GUATEMALA: Systemic injustice and Impunity, part 1

In 2010, Rights Action continues our long-term work of funding and supporting community-based groups that have suffered injustices (repression, human rights violations, environmental injustice) and are struggling to end impunity in Guatemala.

Injustice and impunity are not a crisis in Guatemala. This is not a tragedy. Rhetoric aside about democracy, sovereignty and the rule of law, 14 years after the "peace process" was concluded, Guatemala remains a profoundly undemocratic, unequal and unjust country in which the wealthy and powerful sectors act with close to complete impunity.

BELOW

- Article: "Violence and failing justice, impunity in Guatemala", by Colin Murphy, Le Monde diplomatique
- Interview: with Carlos Castresana, head of the UN International Commission against Impunity in Guatemala – CICIG, by Felix Flores, Barcelona, 09/10/2009, International
- Update: Amnesty International report on "Allegations of police killings "social cleansing" in Guatemala

Injustice and impunity are not only "Guatemalan" problems. They are "Canadian" and "USA-American" problems as well.

North American companies and investors have extensive business dealings (mining, hydroelectric dams, fruit and coffee exports, maquiladora industry, child adoptions, tourism, etc.) in Guatemala and they act and operate in the same context of impunity and the lack of enforceable laws and regulations. USA and Canada contribute to the perpetuation of Guatemala's impunity in the measure that we turn a blind eye to it, and continue with "business as usual".

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December 2009

VIOLENCE AND FAILING JUSTICE, IMPUNITY IN GUATEMALA

by Colin Murphy, Le Monde diplomatique, http://mondediplo.com/2009/12/15guatemala

At 7.15am on 4 September last year, Yuri Melini stepped onto the street from his mother's house in a suburb of Guatemala City. A man standing across the road called him. The man had a lost look, and had the dress and manner of someone from rural parts. He was

holding a folded newspaper. "Chh chh," called the man, and Yuri Melini crossed the street to help him.

When Yuri Melini was one metre away, the man took a gun out from behind the newspaper. Yuri Melini turned to run, but the man shot him, and then shot him again, six more times. Yuri Melini collapsed and the man approached him. Yuri Melini lay there, awaiting the "coup de grâce", but it never came. The man left.

"And here I am," says Yuri Melini, speaking on the phone from Guatemala, as if happily surprised.

Melini is one of the most prominent human rights and environmental activists in Guatemala, a country where protection for rights and the environment is impoverished, and their protectors are besieged. Since 2000, he has run an organisation called Calas (in English, the Centre for Legal, Environmental and Social Action), which agitates for indigenous rights and the protection of the environment, among other areas.

Guatemala is caught in "a vicious circle", he says, mired in a "historical level of violence", the residue of the civil conflict that lasted from the 1970s to the peace accord of 1996. Not only is violent crime chronic, there is a culture of "total impunity".

Melini's language and analysis is echoed elsewhere. Amnesty International reported that, of 5,781 killings in Guatemala during 2008, 1% resulted in a conviction. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has criticised Guatemala for fostering impunity for killings. Human Rights Watch concluded: "A dozen years after the end of Guatemala's brutal civil war, impunity remains the norm when it comes to human rights violations."

'LIFE HAS LITTLE VALUE'

In May of this year, Amnesty International reported that activists working with two leading human rights organisations in Guatemala had received dozens of death threats via SMS text messages. One message read: "You've got one hour, this is the last warning. Stop messing with us. We'll kill your kids first, then you."

Melini elaborates: "In general terms, there is a very low value placed on life. Women and young people are killed on a regular basis. Environmentalists are also killed, when they get in the way of interests. You can contract a hired gunman for a very small price. A group with money can hire in a Colombian group to carry out assassinations."

In the first half of 2009, he says, there were 241 attacks on human-rights defenders. This context is such that, despite a growing international consensus around the need to prioritise environmental interventions, work as an activist in Guatemala is increasingly difficult.

Defence of the environment has become a cross-cutting issue that involves work on human rights, criminality and governance.

He cites examples: in the mining industry, the use of toxic chemicals, such as arsenic, has insidious effects on the health of workers; indigenous Mayan communities living on traditional lands in isolated areas suffer intrusions from narco-trafficking and illegal mining.

Yet there is, he says, "a sign of hope that some things can change". The election of Barack Obama in the US and subsequent substantial investment in "clean" technologies point the way forward at an international level. The global financial crisis "is an opportunity to develop a more sustainable model" and a "just economy". "The economy and environment may seem like distinct themes, but they're complementary. The key elements of development - factories, roads, railways - all have an environmental impact."

STATUS IS NO PROTECTION

There is, as yet, little appreciation of this in Guatemala, though, where there is "a crisis of governmentality". "On the one hand, there is no sense of corporate responsibility and on the other hand, there is total impunity and a justice system that doesn't work."

The attempt on Melini's life has left him reliant on a zimmer frame for walking, and on bodyguards for protection, but it brought him to international attention, which culminated in May this year with an international award for the protection of human-rights defenders from the organisation Front Line. The attack "raised me to the status of a recognised public figure, and has generated a debate in the country about these issues," he says. "The Front Line award has permitted me to launch myself onto a new level, in a way that I couldn't have done before, and that itself is an additional form of protection."

That it may be, but "celebrity" on the international human rights circuit, and even national recognition, is no bulletproof charm. Amidst the culture of impunity that Melini has documented, it could be tempting to despair at attempts to foster change.

Jim Loughran of Front Line concedes this. "Sometimes, when confronted by such an extreme situation, you can feel powerless," he acknowledges. "How do you break the cycle of poverty and violence in a country? Where is your starting point?" This, he says, is where Front Line's philosophy applies: "protect one, empower a thousand". "Your starting point is action to create a safe space around human-rights defenders, those people working on the ground to create change. You take the small steps that enable people on the ground to reduce their risk of arrest, harassment or assassination."

Whether those small steps serve to help Guatemala advance along the path to stability remains to be seen.

(Colin Murphy is a journalist and writer based in Dublin)

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September 2009

INTERVIEW WITH CARLOS CASTRESANA: head of the UN International Commission against Impunity in Guatemala - CICIG

By Felix Flores, Barcelona, 09/10/2009, International (Translated for Rights Action by Rosalind Gill, RGill@glendon.yorku.ca)

Carlos Castresana (Madrid, 1957), the criminal prosecutor who set in motion the legal case against Pinochet and against members of the Argentine military, has set a benchmark of quality for international justice. A judge and magistrate, since 2007, he has also been the head of the UN International Commission against Impunity in Guatemala - CICIG.

IN THIS CAPACITY, HE DEALT WITH THE CASE OF RODRIGO ROSENBERG, THE LAWYER WHO, BEFORE BEING MURDERED IN MAY - LEFT A VIDEO TAPE THAT NAMES GUILTY PARTIES, AMONGST WHOM WAS PRESIDENT ÁLVARO COLOM.

Carlos: The case was treated like a major state crisis. And there is no doubt that the governability of the country was affected for 72 hours. The case is not all that complicated. It is a good example of how the CICIG works - we simply used practices that have been successful in other places - there are no miracles involved here.

The Rosenberg case was resolved because, instead of doing what a large part of Guatemalan and international public opinion was asking - putting the President and the First Lady on trial - we followed strict police technical rules: video tapes from all the security cameras in houses near that of the victim were confiscated, bearing in mind that that in upper class neighbourhoods, there is 24 hour camera surveillance on each block. The video tapes allowed us to identify the vehicle that followed Rosenberg as he left his house on bicycle on May 10th.

The vehicle (a black Mazda) had several identifying features: a false license plate, a spoiler on the back, alloy wheels with a red circle in the middle and a sticker on the gas cap. As it was not an ordinary car, we followed police procedure, which is to go to the Motor Vehicle Office to search for records of Mazda 6 cars registered in Guatemala. Then we went to the houses of the car owners and eventually found the culprit, who turned out to be an ex-police officer. Then we did what is done in any civilized country-we tapped his phone and followed up until we got the rest of those involved.

Our goal is to ensure that Guatemala has institutions that function in a consistent, transparent and reliable manner. The problem is, the Guatemalan police, until we came on the scene, did not officially carry out telephone monitoring - this does not mean it did not happen, only that it was not carried out legally. Also, the police did not have a viable witness or confessed criminal protection programme.

The system was very corrupt and very inefficient. Money that should have gone to the protection programme was being kept by the authorities for themselves. So the witnesses refused to testify or simply disappeared and they could end up being murdered because they had no protection. We brought in specialists from Columbia, Italy and Spain.

TO WHAT DEGREE IS PRESIDENT ÁLVARO COLOM IMPLICATED IN ALL THIS?

Carlos: I cannot answer that question until the investigation is over. Our investigation brings to this case a credibility that was lacking in local institutions. The CICIG has made it possible for weak institutions whose integrity was questionable to operate with some degree of normalcy and correctness. If you look at the situation in Honduras, for example, you will see that a case that should be criminally investigated, even if the judiciary itself may be found liable, must be investigated using correct legal procedures, whatever the outcome. As I said before, if they let us, we will carry out the investigation. I think the Guatemalan media is doing the best it can to keep its distance and allow us to do our work with discretion and respect.

HOW DID THE AUTHORITIES RECEIVE CICIG?

Carlos: They were fairly respectful and gave us the time we needed. But there is no doubt that initially, some of them were very skeptical of us. They did not want to cooperate with us, probably out of feelings of sovereignty and patriotism, which fed into a misunderstanding of our intentions.

Nonetheless, we should bear in mind that it was Guatemala that contacted the United Nations and that CICIG did not come here to interfere. We seem to have gained the respect of the people at this time. Most people see CICIG as a form of security. We have, however, had our difficulties with the Government. I think our formal relationship is working more or less as it should, but a country like Guatemala, that is so lacking in resources, cannot provide all the vehicles or personnel we may need, or introduce reforms and implement them as rapidly as we may wish. But we know full well what we are up against. On the whole, there has been cooperation on both sides, but this does not mean that things have always gone smoothly.

There have been several disagreements, one of which was with our principal counterpart, the Ministry of Government. Our cooperation went well with them in 2008, but changed for the worse in 2009 with the change of minister (January to July-August). Now we are developing a relationship with the present minister. We smoothed things out with the President's office by supporting eight of thirteen proposed candidates for Supreme Court magistrate (some of whom we had considered to be less than suitable, to say the least.) This issue is being resolved tonight when five of those eight candidates will be appointed. In fact, nearly half the Supreme Court has been reformed following the recommendations made by CICIG and the various embassies, which have, I should add, been very helpful to us.

THE LAST BULLETIN PUT OUT BY THE HUMAN RIGHTS ORGANIZATION OF GUATEMALA (GAMMUTUAL SUPPORT GROUP) STATES: "Today's violent incident is much worse than yesterday's and tomorrow's will, no doubt, make us forget the succeeding ones".

IT ALSO STATES: "At this moment in time, Guatemala has reached an apex of violence, with crime rates higher than those seen during 36 years of war". IS THIS YOUR ASSESSMENT OF THE SITUATION?

Carlos: Yes. Without wanting to over-dramatize, I can guarantee you that if these problems remain unresolved, they will naturally tend to get worse. The number of violent murders has steadily increased since the Peace Accords.

During Arzú's presidency, there were 12,000 murders, 14,000 during Portillo's presidency, during Berger's mandate it went up to 21,000 and by the end of Colom's mandate, the number may well increase to 25,000. These are not the statistics of a peaceful country, given that Guatemala has less than 13 million inhabitants.

And there are similar alarming statistics in other areas. For example, I am concerned about some very significant data that I would like to share with you: The country is consuming double the amount of munitions than during the war - the 25 million bullets a year used at that time has now risen to 50 million. Of course, a lot of these are exported on the contraband market but a large number are still used in Guatemala.

There is obviously a conflict - not in the legal or political sense of the word, but a problem of another nature, that must be resolved.

GUATEMALA IS NOW A MORE VIOLENT COUNTRY THAN EL SALVADOR, WHICH HAD THE REPUTATION OF BEING THE MOST VIOLENT COUNTRY IN LATIN AMERICA

Carlos: I would say that qualitatively, this is true, perhaps not in absolute terms of crime statistics, but certainly in terms of State response. In El Salvador, the rate of impunity is around 50%, while it stands at 98% in Guatemala. The historical process is similar in both countries; a brutal armed conflict, peace accords that have been more or less implemented and an institutionality that is functioning, but only weakly.

We could say that the justice system in Guatemala has almost collapsed. They are only able to solve two out of every one hundred cases. This means that fundamental rights in this country are more theoretical than anything else because the State cannot guarantee minimum rights of freedom and security that allow people to live a normal life.

WHAT IS THE LEVEL OF COMMON CRIME, GANGS AND POLITICAL VIOLENCE?

Carlos: I can only say that this unresolved problem is becoming more and more grave with time... at a time of great hope, the quality of life in this society has deteriorated because of the growing levels of common crime that the State cannot or will not act on. The situation is made even worse by the arrival of many deportees from the US, young delinquents, who are concentrated in the suburbs of the capital and in other population centres that have become ideal breeding grounds for crime. These are common criminals but they are relatively well organized. These groups still do not have names, but they are in touch with organized gangs and with transnational crime gangs. As they have been left to their own devices, the situation is deteriorating seriously.

This is the context in which the International Commission is working. Our first and most pressing objective is to help Guatemala disband what is formally referred to as illegal clandestine security operations. What we are talking about here are paramilitary agents left over from the armed conflict and the counter-insurgency clandestine operations that worked inside all institutions during the war and were controlled by the State, basically by the military.

These counter-intelligence operations were carrying out a dirty war to destroy the guerrilla movement. The Peace Accords stipulated that these groups had to be dismantled but they did not simply dissolve spontaneously. They must now be dismantled. If this is not done, they will become common criminals and later join organized crime.

DOES THE COMMISSION ALSO DEAL WITH THE MURDERS OF WOMEN? IS THE SITUATION IN GUATEMALA MORE SERIOUS THAN IN CIUDAD JUÁREZ, MEXICO?

Carlos: Yes, it is more serious... In Ciudad Juárez, the State has a strong presence, although there is a high level of corruption. But the main issue here is impunity, not the number of murders. In Guatemala, statistics have exceeded all expectations: there are 700 women murdered every year in a country of twelve million inhabitants. But only 2% of the murderers are prosecuted.

In the last three years, there have been 2000 women murdered but there have been only 43 convictions. In other words, there has been almost total impunity in this country... and that is an invitation for criminals to keep going: when the State does not respond to such horrific crimes, it means that the crime is no longer a crime: women can be

murdered and there will be no consequences; this is the message the State is sending to society.

In Ciudad Juárez, there have been four hundred women murdered in 10 years. If you look at the situation in Catalunya (Spain), with a population of six million, there were 37 murders a year and all were solved. Here, there are 700 a year and almost no cases are ever solved.

CAN YOU PROFILE THESE CASES FOR US?

Carlos: The percentage of unsolved murders is generally the same for men, women, youths, elderly people and minors. The same percentage of men and women are murdered and the same percentage of those cases are solved, but there is a marked difference between the two groups.

Men are murdered usually for what they have done, while women are murdered because of who they are. The difference is that men can stop doing what they are doing but women cannot stop being who they are. Women need special protection because they are victims of special aggression and the State should respond accordingly.

As well, in three out of every four cases, around two-thirds or three-quarters of the cases, the murderer is known; because these are cases of domestic violence. Women are not murdered by strangers - they are killed by their husband, boyfriend, father, partner, colleague or boss...

So in three out of every four cases of the murder of a woman, the police does not have a difficult investigation on their hands, because the murderer was known to the victim long before he killed her. Most murders take place at the time when there has been a marriage break-up and the judge is about to order the husband to leave the family home, provide financial support for his family or stay away from his estranged wife - an order he cannot tolerate.

Out of 400 murders, 300 were committed in a context of domestic violence. Three out of every four cases need very little investigation... Impunity in cases of murder of women is much more serious than in the murder of men. The statistics look the same, but the paradox is that there is, in fact, a huge imbalance in the actual situation of the two groups.

IN SPAIN, THE ATTEMPT TO PROSECUTE THE FORMER ISRAELI MINISTER OF DEFENSE, BENIAMIN BEN ELIEZER, ALONG WITH VARIOUS OFFICIALS, FOR BOMBING GAZA IN 2002 WAS HELD UP BY THE GOVERNMENT WHEN IT INTRODUCED A REFORM OF THE ORGANIC LAW OF THE JUDICIARY POWER, WHICH WAS PASSED BY THE SENATE YESTERDAY. WHAT DO YOU THINK OF THAT?

Carlos: I think this very bad. First, because this reform is neither appropriate nor necessary and secondly, because to pass the reform, they are using a legislative technicality that is not valid, as far as I know.

The fundamental question is: Spain has been a pioneer since 1996, when the UPF (Progressive Prosecutor's Union) denounced, first the Argentinian military junta and then the Chilean military junta and we opened what is known as the Pinochet case. This set a precedent, not only for justice but also for hope for millions of people around the world.

This was a distinctly Spanish initiative. It seems to me that politically, destroying this achievement of Spanish jurisdiction means destroying the only significant contribution that we have made to international jurisdiction ever, since the Inquisition, which Spain is also well-known for. We have made a contribution, and it should be as respected in Spain as it is elsewhere.

Unfortunately, it has never been viewed positively - it has always been seen from the point of view of the political-economic-diplomatic problems it can cause. Now the reform of the law will destroy universal jurisdiction and break commitments made by Spain. This is the worst thing that could happen.

WHAT COMMITMENTS?

Carlos: The accords that Spain has signed. Universal jurisdiction does not mean that Spain decides what happens, it means that international law decides. Spain signed the Convention Against Genocide, as well as the Rome Statute of the International Criminal Court and many other accords that protect citizens and pursue international criminals, using universal jurisdiction based on the Geneva Convention and the Convention Against Torture...

Spain must honour its commitments. We don't have to take recourse in excess, but neither should we only go half way. If universal jurisdiction in our country has been limited now to Spanish victims only, this means that universal jurisdiction is being revoked and that is an outrage. We can all understand that it can be necessary to limit the exercise of justice for practical reasons of political imperative but once a case becomes a matter of political discretion, as in cases of extradition, it should be the Government that decides that those responsible for the genocide in Tibet, for example, will not be pursued and the Government that decides not to proceed with this process.

The same process can apply to the Israeli leaders. This is a political decision that should be made in a political context. We should not ask judges to perform duties that do not form part of their responsibilities. Everybody should do their own job. A judge applies the law, the Government engages in politics.

Spain can make political concessions in the exercise of jurisdiction. That is reasonable and everyone understands that it can be necessary to make such adaptations, but at the same time, Spain must maintain a pro-active stance in the International Criminal Court and in international fora that promote other initiatives and attempt to extend universal jurisdiction so that it will be truly universal and so that all countries are able to assist victims and carry out the commitments they agreed to in the accords they signed.

But instead of doing that, we are opting out and lamentably, destroying precedents of which any Spanish citizen could have been proud. We have retreated into a corner of history after being the ones who took the Nuremberg law out of the freezer and applying it 50 years after it was passed.

In the end, we can understand the reasons for doing this, but ways can be found to continue respecting principles and allow for practical solutions that respect international law and do not violate commitments or make a step backwards from the victories that were gained through enormous effort and the suffering of millions of victims.

DO YOU THINK THAT IN THE END, PARIAHS SUCH AS THE PRESIDENT OF THE SUDAN AND THE FALLEN LEADERS OF THE FORMER YUGOSLAVIA, WILL CONTINUE TO END UP BEING TRIED IN THE HAGUE WITHOUT GOING THROUGH OTHER LEVELS OF JUSTICE?

Carlos: Yes, this is often what happens, but you cannot get to the roof without first going through the first and second floors. We have to be realistic but at the same time, believe that change is possible. There are certain essential steps that must be taken if change is to take place.

We began in 1945 with the justice of the victors, which was indeed justice, no one will dispute that. There were, however, crimes on the other side that were never prosecuted, despite the fact that they were just as deserving of criminal punishment as those of the defeated. But this was a first step and there has been some continuity in this process.

It is often forgotten that the Pinochet case prosecuted and imprisoned a leader who had not been removed from military or political power before the trial. This made the prosecution and sentencing of Fujimori much easier.

We are moving ahead and we must be patient. Prosecuting powerful first world leaders for bombing is still not possible, but this will happen if we build on the advances we have made.

YOU MUST HAVE SOMEONE ELSE IN MIND WHO SHOULD BE BROUGHT BEFORE THE COURTS...

Carlos: Yes. After 9/11, in 2002, 2003 and 2004, conditions for universal justice were terrible. Today, things have improved a little. The International Criminal Court has to be patient but also demands results. This can be done and will be done. The Statute of Rome, which has hardly been used, still has a potential that we must see in action in the coming years.

IS THERE ANY HOPE THAT THE US WILL SUPPORT THE INTERNATIONAL CRIMINAL TRIBUNAL?

Carlos: Yes, absolutely, this is going to happen, and possibly during the Obama presidency.

HAVE YOU SEEN ANY INDICATION THAT THIS DECISION IS IMMANENT?

Carlos: No, but I believe that in a year or two, the right conditions will be there. The US is already involved, but for political reasons, it cannot officially join the Tribunal. It withdrew its signature but acts as an intermediary between countries that have a definite presence in international justice - Great Britain, Western European countries or Canada. It is only for political reasons that it is not operating at the first level.

It is also difficult to have quantitative representation from Russia and China and India and Pakistan. But the situation in the US is beginning to change and in the short term, we will see the US join the International Tribunal.

ARE THERE MANY CASES OF CRIMINALS THAT THE COURT HAS YET TO TAKE UP?

Carlos: We cannot take up cases retroactively but the Court must speed up its deliberations. At this time the Court is not very productive - we must produce more

results. But this can be done. We must ensure that we are ready to act when political circumstances are propitious. This can be done.

* * *

15 December 2009

ALLEGATIONS OF POLICE KILLINGS IN GUATEMALA MUST BE INVESTIGATED, THE MEDIA AND AUTHORITIES FREQUENTLY REFER TO THESE KILLINGS AS 'SOCIAL CLEANSING'

© Amnesty International, http://www.amnesty.org/en/news-and-updates/report/allegations-police-killings-guatemala-must-be-investigated-20091215

Amnesty International has condemned the failure of the Guatemalan authorities to thoroughly investigate extra-judicial killings in which police officers have been implicated. In a report released on Tuesday, Amnesty International says that killings by police officers, often of young people who have either a criminal record or are suspected of involvement in crime, continue to be reported.

"Despite repeated reports and investigations by local and international human rights organizations the problem of police involvement in extra-judicial killings continues," said Kerrie Howard, deputy director of the Americas Programme at Amnesty International. "The Guatemalan authorities must take seriously these allegations and investigate effectively and thoroughly".

The media and the authorities have frequently referred to these extra-judicial killings as "social cleansing", taking the law into their own hands to "rid" society of people they suspect involved in criminal activity.

Guatemalan officials are failing to investigate these killings. Amnesty International has asked that the authorities fulfil their obligations under international human rights law to protect the right to life and to bringing to justice those responsible for violating this right. Guatemala has a very high level of violent crime, yet has a very low conviction rate. It is estimated that 98 per cent of homicides go unresolved in Guatemala.

Amnesty International has received frequent reports of individuals who came into contact with the police and were then never seen alive again. The bodies of the victims, some as young as 13, were mostly discovered in vacant lots or on rubbish tips with their hands tied behind their backs, strangled or with multiple gun shot wounds inflicted at close range.

Investigations into the cases often take many months to begin, by which time much of the evidence which could be used to identify the perpetrators is lost.

Amnesty International said it believes that to date, there has been no serious initiative to hold those responsible for these serious human rights violations to account. Amnesty International called on the Guatemalan president to guarantee an end to extra-judicial killings and to bring to justice those responsible for these crimes.

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