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Canada

Reflections Regarding the **Las Dos Erres Massacre** Cases in Guatemala

ASF Canada

March 12th, 2013

Photo taken by **Gregory Krupa**,
LWBC Volunteer,

LWBC is a non-governmental international development organisation, whose mission is to support the defence of human rights for the most vulnerable groups and individuals, through the reinforcement of access to justice and legal representation.

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FOREWORD

After years of impunity, 2011 and 2012 have marked the beginning of historic legal advances in the condemnation of the perpetrators of crimes and massacres committed during the internal armed conflict which devastated Guatemala between 1960 and 1996 and beyond.

In particular, five army officers were sentenced by a Guatemalan national court in relation to the massacre of Las Dos Erres case. Paramilitaries have also recently been condemned for their participation in the massacre of Plan de Sanchez.

Furthermore, the former Head of State and Chief of Armed Forces, José Efraín Ríos Montt, is currently being charged for his alleged involvement in the Las Dos Erres massacre and the genocide of the Maya Ixil population. Such cases have the potential to set considerable legal precedents in Guatemala and internationally in the prosecution of intellectual authors of grave human rights violations.

In Guatemala, the Inter-American human rights system had a significant impact in these cases, by instructing the State of Guatemala to investigate and prosecute the authors of the Las Dos Erres massacre. Furthermore, the recent decision of the Inter-American Court of Human Rights (I/A Court HR), recognizing the responsibility of the State of Guatemala for violating several rights of the victims of five massacres that were perpetrated against inhabitants of the Rio Negro community, also represents an important advance in the fight against impunity.

These extraordinary legal proceedings, which were once hardly conceivable in Guatemala, have been brought to light by the courageous victims of theses atrocities. Despite working in an extremely difficult context marked by near total impunity and a history of violence, the survivors and relatives of the massacred population, as well as dedicated Guatemalan human rights defenders and lawyers, have been capable of spearheading these cases and bringing the perpetrators of these atrocities to justice.

Since 2010, LWBC has made a solid contribution to the efforts of human rights defenders in Guatemala through the reinforcement of strategic litigation skills for local partners and continued support for a Guatemalan legal system that can effectively fight against the country's endemic culture of impunity.

In the months preceding the Las Dos Erres trials, LWBC was the principal supporter of the Human Rights Law Office of Guatemala (*Bufete jurídico de derechos humanos* – BDH) who represents the civil party in these cases. Many interns and volunteer lawyers participated in the preparation and observation of the trials. As a result, LWBC has not only acquired a solid understanding of the Las Dos Erres cases within their peculiar context, but also cultivated positive relationships with lawyers and civil society organisations in Guatemala. The objective of this report is to discuss the trial and share LWBC's international perspective.

This report is the result of a collective effort of generous persons who have devoted their time, hard work, and professionalism in support of LWBC's mission. It is hoped that this report may contribute to strengthening the national legal system in Guatemala and promote future efforts to bestow justice to victims of mass human rights violations.

EXECUTIVE SUMMARY

In two cases in 2011 and 2012, a total of five army officers were condemned to more than 6000 years in prison for their participation in the massacre of over 200 inhabitants of the village of Las Dos Erres, Guatemala, on December 7, 1982. Furthermore, proceedings are now taking place against the former Head of State and Chief of the Armed Forces, José Efraín Ríos Montt. It has taken two decades for survivors and relatives of the victims to finally have a sense that justice is being served in relation to what occurred in Las Dos Erres.

The BDH represents the victims in all of these proceedings. LWBC has been involved with the operations of the BDH since its inception in 2010, and regularly sends volunteer lawyers and interns to assist the office in its work and in the preparation of cases. In light of the prevailing context of impunity and insecurity in Guatemala, LWBC sent a trial observation mission to observe the 2011 hearings. More LWBC volunteers attended the proceedings held in 2012. This report seeks to share the particular insight LWBC has gained on the Las Dos Erres cases through its work and that of its partners and volunteers.

During the internal armed conflict which devastated Guatemala between 1960 and 1996, an estimated 626 massacres were perpetrated against the civilian population on a scale which allegedly amounted to genocide, mostly by state forces and related paramilitary groups. The Las Dos Erres massacre was committed by members of a specially trained elite counter-insurgency unit of the Guatemalan armed forces. They forcibly removed the villagers from their homes, separating the men from the women and children. Men were interrogated and tortured; women, including pregnant women, the elderly and young girls, were raped. Afterwards, the villagers were thrown one by one into a well and killed. The chief of the military zone where Las Dos Erres was located cooperated in the preparation and execution of the massacre. Upon his orders after the massacre, the livestock and other property of the community were stolen, and their houses and crops were destroyed.

After the signing of the Peace Accords in 1996, a context of near total impunity hampered proceedings for many years. It was only in 1999 and 2000 that arrest warrants were issued against 16 persons suspected to have participated in the massacre. As a result of numerous motions brought forward by defence lawyers, the proceedings stalled at the national level. Therefore, on November 24, 2009, the I/A Court HR declared that the State of Guatemala had violated several of its international obligations in relation to the Las Dos Erres massacre. The Guatemalan Supreme Court of Justice later ordered the enforcement of this judgement, as well as declaring the inapplicability of the amnesty law included as part of the peace agreements to the charges in question and ordering the resumption of criminal proceedings, illustrating the impact of the regional court on national proceedings.

The first Dos Erres trial, against four army officers, took place between July 25 and August 2, 2011. Preliminary examination and pre-trial motions on the admissibility of evidence were resolved prior to the trial. Overall, the trial observation team came to the conclusion that the trial was conducted according to fair trial and due process international standards. The observers were also satisfied that the evidence presented during the trial was sufficient for the judges to find beyond reasonable doubt that the defendants were guilty as charged.

However, this report highlights some aspects of the hearings that should be considered in order to improve actual and future proceedings. For example, defence and prosecution witnesses were presented without any strict order of presentation. Although it would have been preferable to have the prosecution present its entire case before that of the defence during trial, the full and reciprocal disclosure before trial as well as the consent of the parties outweighed any resulting concern as to the rights of the parties to a fair trial.

Further, it appeared that cross-examination of the witnesses was not used to its fullest possible extent during the trial, as no leading questions were asked to test witness credibility. Furthermore, objections and expert qualifications were not debated in court, while not all hearing-impaired witnesses were adequately accommodated. In addition, the Court could have been more flexible with regard to the length of time permitted for the concluding arguments of one of the accused. However, this did not amount to a violation of his rights, as his counsel knew beforehand he had to present his conclusions within such a timeframe.

The Court found the accused guilty of 201 counts of murder and of crimes comparable to crimes of international character found in national law, and sentenced to 6060 years of prison each. One of the accused, Carías Lopez, was also found guilty of aggravated theft and was sentenced respectfully 6 additional years of imprisonment amounting to 6066 years. Immediately after the verdict, the Court sentenced the accused; it would be suitable to have a separate hearing for the verdict which could be solicited by the Public Prosecutor's Office, as the strategy of the accused could change after a finding of guilt. This historic verdict was confirmed by the Supreme Court of Justice on August 8, 2012.

Between February 23 and March 12, 2012 LWBC volunteers attended the trial of another accused in the Las Dos Erres massacre. He was also found guilty of 201 counts of murder and one count of crimes against the duties of humanity, and sentenced to 6060 years of prison. In comparison to the first trial, it appeared that the defence had a more limited role. This may be explained by the overall lack of preparation and performance of the defence lawyer. In this case, the presence of cameras and audio-visual recording equipment in the courtroom seemed to interfere with the hearings. After a recent reform to the Guatemala Criminal Code of Procedure, leading questions can be asked during the examination-in-chief, a practice that could undermine the credibility of the witness statements. Considering that most of the evidence presented in 2011 was produced again in this trial, it would be suitable to have evidence more tailored to each case.

These two cases brought against some of the direct perpetrators of the Las Dos Erres massacre opened the door for the prosecution of its intellectual authors. Currently, two cases are proceeding in national courts against Ríos Montt, one for the genocide of the Maya Ixil population and one for his alleged participation in the Las Dos Erres massacre. Both cases face delays resulting from various frivolous motions presented by the defence. In one of these cases, LWBC presented the Guatemala Constitutional Court with an *amicus curiæ* brief regarding national and international law relating to amnesty laws.

LWBC is also closely monitoring the case of one of the four alleged commanders that led the squad operation at Las Dos Erres. Jorge Vinicio Sosa Orantes was extradited from Canada to the United States in September 2012 to face charges of immigration fraud, despite LWBC's request that Canada conduct a complete and thorough investigation and eventually commence criminal proceedings against him pursuant to its universal jurisdiction. Alternatively, Canada should have extradited him to Guatemala, where he would face appropriate charges for the crimes he allegedly committed.

Considering all of the above, LWBC respectfully makes a series of recommendations that could contribute to the fight against impunity in Guatemala through strategic litigation:

- Broader cross-examinations should be promoted;
- Leading questions during the examination-in-chief should not be allowed;
- The prosecution should present its entire case before the defense does during trial;
- After a finding of guilt, the parties should be provided the opportunity to address the court regarding what sentence should be imposed;
- Evidence should be tailored to each case;

- More flexibility should be provided to the parties when presenting their objections and closing arguments;
- Limits could be imposed on the use of cameras or audio-visual recording equipment in the courtroom;
- Facilities and resources should be provided to accommodate hearing impaired witnesses;
- The Public Prosecutor's Office should have adequate resources and support for its investigations in cases of serious violations of fundamental rights;
- Tribunals should have adequate resources, protection and independence;
- Jorge Vinicio Sosa Orantes should be extradited to Guatemala to face trial for his alleged participation in the massacre;
- The international community should support Guatemala in its efforts to fight against impunity.

All actors involved should take the necessary means to continue the quest for justice for other victims of human rights violations committed during the internal armed conflict.

TABLE OF ABBREVIATIONS

LWBC: ..... Lawyers Without Borders Canada

ACHR: ..... American Convention on Human Rights

BDH: ..... Human Rights Law Office in Guatemala
(Bufete jurídico de derechos humanos)

CALDH: ..... Center for Human Rights Legal Action
(Centro para la Acción Legal en Derechos Humanos)

CEH: ..... Commission for Historical Clarification
(Comisión para el Esclarecimiento Histórico)

CCP: ..... Code of Criminal Procedure

CC: ..... Criminal Code

CICIG: ..... International Commission Against Impunity in Guatemala
(Comisión Internacional contra la Impunidad en Guatemala)

CCIJ: ..... Canadian Centre for International Justice (CCIJ)

FAMDEGUA: ..... Association of the Families of the Detainees and Disappeared of Guatemala
(Asociación de Familiares de Detenidos y Desaparecidos de Guatemala)

FAR: ..... Rebel Armed Forces
(Fuerzas Armadas Rebeldes)

IACHR: ..... Inter-American Commission on Human Rights

I/A Court HR: ..... Inter-American Court of Human Rights

ICC: ..... International Criminal Court

ICCPR: ..... International Covenant on Civil and Political Rights

ICTR: ..... International Criminal Tribunal for Rwanda

ICTY: ..... International Criminal Tribunal for the Former Yugoslavia

LRN: ..... Law on National Reconciliation
(Ley de Reconciliación Nacional)

PAC: ..... Civil Self-Defence Patrols
(Patrullas de Autodefensa Civil)

PEK: ..... Special Kaibile Squad
(Patrulla Especial Kaibil)

INTRODUCTION

On December 7, 1982, more than 200 civilians, including children, were killed in the village of Las Dos Erres in Guatemala by a specialized commando unit of the army. During this massacre, men were tortured and women were raped, leaving only three survivors. August 2, 2011 marked the end of a long legal battle with the sentencing of four army officers for their participation in the massacre.

The civil party, the *Asociación de Familiares de Detenidos y Desaparecidos de Guatemala*, (Association of the Families of the Detainees and Disappeared of Guatemala - FAMDEGUA), brought forward the case in 1994 on behalf of the families of the victims. Since then, the BDH, more specifically human rights lawyer Mr. Edgar Fernando Pérez Archila, has acted as FAMDEGUA's counsel in this case.[1]

Through financial, material and technical support, LWBC has contributed to the establishment and operation of the BDH, where a team of lawyers are working full time to defend victims and vulnerable groups in Guatemala. More than 20 LWBC volunteers have contributed to the preparation of cases and have attended trials in which the BDH has acted as legal counsel for human rights victims, such as the Las Dos Erres massacre.

In response to a request from the BDH, LWBC deployed an observation mission in August 2011 for the first trial concerning the Las Dos Erres massacre (Las Dos Erres I).[2] In the course of its activities, LWBC have previously carried out trial observation missions notably in Colombia.[3]

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[1] On April 21 2012, Edgar Fernando Pérez Archila received the International Human Rights Lawyer Award of the American Bar Association. He was also awarded a medal from the Canadian General Governor on December 6, 2012.

[2] The underlying reasons for such a request were: 1) the emblematic nature of the trial not only at the national level, but also internationally; 2) the difficulties faced by the victims in bringing the case to trial; 3) the context of prevalent impunity in Guatemala; and also 4) the pressures and intimidation judges and other actors could potentially face as a result of their involvement.

[3] LWBC, *Lucha contra la impunidad, justicia penal y derechos humanos de los indígenas de Colombia: Una ecuación difícil – Informe de observación del juicio de los autores del asesinato/homicidio de Edwin Legarda*. (Quebec: 2011) online: http://www.asfcanada.ca/documents/file/popayan-rapport-final-3-esp.pdf.

LWBC's observation mission in Las Dos Erres I trial aimed at monitoring the trial and determining whether justice had been rendered, especially in regards to the level of impunity still present in Guatemala and the difficult conditions under which judges and lawyers exercise their functions. It was important to monitor due process and assess whether the trial was conducted according to national, regional and international standards. The mere presence of international observers contributed to compliance with the abovementioned objectives. The observers who participated in this mission were: Mr Pierre Rousseau, Ms Marylene Robitaille, and, for the last two days of the trial, the Executive Director of LWBC, Mr Pascal Paradis.[4]

The objective of this report is to share with the public the international perspective that LWBC gained by building upon the knowledge and experience of its team, volunteers and partners, in particular with respect to the cases relating to the massacre of Las Dos Erres. Although this report is not, per se, a trial observation report, LWBC did send a trial observation mission for Las Dos Erres I; and upon their return from Guatemala, the observers drafted a document describing the context, the case and rendering their assessment of the trial, these observations are highlighted within sections 1, 2 and 3 of this report. Given the particular knowledge it has gained through working on this case in Guatemala, LWBC feels it has the necessary insight to comment on the proceedings and make recommendations for improvement of legal proceedings in the fight against impunity in Guatemala.

This report will address the socio-political and legal context surrounding the 2011 and 2012 Las Dos Erres trials, including the broader circumstances of the Guatemalan armed conflict (Section 1). This report will also provide some insight into the Las Dos Erres I trial (Section 2) with some noted observations on this trial with regards to fair trial principles and due process (Section 3).

This report also covers an additional trial held between February 23 and March 12, 2012 in relation to the Las Dos Erres massacre (Las Dos Erres II). LWBC interns and volunteers attended this trial and reflections have been outlined within this report (Section 4).[5] A daily account of the hearings was published on LWBC's blog by one of the volunteers.[6] She was also invited to make any relevant observations on this trial. This daily blog was not intended to take the form of a trial observation report, but rather that of an informative exposé of the hearings to allow LWBC and its members, as well as the general public, to follow the case and to gain a better understanding of the Guatemalan justice system. This part of the report seeks to reflect upon the information and insight published in this blog.

The report subsequently seeks to present the two proceedings pending against the former President of Guatemala, José Efraín Ríos Montt (Section 5), in which the civil party is represented in one case by the BDH and in the other case jointly by the BDH and the *Centro Para la Acción Legal en Derechos humanos* (Center for Human Rights Legal Action - CALDH). These organisations are receiving support from LWBC, and are being assisted by LWBC volunteers. This report also explains the extradition proceedings of another accused from Canada to the United States (Section 6).

Finally, this report presents recommendations, drawing particularly from the observations made during the legal observation mission of the Las Dos Erres I trial as well as, in part, observations of the LWBC volunteer in the Las Dos Erres II trial.

[4] Mr Pierre Rousseau is a retired member of the Québec Bar (Barreau du Québec) who practiced mainly as a Crown prosecutor and was chief prosecutor for the Northwest Territories from 1992 to 1998 and Yukon from 1999 to 2001. Mr Rousseau was also LWBC's lead observer at the observation of the Legarda trial in Colombia in January, May and June of 2010. Ms Marylene Robitaille was called to the Quebec Bar in 2010. Her previous experience as an international volunteer working with the BDH provided her with an extensive knowledge of not only the Guatemalan criminal process but also of the facts and circumstances of the case.

[5] LWBC's team included Sophie Beaudoin (LWBC's intern and articling student), Greg Kuppa (LWBC's volunteer), and Clémentine Sallée, a Canadian lawyer since 2006, who spent seven months working for LWBC in Guatemala.

[6] See the posts made by Clémentine Sallée on LWBC's blog: http://www.asfcanada.ca/fr/blogue/auteur/clementinesallee

1.
POLITICAL AND LEGAL CONTEXT OF THE TRIALS

1.1 Socio-Political Context

1.1.1 *The Internal Armed Conflict*

Between 1960 and 1996, Guatemala was shaken by internal armed conflict. This conflict was characterized by human rights violations committed on a massive scale. Until 1986, a series of military or pro-military governments succeeded each other and organised numerous campaigns to eradicate rebel groups. About 91% of the violations were committed between 1978 and 1983 through the application of the National Security Doctrine, under the dictatorships of Romeo Lucas García and José Efraín Ríos Montt.[7]

Ríos Montt's military regime, from March 23, 1982 to August 8, 1983, is known as the bloodiest of all, during which the worst massacres were committed against civilian populations. He took power after a coup and put in place the Civil Self-Defence Patrols, also known as *Patrullas de Autodefensa Civil* (PAC). PAC were civil militias recruited to fight against the guerilla forces and consolidate state control over the population. Ríos Montt expanded the use of scorched-earth policies, following which hundreds of villages were completely destroyed, thousands of people were displaced or fled the country, and Mayan communities were massacred. Ríos Montt put in place the National Security and Development Plan, a counterinsurgency strategy, which included military plans, such as *Victoria 82* and *Firmeza 83*. *Victoria 82* notably sought to annihilate what was defined as being the internal enemy, referring to all forms of opposition, and attacking civilian populations in zones identified or perceived as being close to the guerillas, principally in rural areas and discriminately targeting Mayan and *campesino* (peasant) communities.[8] This pattern of obscene violence was replicated in rural communities throughout the country by the Guatemalan armed forces.

1.1.2 *Peace Process*

In 1996, the signing of the Accords of Firm and Durable Peace (Peace Accords) officially marked the end of the internal armed conflict in Guatemala. They were signed between the Government of Guatemala and the Guatemalan National Revolutionary Unity (URNG) with the mediation of the United Nations (UN) and allied countries. These agreements were in part designed to help a battered society to move forward following several decades of widespread violence and terror. The Commission for Historical Clarification (CEH) was established pursuant to the Peace Accords to investigate human rights violations and other acts of violence which were committed during the internal armed conflict without identifying individual responsibility. The *Ley de Reconciliación Nacional*[9] (*Law on National Reconciliation* - LRN) was adopted in compliance with the terms of the Peace Accords following the end of the conflict. It contains dispositions granting an amnesty for a number of political crimes and related common crimes committed during the internal armed conflict. However, s. 8 of the LRN, in accordance to what was agreed upon in the peace negotiations and established by the Peace Accords, excludes from the scope of application of the law all crimes for which penal responsibility cannot be extinguished, such as genocide, torture, and forced disappearances.

[7] Commission for Historical Clarification, *Guatemala, memoria del silencio: informe / de la Comisión para el Esclarecimiento Histórico*, (1999) [CEH, "memoria del silencio: informe"]. (Harley, please harmonize with note 13)

[8] *Ibid.*

[9] *Decreto 145-96 "Ley de Reconciliación Nacional"*, Congress of the Republic of Guatemala, 1996 [LRN].

The CEH estimated that more than 200,000 persons died as a result of the internal armed conflict; one million were internally displaced or forced to flee the country, many were subjected to torture, including sexual violence, and countless more were affected by terror campaigns. The commission identified 42,275 victims, of which 23,671 were summarily executed and 6,159 forcibly disappeared. Around 83% of the identified victims were Mayan. The CEH classified the human rights violations perpetrated by the army against certain ethnic groups as acts of genocide.[10] One of the massacres committed during the conflict was against the community of Las Dos Erres, in December 1982.

Most authorities on this subject agree that the majority of human rights abuses committed during the armed conflict can be attributed to the State, including paramilitary groups controlled by the State and the military. According to the CEH, State forces and paramilitary groups under its direction were responsible for 93% of the violations documented, including 92% of the arbitrary executions and 91% of forced disappearances. The guerrilla forces were responsible for 3% of the violations.[11]

1.1.3 *Context of Impunity*

The justice system in Guatemala has historically been characterized as a system that has functioned within a generalised context of impunity.[12] The CEH describes how impunity and the weakening of the judicial system in Guatemala were intrinsic parts of the internal armed conflict:

> The country's judicial system, […] failed to guarantee the application of the law, tolerating, and even facilitating, violence. […] Impunity permeated the country to such an extent that it took control of the very structure of the State, and became both a means and an end. As a means, it sheltered and protected the repressive acts of the State, as well as those acts committed by individuals who shared similar objectives; whilst as an end, it was a consequence of the methods used to repress and eliminate political and social opponents.[13]

To date, very few of the individuals responsible for such crimes have been brought to justice. In 2009, the rate of impunity for current and past crimes remained around 98%.[14] The Inter-American Commission on Human Rights (IACHR) stated that impunity was total regarding crimes against humanity committed during the armed conflict.[15] After a wave of attacks against human rights defenders, in 2003, the Government of Guatemala requested the support of the UN

[10] *CEH, "memoria del silencio: informe"*, supra note 7. (why is this footnote different from footnote 13 – please harmonize)

[11] *Ibid.*

[12] *Report of the Special Rapporteur on the Independence of judges and lawyers, Leandro Despouy, Mission to Guatemala*, HRC, 11th Sess., UN Doc. A/HRC/11/41/Add.3 (2009) at para. 11.

[13] Commission for Historical Clarification, *Guatemala, Memory of Silence: Report of the Commission for Historical Clarification, Conclusions and Recommendations*, (1999) [CEH, "Memory of Silence: Report"] at para. 10.

[14] *Report of the Special Representative of the Secretary General on the Situation of Human Rights Defenders, Hina Jilani, Mission to Guatemala*, UNHRC, 10th Sess., UN Doc. A/HRC/10/12/Add.3 (2009) at para 13.

[15] Inter-American Commission on Human Rights, Press release No. 37/09, "IACHR Conducted Visit to Guatemala" (June 12, 2009), online: http://www.cidh.oas.org/Comunicados/English/2009/37-09eng.htm

to investigate and prosecute members of illegal armed forces that commit crimes against the population. The *Comisión Internacional contra la Impunidad en Guatemala* (International Commission Against Impunity in Guatemala - CICIG)[16], was jointly established by the UN and the Government of Guatemala.

There are multiple causes of this generalized impunity, including the excessive use of the *amparo*[17] and other dilatory tactics by defence lawyers,[18] the conditions in which the judiciary exercises its functions, the insufficient training of members of the legal profession, the penetration of criminalized groups' influence,[19] and the lack of political will to advance investigations and prosecution.

Guatemala has a long history of political interference with judicial proceedings. Pressures and threats have been exercised against judges and other members of the legal profession, which have often had the unfortunate result of undermining judicial independence and impartiality.[20] According to the last Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, members of the legal profession in Guatemala are the target of attacks and some of them have been killed. The report adds that there is a pattern of threats against judges that are assigned cases in which members of armed groups are accused. These judges do not receive adequate protection.[21]

During the period of the negotiation and signing of the Peace Accords in the 1990s a movement towards the advancement of justice for victims of the conflict began. The return of refugees and internally displaced persons to their communities of origin, and the relative peace which followed the signing of the Peace Accords, saw survivors of human rights violations and family members of the victims attempt to seek justice and answers as to what had happened. Many of them had also requested that mass graves be exhumed in bringing light to the atrocities[22]. Despite exhumation of graves across the country, few of these cases ever led to trial. From the approximate 626 massacres documented to have taken place during the internal armed conflict,[23] Las Dos Erres was one of the the first massacre cases in Guatemalan history to be brought to trial and heard before national courts. Since then, five paramilitaries have been sentenced to 7,070 years of imprisonment for their involvement in the massacre of Plan de Sanchez. All of these circumstances, including the long process of investigating and prosecuting some of the perpetrators of the Las Dos Erres massacre, reflect the importance of this legal step towards justice for victims of the conflict.

[16] The CICIG is an independent and international body whose mandate is to support the Public Prosecutor's Office, the National Civil Police, and other governmental institutions in investigating crimes committed by members of illegal groups and clandestine security groups. It also supports all actions seeking to dismantle such groups, such as prosecuting a limited number of complex cases, and reinforcing institutions of the justice sector. The CICIG can act as a civil party in a trial.

[17] An *amparo* is an action used when constitutional or legal rights are threaded or violated. For more information on this issue see the explanation of this action in section 1.2 a) of this report.

[18] *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala in 2008*, UNHRC, 10th Sess., UN Doc. A/HRC/10/31/Add.1 (2009) at para. 58.

[19] *Supra* note 12 at para. 105.

[20] The CICIG has also raised concerns with respect to judicial independence and corruption. See "Guatemala: CICIG investigará a jueces por irregularidades" Todanoticia.com (15 July 2011), online : *http://www.todanoticia.com/28456/guatemala-cicig-investigara-jueces-irregularidades/*.

[21] LWBC, News Release, "LWBC expresses concern over threats to judicial independence in Guatemala" (6 November 2012), online: *http://www.asfcanada.ca/en/news/lwbc-expresses-concern-over-threats-to-judicial-independence-in-guatemala-163* .

[22] In Guatemala, the legal request for an exhumation automatically triggers a duty on behalf of the Public Prosecutor's Office to investigate the alleged facts.

[23] *CEH, "Memory of Silence: Report"*, *supra* note 7, at para. 86.

1.2 Legal Context

1.2.1. *Brief Overview of the Guatemalan Criminal Legal System*

Guatemala was one of a number of countries that led the wave of criminal procedure reforms that emerged in the mid-1980s in Latin America. Guatemala's reformed *Código Procesal Penal* (Code of Criminal Procedure - CCP) came into force in 1994, abolishing the inquisitorial system to establish an adversarial system of criminal procedure. Since then, it has slowly put in place a number of institutional reforms in order to give effect to such changes. Despite the existence of the adversarial system in Guatemala, there are some elements of the inquisitorial system which still remain, one being the participation of civil parties in criminal proceedings.

Unlike some long established common law jurisdictions, under the Guatemalan criminal justice system, the aggrieved party has legal standing and can institute criminal proceedings or join proceedings initiated by the Public Prosecutor, as a separate party (called the "querellante adhesivo", which is translated for the use of this report to co-plaintiff). The aggrieved party includes the victim of a crime and his or her close family members. In cases of offences affecting a collective interest or a number of interests, the aggrieved party may also include associations with a direct interest in the proceedings. The co-plaintiff may collaborate with the public prosecutor's office in investigating the facts and may also request that information in relation to evidence be communicated to them. As an independent party in the proceedings, the co-plaintiff can object to motions presented by the public prosecutor. [24]

To have a better understanding of the trials that will be analyzed further in this report, a brief explanation of some relevant elements of the Guatemalan criminal law and procedure will be presented. The Guatemalan criminal procedure is divided into three stages: a preparatory phase, carried out by the Public Prosecutor's Office, an institution with functional autonomy; an intermediate procedural phase; and the actual trial.

The preparatory phase, also called the criminal investigation phase, aims to investigate an indictable offence, and gather all relevant data and evidence. The Public Prosecutor's Office oversees this phase including the police investigation.[25]

The intermediate procedural phase, also known as the preliminary examination, begins with a motion to open the criminal proceedings and the formulation of an indictment by the Public Prosecutor (324 CCP). During the intermediate procedural phase, the judge in charge of overseeing the investigative process, a 'controlling' judge different from the trial judge, will determine whether there is a *prima facie* case sufficient to justify that the accused be committed to trial. Based on the evidence gathered by the Public Prosecutor's Office during the preliminary investigation, the judge has to determine if it is reasonable to infer the participation of the accused in the commission of the crimes with which he is charged with by the Public Prosecutor's Office pursuant to the proposed indictment. At this stage, the judge can decide to officially bring the case to trial (art. 341 CCP).

In preparation for the trial, three (3) days following this decision (s. 343 CCP), a hearing will be held for the parties to present their evidence and the judge will decide which evidence is admissible and which is not (s. 344 CCP). The parties have to notify the judge about the evidence they will present during the trial, by providing the list of their documents, material evidence, witnesses, experts, and interpreters, and indicating the facts on which the witness will be interrogated. The defence can object to the presentation of evidence (s. 343 CCP) at this stage, and will also be able to object to its probative value during the trial (s. 182 CCP). Following this hearing, the judge will decide upon a trial date (s. 344 CCP).

[24] *Código Procesal Penal, Decreto No 51-92*, Republic Congress of Guatemala (28 September, 1992) [CCP] at s. 116 and 117.

[25] *Ibid*, at s. 107 and 309.

The trial is the central phase of the criminal process, where all parties present their arguments and supporting evidence, after which the tribunal will give its verdict on the case. The trial is heard by a tribunal, no longer by the judge overseeing the investigation. It will also be relevant to understand for further parts of this report, that during the trial, new evidence can be admitted, if it is indispensable or clearly useful to clarify the truth (s.381 CCP), in which case, the hearings can be suspended, at the request of one of the parties, for a maximum of five days. This new evidence can be objected to by the parties.

Furthermore, the Guatemalan legal system has a specific legal institution called *amparo* that, as will be discussed further in this report, has had a direct impact on the proceedings relating to the Las Dos Erres massacre. The *amparo* is a constitutional action that aims to 1) protect individuals against threats to the violation of their rights 2) restore the enjoyment of their rights when their exercise would already have been affected, transgressed or violated.[26] There is no matter for which this action cannot be used;[27] Guatemalan law does establish a list of situations when the *amparo* can be applied.[28] However, this law can only be used when there has been an exhaustion of all other ordinary, legal or administrative actions.[29]A party may request a provisional *amparo* in order to suspend temporarily an impugned article, act, resolution, or procedure until the tribunal renders a decision on the merits.[30] In principle, this constitutional action is an effective and essential tool to protect fundamental rights protected by the *Constiución Política de la Repúlica de Guatemala* (Political Constitution of the Republic of Guatemala -Constitution). However, it may represent an obstacle to legal proceedings when it is used solely for the purpose of delaying proceedings.

It should also be noted how the *Código Penal de Guatemala* (Guatemalan Criminal Code - CC) defines crimes comparable to crimes of international character. The definition for crimes of genocide within s. 376 of the CC is very similar to the definition contained within the Rome Statute. However there is much debate in Guatemala concerning the interpretation of s. 378 of the CC which prohibits "*crimenes contra los deberes de humanidad*", or crimes against the duties of the humanity. This section relates to crimes against persons or goods that are protected by international humanitarian law but does not include any element of systemic and generalised attack against a civilian population which forms the basis for crimes against humanity. This is why; legal actors in Guatemala generally interpret this article widely and refer to other international legal instruments to prove factual elements necessary for this article.

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[26] *Constiución Política de la República de Guatemala Reformada por Acuerdo legislativo No. 18-93 del 17 de Noviembre de 1993* [Constitution] at s. 265.

[27] *Ley de Amparo, Exhibición Personal y de Constitucionalidad, Decreto 1-86 del Congreso de la Republica de Guatemala*, National Assembly (8 January, 1986) [Ley de Amparo] at s. 8. ; *Constitution*, *supra* note 26 at s. 265.

[28] *Ibid*, at s. 10.

[29] *Ibid*, at s. 19.

[30] *Ibid, at s. 24 and 27.*

1.2.2 *The Las Dos Erres Prosecution before Guatemalan Courts*

The opening arguments in Las Dos Erres I represented a historic moment in Guatemala. This had been the result of a 17 year long legal battle.

On June 14, 1994, before the end of the armed conflict, FAMDEGUA took the first step in filing a motion to request the First Instance Judge of San Benito, Petén, to allow the exhumation of human remains found in a hidden and illegal burial ground located in a well in the former village of Las Dos Erres.

Upon being granted this request, the exhumation began on July 4, 1994. FAMDEGUA also initiated an investigation to gather the testimonies of former inhabitants of the village who were not present at the time of the massacre and/or relatives of the victims.

On October 7, 1999 and April 4, 2000, the Criminal Court of First Instance of the Petén Department issued arrest warrants against 17 persons suspected to have participated in the massacre. These arrest warrants were immediately challenged, with nine of the accused arguing that the LRN, the amnesty law previously discussed, applied to the crimes of which they were accused, and therefore requesting that the Court annul the warrants.

This initial motion, together with numerous constitutional challenges, motions for court protection and other motions to dismiss were used by the defence for years to delay the actual judicial process in order to avoid the trial. By the end of 2009, the defence had filed close to 50 amparos motions.. As a result, even though the investigation had started in 1994, the case remained in its initial investigative phase for years. In Guatemala, the concept of dilatory motions does not exist; an individual's right to a defence is strongly protected by the Constitutional Court, sometimes to the detriment of the other party. Given the political context at the time, seeking reparation and obtaining justice did not appear to be possible at the national level.

1.2.3 *Decisions of the Inter-American System of Human Rights*

Faced with these delays and stays of the criminal proceedings at the national level, the office of Human Rights of the Archdiocese of Guatemala (ODHAG) and the Center for Justice and International Law (CEJIL), filed a petition with the IACHR on September 13, 1996. The petition requested that the State of Guatemala be held responsible for its failure to investigate, prosecute and punish those responsible for the Las Dos Erres massacre in violation of sections 8 and 25 of the American Convention on Human Rights (ACHR), in relation to article 1.1 of said instrument. On March 26, 1999, FAMDEGUA joined the procedure.

On April 1, 2000, the State of Guatemala and the victims' representatives reached a friendly settlement pursuant to which the State of Guatemala recognized its international responsibility and committed to provide reparations to the alleged victims.

In the years following the settlement, the State did not take any action to fulfil its commitments. Therefore, the victims requested that the friendly settlement be abandoned. The proceedings before the IACHR were resumed. On March 14, 2008, the IACHR approved the Report on Admissibility and Merits No. 22/01, a report in which it recommended that the State impartially and effectively investigate the massacre in order to prosecute and punish the persons responsible and to remove all factual and legal obstacles to the investigation.

Following the lack of collaboration of the State, the IACHR submitted the Las Dos Erres case to the Inter-American Court of Human Rights (I/A Court HR) on July 20, 2008.

On November 24, 2009, the I/A Court HR rendered an unanimous decision in which it declared that the State of Guatemala had violated several of the rights guaranteed by ACHR.[31] More precisely, it held that the State of Guatemala had violated its international obligations provided for in sections 5.1 (right to humane treatment), 8.1 (right to a fair trial) and 25.1 (right to judicial protection), all in conjunction with section 1(1) (obligation to respect rights) of said Convention. In addition to these violations, the Court also concluded that the State of Guatemala had violated its obligations found, *inter alia*, in sections 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture[32], in section 7b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women[33] and, in respect of Ramiro Antonio Osorio Cristales, one of the only survivors of the massacre, the provisions of sections 17 (rights of the family) and 18 (right to a name) of the ACHR, all in relation to section 1(1) (obligation to respect rights) and 19 (rights of the child) of said Convention.

In terms of remedies, including measures of reparation and rehabilitation, and guarantees of non-repetition, the I/A Court HR unanimously decided that:

> **7.** This Judgment constitutes, per se, a form of reparation.
>
> **8.** The State shall investigate, without delay, in a serious and effective manner, the facts that originated that violations declared […], in order to prosecute and eventually punish those responsible […].
>
> **9.** The State shall initiate the disciplinary, administrative or criminal actions necessary, according to its domestic legislation, against those state authorities that may have caused the facts and thwarted the investigation […].
>
> **10.** The State shall adopt the necessary measures to amend the Law on the Action for Constitutional Legal Protection, Habeas Corpus, and Constitutionality in Guatemala [Ley de Amparo, Exhibicion Personal y de Constitucionalidad en Guatemala][…].
>
> **11.** The State shall proceed with the exhumation, identification, and delivery of the mortal remains of the people who died in the Las Dos Erres Massacre to their next of kin […].
>
> **12.** The State shall implement training courses on human rights for different State authorities […]
>
> **13.** The State shall publish, once in the Official Gazette and in another newspaper with national circulation, [certain portions], of the instant Judgment, including the names of each chapter and the corresponding section -without the corresponding footnotes-, as well as the operative paragraphs. Additionally, this Judgment shall be published in full, at least for one year, in an official website created by the State […].
>
> […]
>
> **16.** The State shall provide the medical and psychological treatment required by the 155 victims […].
>
> **17.** The State shall create a web page for the search of children abducted and retained illegally […].
>
> **18.** The State shall pay […] [certain amounts], for compensation for non-pecuniary damage and reimbursement of the costs and expenses […].
>
> **19.** The Court shall monitor full compliance with this Judgment, in exercise of its powers and in compliance with its obligations under the American Convention, and shall close the instant case once the State has fully complied with the provisions established herein. The State shall submit, within one year from the date of notification of this Judgment, a report on the measures adopted in compliance thereof.[34]

[31] *"Las Dos Erres" Massacre v. Guatemala* (2009) Inter-Am. Ct. H.R. (Ser. C) No. 211, at operative paragraphs, para. 2-5, online: http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf, [I/A Court HR Decision].

[32] *Inter-American Convention to Prevent and Punish Torture*, Organization of American States, O.A.S. Treaty Series No. 67, (entered into force 28 February 1987, ratification by Guatemala on 10 December 1986).

[33] *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, Organization of American States, O.A.S.Treaty Series No.A-61, (entered into force 5 March 1995, ratification by Guatemala on 4 January 1995).

[34] *I/A Court HR Decision*, *supra* note 31 at operative paragraphs, para. 7 and following.

1.2.4 *Consequences of Inter-American Court Decision on the Guatemalan Judicial Process*

Following the decision of the Inter-American Court, the victims' representatives filed a motion before the Guatemalan Supreme Court of Justice to enforce the condemnatory decision of the I/A Court HR. On February 8, 2010, the Supreme Court of Justice ordered the enforcement of said judgment.[35] More precisely, the Court ordered the resumption of the criminal proceedings in the Las Dos Erres case against the accused, and that all the judicial and administrative mechanisms necessary to investigate, prosecute and sentence the persons responsible for the massacre be set in place. It also declared void and without effect all the ordinary and constitutional legal challenges brought against the arrest warrants of the 17 accused (issued more than 10 years before), and declared that the LRN could not be applied to the crimes for which they were being charged.

The Supreme Court relied in part on the *pacta sunt servanda* and *bona fide* principles, as codified under sections 26 and 27 of the Vienna Convention on the Laws of Treaties, 1969, which establish the binding nature of treaties upon the parties to it and the good faith performance of the obligations set forth therein, as well as, *inter alia*, section 68 of the ACHR and sections 46 and 203 of the Political Constitution of the Republic of Guatemala, to conclude that the State of Guatemala, having ratified the ACHR and recognized the jurisdiction of the I/A Court HR, could not invoke provisions of its internal legislation or the absence thereof as a justification for its failure to comply with its international human rights obligations and enforce a condemnatory sentence of the I/A Court HR. In consequence, the judgment had to be applied regardless of any conflicting internal decision.

As outlined above, the I/A Court HR decision had a major impact on the Las Dos Erres case on a national level. It allowed for the resumption of the case through the reactivation of 17 arrest warrants and the elimination of all *de jure* o *de facto* obstacles which hindered the criminal proceedings against those accused. In particular, it eliminated the obstacles created by numerous motions filed under the LRN.

It is important to mention that of the 17 accused:

- Four were captured in Guatemala and convicted in the 2011 trial;
- One has been extradited from the United States to Guatemala and convicted in 2012;
- One has been convicted to 10 years in prison in the United States for immigration fraud;
- One is being held in the United States for immigration fraud;
- Three have died;
- Six are still at large; and
- One has been extradited from Canada to the United States for immigration fraud charges (for more information on this case see Section 6 of this report).

[35] *Solicitud de ejecución de sentencia de la Corte Interamericana de Derechos Humanos No. MP 001/2006/96951* (8 February, 2010), Supreme Court of Guatemala.

2.
FIRST TRIAL DESCRIPTION FOR THE LAS DOS ERRES MASSACRE

2.1 Surrounding Circumstances and Facts of the Las Dos Erres Massacre

According to the evidence presented at trial, the community of Las Dos Erres was populated by migrant farmers from the Pacific coast and the eastern part of the country. The Petén Department in which the village was located was largely unpopulated until it was opened for settlement in approximately mid-70s. The community of Las Dos Erres was founded in 1978. The colonization of this isolated region was promoted by a government agency, called *Fomento y Desarollo de Petén* (Promotion and Development of the Peten Region), as part of its agrarian reform and to avoid immigration from Mexico. At this time, Guatemala was divided into military zones and Las Dos Erres y Las Cruces were part of military zone 23. As part of the National Security Doctrine and the resulting counter-insurgency strategies implemented by the army during the internal armed conflict, rural communities were often purported to be allies and supporters of the insurgency, thus becoming potential military targets.

The presence of the *Fuerzas Armadas Rebeldes* (Rebel Armed Forces - FAR) increased in the region in 1982. As a result of confrontations with rebel forces, the military commissioner of Las Cruces decided in September 1982 to establish a civil self-defence patrol; the inhabitants of Las Dos Erres accepted to be part of this patrol but only if the patrol was limited to the village of Las Dos Erres and not the neighbouring village of Las Cruces. Following this and based on a number of rumours, the community of Las Dos Erres had been identified as guerilla sympathizers who were located in a zone considered conflictive, a so-called red zone.

Evidence presented at trial established that, in October 1982, an ambush organized by rebel forces took place in San Diego, a few kilometres away from Las Cruces. This ambush resulted in 19 casualties for the armed forces and the theft of approximately 22 rifles by the guerilla forces. A military operation was implemented with the objective of recuperating the rifles stolen by the guerillas.

According to the evidence presented at trial, this military operation took place between December 4 and 8, 1982 and was directly carried out by members of a specially trained elite counter-insurgency unit of the Guatemalan armed forces, known as the *Patrulla Especial Kaibil* (Special Kaibile Squad - PEK), also known as *Kaibiles*. Three out of the four accused, Reyes Collin Gualip, Manuel Pop Sun, and Daniel Martínez Méndez, were specialized PEK instructors. They were commissioned to execute a military operation against the civilian population of the community of Las Dos Erres. During this operation, the high commanders of the military zone in which Las Dos Erres was located provided the squad with a guide and 40 PEK members.

On the night of December 6, 1982, the squad arrived near Las Dos Erres where the *Kaibiles* were ordered to divide into four operational groups (command, assault, support and security groups), the accused being part of the assault group.

At dawn on December 7, 1982, members of this squad, including those accused, forcibly removed the villagers from their homes, gathered them together, and then separated the men from the women and the children, locking them up in the school and in one of the churches of the village, respectively. Men were interrogated and tortured; women, including pregnant women, the elderly and young girls, were raped. Afterwards, women that had previously been tortured were forced to cook for the entire squad. After eating, the squad led the villagers blindfolded one by one to a well of the village, beginning with the children. There, they interrogated them about the rifles, before hitting them on the head with a sledgehammer and throwing them into the well. Once in the well, the squad shot at them and threw grenades. The rest of the villagers were taken to the mountains and were shot and killed on the way. Expert statements given in court attested to the brutality of the attacks against the community. Based on the exhumations, subsequent analysis and testimonies of victims' relatives, it is estimated that more than 200 persons were killed during this operation, leaving almost no survivors.

Carlos Antonio Carías López, the fourth accused in this trial, was sub-lieutenant and chief of the military detachment of the village of Las Cruces, whose jurisdiction extended to the area of Las Dos Erres. He knew about the operation before, during and after the massacre. Following a preconceived military plan, Carías López cooperated in the preparation and execution of the massacre against the population of Las Dos Erres. On December 7, he ordered his soldiers and a patrol group of the PAC to guard all routes giving access to Las Dos Erres community in order to prevent anyone escaping from Las Dos Erres, and from witnessing the massacre or providing assistance to the victims.

When inhabitants of Las Cruces asked him about what was occurring in Las Dos Erres, he answered that an operation called "limpieza" was taking place, gave them evasive answers and prevented relatives of the residents of Las Dos Erres from going there. Later, he told them not to ask about Las Dos Erres inhabitants, as they had been murdered for being *guerrilleros*.

On December 9, he ordered his troops to steal livestock and other property from the community, burn their homes and crops and destroy all evidence of the massacre to hide what had occurred.

As a result of these events, the village of Las Dos Erres was virtually erased from the map.

2.2 Charges

Seventeen army officers are purported to have participated in the massacre of the community of Las Dos Erres. Three of these former *Kaibiles* stood trial in Guatemala in July and August 2011, the fourth accused being the former leader of the military post of Las Cruces.

The three ex-*Kaibiles*, Reyes Collin Guallip, Manuel Pop Sun and Daniel Martínez Méndez, were each charged with 201 counts of murder and of crimes against the duties of humanity.

Carías López was charged as an accomplice to 201 counts of murder and "crimes against the duties of humanity" and as a direct participant in one count of aggravated robbery (*hurto agravado*[36]).

2.3 The Trial Process

This subsection will provide an overview of the whole trial, starting with the preliminary proceedings and ending with the judgment. Following this will be an assessment of the proceedings based on the issues identified within the trial.

2.3.1 *Preliminary Proceedings*

After the decision of the Supreme Court of Justice to enforce the sentence of the I/A Court HR on February 2010, the Criminal Division Judge of the Petén Department heard the first declarations and indictment of the accused, as well as the written argument against the arrest warrant of Carías López and a motion to modify his indictment to add the charge of murder between February and March 2010. In June 2010, the case was transferred to Guatemala City under the high risk jurisdiction. In July 2010, the charge of murder was added to the indictment of Carías Lopez by the Criminal Division Judge of Guatemala City, and the accused has remained in custody since then. In September 2010, the cases against the accused were joined by the Criminal Division Judge in Guatemala City that later conducted the preliminary examination phase, at the end of which the charges against the accused were officially accepted. The evidence hearing took place over five days in September and October 2010. The table shown at Appendix I has further details of the preliminary proceedings.

2.3.2 *Hearings*

The trial took place over six days, between July 25 and August 2, 2011. The trial had originally been scheduled to last between 10 and 12 days. The *Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contre el Ambiente* (Guatemala Court of First Instance, Criminal, Narcoactivity and Crimes against the Environment Division - Court of First Instance), was presided by Madam Justice Iris Yasmin Barrios Aguilar. The three judge panel was completed by two "*jueces vocale*s" (member judges), Patricia Isabel Bustamante Garcia and Pablo Xitumul De Paz.

[36] *Código Penal de Guatemala*, [CC] at s. 247.

The second day was particularly long, as 20 witnesses were heard. On Thursday, July 28, the trial was adjourned early in the day as two expert witnesses from Argentina, whose testimony had been scheduled to be heard later that day, had not yet arrived. On August 1, the trial resumed with the testimony of these two witnesses and continued at a similar pace. Lawyers from all parties also presented their closing arguments to the court. The final day was quite short as the judges gave one of the accused the opportunity to make his last declaration to the court, which took him about two minutes. The court was adjourned until 3:00pm the same day for the reading of the judgment.

2.3.3 *Particulars of the Evidence*

The evidence used by the prosecution to establish the facts were: two survivor testimonies, two ex-*Kaibile* testimonies, circumstantial testimonies, expert evidence, and documental evidence. It must be kept in mind that the case was only the object of a complaint in 1994 – because of the climate of fear- and that there was a limited number of eye-witnesses since most of victims had been killed.

2.3.3.1 Declaration of the Accused

Unlike in many other jurisdictions, in criminal proceedings in Guatemala, following the opening of the trial and the resolution of any incidental questions, the accused is offered the opportunity to make a declaration. The presiding judge shall explain to the accused, or each of the accused, in clear and simple language, the charges against them and that they have the right to remain silent.[37] If an accused decides not to make a declaration at this point, this does not prevent him from making one or several declarations at a later stage of the trial, so long as such intervention is pertinent to the issues being debated.[38] If the accused decides to make a declaration at the beginning of the trial, the other parties, with the accused's defence lawyer being last, are offered the opportunity to examine or cross-examine the accused as the case may be. The accused is free to decide whether or not to answer any questions in relation to the examination or cross-examination of the declaration.

Pursuant to the rules explained above, the four accused chose to exercise their right to make a declaration. Such declarations were preceded by a warning from the court that they had a constitutional right to remain silent and not to incriminate themselves. They all denied any knowledge of, or participation in, the massacre in Las Dos Erres and were cross-examined by the other parties. The questions on cross-examination were open-ended and focused on eliciting more information.

2.3.3.2 Witness Statements

Normally, after the accused has declared or expressed his wish not to make a declaration, expert witnesses, followed by other witnesses (first the prosecution's witnesses and last the defence witnesses) will be called to testify and be cross-examined by the other parties.[39] Despite these rules, witnesses and expert witnesses from each party came to testify without any particular order being followed other than that of convenience. Thus, defence witnesses were called before the prosecution closed its case – as a matter of fact, the last witness to be heard during the trial was called by the prosecution. The Court decided on the order of witnesses based on their availabilities, taking into account that some of them could not attend until the second week. During the trial, none of the lawyers expressed any concerns relating to the witnesses' random order of appearance pursuant to s. 366 CCP.

[37] *CCP*, *supra* note 24 at s. 81, 370 and 371.

[38] *Ibid*, at s. 372.

[39] *Ibid*, at s. 375 to 379.

The first witnesses were two eye-witnesses called by the prosecution, that is to say the witnesses who were present at the scene of the massacre. Indeed, they were two former *Kaibiles*, who had confessed to their participation in the Las Dos Erres military operation and had witnessed the atrocities being committed: Favio Pinzón Jerez and César Franco Ibáñez. They both agreed to testify against the accused in exchange for immunity and protection. They were thus placed under a witness protection program pursuant to the *Ley para la Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia Penal* and testified via video-conference from Mexico (in the offices of the *Procuraduria General de la República*[40]).[41] After being sworn in by the presiding judge they were read a summary of the previous statements they had made and which had been accepted in anticipation by the Court, in accordance with the procedure established in the CCP for witness who cannot participate directly in the debate.[42] They were also told that their statement was to be confined to the issues raised in their previous declarations.

César Franco Ibáñez was part of the security group on the day of the massacre. He explained how the massacre was perpetrated. He emphasized that the inhabitants of Las Dos Erres did not resist, were unarmed, and were peasants. He confirmed that women were raped and were forced to cook for the squad thereafter. He clearly indicated the names of the three accused that were members of the squad and participated in the massacre, Reyes Collip Gualip, Manuel Pop Sun, Daniel Martínez Méndez. On December 8, the squad left the village with two women that they killed afterwards. César Franco Ibáñez observed the massacre and did not do anything to stop the executions.

Favio Pinzón Jerez, a cook for the PEK, described the participation of each of the accused in the massacre. He was himself mandated to bring the victims to the well. He notably stated that Manuel Pop Sun threw children into the well while still alive. He added that Reyes Collin Gualip hit the victims to make them fall into the well. He explained that they were part of the assault group that was in charge of finishing off the villagers. He referred to the overall operation in Las Dos Erres as "la *chapeadora*", and as "limpieza del camino" which means "there shall be no survivors." [43]

Two survivors of the massacre also testified. Ramiro Antonio Osorio Cristales, a witness called by the civil party, was a 5-year old child at the time of the massacre. He coherently described what had occurred in Las Dos Erres, notably how the army officers separated women and men and later massacred them, including pregnant women. He also explained that he saw his own mother dragged out of the church and that both of his parents were killed during the massacre. He described how he was illegally adopted by a military officer and treated inhumanely by him. During his testimony, the presiding judge interrupted him, as he was speaking about what he had been through after his abduction, stating that it was repetitive and irrelevant to the issues being debated. His lawyer, Edgar Pérez, objected, arguing the importance of such an account in light of the need for justice for the victims. The Court rejected this line of argument and requested that the testimony be redirected to the issues being debated, i.e. the massacre and the alleged participation of the accused therein.

[40] It is the Mexican agency in charge of criminal investigations and prosecutions.

[41] One designated authority has to be present with the witness.

[42] *CCP*, *supra* note 24 at s. 348.

[43] According to international humanitarian law, "It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis." (s. 40, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)*, June 8, 1977, 1125 UNTS 3).

Salome Armando Gomez Hernandez was 11 years old at the time of the massacre and successfully fled from the area. He explained why he was present in Las Dos Erres the day of the massacre and how he was able to escape back to his house, located in Los Gonzalez, close to Las Dos Erres. He stated that Carías López gave evasive answers to family members of the victims that were living in Las Cruces. Many other witnesses testified that Carías López prevented people from accessing Las Dos Erres. Salome's family members also testified, explaining how *Kaibiles* came to their house after the massacre in search of arms, attacking and threatening.

Some witnesses appeared to suffer from hearing problems. The first witness in this situation, Jose Ines Lima Archila, a defence witness for Carías López, did not understand the judge's instructions; the Court requested that the defence resolve this issue and, counsel decided to discontinue his examination. The witness was therefore dismissed. A second witness in the same situation, Bartolomeo Piñedo Vasquez, was also dismissed. However, when the same situation occurred later during the trial, counsel for victims provided the hearing impaired witness with small earphones which were plugged in to the microphone. This initiative enabled two additional witnesses to use this device to testify.

2.3.3.3 Expert Witness Statements

In the case of the expert witnesses, each identified their written report, stating whether there were any changes they would like to make, and then reading their conclusions. Then, they presented their findings using a PowerPoint presentation, or were simply examined by the party that was presenting the witness and then cross-examined.

Manolo Estuardo Vela Castañeda, a socio-historical expert, explained that the army wrongfully suspected there was a link between the inhabitants of Las Dos Erres and the guerillas that had stolen the rifles. The Las Dos Erres massacre was a military operation to punish a vulnerable population in response to the previous ambush. The Las Dos Erres massacre was the only one in Petén where an entire community disappeared from the map as a result.

Rodolfo Robles Espinosa, military expert and also a witness in the Fujimori case in Peru, confirmed that Las Dos Erres village was inhabited by a non-belligerent civilian population exclusively dedicated to agriculture. The inhabitants were unarmed and showed no resistance. According to this expert witness, all PEK members participated in the massacre without demonstrating any opposition to the orders and instructions received. He also explained that, according to Campaign *Victoria 82*, military officers were obliged to communicate and exchange information, demonstrating that Carías López knew about the massacre.

Silvana Turner and Patricia Bernadi, forensic anthropologists, established that children were the first to be killed and thrown into the well. They also explained that the remains were in bad condition, presented signs of torture, and that the skulls showed multiple fractures. Their statements attested to the brutality of the attacks against the community. Nieves Gomez, a psycho-social expert, discussed long term damages suffered by the few survivors and family members, such as anxiety, and post traumatic stress disorder.

2.3.3.4 Other Evidence

During the trial, various documents were presented such as the plan of Campaign Victoria 82. This document notably showed that there was a constant exchange of information between commanders. The Counterinsurgency Manual allowed the court to determine the existence of prior and detailed military planning against populations considered as insurgents. Declassified documents from the US Government were used to share the information that the US Embassy had collected in relation to the massacre during a US-led investigation that had taken place in Guatemala shortly thereafter, by the end of 1982. Other evidence was also presented, such as the plan of Campaign *Firmeza 83*, the Security and Development manual and volumes of the CEH, also known as "Guatemala: Memory of Silence", etc.

2.3.4 *Final Submissions of the Parties*

The Court decided that the prosecution and the victims' counsels would each be granted one hour to present their closing arguments, while the four defence attorneys were each granted 30 minutes to present theirs.

The prosecution spoke first and cited international and Inter-American human rights law, including Common Article 3 of the *Geneva Conventions* of 1949 relating to non-international armed conflict. The prosecutor then argued there was overwhelming evidence that the accused had attacked a civilian population and that they were all responsible for what had happened in the village of Las Dos Erres. The prosecution also read excerpts from the CEH report.

The civil party's counsel argued that this military operation was part of a scorched-earth policy whereby entire communities were to be wiped out by the army as a means to fight the alleged insurgents, the so-called "enemy of the state". Edgar Pérez argued that declassified documents from the United States showed that the Guatemalan government had the support of the United States in implementing this policy. He claimed that the army initiated this operation and was entirely responsible for the massacre. He argued that these actions qualified as crimes against the duties of humanity.

Defence counsel for Daniel Martínez Méndez argued that there was no evidence whatsoever that her client had committed any of the crimes he was charged with. She said the onus was on the prosecution to prove active participation by her client in the actual crimes, not just that he happened to be present in Las Dos Erres. Furthermore, she argued that many of the expert witnesses' opinions were only based on statements made by family members of the victims of the massacre or the survivors thereof, and that, in any event, there was not a single statement or other evidence that incriminated her client. Therefore she concluded that the court should declare her client not guilty on all counts.

Counsel for Manuel Pop Sun, argued that the ex-*Kaibiles*' statements that incriminated his client were not credible as they had been obtained through leading questions and for a self-serving purpose. Additionally, he argued that the context during which the alleged facts had taken place could not qualify as an internal armed conflict, since the insurgents were not a formal army. Finally, he concluded that, in any case, that his client was following orders and, as a result, did not bear responsibility for these crimes.

Counsel for Carías López argued that there was no evidence of his client's personal participation in the events, nor any evidence that he had engaged in acts of violence or assault against the villagers. He claimed that Carías López did not help or even collaborate with those responsible for the massacre. He then started to review the evidence which had been presented by the prosecution to show inconsistencies between testimonies concerning his client as well as the lack of evidence, but he was prevented from going any further by the presiding judge, his assigned half-hour having expired. He was given another few minutes but he complained at the end that he had not had the chance to fully present his case to the Court.

Counsel for Reyes Collin Gualip explained that when the events occurred, there were a number of illegal groups that had used violence to advance their cause and that the State had been left with no choice but to react. He raised a number of inconsistencies in the two ex-*Kaibiles*' testimonies, and argued that the troops really believed there were insurgents in that village as their headquarters had told them. Further, counsel argued that the magnitude of the operation falsely convinced his client that the information he had been given by his commanding officers was true. Additionally, he mentioned that the soldiers were highly disciplined and had to obey orders. He also raised issues with the way the video-conference was carried out, arguing it was illegal as there was no judge with the witnesses in Mexico to control the validity of the process, nor any counsel to assist them. He finally argued that there was no evidence whatsoever that people had been killed with a sledgehammer.

Finally, before arguments were closed, the accused were given a last chance to address the Court, as provided for in the CCP.[44]. The three PEK members simply reiterated that they were not responsible for the massacre. The fourth accused stated that he had nothing further to say.

[44] *CCP, supra* note 24 at 382.

2.3.5 *Verdict*

On August 2, 2011, at 3 p.m, the Court delivered its verdict, after hearing a short declaration from one of the accused. The Court reviewed the history of the community of Las Dos Erres and the evidence presented by the prosecution. It concluded that the attacks were premeditated, that the village was a peaceful community and that odious crimes had been perpetrated against it. The three ex-*Kaibiles* were found guilty as the Court concluded that they had been present at Las Dos Erres and had participated in the massacre. The Court gave significant weight to the testimonies of the two survivors. The judges went on to conclude that the fourth accused, Carías López, was responsible for the army's local garrison and was aware of the orders which had been issued by the army in respect of the operation. The Court also reviewed the experts' testimonies, and concluded that the people of this village were peaceful farmers. It emphasized the fact that the victims of the massacre included women, in particular pregnant women, as well as children, and thus constituted an unjustifiable attack on peaceful peasants. They found the four defendants guilty of 201 counts of murder, and of crimes against the duties of humanity. They also found Carías López guilty of aggravated theft, since it had been established that he had illegally taken possession of property from the community for his own benefit.

2.3.6 *Sentence*

The sentence was rendered immediately thereafter. In Guatemala, there is no separate sentence hearing after the finding of guilt[45]. Each of the accused was sentenced to 30 years in prison for each of the 201 murders, and to a further 30 years for crimes against the duties of humanity, for a total of 6,060 years in prison. Carías López was sentenced to a further six years in prison for aggravated theft. According to section 44 of the CC, the offenders should serve a maximum sentence of 50 years. Their political rights were suspended for the time of their prison sentence, based on article 59 of the CC. The Court also ordered the Public Prosecutor's Office to prosecute all the other alleged perpetrators of the massacre of Las Dos Erres.

[45] In a criminal trial in Canada, once a person has been found guilty by the court, the offender and the victims can address the court as to what punishment should be imposed on the accused.

2.4 Appeal

The convictions of the four accused were upheld by the Court of Appeal on April 2, 2012. The parties were given the right to file a special appeal within a period of 10 days following the declaration of the sentence.[46]

The appeal of Carías Lopez contained 12 procedural and 7 substantial arguments, which were all rejected by the Court of Appeal. He notably criticized the Court of First Instance for rejecting his motion regarding the application of amnesty to the charge of aggravated robbery. The Court of Appeal stated that judges are competent for rejecting all motions that are frivolous and inadmissible. It also ruled that aggravated robbery is the equivalent of pillage, which is not subject to prescription.

Carías Lopez also suggested that the Court of First Instance wrongfully imposed limits on his counsel in the presentation of his final conclusions. The Court of Appeal rejected this line of argument, on the basis that his counsel should have used a special legal motion during the trial in order to appeal this decision. More precisely, it could only have been possible if his counsel had previously protested when the court informed the parties about the time limitation for their conclusions.[47] The Court also added that judges are legally entitled to limit the time allotted to the parties, who shall conclude when it elapses.

Furthermore, he alleged that the decision violated his right to be presumed innocent, because the established facts were not sufficient and precise enough to determine his responsibility. The court stated that it is not under its jurisdiction to evaluate the merits of the evidence. However, the court ruled that the right to be presumed innocent was guaranteed during the entire trial.

Carías Lopez also argued a lack of demonstrated acts of cooperation that led to the commission of crimes against the duties of humanity. The court responded that a relation of causality can objectively be established between the acts he committed and the result produced thereof, for which he is responsible.

The other appellants argued, notably, that the decision violated their right to a defence as it did not recognize the probative value of their declarations. The Court rejected this allegation, ruling that their right to a defence had not been violated, as they had had the opportunity to defend their respective case and to use all available legal actions. The court also stated that, according to the law, a declaration from the accused does not constitute proof. Therefore, not retaining any positive probative value to their declarations was not a violation of their right to a defence.

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[46] *CCP*, *supra* note 24 at s. 394 and s. 415 to 434. Two kinds of appeal exist under the CCP: a general appeal with respect to certain decisions (s. 404 and following), which do not suspend the proceedings, except under certain circumstances, and can be evocable on any grounds; and a special right to appeal, which can only be exercised if based on certain procedural or substantial grounds (s. 415 and following).

[47] *Ibid*, at s. 402 and 420.

3.
ASSESSMENT OF THE FIRST TRIAL

As previously underlined in the introduction, this part is mostly based on the observations made by the observation mission that was deployed by LWBC in July and August 2011. Therefore, this part reviews the main issues raised, explains the impact of some of these concerns, and suggests possible ways of addressing or further analyzing them in the future.

It was important to assess whether the trial was conducted according to national, regional and international standards.[48] The Canadian adversarial system has also been used as a basis for comparison in order to shed light on the differences between the two systems and their comparative strengths and weaknesses.

3.1 Overall Assessment of the Trial

According to LWBC's observation team, the trial of the four defendants met the previously outlined standards on the right to a fair trial, and no violations of any fundamental rights occurred or were suspected to have occurred during this trial. The observers are also satisfied that the evidence presented during the trial was sufficient for the judges to find beyond reasonable doubt that the defendants were guilty as charged.

The observation team identified a number of issues that raised concerns, but these concerns, taken individually or collectively, were insufficient in the opinion of the observers to conclude that the fundamental rights of any party to a fair trial had been breached.

3.2 Publicity Around the Trial

This case involved the death of over 200 persons and many of their relatives and friends wanted to attend the trial, as did many other victims of the internal armed conflict. In order to accommodate all these people, the Supreme Court allowed the trial to take place in its courtroom, the largest in the country. The observers are of the view that this was an excellent decision as the Court was full to capacity throughout the entire trial.

At the end of the trial, it must be noted that the crowd in the courtroom erupted in applause and loud expressions of support for the victims could be heard. The judges seemed a bit surprised by the reaction but let the situation defuse itself without intervening.

The media were present occasionally throughout the trial, with reporters from local, national and international agencies in attendance, many of whom were taking pictures, filming and interviewing people. Local television broadcasted part of the hearings. Also present in the courtroom from time to time were officials from foreign governments, as well as international and national observers from the United Nations and other non-governmental and civil society organizations. A significant number of reporters and observers were present on the day the verdict was delivered. Nevertheless, the presence of media and observers did not appear to have any disrupted influence on the proceedings, the witnesses or the defendants. Their presence was evidence that the trial was public and contributed to the visibility of the case on a national and international level.

[48] See s. 6, 7, 8, 10, 11 of the *Universal Declaration of Human Rights*, s. 2(1), 3, 26, 14 of the *International Covenant on Civil and Political Rights*, s. 1, 3, 8, 9, 24, 25(1) of the American Convention of Human Rights, s. 12, 14, 15, 16, 17 of the *Political Constitution of the Republic of Guatemala*, s. 7, 14, 15 of the CCP.

The right to a public trial is a basic standard clearly defined within a number of international instruments. S. 14(1) of the *International Covenant on Civil and Political Rights*[49] (ICCPR), ratified by Guatemala, recognizes the right to a public trial and establishes some limitations to the participation of the public and the press:

> **The press and the public may be excluded** from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. [Emphasis added]

The observation team was surprised by the latitude the press enjoyed in the courtroom immediately after the verdict was rendered, but given the emblematic and historic nature of the case, understood the need for Guatemalans and the international community to be made aware of these proceedings and the resulting decision. This point will further be discussed in the observations made about the 2012 trial.

3.3 Duration of the Trial

From the very beginning of the trial, it seemed that the judges wanted to conclude it as expeditiously as possible. This approach prevailed to the extent that the trial was completed within 6 days between July and August of 2011. The information that the lawyers received prior to the trial was to the effect it would last between 10 and 12 days.

In addition to the right of the accused to be tried without undue delay or within a reasonable time, which was not an issue in this case, various international instruments state that the accused must have adequate time for the preparation of his defence, such as section 14 (3) b) of the ICCPR and section 8(2) c) of the ACHR. Thus, the need to expedite the trial could be questioned, particularly given the importance of the case, and the complexity of the issues and of the evidence submitted either orally at trial or through massive amounts of documentation. The expedited timeframe made the lawyers' job challenging, as they had little time to manage the issues that arose during the hearing. By the end of each day, they looked exhausted, something which could affect the quality of their work. The speed with which the trial was carried out also affected the ability to conduct a full and complete examination of all witnesses, and some lawyers LWBC observers spoke with indicated they had little time to review documents during the trial.

[49] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, (entered into force 23 March 1976, accession by Guatemala on May 5, 1992, approved by the Guatemalan Congress through the adoption of the Decree 9-92 on February 19, 1992).

However, according to the United Nations Human Rights Committee, it is incumbent on counsel to request an adjournment of the trial if they feel they have insufficient time to prepare their case.[50] This matter had been sitting in Guatemalan courts for over ten years and lawyers had considerable time to prepare for the hearing. The possible damage caused to their cases as a result of the expedited trial process is very limited when compared to that risked by the aura of impunity that these types of crimes have enjoyed in Guatemala.

In addition, the preliminary examination and pre-trial motions on the admissibility of evidence were resolved prior to the trial, removing this often tedious and time-consuming process from the trial itself. In Guatemala, when the trial begins, all issues related to the evidence are dealt with by the preliminary inquiry judge, which allows the trial to flow smoothly until its conclusion. This is one of the reasons why this trial was able to conclude within six days. It is not unreasonable to conclude that evidentiary issues would have added several days, as the evidence hearing lasted for five days, almost doubling its timeframe.

In conclusion, the trial remained within international standards in terms of criminal prosecutions. The speed of the trial did impact upon the lawyers but not to the extent of infringing on anyone's rights. It was also a relief for many people who wanted this matter to be dealt with expeditiously by the courts, notably because of security considerations for those involved.

3.4 Judges' Management of the Hearing

In the prevailing context of impunity, and of threats and pressures against judges, the observers were particularly interested in verifying whether the judges appeared to have performed their duties independently and impartially. It is important to stress that in many respects, they were impressed by the Guatemalan criminal system and its efficiency. In general, the observation team concluded that the judges' conduct was extremely respectful and fair. The judges were careful and showed the utmost impartiality throughout the trial. They were diligent and always punctual, often arriving earlier and waiting until the parties and their legal representatives had arrived to start the hearings. Only the president of the court addressed the lawyers and if there was any need for consultation with the two other judges, the judges did so directly on the bench. Thus, the trial was run diligently and expeditiously, without any significant incident, in a very professional manner.

3.5 The Prosecution

The prosecution team acted professionally during the trial. The observers did not notice any attempt to circumvent the defendants' rights and the relationship between the parties appeared to be very civil. In court, the observation team did not witness any evidence of prejudice or lack of objectivity from the prosecution's lawyers.

[50] UN Human Rights Committee, *General Comment Not. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, (23 August 2007) U.N. Doc. CCPR/C/GC/32.

3.6 The Victims' Proactive Role and Victims' Rights

Counsel for the victims was also very professional, as was his team. Together, they were responsible for managing a large number of witnesses. They seemed to work seamlessly with the prosecution. They were also very respectful with colleagues and with the court.

An interesting element of this trial was the standing of the victims and whether this could cause an imbalance between the prosecution and the defence with respect to the principle of equality of arms. Pursuant to this principle, the defence and the prosecution must have procedural equality, that is, equal access to the court. For example, both the defence and the prosecution must have knowledge of forensic evidence and the possibility of challenging this evidence.[51] The International Commission of Jurists defines the principle of equality of arms as the opportunity for each party to:

> [...] have the same procedural means and opportunities available to them during the course of the trial and be in an equal position to make their case under conditions that do not place them at a substantial disadvantage vis-à-vis the opposing party.[52]

The general trend in national and international jurisdictions is to recognize a broader role for the victims in criminal proceedings. Restricting victims from participation, especially in common law jurisdictions, is increasingly being questioned. Integration of victims into the process has a significant added-value in terms of comprehensive reparation, empowerment in the legal proceedings, and increased confidence and satisfaction in the system for the victims themselves. In addition, the interests of the prosecution and of the victims may sometimes be different or in opposition and it provides the victim with a voice and stronger recognition. It allows the victims to feel that they are playing a genuine role during the whole criminal process and that they are not excluded.[53]

The advantages of having victims as part of the process outweighed the risks of imbalance and therefore the observers saw no particular problem in terms of equality of arms in this respect. For the observation team, the contribution of victims' counsel to the trial was significant as, under Guatemalan law, victims have the right to be heard during a criminal trial. Thus, victims could not only testify on the massacre itself but also on the impact the crime had on them and their relatives. Victims play a particularly important role in Guatemala, in light of the limited resources of the Public Prosecutor's Office to investigate and bring to justice all the human rights violations committed during the internal armed conflict: *Victims have multiplied resources to improve the discovery of evidence or have themselves provided evidence to the state for use in the criminal prosecutions.*[54]

[51] Geert-Jan Alexander Knoops, *An Introduction to the Law of International Criminal Tribunals* (New York: Transnational Publishers, 2003) at p. 126.

[52] International Commission of Jurists, *Trial observation Manual for Criminal Proceedings. Practitioners Guide No. 5* (Geneva: 2009) at p. 95.

[53] Jonathan Doak, "Victim's Rights in Criminal Trials: Prospect for Participation" (2005) 32-2 Journal of Law and Society.

[54] Raquel Aldana, "A Reflection on Transitional Justice in Guatemala 15 years After the Peace Agreements" in Christoph Safferling & Thorsten Bonacker, eds., *Victims of International Crimes: An Interdisciplinary Discourse* (TMC Asser Press, 2012) at p. 7.

It should be noted that victims are permitted to take part in criminal proceedings before the International Criminal Court (ICC):

> Where the personal interests of the victims are affected, the Court **shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court** and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.[55] [Emphasis added]

The ICC sets out a number of rules and guidelines to allow the effective participation of the victims in the trial in accordance with the principle of equality of arms. For example, the court may ask the victims to choose a common legal representative,[56] and in order to question a witness, their counsel must make an application to the chamber, which will then issue a ruling on the request.[57]

In Guatemala, the court has been very careful not to provide any advantage to the prosecution through the participation of victims' counsel. For instance, the witnesses for the prosecution and the victims were considered together and counted as witnesses for the prosecution. The court limited the number of counsel for each team and any change to that had to be authorized by the court. Furthermore, as mentioned above, the court imposed an equal time limit for both the prosecution and the victims and for the defendants. The observers were very impressed by the fact that, in this case, the victims could have standing in a criminal prosecution and that this approach could be effective, without tipping the balance in favour of the prosecution.

In many common law jurisdictions, it is unheard of for the victims to have standing in a criminal prosecution. For example, for criminal matters in Canada, the prosecutor acts for society in general and is not counsel for the victims, while defence counsel acts for the defendants. Thus, victims are only witnesses for the prosecution, and occasionally provide a victim's impact statement. It appears that this method does not provide fair treatment for the victims; jurisdictions should be more sensitive and integrate the victims as a party. What was observed in Guatemala confirms that having the victims as a party is a sound approach that is extremely valuable.

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[55] *Rome Statute of the International Criminal Court*, 17 July, 1998, U.N. Doc. 2187,U.N.T.S. 90 (entered into force July 1, 2002) at s. 68 (3) [Rome Statute].

[56] *International Criminal Court, Rules of Procedure and Evidence*, 9 September, 2002, U.N. Doc. ICC-ASP/1/3, at Rule 90 (2).

[57] *Ibid*, at Rule 91 (3) a) and b).

3.7 Defence Counsel

A total of five lawyers represented the four defendants, with three being represented by a single lawyer each from the *Public Criminal Defense Institute* and the other by two private lawyers. They were all very respectful with each other, with the other parties and with the court. They also showed respect to all witnesses and there was no concern in terms of cross-examination. They objected when warranted under the law and the rules established by that court, and most of the times their objections were sustained.

It did not appear to the observers that the interests of the defendants might conflict with one another, and no defendant implicated any co-accused when testifying. It is worth underlining the fact that each of them was represented by separate counsel even though their interests often coincided.

3.8 Presentation of Evidence

Evidence is the essence of criminal trials in adversarial systems. The process according to which such evidence is presented, admitted and weighted is crucial to the success of the trial, in terms of respecting the fundamental rights of all parties, and in particular that of the victims and the defendants.

3.8.1 *Declaration of the Accused*

As mentioned earlier, the four defendants were offered the opportunity to make a declaration at the beginning of the trial, after being warned that they had a constitutional right to remain silent and not to incriminate themselves. In this case, the accused chose to declare, refuting their participation in the massacre. When they made their declaration, they only knew the prosecution's evidence through the material their lawyers had received prior to the trial and it is unclear whether they had a sufficient knowledge of the prosecution's case, since the totality of the prosecution's evidence had not yet been completely disclosed in court. At the time the accused made their declarations, it was not known whether any evidence would change from what was in the initial statements or reports. Once they had answered their lawyer's questions, they were cross-examined by the other parties. This situation also implied that the prosecution did not cross-examine the defendants after having heard the testimony of other witnesses that had identified the defendants at the crime scene.

The observers analyzed whether this process might weaken the basic principle of the presumption of innocence, which expresses itself through the rule that the onus to prove the defendants' guilt rests upon the prosecution. According to this principle, it is usually preferable to have the prosecution present its case first and to allow the defendants hear all of the evidence against them before making a decision as to whether or not they choose to make a declaration, especially when he might be cross-examined. This ensures that when the defence assesses their strategy, they know exactly what evidence has been presented so as to make a fully informed decision in presenting their case.

It is worth noting that a similar provision exists at Rule *84bis of the Rules of Procedure and Evidence*[58] of the International Criminal Tribunal for the Former Yugoslavia (ICTY). This provision provides the choice for an accused to make a statement, which shall not be the object of examination. There does not appear to be any restriction as to when the accused is able to make this statement other than the fact that this statement is subject to the control of the Trial Chamber.

This concern might also be outweighed by the fact that according to the CCP, these declarations are considered a right that the accused can decide to exercise at any time during the trial. The decision not to make a declaration cannot be used against him.[59] Furthermore, an accused is not obliged to answer the questions which he is being asked by the parties at any point during the trial.[60] In addition, the concept of pleading guilty does not exist, and an incriminating declaration cannot constitute evidence, as under the Constitution, the accused is presumed innocent until he has been declared responsible by a court.[61] In addition, when an accused decides to declare, the judge cannot give any probative value to his declaration as evidence, neither against him nor in his favour.

3.8.2 *The Order of Witnesses' Appearance*

As stated above, the trial started with the declarations of the defendants. Furthermore, on the third day of the trial, a witness for the defence was called. This occurred while there were still more prosecution witnesses to come. Furthermore, this pattern continued, with further defence witnesses interspersed between prosecution witnesses. This appears to be infrequent in Guatemala, but the court had decided to proceed in this manner to accommodate the different dates on which witnesses were available.

The observation team has some reservations about this flexibility shown by the court and by counsel. Section 377 of the CCP states that prosecution witnesses will be called first, followed by those of the civil party, with the defence witnesses called last. However, the presiding judge may alter that order when he or she considers that it would help clarify the facts of the case. It is this last portion of article 377 that could represent a source of concern.

Witness testimony and cross-examination thereof, in order to test the facts alleged to have been witnessed and the credibility of the witness, are a major aspect of a trial. As previously explained, having the prosecution present its case first is important as it affords counsel for the accused the opportunity to test the credibility of each of the prosecution witnesses before having to make any final decision in terms of its defence strategy.

It should be noted that at both the ICTY and the International Criminal Tribunal for Rwanda (ICTR), the prosecution presents its case and evidence before the defence. The rules of procedure and evidence of the ICC are somewhat different, as section 140 gives broad powers to the presiding judge to give directions for the conduct of the proceedings. This practice could raise concerns:

> The considerable discretion could result in fundamentally different approaches being taken in different cases, and in turn affect the perceived fairness of the court proceedings and the right of all accused to equal treatment, but this risk could be reduced by practice directives or harmonization in other forms.[62]

[58] *International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence*, U.N. Doc. IT/32/Rev.48 (entered into force 14 March 1994) [ICTY Rules of Procedure and Evidence].

[59] *CCP*, *supra* note 24 at s. 8.

[60] *Constitution*, *supra* note 26 at s. 15 and s. 16.

[61] *Ibid*, at s. 14.

[62] Robert Cryer et al., *An Introduction to International Criminal Law and Procedure*, 2d ed. (New York: Cambridge University Press, 2010) p. 469.

It should be remembered that the Guatemalan CCP provides that before the hearing on the merits of a criminal case, a preliminary hearing shall be held during which each party must notify the judge of the proposed evidence. The judge will then notify the parties about it during the hearing. Each party must also provide a summary of each of those elements and signal the facts on which the witness will be examined. In respect of the documentary evidence, this means that all parties will have the opportunity to read such documents prior to trial. The contents of all documentary evidence should be made available for viewing before the trial. The lawyers did not see the order of witnesses as a problem because they had received full disclosure during preliminary hearings and knew what evidence would be presented.

Even though counsel knew what evidence would be presented, the only evidence on which the court bases its decision is the one given during an oral trial. In this context, one could wonder about the extent to which it was possible for the defence to make sound decisions about which witnesses to call when they did not know exactly what the prosecution witnesses would say. Further, counsel may object to the admissibility of new evidence and the probative value of already admitted evidence (182 CCP); as this objection may be sustained or dismissed, defence counsel must consider what evidence will be presented in either scenario. The practice of mixing witnesses' order of presentation is a practice which should be reconsidered.

In this case, because there was full and reciprocal disclosure before the trial, and because all parties agreed to proceed in this manner, the observers are satisfied that due process was nonetheless followed and it did not cause any violation of any party's rights.

3.8.3 *Examination and Cross-examination of Witnesses*

In relation to examination and cross-examination, section 14(3) (e) of the ICCPR states that the defendant has the right to: "*examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*"

Prior to legislative reform in 2011, leading questions were not permitted during the examination-in-chief and the cross-examination. However since July 2011, section 378 of the CCP, which entered into force before the trial, allows for leading questions to be asked and any legal objections to such questions were removed from the list of possible objections. However, it seems that during the trial, no leading questions were asked by counsel.

Cross-examination is the most important tool for counsel to test witness credibility. In the observers' view, the cross-examinations in this trial were very different than those seen in other jurisdictions, as most of the questions were simply confirming what the witness had said during the examination-in-chief without raising any leading questions. This may affect the ability of the court to assess the credibility of a witness, as leading questions are an essential tool in cross-examination for assessing credibility and examining possible contradictions or inconsistencies of the witness. Since the trial occurred shortly after the reform of section 378 of the CCP, it is difficult to know whether the observed pattern reflected the parties' strategy, or whether parties refrained from asking leading questions because they were not used to doing so.

As for the examination-in-chief, the questions to a witness in cross-examination should only relate to the subjects on which he was proposed and admitted as a witness. It would be preferable to have broader cross-examination, even on issues for which the witness was not initially called upon to address, as the witness may know much more about the matter than what the lawyer calling him or her is willing to ask. This practice could give the court more tools to evaluate the evidence. For example, if the case hung on only a few witnesses, there could be concerns about the validity of the evidence that is largely untested; in such instances, and where there is evidence to the contrary, the benefit of the doubt must go to the defendants.

In this case, however, the evidence was overwhelming and all the elements of the alleged offences were corroborated in multiple ways. Therefore, the fact that cross-examination was not used to the fullest extent possible did not, in this case, violate the rights of the defendants.

3.8.4 *Expert Witnesses*

The observers noticed that a number of expert witnesses were testifying based on other witnesses' statements. While this is permissible, as hearsay evidence is allowed, it weakens the probative value of the expert's opinion. In order to avoid that situation, it would be preferable to put that evidence on record of the person upon whose statement the expert based his opinion. For example, one expert explained that he read the two ex-*Kaibiles*' statements in order to form his opinion on how the operation was prepared. However, while those two witnesses were called by videoconference, they did not testify directly on that issue – if they had, it could have given the expert's opinion more weight.

In Guatemala, the qualifications of experts are evaluated during the trial, right before they testify or during the cross-examination. It must be noted that according to the CCP (s. 226), experts must have the required titles relevant to the matter for which they will testify. However, the observers had the impression that some witnesses that did not appear to be qualified as experts seemed to testify as such and gave their opinion. They also observed that there was no special procedure used to determine their qualifications. For example, in Canada, *voir-dire* examinations (a trial within a trial), are used to establish whether evidence is admissible or an expert is qualified on the subject relevant to his testimony.

3.8.5 *Management of Objections*

In contrast to many other jurisdictions, in the Guatemalan criminal system, objections are not really discussed in court. Most of the objections are made and sustained or dismissed by the Court without giving the time to the party objecting to motivate its objection and without any argument from the other party. It would be interesting to encourage debates on those objections, especially when the opposing party has a different line of argument.

3.8.6 *Oral Evidence*

It was surprising that the presiding judge denied counsel for Carías López the right to challenge some documents. While that counsel had an opportunity to object to the admissibility of this evidence during the preliminary inquiry, still, when he made his objection during the actual trial, the documents were not yet filed as exhibits. Counsel's motion could therefore have been heard. As we have seen earlier, it is a fundamental right for the defence to be able to challenge the evidence presented by the prosecution or any other party that is involved in the trial and that could cause prejudice to the accused during the actual trial as his fate will be decided by those judges and not by the judge presiding the preliminary examination.

3.8.7 *Hearing Impaired Witnesses*

As briefly mentioned above, some witnesses appeared before the Court and could not hear the presiding judge. After a short discussion, the judge asked counsel who had called the witness what he wanted to do, after which, counsel withdrew his witness. No attempt was made to verify with the witness exactly what the problem was or to provide technical assistance or sign language interpretation if needed. The Court made the comment that counsel should have raised this issue earlier in order to allow Court officers to be in a position to cope with the situation. It is unknown whether counsel knew beforehand of the problem. When lawyers interview witnesses prior to a trial, it is generally in an office or a small interview room where the conversation involves only a few people, without the noise of a large courtroom setting. It might be only at trial that it becomes apparent that a given witness has an impaired hearing problem.

According to international standards, the defendant must have adequate facilities for the preparation of his defence. On this matter, the Appeals Chamber of the ICTR has ruled the following:

> A Trial Chamber "shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case". However, it is for the accused who alleges a violation of his right to have adequate time and facilities for the preparation of his defence to draw the Trial Chamber's attention to what he considers to be a breach of the Tribunal's Statute and Rules; he cannot remain silent about such a violation, then raise it on appeal in order to seek a new trial.[63]

In this trial, some impaired hearing witness did not appear to have access to all the facilities they required. This is all the more relevant as the situation arose on a few occasions until one of the lawyers came up with the idea of providing earphones to the witness that were plugged in the microphone system; this solution remained in place for subsequent hearing-impaired witnesses, allowing them to testify. However, the witnesses who were initially not able to testify were not called again. In such an important trial, additional efforts could therefore have been made to accommodate the witness.

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[63] *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, IT-99-52-A, Appeal Judgment (28 November, 2007), at para. 220 (International Criminal Tribunal for Rwanda, Appeals Chamber).

3.9 Final Submissions of the Parties

Before the final submissions started, the presiding judge decided to limit the time counsel had to address the court. She ordered one hour each for the prosecution and counsel for the victims (for a total of two hours) and half an hour for counsel for each defendant (for a total of two hours).

In general, the lawyers respected their time limit but it became obvious that in the case of counsel for Carías López, he would not be able to wrap up his submission within such a timeframe because he wanted to raise doubt as to the strength of the evidence. It must be remembered that his client was not accused of having directly participated in the massacre but of having been an accessory. The prosecution's evidence in this regard was circumstantial, as nobody could say with certainty what he knew or did not know at the time of the massacre.

The legal foundation for the judge to limit a final submission is found in section 382, subsection 5 of the CCP:

> **Where there is an obvious abuse of the right to address the court**, the president shall bring that to counsel's attention and, if such behaviour persists, could limit with caution the speaker's time to address the court, taking into account the nature of the matters at stake, the evidence on record and the issues to resolve. Upon reaching that time limit, the speaker should conclude. Failure will mean a failure to fulfill that function or an unjustifiable abandonment of the defence [emphasis added, unofficial translation]. [64]

At first glance, this section appears very reasonable and does not grant the court discretion to limit final submissions other than in the circumstances described. During the final submission by counsel for Carías López, it did not appear that he was abusing his right to address the court.

There was a lot at stake for the accused in this extremely important trial – as shown by the imposed sentences – and Carías López's whole defence was based on a combination of, on the one hand, his own testimony and, on the other hand, the circumstantial nature of the evidence against him. Consequently, this limitation of counsel's address to the court might be questioned.

The limitation of the duration of closing arguments by a tribunal is not unheard of. For example, the President of the ICTR has issued a Practice Direction to regulate and limit the length of closing arguments in order to encourage parties to prepare their case accordingly.[65] In addition, Rule 73 *ter* of the Rules of Procedure and Evidence of the ICTY also allows the Trial Chamber to determine the time available for the defence to present its evidence and may shortened the estimated length for the examination-in-chief of some defence witnesses.[66] According to the Chamber of Appeal of the ICTY:

> [...] in addition to the question whether, relative to the time allocated to the Prosecution, the time given to the Accused is reasonably proportional, a Trial Chamber must also consider whether the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights.[67]

In this case, lawyers had been notified right from the beginning that they would be given a limited amount of time to present their conclusions. Lawyers had enough time to prepare their final submissions and he could have prepared his main arguments and ensure that he could present them within the time allocated. While the court could have shown more flexibility in this case, because the legislation seems to provide the court with limited powers to limit counsel's final submissions and the time counsel had to prepare, this incident does not amount to a violation of the defendants' rights.

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[64] ***Artículo 382. (Discusión final y clausura):*** *[…] En caso de manifiesto abuso de la palabra, el presidente llamará la atención al orador, y, si éste persistiere, podrá limitar prudentemente el tiempo del informe, teniendo en cuenta la naturaleza de los hechos en examen, las pruebas recibidas y las cuestiones a resolver. Vencido el plazo, el orador deberá emitir sus conclusiones. La omisión implicará incumplimiento de la función o abandono injustificado de la defensa […].*

[65] *International Criminal Tribunal for Rwanda Practice, Direction on Length and Timing of Closing Briefs and Closing Arguments*, 3 May, 2010.

[66] *ICTY Rules of Procedure and Evidence*, *supra* note 59 at Rule 73 ter.

[67] *Prosecutor v. Naser ORIC*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case (20 July 2005) at para. 8 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber).

3.10 Verdict

LWBC is satisfied that the verdict was based on the evidence that was presented before the court. The judges presented their analysis of all the evidence in the written decision, indicating clearly what evidence they accepted or rejected and elaborating in detail on the reasons for doing so in each instance. In general they accepted all the expert evidence and all the witnesses for the prosecution, in particular those that had been in Las Dos Erres or close to it at the time of the massacre; they rejected the evidence brought by the defence, including the defendants, because they found the defendants not credible and their testimony self-serving. The court indicated that after such an analysis, there was no room left for any doubt about the defendants' guilt.

3.11 Sentencing

As mentioned earlier, according to the Guatemala CCP, no sentence hearing took place after the conviction. However, all parties were able to address the court with regards to sentencing before the court handed down the sentence.

This procedure is similar to the amendment brought to the rules of procedures of the ICTR and the ICTY, which allows the determination of the verdict and the sentence in a single judgement. This is also the procedure for the ICC, although the Trial Chamber will hold a separate sentencing hearing at the request of a party.[68] These practices demonstrate the relevance of giving the accused the opportunity to address the court after his conviction. In fact, when the accused is still presumed innocent, the defence may have a different strategy in relation to sentencing than when the accused is found guilty.

Some may believe at first glance that the sentence decided by the judge, 6,060 years in the case of the three PEK members, and 6,066 years in the case of Carías López, are preposterous as it would be impossible to live long enough to serve the entire sentence. Although it must be kept in mind that in Guatemala, the maximum sentence a person canserve is 50 years, the sentences carry a strong message and a symbolic meaning in recognition of the magnitude of the crime and the number of victims, not only those killed in the massacre but those who continue to suffer decades later at the memory of the murder of their friends and relative. As one of the judges mentioned, "none of the victims can be made invisible".

[68] *Rome Statute*, *supra* note 55 at s. 76.

4.
SECOND TRIAL FOR THE LAS DOS ERRES MASSACRE

4.1 Context

Pedro Pimentel Ríos is also a former PEK member. He left Guatemala in 1991 for the United States. He was arrested in May 2010 on an arrest warrant held against him in Guatemala. In July 2011, he was extradited from the United States to Guatemala to face criminal charges for his alleged involvement in the Las Dos Erres massacre along with 16 other *Kaibiles* and the head of the military post of Las Cruces.

4.2 Charges and Preliminary Examination

On July 22, 2011, Pimentel made his first court appearance — the hearing of his first declaration. On September 21, 2011, the public prosecution presented its indictment, following which the court issued an order of preventive detention. On September 29, 2011, the court heard a motion attacking the validity of the indictment, which was found to be without merit. Similarly to the three ex-*Kaibiles* tried in July 2011, Pimentel was accused of 201 counts of murder and one count of "crimes against the duties of humanity." On October 12, 2011, a preliminary examination was held where the judge then decided that the public prosecutor had presented sufficient evidence in order for a tribunal to reach a conclusion on the responsibility of the accused. As a result, Pimentel was officially placed in the hands of Guatemalan legal system. On October 17, 2011, the evidentiary hearing took place[69].

4.3 Hearings

Pimentel's trial lasted 10 days, from February 23, 2012 to March 12, 2012. The case was heard by three judges, and was presided over by Justice Irma Jeannette Valdes Rodas.

4.4 Particulars of Evidence

Most of the evidence presented in the 2011 trial was produced again during this trial. For example, a number of expert witnesses who had testified in Las Dos Erres I trial appeared again during the hearings.

As in the trial in 2011, the court heard the testimony of two ex-members of the PEK by videoconference from Mexico. Favio Pinzón Jerez stated that the accused had been present at the scene of the massacre but did not confirm seeing the accused committing a crime. He also said that he saw the accused leaving a few days after the massacre by helicopter with two survivors. During the witness examination by the civil party's lawyer, the judge rejected an objection raised by the defence lawyer who was arguing that it was a leading question. As previously mentioned in this report, a recent reform withdrew leading questions from the list of possible objections, even if a leading question is being asked by the party who presented the witness, as was the case here. Of note, most of the objections raised by the public prosecution and civil party and their lawyers during the cross-examination of the witness by the defence were accepted by the presiding judge. Most of the objections were based on relevance and the repetitive nature of the defence lawyer's questions.

César Franco Ibáñez, the second ex-*Kaibile* to testify, confirmed, in a precise and detailed manner, many of the facts previously provided by Favio Pinzón Jerez. The witness described the massacre and the presence of the accused at the scene thereof as part of the assault group. Like Javio Pinzón Jerez, he did not confirm having seen the accused commit any crime in the village, but confirmed that he was next to the well and that he had been selected to kill the victims. The witness also stated that, upon leaving the village, the PEK had taken two young women with them that were later raped by many *Kaibiles*. He stated that the accused murdered one of these women as a demonstration of how to kill. It was the first time that a mention of these two women was made, and no questions were asked of the witness regarding this aspect of his testimony. Upon finishing his statement, the witness stated that he had not participated in committing the massacre, and apologized for this horrible operation.

[69] Greg Krupa "Caso Dos Erres continues with the extradition arrest, and indictment of Pedro, Pimentel Ríos" (11 November, 2011), online: LWBC Blog *http://www.asfcanada.ca/fr/blogue/billet/caso-dos-erres-continues-with-the-extradition-arrest-and-indictment-of-pedro-pimentel-rios/82*.

Two survivors testified, as did more than 13 relatives of victims. One of the survivors, Salomé Armando Gomez, identified the accused. According to his testimony, on the day of the massacre, the accused had made a speech from the pulpit to the women and children gathered together in the church by the army officers. He mentioned remembering what the accused was wearing and his skin colour. During the witness cross-examination, the defence lawyer insisted that the witness clearly identify the accused, since two men were seated at the table at which he had pointed his finger (the accused and the defence lawyer himself), but the presiding judge intervened to stop that line of questioning, concluding that the identification of the accused had been clearly made. The relatives of Salomé called to testify thereafter also identified the accused as one of the men who had entered their house, assaulted the father and interrogated the entire family as to the whereabouts of the stolen rifles. The family ranch was located in Los Gonzalez, near the village of Las Dos Erres, and the events described occurred just after the massacre, upon the PEK returning to the Santa Elena base.

Eduardo Arevalo Lacs held the position of major, and was the chief of the special operations *Kaibiles* training up to 1982. On the day of the massacre, he was not on duty, because he was recuperating from a helicopter accident. During his examination by the civil party's lawyer, the questions seemed to infer his knowledge and high-command's knowledge of the operation. The examination of the witness was one of the elements used to request the introduction of additional evidence.

During the hearings, Pimentel's lawyer requested permission twice for his client to make a declaration. The first time, the judge decided that his declaration would be heard after the witness testimonies, but at that point the Court was informed that the accused no longer wished to exercise his right to declare. On the second occasion a request to declare was made, the presiding judge concluded that such declaration could not been made as one of the three panel judges was not physically present in the courtroom, said the judge, being in Mexico to supervise the witnesses testifying by videoconference, in accordance with the CCP.

Before the closing of the oral arguments, the accused finally made a declaration. He declared that he was not present in Las Dos Erres the day of the massacre, as he was undergoing medical tests in another part of the country in preparation for his departure to the School of the Americas.[70] When asked by the prosecution why the two ex-*Kaibiles* had testified to his presence at the scene of the massacre, he suggested the hypothesis of jealousy. In the second part of his declaration, the accused explained his understanding of the socio-political context of the internal armed conflict, underlining the violence of the rebel movement, the cruelty of the guerrillas, their betrayal of the country, and their criminal behaviour. He deplored the bad reputation borne by the army in Guatemala. As the accused was pointing an accusatory finger at the prosecution, the civil party's lawyer objected to the accused's accusatory attitude and discourse, and the presiding judge told the accused that he had to respect the other parties. Following his declaration, one of the only questions asked by the civil party's lawyer was whether the accused believed that the life of a poor person had any value.

[70] The School of the Americas was a counterinsurgency military training institute for Latin American government officials created by the United States in 1946.

4.5 Final Submissions

On the 8th and 9th day of the hearings, the parties presented their oral closing arguments. Thereafter, the public prosecutor and the defence lawyer exercised their right to reply (art. 382 CCP). This right enables a party to refute the arguments the opposing party made during his or her closing arguments. Finally, the civil party, FAMDEGUA and the survivors and relatives of the victims were able to make a declaration, in accordance with the CCP (para. 6 of s. 382).

In his closing arguments, the public prosecutor argued that the accused had violated Common Article 3 of the four *Geneva Conventions* of 1949 and had committed 201 murders. He then requested that the Court sentence the accused to 30 years for each of the 201 murders in order to ensure visibility of each of the victims, and 30 additional years for the offense of "crimes against the duties of humanity", for a total of 6060 years of imprisonment.

Filled with emotion, the closing arguments of the civil party's lawyer focused on the long battle for justice of the survivors and family members of the victims. He emphasized the horror and gratuitous nature of the crimes, the complicity of high level officials, the impunity that followed the massacre, the fact that the victims were civilian, and the guilt of the accused. Also requesting a 6060-year prison sentence, he then underlined the aggravated circumstances of the case: the premeditation of the crimes, the knowledge of the accused, the aim of the mission to eliminate an entire civilian population, and the violation of international humanitarian and human rights standards binding on Guatemala. Both the public prosecution and the civil party's lawyer asked the court to also order the continuation of the investigation in order to establish responsibility of higher-level authorities in the massacre.

In his closing arguments, the defence lawyer questioned the admissibility of evidence presented and the credibility of the witnesses, and concluded that the public prosecution had not fulfilled its burden of proof in establishing the guilt of the accused. According to him, no fractures were found on the exhumed bones and skulls. The Public Prosecutor retorted that the experts' conclusions on the matter had been clear to the effect that the remains presented multiple fractures and lesions. He also argued that a Kaibil had to respect hierarchy and orders without discussion and that his client had no authority over the PEK, without specifically referring to a possible defence. He alleged that the testimonies of the ex-militaries were inadmissible since new elements which had not been disclosed during their previous written statements had been added to their oral testimony, and questioned their credibility. He underlined their disloyalty and mentioned contradictions in their testimonies, without identifying specific examples. The defence alleged that as none of the victims of sexual assault had come forward to testify, and since almost none of the witnesses were eye-witnesses of the massacre, that therefore their testimony constituted hearsay. However, the court stated that the atrocity of the massacre lay in the near-absence of survivors. He ended his closing arguments calling into question the possibility of one person being able to murder 201 others, and alleging that future generations would question the sanity of a justice system which could order a 6060 year prison sentence.

4.6 Verdict and Sentence

On the last day of the hearings, the accused exercised his right to make a final declaration. He mainly repeated the arguments presented by his lawyer and reiterated that he was not present in Las Dos Erres at the time of the massacre.

The hearings resumed a few hours after. The Court found Pimentel guilty of 201 counts of murder and one count of "crimes against the duties of humanity", and condemned him to a 6060-year prison sentence as requested by the prosecution and civil party. The reading of the verdict lasted two hours. The presiding judge explained how each fact inferring Pimentel's participation in the massacre had been established by evidence, and its probative value. The court concluded that the murders had been committed with cruelty and premeditation. The verdict also ordered the public prosecutor's office to pursue its investigations into the chain of command, ordered the State of Guatemala to give land title to each of the victims' family members or survivors within two years of their petition therefore, and to widely broadcast on television a documentary on the massacre.

4.7 Main Observations on the Trial

As previously mentioned, the mandate of LWBC's volunteers and intern was to attend the trial, and, in the case of Clémentine Sallée, to write an informative daily blog on the proceedings. This part of the report presents some impressions and observations from the blog.[71]

4.7.1 *Overall Observation on the Judge and the Parties*

Generally, it appears that the defence had a more limited role in the trial of Pimentel than in the 2011 trial. Some could argue that the judge left the impression of siding with the prosecution. For example, many of the questions raised by the defence in cross-examination were successfully objected to whereas the majority of the defence's objections were rejected by the court for lack of relevance. Furthermore, it appeared that Pimentel's lawyer did not rely on all the possible defences, excuses or justifications available to his client, and neither demonstrated a clear strategy nor expressed himself understandably.

However, the imbalance that was flagged between the prosecution and the defence might be explained in part by the overall preparation and performance of the defence lawyer. In comparison with the Las Dos Erres I case, Pimentel was the only accused to face trial. The prosecution objectively relied on a larger pool of resources, as various lawyers represented the public prosecutor and the civil party, while only one lawyer represented the accused; and this gave an impression that the prosecution was stronger.

[71] See Clémentine Sallée's posts on LWBC Blog at *http://www.asfcanada.ca/fr/blogue/auteur/clementinesallee*

4.7.2 *Publicity of the Trial*

As in the case in August 2011, Pimentel's trial was open to public and received considerable media coverage. It appeared at times during this trial that the use of cameras and audio visual recording equipment by the media interfered with the hearings as well with the serenity and decorum expected in a courtroom.

Although the presence of the media during the hearings is important to ensure that hearings and trials are public, the Court could consider imposing limits on the use of cameras or audiovisual recording equipment to ensure the hearings, the parties and the assistance are not unduly disturbed.

4.7.3 *Declaration of the Accused*

As described above, the exercise of Pimentel's right to make a declaration was postponed twice. On one occasion, when the accused was granted the opportunity to exercise his right to declare, he changed his mind and no longer wished to do so. This reiterates the previous conclusion of this report that it would be preferable for the accused to make any declaration after the prosecution is done presenting its witnesses, as the strategy of the accused lawyer and the nature of his declaration can change after hearing the evidence presented against him and having the opportunity to evaluate the credibility of such evidence.

4.7.4 *Examination-In-Chief*

As explained, the recent CCP reform now allows for the parties to ask leading questions, even by the party who presents a witness. This broad ability differs from procedures known in other jurisdictions and could be reconsidered. For example, in Canada, parties that present witnesses are not allowed to ask leading question to their witness as it can weaken the credibility of witness statements. When a witness is presented by a party, it can be inferred that his testimony will be favourable because he is called to the bar to support the party's line of argument. Counsel should therefore create conditions for a spontaneous and convincing testimony. During the examination-in-chief, suggesting and leading a witness to a precise answer has the opposite effect.

4.7.5 *Evidence*

It appears that the evidence presented in this case and in the 2011 case seemed to be virtually the same. This is in part due to the lack of sufficient resources of the prosecution to do otherwise, often counting on the civil party to assist him in documenting the cases. However, it would be suitable to have evidence more tailored to each case. It was also somewhat surprising at times that the line of questioning focused on the chain of command when the accused was not in a position of authority. That trial seemed to be used as a way to ask questions that will only be relevant to other cases. On the other hand, this perhaps enables for superiors to be brought to justice.

4.7.6 *Sentence*

In relation to the sentence which ordered the state to take positive actions. Although it is important for the victims' relatives to be compensated, it could be questioned how a tribunal in a case regarding the criminal responsibility of an individual, may order the state to do something, especially when the state was not invited to present any argument on this point.

Finally, the importance of bringing this emblematic case to justice for the family members of the victims should again be pointed out. It also establishes a precedent and opens the door to bring to justice the superiors responsible for the planning and implementation of the massacre.

5.
THE CASES AGAINST JOSÉ EFRAÍN RÍOS MONTT

5.1 First Case of José Efraín Ríos Montt

As previously mentioned in this report, Ríos Montt's military regime was the most violent period of the 36 year internal armed conflict. Ríos Montt has avoided facing justice for almost 30 years. When a Spanish judge issued an international arrest warrant for him in 2006, under universal jurisdiction, on charges of genocide and crimes against humanity, Guatemalan authorities refused to extradite him. Until January 14, 2012, he enjoyed immunity from prosecution for the past 12 years as a member of the Guatemalan Congress.

On January 26, 2012, Ríos Montt appeared before the *Juzgado Primero de Mayor Riesgo A*, in the first case against him for crimes against the duties of humanity and genocide against the Maya Ixil population. In this case, he is co-accused with his former Military Chief of Staff, Héctor Mario López Fuentes, and Military Intelligence Chief Official, José Mauricio Rodríguez Sanchéz.

Criminal proceedings were opened against him as the intellectual author of 1,171 deaths, the forced displacement of 29,000 individuals, sexual violence against at least 8 women, and torture of at least 14 individuals. He refused to make a declaration during this hearing and has remained under house arrest since that time. On March 1, 2012, the tribunal refused to apply the *Law on National Reconciliation*, as requested by the defence, and on March 27, 2012, the prosecution presented the indictment against him.

The fact that Ríos Montt is being trialed with two other co-accused can delay the case. In fact, defence lawyers presented over fifteen preliminary motions, including recusal motions regarding the judge and experts, some which have delayed the proceedings. A new judge of the *Juzgado Primero de Mayor Riesgo B* has been assigned to decide on these motions. While the judge started to hear these motions in August 2012, the lawyer of a co-accused, José Mauricio Rodríguez Sanchéz, presented another motion for the application of the *Law on National Reconciliation*, which was rejected. The defence appealed this decision.

One of the motions presented by the lawyer of another co-accused, Héctor Mario López Fuentes, argued for the application of an auto-amnesty law, that was adopted in 1986. LWBC has presented an *amicus curiæ* brief on November 14, 2012, concerning the relevant national and international norms with regards to amnesties laws that were promulgated during and after the internal armed conflict, to the Constitutional Court that should render its decision on the matter shortly.[72]

Once the appeal and all other motions had been addressed, the pre-trial judge decided, on January 28, 2013, that there was sufficient evidence to initiate a trial against Ríos Montt[73]. Such trial is scheduled to begin March 19, 2013. In this case, the BDH and CALDH are both representing the civil party, *Asociación Justicia y Reconciliación* (Association for Justice and Reconciliation), with the support of several LWBC volunteers and interns

[72] LWBC, News Release, "Avocats Sans Frontières Canada présente un mémoire d'*amicus curiæ* concrenant les lois d'amnistie devant la Cour constitutionnelle du Guatemala" (21 November 2012), online: *http://www.asfcanada.ca/fr/nouvelles/avocats-sans-frontieres-canada-presente-un-memoire-d-amicus-curiae-concernant-les-lois-d-amnistie-devant-la-cour-constitutionnelle-du-guatemala-167*

[73] Dominic Voisard, "Deux procès pour génocide contre Rios Montt" (27 August, 2012), online: LWBC Blog *http://www.asfcanada.ca/fr/blogue/billet/deux-proces-pour-genocide-contre-rios-montt/141*; LWBC, Press Release, « Lawyers Without Borders Canada Welcomes the Opening of the Trial Against Former Head of State of Guatemala (January 31st, 2013), online: *http://www.asfcanada.ca/documents/file/press-release-rios-montt-jdg.pdf*.

5.2 Second Case of José Efraín Ríos Montt

The second trial against Ríos Montt specifically concerns his alleged implication in the massacre of the civilian population of the community of Las Dos Erres. It is possible that the public prosecution strategically chose this massacre to prosecute Ríos Montt, thinking it could rely on the evidence that substantiated the previous condemnation of material authors.

As in the first case against Ríos Montt, his lawyers filed motions, which delayed the proceedings. On May 14, 2012, defence lawyers presented a motion challenging the court's competence, based on the *LRN*. This law contains a special procedure to determine whether related offences, of common law, fall under the application of the law, and of the amnesty granted there under. This motion was dismissed by the court. The court determined that the judges, as the masters of their own procedures, should eliminate all obstacles that would impede the prosecution and condemnation of the authors of the Las Dos Erres massacre, including motions that could have a dilatory effect. The judge declared himself competent to hear the charges against Ríos Montt, as put forward by the public prosecution.

On May 21st, the public prosecution presented the charges against him: murders and crimes against the duties of humanity. According to the public prosecution, the concentration of both the legislative and executive branches of power in the hands of Ríos Montt allowed him to apply an anti-subversive policy that led to the commission of systematic violations of the human rights of civilians by members of the armed forces. Given his position of authority, Ríos Montt was aware of the atrocities that were about to be committed by his subordinates and he did not act to prevent or stop them and punish those responsible. Similar arguments were also put forward by the Bufete.

The defence suggested that his client was not present where the massacre took place and could not have participated in its commission. Ríos Montt himself declared that he took the necessary political measures to defend his country while it was embroiled in an internal armed conflict. He said he had a different vision of his country than that held by the guerilla

Considering the command chain and the authority he exercised over the armed forces when the massacre was perpetrated, the court ruled that there was sufficient evidence to reasonably believe that Ríos Montt could have been involved in the massacre. However, the judge did not retain the charge of murder and substituted that of genocide. According to the judge, there was a genocide committed with the objective of destroying a national group. The judge ordered proceedings be launched against Ríos Montt for genocide and for crimes against the duties of humanity.

This substitution in the charges brought against Ríos Montt surprised the audience. In fact, the victims of the massacre of Las Dos Erres were mostly composed of the Guatemalan mixed-race population, called "ladino", and were not members of an indigenous group. However, to qualify as genocide, the acts must have been committed with the intention of partially or entirely ensuring the destruction of a national, ethnic, or religious group. The evidence that the victims were members of such a group is an essential element of the crime. Even if the public prosecution and the civil party tried to demonstrate that the authors of the massacre were persuaded that the population was made up of guerilla, it seems probable that, considering international jurisprudence on the matter, this group would only be considered a political group, the destruction of which is not generally accepted as genocide.

For the charges of genocide and crimes against the duties of humanity, alternative measures to pre-trial imprisonment are possible, as long as there is no risk of flight or obstacle to truth verification,[74] which is why Ríos Montt has since been placed under house arrest. This would not have been the case if the judge had upheld the charge of murder, for which art. 264 CCP prohibits substitutive measures to imprisonment. The judge considered the list of crimes covered by article 264 to be exhaustive. This list includes murder but not genocide. Considering that he is not imprisoned, the defence could be encouraged to file motions to delay his trial. The public prosecution and the co-plaintiff will request a hearing to modify the charges against Ríos Montt. However, this has not yet been possible, as the defence initiated an amparo, which is delaying the case.

In this case, the BDH represents the co-plaintiff, FAMDEGUA. In the two cases against Ríos Montt, lawyers for the prosecution and the victims will have to demonstrate the responsibility of an alleged intellectual author of the massacres. It is a considerable precedent for Guatemala to see in the docket of the accused a former head of State and of the military for atrocities committed during the internal armed conflict.

[74]According to the judge, because Ríos Montt presented himself voluntarily to the Prosecution, there is no risk that he will escape. See *CCP*, *supra* note 24 at s. 262 and following.

6.
JORGE VINICIO SOSA ORANTES CASE

As previously mentioned, Jorge Vinicio Sosa Orantes is also currently under indictment in Guatemala. It is alleged that he was one of the four commanders that led the squad operation at Las Dos Erres, a higher position than other officers that have faced trial in Guatemala until now. During the 2011 trial, soldiers present in Las Dos Erres testified that not only Sosa Orantes led the operation, but he directly killed villagers with a sledgehammer and fired a machine gun into the well.

Sosa Orantes obtained both Canadian and United States citizenship in 1992 and 2008 respectively, although authorities at the time knew about the alleged implications of the Guatemalan armed forces in the commission of massacres. He was not detected: "because of oversights and lack of scrutiny by the Canadian and U.S. governments, according to court documents and interviews with Sosa, his relatives, officials and others".[75] This case has multiple connections with Canada, as one of the only survivors of the massacre, Ramiro Osorio Cristales, is also a Canadian citizen.

Sosa Orantes was only arrested on 18 January 2011 in Canada, based on an extradition request from the United States, where he is accused of having lied in his citizenship application. On September 2, 2011, the Alberta Court of Queen's Bench ruled that the legal and evidentiary requirements for extradition to the United States have been met, yet Chief Justice Wittmann declared:

> The evidence of the massacre at Dos Erres clearly establishes that Sosa was present and involved; that he actively participated in the killings with a sledgehammer, with a firearm and a grenade. The evidence also clearly establishes that he was one of the commanding officers that took the decision to slaughter 171 men, women and children. It is difficult for this Court to comprehend the murderous acts of depraved cruelty the scale disclosed by the evidence. This conduct is criminal in any civilization.[76]

After a decision of the Alberta Court of Appeal on August 8, 2012, that denied Sosa Orantes leave to appeal of the Alberta Court of Queen's Bench decision, he was extradited to the United States on September 21, 2012.

LWBC jointly with the Canadian Centre for International Justice (CCIJ) worked on this case, in collaboration with Guatemalan partners and victims; in order to have Sosa Orantes prosecuted for the worst crimes he is alleged to have committed in Guatemala: murder and crimes against the duties of humanity. In fact, the United States can only prosecute Sosa Orantes for charges of immigration fraud, for which there is a maximum sentence of 15 years, as the law does not provide extraterritorial jurisdiction for crimes against humanity. Therefore, LWBC and CCIJ advocated for Canada to carry a complete and thorough investigation and eventually bring criminal prosecution against him under its universal jurisdiction provided by the *Crimes Against Humanity and War Crimes Act (CAHWCA)* and the Criminal Code. Both organizations also advocated that:

> In the alternative, Canada should pursue an extradition option only if it results in Sosa Orantes facing charges commensurate with the crimes he allegedly committed. For the time being, only Guatemala's extradition request would allow this. One last option would be for Canada to seek assurances from the USA that Sosa Orantes will be extradited back to Guatemala or Canada to face justice for the more important charges. The greatest interest of justice and the fight against impunity require no less.[77]

Although Sosa Orantes is now in the United States, LWBC hopes he will be extradited to Guatemala where he may face charges for his alleged participation in the Las Dos Erres massacre.[78]

[75] Sebastian Rotella, "How an accused Guatemalan War Criminal Won U.S., Canadian citizenship" (18 October, 2012), online: Pro Publica http://www.propublica.org/article/accused-guatemalan-war-criminal-who-won-u.s.-and-canadian-citizenship-faces.

[76] *United States of America v. Sosa*, 2011 ABQB 534 at para. 32.

[77] LWBC, News Release, "LWBC Reiterates Call for Alleged Perpetrator of Crimes Against Humanity to Face Justice" (9 August, 2012), online: http://www.asfcanada.ca/fr/nouvelles/lwbc-reiterates-call-for-alleged-perpetrator-of-crimes-against-humanity-to-face-justice-147, Matt Eisenbrandt and Pascal Paradis, "Canada can't ignore alleged crimes against humanity" Calgary Herald (April 8, 2011), online: Canadian Centre for International Justice http://www.ccij.ca/media/ccij-in-the-news/index.php?WEBYEP_DI=10.

[78] LWBC, News Release, "Sosa Orantes Extradited to the United States for Immigration Fraud: LWBC Calls Upon Guatemala to Request his Transfer" (22 October, 2012), online: http://www.asfcanada.ca/en/news/sosa-orantes-extradited-to-the-united-states-for-immigration-fraud-lwbc-calls-upon-guatemala-to-request-his-transfer-160.

RECOMMENDATIONS

Based on the observations made by the 2011 trial observation team, LWBC's volunteer who attended the trial of Pimentel Ríos, and colleagues in Guatemala, we are respectfully providing a series of recommendations that we hope may assist in improving the criminal legal system in Guatemala.

Criminal Procedure of Guatemala:

- Broader cross-examinations should be allowed and encouraged, in particular on any matter that is relevant to the case before the court as well as any matter that is relevant to the witness' credibility. Leading questions during the examination-in-chief should not be allowed.
- The trial would benefit from less flexibility when it comes to the order of presentation. The prosecution and victims' witnesses should preferably be called first, and defence witnesses should testify only after the prosecution and victims' witnesses have all been heard and their case is closed.
- After a finding of guilt, the defendants and the victims, or their counsel, could be provided the opportunity, if they so request, to address the court as to what sentence should be imposed.
- Trials would benefit if there was more flexibility when dealing with counsel in terms of providing them with sufficient time and opportunity to explain their points, particularly when presenting their closing arguments.
- Objections and expert qualifications should be debated in Court.
- Limits could be imposed on the use of cameras or audio-visual recording equipment in the courtroom.
- Adequate means and facilities should be provided to accommodate hearing impaired witnesses.

Investigations and Administration of Justice:

- The Government of Guatemala should continue to encourage, assist and provide resources to the public prosecutor's office in its investigation of persons who are suspected of having participated in this massacre and other massacres or who are suspected of having planned or ordered them, as well as in relation to any other serious violations of fundamental rights. This would allow the public prosecutor's office to have more evidence tailored to each case.
- It should also support the courts in their efforts to restore confidence in the administration of justice in the country by reducing impunity and being more effective in criminal prosecutions.

International Perspective:

- Canada and other countries should support Guatemala in its efforts to have people who are alleged to have committed serious crimes in that country brought before the courts and tried for those crimes before a fair, independent and impartial tribunal.
- Further, U.S. and Guatemalan authorities should seriously consider the case of Jorge Vinicio Sosa Orantes and consider extraditing him to Guatemala for his alleged participation in the massacre.

CONCLUSION

These trials took place in a very specific context, which must be taken into account when considering this report. Guatemala faced a terrible internal armed conflict that lasted many years, one where violence was widespread. Peace accords were ultimately negotiated with the hope of ending this long period of suffering for the people of Guatemala, particularly for Indigenous peoples and peasants living in rural areas.

Many thought that the amnesty established in the LRN would cover any and all actions during the internal armed conflict, but recent decisions show the courts deciding otherwise, and making it clear that the authors of gross human rights violations like murder, genocide and crimes against humanity will not benefit from such amnesty.

LWBC salutes the efforts made by the Courts, lawyers, civil society and other parties in Guatemala to bring to justice the persons alleged to have participated in the massacre of Las Dos Erres and for their contributions to the changes that have occurred in the last few years to reduce impunity for those crimes.

LWBC hopes these trials constitute a turning point for Guatemala, that the issue of impunity will be broadly addressed, and that the people suspected of committing serious crimes will receive a fair and impartial trial before a court of law. The trials demonstrate the impact of strategic litigation actions for the advancement of human rights and reinforcement of the functioning of national legal systems in Guatemala and beyond.

These cases are part of a transitional justice process and demonstrate that justice applies to all citizens without distinction, including the intellectual authors of the crimes. In addition, it can reconstruct the historical memory of a country as well as represent a form of reparation for the relatives of the victims in their seeking of truth and justice.

APPENDIX I

DATE	PROCEDURE	APPLICABLE TO	COURT	NOTES
02/08/10	Motion to enforce the sentence of the I/A Court HR	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Supreme Court of Justice	See section 2.3
02/10/10	Written argument presented by Carlos Antonio Carías López against his arrest warrant	Carlos Antonio Carías López	Criminal Division Judge in Petén	
02/12/10	First declaration and indictment	Manuel Pop Sun	Criminal Division Judge in Petén	Accused charged with murder and crimes against the duties of humanity. The accused chose not to declare.
02/17/10	First declaration and indictment	Reyes Collin Gualip	Criminal Division Judge in Petén	Accused charged with murder and crimes against the duties of humanity. The accused chose not to declare.
03/01/10	First declaration and indictment	Carlos Antonio Carías López	Criminal Division Judge in Petén	Accused charged with aggravated robbery and crimes against the duties of humanity.
04/07/10	Motion to modify Carlos Antonio Carías López's indictment	Carlos Antonio Carías López	Criminal Division Judge in Petén	To add the charge of murder.
06/03/10	Transfer of the case to Guatemala City – under the "high risk" jurisdiction	Manuel Pop Sun and Reyes Collin Gualip	Supreme Court of Justice	New number of Case C-01076-2010-0003
07/27/10	Hearing to modify Carlos Antonio Carías López's indictment	Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	The Court adds the charge of murder. Accused detained in custody as of that date.

DATE	PROCEDURE	APPLICABLE TO	COURT	NOTES
09/01/10	Preliminary examination: Trial opening authorization	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	Cases against the accused are joined as of that date.
09/08/10	Preliminary examination: Trial opening authorization	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	The charges against the accused were officially accepted.
09/13/10	Hearing: Evidence admission	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	
09/23/10	Hearing: Evidence admission	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	
09/29/10	Hearing: Evidence admission	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	Cancelled.
10/01/10	Hearing: Evidence admission	Manuel Pop Sun , Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	Cancelled.
10/04/10	Hearing: Evidence admission	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	
10/08/10	Hearing: Evidence admission	Manuel Pop Sun, Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	
10/23/10	Hearing: Evidence admission	Manuel Pop Sun , Reyes Collin Gualip and Carlos Antonio Carías López	Criminal Division Judge in Guatemala City	Decision on which of the evidence submitted by the parties to the Court was admitted.

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