crimenes-la-dictadura).
1276. Argentine Constitution, Article 108.
1277. The appointment by the president requires agreement of at least two-thirds of the present Senate members in a session convened for that purpose. *Ibid.*, Article 99(4).
1278. *Ibid.*, Article 116.
1279. This unit has been described using various nomenclature. Pablo Parenti is a senior attorney with the Attorney General’s Unit for Coordination and Monitoring Cases Involving Violations of Human Rights during the Argentine dictatorship. ICTJ, Interview with Pablo Parenti, published January 2012 (hereinafter: Parenti Interview), available at: [ictj.org/news/interview-pablo-parenti-esma-trials-argentina](http://ictj.org/news/interview-pablo-parenti-esma-trials-argentina). Filippini describes it as a “coordination unit.” ICTJ Briefing Paper.
1280. Argentine Attorney General’s Office, Resolution 1442/13.
1281. Argentine Attorney General’s Office, Resolution 435/12.
1282. Argentine Supreme Court, Directive 42/2008.
1283. ICTJ Briefing Paper.
1284. As per Article 118 of the Argentine Constitution, which establishes that matters that concern international law must be heard in federal courts.
1285. O’Donnell, “New Dirty War Judgments in Argentina,” 350.
1286. Procuradoría de Crímenes de Lesa Humanidad, *El Estado de las Causas por Crímenes de Lesa Humanidad en Argentina—Informe Estadístico*, March 2007 (en adelante “Informe Estadístico 2017”), available at: [fiscales.gob.ar/wp-content/uploads/2017/03/LH\\_Informe-Estadistico\\_2017.pdf](http://fiscales.gob.ar/wp-content/uploads/2017/03/LH_Informe-Estadistico_2017.pdf).
1287. Parenti Interview.
1288. O’Donnell, “New Dirty War Judgments in Argentina,” 251.
1289. This was made possible following a complaint lodged by Grandmothers of Plaza de Mayo at the Inter-American Commission of Human Rights arguing a violation of their right to access justice. Argentina accepted a friendly settlement in the case and committed to introduce new legislation to enable more effective participation in

- proceedings by victims and organizations supporting them. See Presidential Decree No. 1800, November 19, 2009.
1290. O'Donnell, "New Dirty War Judgments in Argentina," 351.
  1291. Informe Estadístico 2017.
  1292. Ibid.
  1293. ICTJ Briefing Paper, quoting the general prosecutor.
  1294. FIDH, *Argentina: Avances y obstáculos en los procesos en contra de responsables de crímenes contra la humanidad durante la dictadura*, May 2009 (hereinafter: FIDH Report), at 43-46.
  1295. Congress Law 26,374, May 2008.
  1296. As recognized by the Argentine Supreme Court in its Directive 42/2008.
  1297. FIDH Report, 38.
  1298. Parenti Interview.
  1299. Procuradoría de Crímenes de Lesa Humanidad, Pautas para la actuación de los y las fiscales en la investigación de crímenes de lesa humanidad, April 2016, 38-39.
  1300. O'Donnell notes that the court applied a definition of genocide "out of conformity" with international law, in that it included "political groups." O'Donnell, "New Dirty War Judgments in Argentina," 334.
  1301. Ibid., 350.
  1302. Crimes against humanity provisions were introduced in 2007 through legislation that implemented the Rome Statute, Law 26,200, December 2006.
  1303. Relying on ordinary crimes provisions and considering crimes to have been committed "in the context of crimes against humanity" has been common practice in some Latin American courts. For a study on this matter ("Subsunción de conductas en derecho internacional y nacional"), see Due Process of Law Foundation, *Digesto de Jurisprudencia Latinoamericana sobre Crímenes de Derecho Internacional*, vol. 1, 178-90.
  1304. In *Arancibia Clavel*, the Supreme Court stated that ordinary crimes could be considered as crimes against humanity because they affect international law. Case No. 259, *Arancibia Clavel*, Judgment, August 24, 2004, considerando 16.
  1305. ICTJ Briefing Paper. Filippini also suggests that prosecutors have begun to investigate crimes committed before the 1976 coup.
  1306. Human Rights Watch, *World Report 2012: Argentina Country Summary*.
  1307. CELS, *Nuevo informe: Responsabilidad empresarial en crímenes de lesa humanidad en la Argentina*, December 14, 2015, available at: [cels.org.ar/web/2015/12/nuevo-informe-responsabilidad-empresarial-en-crimenes-de-lesa-humanidad-en-la-argentina/](http://cels.org.ar/web/2015/12/nuevo-informe-responsabilidad-empresarial-en-crimenes-de-lesa-humanidad-en-la-argentina/).
  1308. Argentine law does not recognize the criminal liability of corporations. Natural persons responsible for the acts of the corporation could be prosecuted.
  1309. See Parenti Interview. An estimated 5,000 people were detained at ESMA.
  1310. "Guilty: Argentina Dirty War Commanders," *International Justice Tribune*, November 7, 2011.
  1311. European Center for Constitutional Rights, *On-going Trials in Argentina: Campo de Mayo*, available at: [www.ecchr.eu/en/our\\_work/international-crimes-and-accountability/argentina/articles/update-on-on-going-trials-in-argentina-iii.html](http://www.ecchr.eu/en/our_work/international-crimes-and-accountability/argentina/articles/update-on-on-going-trials-in-argentina-iii.html).

1312. Comisión Juicio Campo de Mayo, Causa Área 400, April 4, 2013, available at: [www.comisionjuiciocampodemayo.wordpress.com/juicio/causa-area-400/](http://www.comisionjuiciocampodemayo.wordpress.com/juicio/causa-area-400/).
1313. Human Rights Watch, *World Report 2011: Argentina Country Summary*.
1314. Amnesty International, *Argentina: Historic Ruling on Operation Condor a Great Step Forward for Truth and Justice*, May 27, 2016, available at: [www.amnesty.org/en/latest/news/2016/05/argentina-historic-ruling-on-operation-condor-a-great-step-forward-for-truth-and-justice/](http://www.amnesty.org/en/latest/news/2016/05/argentina-historic-ruling-on-operation-condor-a-great-step-forward-for-truth-and-justice/).
1315. “Murió Jorge Rafael Videla, símbolo de la dictadura militar,” *La Nación*, May 17, 2013, available at: [www.lanacion.com.ar/1582853-murio-jorge-rafael-videla-simbolo-de-la-dictadura-militar](http://www.lanacion.com.ar/1582853-murio-jorge-rafael-videla-simbolo-de-la-dictadura-militar).
1316. See, inter alia, Argentine Supreme Court, Case No. 10,919, *Vigo*, Judgment, September 14, 2010; Case No. 14,217 *Alespeiti*, Judgment, April 18, 2017. “Corte Suprema otorgó el arresto domiciliario a un militar condenado por crímenes de lesa humanidad,” *La Nación*, April 18, 2017, available at: [lanacion.com.ar/2012979-la-corte-suprema-otorgo-el-arresto-domiciliario-a-un-militar-condenado-por-crimenes-de-lesa-humanidad](http://lanacion.com.ar/2012979-la-corte-suprema-otorgo-el-arresto-domiciliario-a-un-militar-condenado-por-crimenes-de-lesa-humanidad). “Cambio de época: Corte benefició con prisión domiciliaria a represor condenado,” *Minuto Uno*, April 18, 2017, available at: [minutouno.com/notas/1547016-cambio-epoca-corte-beneficio-la-prision-domiciliaria-represor-condenado](http://minutouno.com/notas/1547016-cambio-epoca-corte-beneficio-la-prision-domiciliaria-represor-condenado). “En 2016 ya otorgaron la prisión domiciliaria a unos 50 militares,” *Clarín*, July 14, 2016, available at [clarin.com/politica/otorgaron-prision-domiciliaria-militares\\_o\\_ryise8Z\\_.html](http://clarin.com/politica/otorgaron-prision-domiciliaria-militares_o_ryise8Z_.html).
1317. “Argentina: la violencia de la ley,” *New York Times Español*, May 6, 2017, available at [www.nytimes.com/es/2017/05/06/la-violencia-de-la-ley-en-argentina/](http://www.nytimes.com/es/2017/05/06/la-violencia-de-la-ley-en-argentina/).
1318. Argentine Supreme Court, Case No. 1574, *Muiña*, Judgment, May 3, 2017. See also Council on Hemispheric Affairs, *Argentina’s Supreme Court Resurrects Repealed Law to Reduce Sentence for Dictatorship-Era Enforcer*, May 9, 2017, available at: [coha.org/argentinas-supreme-court-resurrects-repealed-law-to-reduce-sentence-for-dictatorship-era-enforcer/](http://coha.org/argentinas-supreme-court-resurrects-repealed-law-to-reduce-sentence-for-dictatorship-era-enforcer/); “Delitos de lesa humanidad: La Corte aplicó el 2 x 1 a un condenado,” *La Nación*, May 4, 2017, available at: [www.lanacion.com.ar//2020319-delitos-de-lesa-humanidad-la-corte-aplico-el-2-x-1-a-un-condenado](http://www.lanacion.com.ar//2020319-delitos-de-lesa-humanidad-la-corte-aplico-el-2-x-1-a-un-condenado).
1319. “El caso Muiña: los argentinos rechazan el atropello a los derechos humanos,” *New York Times Español*, May 9, 2017, available at: [www.nytimes.com/es/2017/05/09/el-caso-muina-los-argentinos-rechazan-el-atropello-a-los-derechos-humanos/](http://www.nytimes.com/es/2017/05/09/el-caso-muina-los-argentinos-rechazan-el-atropello-a-los-derechos-humanos/).
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1321. “Argentines Protest against Supreme Court Ruling on Dirty War Sentences,” *The Telegraph*, May 11, 2017, available at: [telegraph.co.uk/news/2017/05/11/argentines-protest-supreme-court-ruling-dirty-war-sentences/](http://telegraph.co.uk/news/2017/05/11/argentines-protest-supreme-court-ruling-dirty-war-sentences/); “Masiva marcha en contra del ‘dos por uno’ y duras críticas a la Corte Suprema,” *La Nación*, May 11, 2017, available at [www.lanacion.com.ar/2022681-masiva-marcha-en-contra-del-dos-por-uno-y-duras-criticas-a-la-corte-suprema](http://www.lanacion.com.ar/2022681-masiva-marcha-en-contra-del-dos-por-uno-y-duras-criticas-a-la-corte-suprema).
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- argentina-promulga-una-ley-contra-la-reduccion-de-las-penas-por-crimes-lesa-humanidad/20000035-3264624.
1323. Human Rights Watch, *World Report 2012: Argentina Country Summary*. Noting significant delays at the appellate level, “with appeals normally taking more than two years to be heard after the sentence of the trial court, ... [by January 2012] the Supreme Court had confirmed final sentences in only four of the cases reactivated after the annulment of the amnesty laws.”
1324. Human Rights Watch, *World Report 2011: Argentina Country Summary*.
1325. Parenti Interview: “The current process is not going to bring many perpetrators to trial—many of them are dead, many are not going to be identified.”
1326. Informe Estadístico 2017.
1327. Human Rights Watch, *World Report 2012: Argentina Country Summary*: “Julio López, age 79, a former torture victim who ‘disappeared’ from his home in September 2006, the day before he was due to attend one of the final days of a trial, remains missing.” See also, FIDH Report at 49–52.
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1331. The Council of Magistrates is a permanent organ within the Argentine judiciary (Argentine Constitution, Article 114). It is composed of members of parliament, judges, lawyers, one academic, and one representative of the Executive Branch. See Congress Laws 24,937, January 1998, and 25,669, October 2002.
1332. [www.cels.org.ar/web/category/memoriaverdadjusticia/](http://www.cels.org.ar/web/category/memoriaverdadjusticia/).
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1338. Winifred Tate, “Paramilitaries in Colombia,” *Brown Journal of World Affairs* 8 (Winter/Spring 2001): 165; William Avilés, “Paramilitarism and Colombia’s Low-Intensity Democracy,” *Journal of Latin American Studies* 38 (2006): 394.
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1509. For an explanation of the complex procedures under Haiti's civil law, see the web page on the case maintained by the Institute for Justice and Democracy in Haiti, available at [ijdh.org/projects/jean-claude-duvalier](http://ijdh.org/projects/jean-claude-duvalier). IJDH notes that individual civil complainants can join a criminal case once it has been brought by the government prosecutor. IJDH assisted in enjoining civil plaintiffs to the criminal case.
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1520. See Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, A/HRC/17/42, April 4, 2011; see also OHCHR, *UN Human Rights Chief Offers Haitian Authorities Assistance in Duvalier Case*, February 1, 2011, available at: [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10696&LangID=E](http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10696&LangID=E); see also United Nations Security Council, *Report of the Secretary-General on the United Nations Stabilization Mission in Haiti*, S/2011/183, 24 March 2011, para. 82; see also “UN Independent Human Rights Expert Urges Support for Justice in Haiti,” *UN News Centre*, January 19, 2011, available at: [ijdh.org/archives/16882](http://ijdh.org/archives/16882). The Independent Expert’s report notes that other UN mandate-holders would provide support as necessary, including the Special Rapporteur on torture and the Special Rapporteur on extrajudicial killings.
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1524. Morris A. Ratner, “Judicial Ethical Integrity: Challenges and Solutions,” *Hastings Int’l & Comp. L. Rev.*, 39 (2016): 158, available at: [repository.uchastings.edu/faculty\\_scholarship/1422](http://repository.uchastings.edu/faculty_scholarship/1422)
1525. The statement can be found at [oas.org/en/iachr/docs/other/Haiti2011.asp](http://oas.org/en/iachr/docs/other/Haiti2011.asp).
1526. Organization of American States, May 5, 2014, [ijdh.org/2014/05/topics/law-justice/iachr-calls-on-member-states-to-open-their-archives-on-the-human-rights-violations-committed-under-the-regime-of-jean-claude-duvalier/](http://ijdh.org/2014/05/topics/law-justice/iachr-calls-on-member-states-to-open-their-archives-on-the-human-rights-violations-committed-under-the-regime-of-jean-claude-duvalier/).
1527. Under President Peña Nieto’s administration, and less than three months before the violent encounter in Iguala, the military massacred 22 people in Tlatlaya after they had surrendered. The military acted without regard for due process or a respect for human rights on written official orders to “take out” or extrajudicially kill suspected criminals “in the darkness.” “Mexican Soldiers Ordered to kill in Tlatlaya, Claim Rights Activists,” *The Guardian*, July 2, 2015, available at: [theguardian.com/world/2015/jul/03/mexican-soldiers-ordered-to-kill-in-san-pedro-limon-claim-rights-activists](http://theguardian.com/world/2015/jul/03/mexican-soldiers-ordered-to-kill-in-san-pedro-limon-claim-rights-activists). For more on the context in the state of Guerrero, see Open Society Justice Initiative, *Broken Justice in Mexico’s Guerrero State*, 2015.

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1530. Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE) 2015.
1531. [wola.org/analysis/qa-mexicos-new-criminal-justice-system/](http://wola.org/analysis/qa-mexicos-new-criminal-justice-system/)
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1538. Acuerdo para la incorporación de asistencia técnica internacional desde la perspectiva de los derechos humanos en la investigación de la desaparición forzada de 43 estudiantes de la normal rural Raúl Isidro Burgos de Ayotzinapa, Guerrero, dentro de las medidas cuatelares MC/409/14 y en el marco de las facultades de monitoreo que la CIDH ejerce sobre la situación de los derechos humanos en la región, available at: [oas.org/es/cidh/mandato/docs/Acuerdo-Addendum-Mexico-CIDH.pdf](http://oas.org/es/cidh/mandato/docs/Acuerdo-Addendum-Mexico-CIDH.pdf). For more information on the formation of the GIEI and the implementation of its mandate, see Carlos M. Beristain et al., *Metodologías de investigación, búsqueda y atención a las víctimas*, FLACSO, 2016, available at: [flacso.edu.mx/agenda/Metodologias-de-investigacion-busqueda-y-atencion-las-victimas-Del-caso-Ayotzinapa-nuevos](http://flacso.edu.mx/agenda/Metodologias-de-investigacion-busqueda-y-atencion-las-victimas-Del-caso-Ayotzinapa-nuevos).
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1553. See “Mexican Attorney General’s Office Accused of Torture, Bribes, to Manipulate Ayotzinapa Investigation,” available at: [www.univision.com/univision-news/latin-america/mexican-attorney-generals-office-accused-of-torture-bribes-to-manipulate-ayotzinapa-investigation](http://www.univision.com/univision-news/latin-america/mexican-attorney-generals-office-accused-of-torture-bribes-to-manipulate-ayotzinapa-investigation).
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