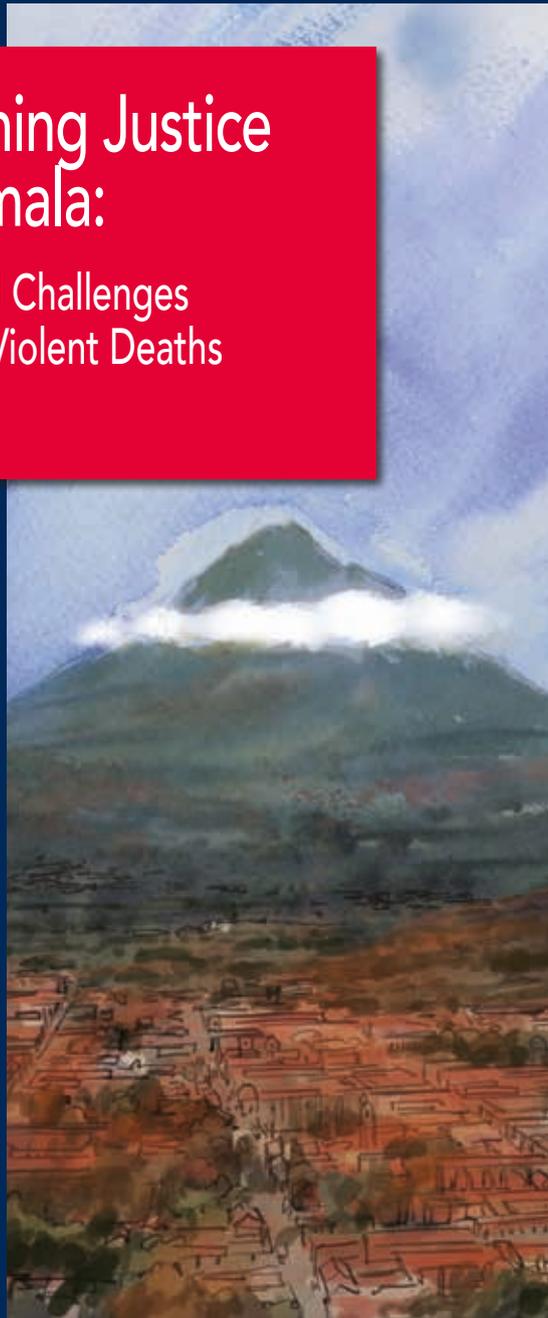


Transforming Justice in Guatemala:

Strategies and Challenges
Investigating Violent Deaths
2011-2014

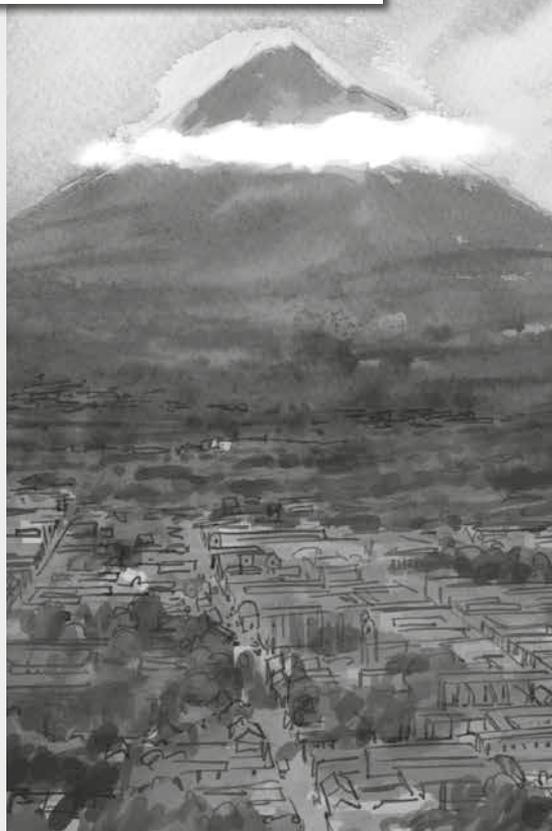


Claudia Paz y Paz Bailey



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Introduction



On December 9, 2010, I was appointed attorney general of Guatemala, a post I held until May 17, 2014. I was the first woman to become attorney general, and the first person who came from academia and had worked for the defense of human rights. In Guatemala at that time the appointment of a person with my characteristics could only happen in the midst of a crisis. Just as it had been in a moment of crisis three years earlier, in 2007, that the State of Guatemala had asked the United Nations to install, in the country, the International Commission against Impunity in Guatemala (CICIG).

The previous appointment of the attorney general had been annulled by the Constitutional Court, after the then-Commissioner of the CICIG resigned, as he alleged that the recently-appointed attorney general had ties to persons related to organized crime. Applying for the job was not an easy decision. At that time there was enormous distrust in the justice system; it was thought that it was impossible to bring about any change. In addition, it was public knowledge that the security and justice institutions were weak, infiltrated as they were by organized crime, and that those organizations wielded tremendous power. By trying to fight them you could do harm not only to your reputation.

Efforts from academia and human rights advocacy to transform the justice system had practically reached their limit. Along with other professionals, we had documented in detail the failings of the institutions and the processes, reported and accompanied cases of serious human rights violations, we even got new laws passed. Yet we only advanced a few millimeters in expanding access to justice for the majority of Guatemalans. The security situation, instead of improving, was getting worse and paths for making progress from outside were running their course. It was the time to transform the crisis into an opportunity and to accept the challenges that a position such as this would entail.

The challenges were enormous, both within the institution and beyond. Internally, the Attorney General's Office lacked a clear way forward. Citizens did not believe in the prosecutors, and public-sector workers were frustrated and unmotivated. It was clear that some were working for organized crime. So where to begin? The best surprise was to find career-service officers within the institution who were committed to their work, and who acted responsibly in relation to the institution and the victims. It was with those conscientious career-service officers that those of us who went in from the outside teamed up. Working together we undertook the institutional transformations narrated in this book. This composition had its advantages. On the one hand, those of us coming in from outside had a vision of change, a path to follow for transforming the institution, and on the other hand, the career prosecutors knew the institution and the trade of investigating criminal cases.

In the national context Guatemala was undergoing a situation of insecurity and institutional weakness. Even though institutional strengthening actions had begun since 2009, with Amílcar Velásquez Zarate heading up the Attorney General's Office, and the arrival in 2010 of Carlos Menocal to head up the Ministry of Interior, there was not yet enough progress, and citizens' distrust in the justice and security institutions was profound. Insecurity was not just a perception. By 2009 the number of violent deaths had doubled in relation to 2001, and the homicide rate was the highest since the signing of the Peace Accords, at 46.4 per 100,000 population.

The State's response, in its public discourse, was to reinforce the idea that the gangs were the principal and only ones responsible for the violence in Guatemala, ignoring other factors that also cause violence, such as the displacement of drug-trafficking organizations from Mexico, for example the Gulf Cartel and the Zetas, which disputed control over routes for the transshipment of money and drugs with the local organizations. There were penalties on the books of up to 50 years for murder, yet the deterrent effect was minimal, with more than 95% impunity in crimes against life.

The plans for responding to the gangs were not very effective, such as "Plan Escoba," which jailed hundreds of young people supposedly caught *in flagrante delicto* for drug possession. These were young people who would enter and leave the prisons precisely because they are poor youths, without any proof of their participation in criminal conduct. These policies also included the participation of members of the military in police patrols, i.e. the return of the Army to internal security tasks, with very little in the way of results.

As of 2004 the situation worsened with the increase in the arbitrary action of the police and in extrajudicial executions, and the murders of prisoners in prison. These were human rights violations, as state agents executed alleged criminals. Their unlawful activity was more complex; groups were formed within the security forces that participated in "*tumbes*" or stealing drugs and money, contraband in fuel, contract killings, and other unlawful activities.

Similar measures were adopted in Honduras and El Salvador, in response to the situation of insecurity, focusing exclusively on the gangs, with the adoption of laws called *mano dura* [hard-line] and *super mano dura* [super hard-line] which have led to the detention of thousands of youths merely for belonging to the gang. The results were the opposite of what was expected: in the prisons the gangs grew tighter and mutated into more violent groups. In addition, in these countries prison overcrowding worsened, the deaths of inmates increased, and there were more police abuses and extrajudicial executions.

In an evaluation of the impact of these policies the UNDP, in its Regional Human Development Report for Latin America 2013-14, categorically concluded: “The hard-line policies adopted in the region have failed to attain their goal of reducing violence and crime. They have also had a deeply negative effect on democratic co-existence and the respect for human rights.”

In Guatemala, given the failure of these policies and the sustained increase in violence, there was a widespread sense that very little or nothing could be done to change the situation. In addition, citizens became more tolerant of recourse to illegal methods to address the insecurity, including private violent responses such as lynching, contract killings, and revenge killings.

So it was an enormous challenge: reducing violent deaths by reducing impunity. Confronting organized crime, drug trafficking, the criminal structures within the State, and the gangs with actions respectful of human rights. This is the history of how we took on that challenge. What measures did we take, as the central team at the Attorney General’s Office, to improve the clarification of facts in crimes against life? And what was the influence of this clarification in reducing violent deaths in the country?

It’s a story that should be told because it shows that it is possible to take on organized crime with absolute respect for the rule of law; that there are fully legal measures that can and should be implemented to increase the efficacy of the justice system and reduce levels of violence.

These measures were not exclusively at the Attorney General’s Office. In 2010 the presiding judge of the Criminal Chamber at the Supreme Court of Justice was César Barrientos, a person committed to improving the criminal justice system and who clearly understands the changes needed to achieve it. Carlos Menocal was in charge at the Ministry of Interior; his term had begun with the decline in violent deaths, and progress in measures for strengthening the National Civilian Police. The National Institute of Forensic Science had developed its capacity to provide scientific evidence. In other words, there was a political will at the highest level in the four institutions, which made it possible to implement policies consistently and in a coordinated fashion.

The transformation of the Attorney General’s Office is narrated based on my experience. What was the objective? How was it to be attained? What was accomplished? What effects did it have? What are the tasks pending? It is documented through official sources, such as the Strategic Plan of the Attorney General’s Office 2011-2014, annual reports (“Memorias de Labores”) of the institution, the plans and reports of programs, and other evaluations and reports

that examine the situation of justice and security in the country and in the region. In addition, 15 interviews were conducted with persons who were part of the core team at the Attorney General's Office in those years, and persons from outside who had a direct relationship with the changes that were implemented. To analyze the impacts, official data are used on homicides, injuries, and persons missing from the National Civilian Police and from autopsies performed by INACIF.

The book is structured in three chapters. The first describes the criminal justice reform in Guatemala and the institutional transformations that began with the Peace Accords, particularly how the Attorney General's Office, the National Civilian Police, and the National Institute of Forensic Science were established, and the role of judges in the accusatory process. The failings in the early days of the new institutional framework are examined, including the failure to carry out the promise contained in the Peace Accords to transform the justice system. There is a description of how the criminal networks that operated in the context of the war as part of the state apparatus, and their involvement in the new forms of crime and how they operated to guarantee themselves impunity. The conditions that facilitated the establishment of the CICIG in Guatemala are also explained.

The second chapter describes the changes in the Attorney General's Office, the implementation of a new model of prosecutorial management, and of a new methodology for criminal investigation, strategic prosecution. Although the transformations in the Attorney General's Office in large measure reached the whole institution, the analysis is focused on the Office of the Prosecutor for Crimes against Life, given its importance in relation to security in the country, and since it is where the new model of prosecutorial management and strategic prosecution were implemented to the greatest extent. The change and their effects during my term as attorney general (December 2010 to May 2014) are examined.

The third chapter analyzes trends in homicides in Guatemala from 2001 to 2015 to determine whether the reduction in homicides that occurred as of 2010 was related to the changes implemented in the system of criminal investigation. Although 2014 and 2015 go beyond my period as attorney general, this information was important for verifying whether the trends continued or changed. The data are examined for trends, concentration, and profiles of the victims by sex and age. There is a comparison of trends in homicides, injuries, and persons missing to establish whether there is a correlation between homicide and injuries and whether the reduction in homicides translated into an increase in persons missing or disappeared, i.e. into a change in the pattern of violence.

I thank Open Society Foundations for having given me the opportunity to write this book; and Georgetown University, both the Law School and the Georgetown Institute for Women, Peace and Security, especially Melanne Verveer, for having hosted me while I wrote this book. I also thank Alice Barrett for assistance in compiling and analyzing the bibliography, cases, and interviews, and organizing the information; Luis Ramírez, Silvina Ramírez, and Carlos Martín Beristain for their patient accompaniment and valuable contributions; Isabel Zoder and Gabriela Paz, who guided me in the statistical analysis; and Alejandra Samayoa for assistance editing.

This book is dedicated to the men and women who accompanied me during the three years and five months of my term. It was their work, their valor, and their commitment to the victims and to justice in Guatemala that showed that it is possible to take on violence and crime with absolute respect for the law. These persons continue working for justice in Guatemala; to them my most sincere recognition and gratitude.

Chapter I.

Criminal justice in Guatemala.
Reform, gains,
limits and challenges



This chapter describes the process of criminal justice reform in Guatemala that began with the adoption of the Code of Criminal Procedure in 1992, which one must become familiar with in order to understand the scenario of the changes brought about during my term as attorney general. The criminal justice reform in Guatemala occurred during the negotiation and signing of the Peace Accords, and their implementation gave the reform new impetus, incorporated new actors, and added an element that had not been taken into consideration in the initial process, the creation of the National Civilian Police. Therefore reference is made to the content of the Peace Accords, especially the agreement related to the justice system. In addition, two events that limited their implementation are discussed.

Brief reference is also made to the workings of the criminal justice system during the war, since this was the criminal justice system that the Peace Accords set out to transform.

To understand the context of the criminal justice system in Guatemala in 2010 one must be familiar with the shortcomings of the reforms begun in the early 1990s. Ten years after their implementation it appeared that they had not been effective in their main purpose, which was to determine the facts in violent crimes. Accordingly, there is a description of the enormous limitations of the reform process, the infiltration of the institutions of the criminal justice system by actors with ties to organized crime, and how the crisis of security and legitimacy led the State to request support from the international community in order to establish the International Commission against Impunity in Guatemala (CICIG: Comisión Internacional contra la Impunidad de Guatemala).

The CICIG's presence in Guatemala gave new impetus to the transformations begun in 1994 and helped with legislative and institutional reforms, but above all it led to the appointment of new authorities at the highest levels of the Ministry of Interior (Ministerio de Gobernación), which is in charge of the National Civilian Police; the judiciary; and the Attorney General's Office. The CICIG's presence in Guatemala was a necessary condition for my appointment as attorney general, and for the spaces to open up that were necessary for the transformations given impetus by the Attorney General's Office. Accordingly, this chapter ends by describing CICIG's arrival in Guatemala and the processes of change it sparked.

Before referring to the transformation of criminal justice in Guatemala some indicators are included that describe the country's socioeconomic makeup so as to facilitate an understanding of the context in which the events described unfolded.

A. Guatemala, a weak and exclusionary state

Guatemala is a diverse, multiethnic, multicultural, and multilingual country. Ethnically speaking, four different peoples live in Guatemala, the Maya, the Garífuna, the Xinca, and the mestizos. Twenty-four languages are spoken in addition to Spanish, 22 of them Mayan.¹ It is a majority rural country (54% of the population) and it is predominantly agricultural (32% of the population). Of a total population of some 15 million, 51% are women, 40% identify as indigenous, and 70% are under 30 years of age.² The human development index is 0.57, below the world average, and the lowest in Central America.³

Historically Guatemala has had an exclusionary state, as expressed in the following indicators: despite being the largest economy of Central America, with a gross domestic product of \$53.8 billion⁴, it has the highest rates of poverty (70%) and extreme poverty (30%). This poverty is not expressed equally across the population; for example, extreme poverty is 47% in the indigenous population, and there are 80% more women than men living in poverty. Half of all children suffer chronic malnutrition. Tax revenues have not been more than 11% of GDP.⁵

In addition, Guatemala has been characterized by the concentration of economic power: 10% of Guatemalans receive almost half of total income, according to the Central American Bank for Economic Integration. The poorest decile receives only 1.0% of national income, while the richest decile takes in 47.4%.⁶ In a predominantly agricultural country, 92.1% of small producers occupy 21.9% of the area, while 1.9% of producers (commercial producers) occupy 56.6% of the area.⁷

1 Agreement on Identity and Rights of Indigenous Peoples.

2 INE, *Caracterización estadística de Guatemala*, Guatemala, 2012.

3 UNDP, Guatemala, a country of opportunities for youth? *National Human Development Report 2011/2012*. Guatemala City, 2012, p. 27.

4 <http://www.bancomundial.org/es/country/guatemala>.

5 UNDP indicators are used. The UNDP uses the concept of multidimensional poverty, understanding it to gauge privations in the dimensions of the Human Development Index. UNDP, op. cit., pp. 39, 40, 43 and 46.

6 According to the Central American Bank for Economic Integration (BCIE/CABEI), the poorest decile receives only 1.0% of national income, while the richest decile takes in 47.4% of national income. <http://www.bcie.org/uploaded/content/article/1285334126.pdf>.

7 INE, *Agricultural Census*, Guatemala, 2006.

As regards political power, only 14.5% of the legislators are women (23 in the 2016 elections) and 2.3% of all mayors are women (8 of 338 mayors). The representation of indigenous persons is even lower in the national Congress – only 11.5% of the legislators are indigenous (18 of 158) – and much greater among the mayors, 30.0% of whom are indigenous. The political parties in Guatemala are weak and volatile. In 30 years of elections, since the promulgation of the 1985 Constitution, more than 50 parties have formed. Of these, more than 35 have disappeared; and each party has participated, on average, in 1.6 electoral events.⁸ In the words of Jonathan Lemus, “Guatemalan political parties are centralized, exclusive, and hardly institutionalized.”⁹

The exclusionary nature of the Guatemalan State has historical roots. It was described as follows by the Commission for Historical Clarification: “The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanizing social system. The State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice.”¹⁰

Guatemala continued to be exclusionary after the signing of the Peace Accords, yet new actors came on the scene, the so-called emerging elites, whose accumulation of wealth began during the war. These groups range from the emerging bourgeois sectors to groups that became rich from organized crime, including the military elites.¹¹ Gavigan describes it in the following terms: “Since the 1990s, both organized crime and an emerging elite using the tools of electoral democracy and embedded clientelistic practices to compete for influence in state institutions gained significant political influence.”¹² In other words, electoral democracy did not mean greater openness of the institutions to the demands of the vast majorities.

8 Hugo Novales. *Partidos políticos guatemaltecos: financiamiento e institucionalidad*. Guatemala City, ASÍES, 2014, p. 3.

9 Jonathan Lemus. *Partidos políticos guatemaltecos. Dinámicas internas y desempeño*. Guatemala City, ASÍES, 2012, p. 5.

10 CEH, *Memoria del Silencio*, Guatemala, UNOPS, 1999. Conclusions, p. 22.

11 On the elites in Guatemala, see Juan Hernández Pico. Las élites tradicionales en pugna con las élites emergentes. *Revista Envío*, No. 397, April 1998.

12 Patrick Gavigan. *Against the Odds: CICIG in Guatemala*. New York, Open Society Foundations, 2016, p. 4.

Finally, Guatemala has also been defined as a weak state¹³ with very little presence in the national territory. Some of the characteristics of the organization of the state defined in the 1985 Constitution shape this weakness: the presidential term is four years and there is no re-election, which makes any reform project and the continuity of public policies extremely difficult; the appointments of members of the top echelons of the judiciary and the Attorney General's Office are conditioned by corporatist procedures susceptible to political negotiation, which facilitates their dependence on and subjugation to the political powers-that-be.¹⁴

According to Gavigan, this design has been deliberate: "The 1985 Constitution was drafted by representatives of conservative parties hoping to maintain a small, stable state impermeable to concentrations of power that could challenge the political order."¹⁵

These two characteristics of the Guatemalan State, weak and exclusionary, have evidently had an impact, as described throughout this chapter, on the design and workings of the justice institutions. In the last three decades there has been a tension between the efforts of national actors, at times accompanied by the international community, to build strong and independent institutions, and the contrary efforts of major political and economic actors who have preferred weak state institutions incapable of challenging their interests.

B. The Peace Accords

Guatemala suffered a war that lasted 34 years, from 1962 to 1996. In 1996, peace was signed between the government and the guerrilla forces, represented by the Unidad Revolucionaria Nacional Guatemalteca (URNG). The Commission for Historical Clarification (CEH: Comisión para el Esclarecimiento Histórico), established by the United Nations in the context of the Peace Accords, in its report "Memory of Silence," noted that 200,000 persons were killed during the war, including persons executed and disappeared, and more than one million persons were displaced both within and beyond the country's borders.¹⁶

13 The Fragile States Index 2015, produced by Foreign Policy and the Fund For Peace, places Guatemala in the group of countries that have a fragile state (number 64) in relation to matters having to do with political, economic, and social demands on the state. <http://fsi.fundforpeace.org>.

14 Patrick Gavigan. *Against the Odds: CICIG in Guatemala*. op. cit. p. 25.

15 Patrick Gavigan. *Against the Odds: CICIG in Guatemala*. op. cit. p. 25.

16 This information was obtained combining its data with other studies on violence in Guatemala. CEH. *Memoria del Silencio*. Guatemala, UNOPS, 1999. Vol. IV, p. 21.

The CEH also documented cases of torture, rape, and sexual violence. In 83.3% of these cases the victims were Maya. In all, 93% of the cases documented were attributable to actions by the State.¹⁷ The CEH concluded: “in the context of the counterinsurgency operations carried out from 1981 to 1983, agents of the Guatemalan State carried out acts of genocide against groups of Maya people who lived in the regions analyzed in the report.”¹⁸

Following is a brief description of how the justice system operated during the war, and how it was subordinated to the Army and permeated by the logic of counterinsurgency. Next is an analysis of the main aims of the Peace Accords in relation to justice and security, and the main historical events that limited their full implementation.

1. The system for imparting criminal justice during the war

During the war the local, municipal, and departmental authorities, as well as the entire state apparatus, were placed under the control and oversight of the Army.¹⁹ There was absolute subordination of the justice system to the military authorities, who appointed the judges. This subordination reached its highest expression in 1982, when the military junta issued Decree 24-82, called the Fundamental Statute of Government (Estatuto Fundamental de Gobierno), which concentrated executive and legislative powers in the military junta. It also granted the president of the military junta the power to appoint the president and other members of the Supreme Court of Justice and all other collegial courts.²⁰

In addition, during the government of Efraín Ríos Montt special military courts (Tribunales de Fuero Especial) were established; these were the highest expression of the subordination of the judiciary to the military authorities (Decree Law 46-82).²¹ According to the CEH, “the summary trials before the special military courts violated all the guarantees entailed in the right to due

17 Id. Vol. I, p. 73.

18 Id. Vol. IV, p. 51

19 Id. Vol. I, p. 81.

20 Article 3 of Decree-Law No. 44-82 established that “all officials and employees of the State, whatever their rank, shall abide by the provisions issued by the Army command pursuant to this decree, and in the event that for whatever reason they fail to do so, the Army shall act as it deems advisable.”

21 IACHR. *Report on the Situation of Human Rights in Guatemala*. Washington, DC, 1983. <http://www.cidh.org/countryrep/Guatemala83sp/Cap.4.htm>

process of law. Based on the secrecy of their actions and the defenselessness of the accused their objective was to secure a confession by means of torture to ensure the penalty would be imposed, and to give the appearance of legality.”²²

Such was the degree of militarization that the president of the Supreme Court of Justice from 1982 to 1984, Ricardo Sagastume Vidaurre, in his speech given when he resigned, said that he was always against the judges having to take shifts in the civil defense patrols.²³

Another example of the militarization in those years was that the Procurador General de la Nación (Chief Government Counsel), who at the time also performed the functions of attorney general, was appointed by the military junta. The Attorney General’s Office served as an auxiliary to the military junta, both because its chief officer was appointed by it, and in light of the functions it performed.²⁴

Militarization was even more intense with respect to the National Police (Policía Nacional) and Treasury Police (Guardia de Hacienda), the state security forces. The report of the CEH notes: “Beginning in the mid-1960s, these forces were subordinated to Army control, a situation that was maintained throughout the confrontation. Often acting under Army orders, the ‘detectives’ and other plainclothes police became the principal agents of state terror in Guatemala City for a period of almost 20 years.”²⁵

The intelligence units of the Guatemalan Army, which had the greatest control and influence within the Army, secured control of the National Police. The mechanisms they used to obtain this control were, first, the fact that the directors and deputy directors of the National Police were Army intelligence officers. And second, there was a two-way exchange between intelligence personnel and members of the Police: police officers were assigned to Army

22 CEH. *Memoria del Silencio*. op. cit. Vol. II, p. 142.

23 IACHR. *Compilación de informes publicados sobre la situación de los derechos humanos en Guatemala, 1980-1995*, Tomo I (1980-1985), Washington, D.C., 1995. The Civil Defense Patrols (PAC: Patrullas de Autodefensa Civil) were groups established during the war as of 1981 and legalized by Executive Order 222-83 with the aim of involving the civilian population in providing military service, in many cases forced, authorized and coordinated by the Guatemalan Army.

24 Articles 104 and 106 of Decree 24-82, the Fundamental Statute of Government (Estatuto Fundamental de Gobierno).

25 CEH. *Memoria del Silencio*. op. cit. Conclusions, p. 24.

Intelligence, the Presidential General Staff (also known as “El Archivo”), and local army intelligence units in the military zones (known as “S-2”) , and the Ministry of Interior (Ministerio de Gobernación) granted a considerable number of positions to Army Intelligence and the Presidential General Staff so that their members could work as uniformed officers in the National Police.²⁶

Intelligence took control not only of the police, but also of many other state agencies. They penetrated several public agencies, such as the official institutions in charge of mail, telephone service, immigration, customs, courts, the Ministry of Finance, and the Attorney General’s Office. They formed and infiltrated many of the private security companies, which were made up of members and former members of Army Intelligence.²⁷

In these circumstances the National Police, entrusted with the mission of protecting citizens and investigating crime, deviated completely from its function and participated actively in carrying out serious human rights violations.

The courts of justice were completely subordinated and infiltrated, and failed to carry out their function of investigating and punishing serious crimes. The CEH concluded: “During the internal armed confrontation the courts were incapable of investigating, trying, judging and punishing even a small number of those responsible for the most serious human rights crimes, or of providing protection for the victims. 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.”²⁸

During the last years of the war there was a profound distrust in the justice institutions that “resulted from a judicial system that forgot its essential mission: to protect the citizens, especially the weakest, from the abuse of power, and to seek peace by the timely, effective, and egalitarian enforcement of the laws.”²⁹

26 CEH. *Memoria del Silencio*. op. cit. Vol. II, p. 94.

27 Id. Vol. II, p. 96.

28 Id. Vol. V, p. 23.

29 Id. Vol. I, p. 72.

2. The signing of the Peace Accords

The peace negotiations between the *Unidad Revolucionaria Nacional Guatemalteca* and the government of Guatemala resulted in 12 agreements that were signed over a five-year period. The first, the “*Framework Agreement for Searching for Peace by Political Means,*” was signed in 1991, and the last, “*Agreement for a Firm and Lasting Peace,*” on December 29, 1996.

One of the greatest challenges after the signing of the Peace Accords was to rebuild effective justice institutions and citizen trust in their independence by creating new institutions that answered to the needs of democracy, with national coverage, and that carried out their essential function of protecting persons. For this reason, the main content of the accords includes the commitment to fight impunity and strengthen the justice system.³⁰ They expressly provide: “The reform and modernization of the administration of justice should be geared to preventing the judiciary from producing or covering up a system of impunity and corruption. The judicial process is not a simple procedure regulated by codes and ordinary laws but rather an instrument for ensuring the basic right to justice.”³¹

The “Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society” is the one that refers with greatest specificity to the changes in the justice and security system.³² The Agreement begins by recognizing that “One of the major structural weaknesses of the Guatemalan State stems from the system of administration of justice, which is one of the key public services ... [whose characteristics] breed corruption and inefficiency.” And it notes: “A priority in this respect is to reform the administration of justice in order to put an end to inefficiency, eradicate corruption and guarantee free access to the justice system, impartiality in the application of the law, judicial independence, ethical authority and the integrity and modernization of the system as a whole.”

The Agreement provided for reforms in various areas. The main ones were strengthening the judicial career service, separating judicial and administrative functions, recognizing the Mayan authorities, introducing reforms to the Criminal Code, expanding the coverage of the judiciary and the Attorney General’s Office

30 Commitment III, Comprehensive Agreement on Human Rights, Mexico City, 1994.

31 Commitment III, Agreement on Strengthening the Civil Power and the Role of the Army in a Democratic Society.

32 Agreement signed on September 19, 1996.

within the country, establishing oral procedure in all judicial proceedings, and creating the public defenders' office for criminal matters, and the National Civilian Police.

The impetus of the transformations begun with the Peace Accords was weakened by two events that represented major setbacks in their implementation. First was the assassination of Monsignor Juan José Gerardi Conedera, auxiliary bishop of the Archdiocese of Guatemala City and coordinator of the Archdiocese's Human Rights Office, on April 26, 1998, two days after having submitted the Report for Recovery of Historical Memory (REMHI: Informe de Recuperación de la Memoria Histórica). The second setback was the rejection, by referendum, of the constitutional reforms proposed in the Peace Accords, which were mostly aimed at strengthening the justice system.

3. The assassination of Monsignor Juan José Gerardi

Monsignor Juan José Gerardi was assassinated on April 26, 1998. Forty-eight hours earlier he had presented the report "*Guatemala: Nunca Mas*" ("Guatemala: Never Again"), which contained thousands of testimonies of victims and survivors compiled by the Catholic Church and described the serious human rights violations that occurred during the war. In the words of Monsignor Gerardi, the report was produced because the Catholic Church wanted to "contribute to building a different country. That is why we recover the memory of the people. This path was and continues to involve many risks, yet building the Kingdom of God has risks, and the only ones who build it are those who have the strength to face them."³³

Based on the timing of the assassination and the way he was killed – Monsignor Gerardi was murdered by blows to the head³⁴ – there is no doubt that those who had him killed wanted to send a strong message regarding the obstacles

33 Mons. Juan José Gerardi, speech of April 24, on occasion of the presentation of the REMHI report.

34 According to the Archdiocesan Office on Human Rights (ODHAG), "On Sunday, April 26, at approximately 10:00 p.m., when entering his home, after a routine family visit, Monsignor Gerardi was attacked by an individual who was not identified. The assassin struck Monsignor Gerardi with a piece of concrete, and subsequently finished him off with the same object with a blow to the face, disfiguring it. No object of value in the house, nor the vehicle he got out of in his garage, nor any personal belonging was touched by the assassin." ODHAG, Press Release, Guatemala City, April 27, 1998.

that persisted to attaining the truth, memory, and justice in Guatemala.³⁵ Three military officers were convicted of the crime, Colonel Byron Lima Estrada, Captain Byron Lima Oliva, and Specialist Obdulio Villanueva, and one priest, Mario Orantes.

The crime had at least two political objectives. One, as the Bishops Conference noted, was to diminish the impetus of the reform processes contained in the Peace Accords, which were opposed by the Guatemala's most conservative military and economic sectors.³⁶ This was noted by the bishops in a public statement: "We are convinced that those who killed Monsignor Gerardi not only sought to kill his body but also his work, most notably the Human Rights Office of the Archdiocese of Guatemala City and the REMHI Project, thereby causing grave harm to the peace process. We the bishops of Guatemala state our firm decision to see to it that those works and their fruits not remain abruptly interrupted."³⁷

Furthermore, the assassination revealed that the structures that had formed during the war that were responsible for the serious human rights violations continued to operate. They were able to use the violent methods that had characterized them during the war, after the Peace Accords were signed, not only to stop the social transformations announced in the Peace Accords, but also, and above all, to prevent any prosecution of serious human rights violations.

The REMHI report contained a detailed description not only of the impacts of the violence; it also included an analysis of the workings of the "mechanisms of horror" that made possible the massive violence against the civilian population. It presented documented cases of serious human rights violations, especially massacres, extrajudicial executions, and forced disappearances. It also named the names of some of those responsible for the atrocities. There was a major social demand to see those responsible prosecuted for their crimes and punished accordingly. The perpetrators were not about to let that happen. Monsignor Gerardi's assassination was a clear message of what could happen to those who worked on behalf of truth and justice. It spread new fear in numerous social sectors and communities in a scenario in which the

35 United Nations Verification Mission in Guatemala (MINUGUA), Third Report of the Secretary General, A/53/421 (January 1-July 31, 1998), p. 15.

36 Juan Hernández Pico. Gerardi: un crimen político que amenaza el proceso de paz. *Revista Envío*, No. 197, August 1998.

37 Communication from the Guatemalan Bishops Conference on the current status of the investigation into the assassination of Monsignor Juan Gerardi Conedera, August 7, 1998.

country was moving towards the creation of new areas of social consensus fostered by the Peace Accords. Indeed convictions in the first cases involving serious human rights violations were not to be handed down until 10 years after the report was released.³⁸

MINUGUA documented these effects of the Gerardi assassination: “The crime had the greatest impact, both nationally and internationally, in view of the eminent figure of the prelate, the brutal way in which the assassination was carried out – which for many revived the horrors of the past – and the underlying message that was being sent to the promoters of human rights and the peace process itself, when it was revealed that the persons responsible belonged to the Presidential General Staff. This office, under the Army, had become an intelligence agency with its own operational capacity during the internal armed confrontation.”³⁹

4. The “no” vote against the proposed constitutional reform

The other setback to the process of change that began with the peace process was the victory of the “no” vote in the May 1999 referendum. Only 18.5% of the voters went to the polls: 7.6% voted “yes,” 9.3% voted “no,” and 1.6% cast void or blank ballots.⁴⁰

This result made it impossible to adopt basic constitutional reforms for implementing the Peace Accords, especially those aimed at strengthening the judicial career service and the independence of the judiciary, those that decreed that the military forces were not to be involved in public security tasks, and those aimed at full recognition of the rights of the indigenous peoples, among

38 Except for the extrajudicial execution of Myrna Mack and the case against Cándido Noriega, military commissioner of El Quiché, there had been no progress in cases of human rights violations. For example, the case of the Las Dos Erres massacre was obstructed for more than 10 years. On August 31, 2009, former military commissioner Felipe Cusanero Coj was convicted and sentenced to 150 years in prison for the forced disappearance of six persons in Chimaltenango. It was the first conviction for forced disappearance in Guatemala. After that conviction, in the last five years more than 10 cases have gone to trial, including the case against former General Efraín Ríos Montt, for genocide, in which he was convicted. The trial was later annulled and a new trial has not been held.

39 MINUGUA. *Final report on the activities of the United Nations Verification Mission in Guatemala*, Guatemala City, 2004, p. 6.

40 Data from the Supreme Electoral Tribunal.

them express recognition of traditional authorities, the Mayan languages, and consultation in the case of administrative measures that affect them.⁴¹

The scant participation was due, first, to numerous social sectors including the international community taking it for granted that those reforms would be approved, thus they trusted in the outcome and did not sufficiently publicize its contents; and second, to a major disinformation campaign based on racist messages. The effects of this campaign also explain the prevalence of the “no” vote. Its origins were in the fear “that the constitutional reforms would shift the balance of power in Guatemala, starting a dangerous trend by recognizing the majority status of the Mayan population and their cultural values, spirituality, customary law, and languages.”⁴²

Actually, the vote against the constitutional reform reflected the scant commitment on the part of Guatemala’s economic and political elites to implementing the Peace Accords. As MINUGUA indicated, the defeat of the 1999 referendum was the greatest political setback in the process. This was due to “the lack of strong national constituencies supportive of the accords and capable of pressuring successive Governments to implement them. Although the negotiating process broadly involved organized civil society groups, the idea that the agreements represented a full national consensus was later questioned by some sectors of Guatemalan society – the private sector and some political parties included – that either opposed the accords or claimed not to have been sufficiently represented or consulted in the negotiating process.”⁴³

41 United Nations Verification Mission in Guatemala (MINUGUA), Fourth Report of the Secretary General A/54/526 (August 1, 1998-October 31, 1999), para. 30. The main reforms to the justice system included, among others, recognition of indigenous customary law; the administration of justice in local languages; the preference for oral hearings over written procedure; simplification of procedures; implementation of the Law on the Judicial Career Service; and the establishment of a Council on the Judicial Career Service and judicial discipline for oral hearings over written procedure; simplification of procedures; implementation of the Law on the Judicial Career Service...; and the establishment of a Council on the Judicial Career Service and judicial disciplinary boards. ... The full set of reforms also included a provision on the election of 15 members of the Supreme Court of Justice for a term of seven years, in addition to an increase in the judiciary’s share of the budget, from 2% to 6%”. Report of the United Nations Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission resolution No. 1999/31: Report on the mission to Guatemala, E/CH.4/2000/61/Add.1, January 6, 2000, para. 33.

42 Juan Hernández Pico. ¿Por qué el NO en la Consulta Popular? *Revista Envío*, No. 208, Managua, July 1999.

43 MINUGUA, Ninth Report, Guatemala City, 2004.

According to Helen Mack, the political and economic elites had to commit to the reforms contained in the Peace Accords in order to move them forward, but this did not happen in the case of the constitutional reforms. In her words, “neither of the two sectors – responsible in large measure for the country’s structural problems – have believed in the Peace Accords, and they have not been fully implemented; in practice, they have been the target of a systematic blockade by the country’s most conservative sectors. One example was the disinformation campaign against the constitutional reforms resulting from the Peace Accords that led to the non-approval of the 1999 referendum.”⁴⁴

In the wake of these two events a shadow was cast over citizens’ hopes of deepening democracy and strengthening the rule of law stemming from implementation of the Peace Accords, and the possibility of attaining substantial reforms was seriously limited. The conservative forces were able to prevent the changes from taking place, and thus an opportunity was missed to build strong and independent justice institutions.

C. Approval of the Code of Criminal Procedure, establishment of the Attorney General’s Office, the National Civilian Police, and the National Institute of Forensic Science

The discussion and adoption of a new Code of Criminal Procedure was begun in tandem with the negotiation of the Peace Accords, and in order to comply with the new provisions established in the 1985 Constitution. The main purpose of the new legislation was to get past the inquisitorial model regulated in the 1973 Code of Criminal Procedure, which was a written, secret procedure, with pretrial detention as the rule, in which the functions of investigating and sitting in judgment were concentrated in the judges. In the inquisitorial model, all information collected during the investigative phase (*el sumario*) automatically became evidence. This process revolved around the record, in which the police

44 Helen Mack Chang, “La Reconciliación en Guatemala: un proceso ausente.” In *Verdad Justicia y Reparación. Desafíos para la democracia y la convivencia social*. San José, IIDH, 2005, p. 183.

and the judge compiled and documented all the procedural activity from the outset, including the evidence, until the verdict was handed down.⁴⁵

The then-president of the Supreme Court of Justice, Edmundo Vásquez Martínez (1986-1990), began the process of drawing up a Code of Criminal Procedure to bring the criminal justice system into line with the guarantees contained in the 1985 Constitution and international human rights treaties. At that time the inoperative state of the judiciary was “another major problem for consolidating the democratic process and [the effective observance of] human rights in Guatemala.”⁴⁶

According to the authors of the proposal, Julio Maier and Alberto Binder, the challenge was not only to organize an efficient service, as per the criteria of administrative rationality or a mechanism to modernize or expedite judicial procedures, but to ensure that the reform went to the core of the incipient democratic process: “the operation of the criminal justice system is situated at a central point of the relationship between the State and the citizens, indeed one could say – and it has been said – that it is the most precise barometer of respect for and the effective observance of the fundamental rights of persons.”⁴⁷

The new Code was based on the model Code of Criminal Procedure for Latin America⁴⁸ and it proposed to “make criminal trials public; change the system of preliminary investigations in criminal cases, by giving the lead role to the Public Ministry [i.e. Attorney General’s Office] as the director of the investigation and to the police as its immediate auxiliary; reserve to judges the task of deciding...; create a case selection system that makes it possible to remove some of the

45 Despite the adoption of successive Codes of Criminal Procedure in Guatemala (1877, 1898, and 1973), since the repeal of the Livingston Codes in 1938 the inquisitorial system has prevailed without major changes in the normative model. Luis Ramírez. *Cambio social y reforma de la justicia penal en Guatemala de la postguerra*. Guatemala City, 2006.

46 Inter-American Commission on Human Rights. *Annual Report*. Chapter IV, Guatemala, 1990.

47 Julio Maier and Alberto Binder, *Exposición de Motivos al Presidente de la Corte Suprema de Justicia*. March 23, 1989. At the Regional Congress on the Reform of Criminal Justice. San José, ILANUD. Guatemala City, Judicial Branch, 1991, p. 41. Guatemalan attorneys Alberto Herrarte and César Barrientos Pellecer worked along with these two Argentine professors.

48 This Code was approved as a model for the region by the Instituto Iberoamericano de Derecho Procesal. Maximo Langer. *Revolución en el proceso penal latinoamericano: Difusión de ideas legales desde la periferia*. Santiago, CEJA, 2009, p. 15.

excessive burden of work by the [judicial] service in criminal matters; using rational methods and with consensus solutions (diversion), and thereby to try efficiently the important cases that come into the system in accordance with possible human [and material] resources.”⁴⁹

These proposals were pulled together in full in the Code of Criminal Procedure adopted in 1992 through Decree 51-92, which established the accusatory, or adversarial, system. The new criminal procedure was structured in three phases: preparatory or investigative; intermediate, to determine whether there is sufficient evidence to go to trial; and the oral and public debate for producing evidence and determining the criminal liability of the accused. This last stage was the most important in the new framework.

The introduction of oral procedure was the most transformative innovation of the Code of Criminal Procedure. It meant that criminal procedure would be public, accessible to all citizens, who could find out directly what facts are being tried and who is being accused of liability, and who could also learn the nature of the evidence and the rulings. Oral procedure broke with a centuries-long tradition of written and secret procedure, where only a small group of officials controlled the information produced in judicial settings.

As Luis Paulino Mora explains: “The oral system entails greater trust in the activity of the judge..., makes possible greater oversight ... on holding hearings open to the public, which therefore will be able to find out directly how the judges administer justice. The result is that this important function becomes more democratic and transparent.”⁵⁰

One fundamental part of the reform was the obligation to provide professional defense counsel free of charge for those accused with scant economic resources; until then that service was provided by law students. The Institute of Public Defense in Criminal Matters (Instituto de la Defensa Pública Penal) was established for this purpose; at first it was under the Supreme Court of Justice (Order 12-94) and then it was established as an autonomous institution by the Law on the Public Criminal Defense Service (Decree 129-97), which came into force on July 13, 1998.

49 Annual Report, Inter-American Commission on Human Rights, Chapter IV, Guatemala, 1990.

50 Luis Paulino Mora Mora. La importancia del juicio oral en el proceso penal. *Revista Ciencias Penales*, March 1990, p. 14.

With the approval of the Code Guatemala became the first country in the region to move to an accusatory system.⁵¹

1. Establishment of the Attorney General's Office

In 1994, the changes to the Constitution included the reforms to Articles 251 and 252, which separated the Attorney General's Office (Ministerio Público) from the Procuraduría General de la Nación, which under the 1985 Constitution had been merged in a single institution.⁵² The new regulation established that the attorney general (Fiscal General) is entrusted with criminal prosecution, while the Procurador General de la Nación (chief government counsel, or solicitor general) was entrusted with representing the State.⁵³

The Organic Law of the Attorney General's Office came into force in May 1994, and the Code of Criminal Procedure in July of the same year. Both bodies of law assign the new institution the authority to direct investigations in the preparatory stage and to hand down the indictment in the trial phase. These functions derive from the principles of the accusatory system, at the core of which is the division of labor between judges and prosecutors: judges are entrusted with ensuring that guarantees are in place, and judging, while prosecutors have the obligation to investigate criminal acts and are in charge of criminal prosecution.

In the new criminal procedure investigating and clarifying crimes corresponds both to the Attorney General's Office, which directs the Police in the investigation

51 The criminal procedure reform in Guatemala was followed by similar reforms in many other Latin American countries with the adoption of new codes of criminal procedure: Costa Rica and El Salvador 1998, Venezuela 1999, Chile and Paraguay 2000, Bolivia, Ecuador, and Nicaragua 2001, Honduras 2002, Dominican Republic 2004, Colombia 2005, and Peru 2006; Mexico and Argentina are in the process of implementation in the federal justice system, as the reform has come into force in several of their states and provinces, respectively.

52 The first Organic Law of the Attorney General's Office was approved in 1948 (Decree 512); it defined it as an institution auxiliary to the courts and the public administration, and part of the Procuraduría General de la Nación. The 1965 Constitution regulated the functions of the Attorney General's Office within the Executive branch, under the President of the Republic.

53 After the self-coup by President Jorge Serrano Elías (he dissolved the Congress and the Supreme Court) and the appointment as president of Ramiro De León Carpio, constitutional reforms were adopted aimed primarily at cleaning up the Congress of the Republic and the Supreme Court of Justice. See Midori Papadópolo. *Análisis jurídico-constitucional del Golpe de Estado del 25 de mayo de 1993 hasta las reformas a la Constitución*. Guatemala City, Universidad Rafael Landívar, Jurídica series, 1995.

(Article 107 of the Code of Criminal Procedure), and the National Civilian Police, who should investigate criminal acts and individually identify the persons responsible (Article 112 of the Code of Criminal Procedure). In other words, the investigation depends on both institutions, which should coordinate the tasks required for clarifying criminal acts and individually identifying the persons responsible.

The reform process was marked by initial flaws, which profoundly limited its scope. One of these was the improvisation that marked the establishment of the Attorney General's Office. While it was a great opportunity, since it was a new institution, its creation was impacted by the lack of preparation evident with the entry into force of the Code of Criminal Procedure. As indicated by the July 2, 1994 headline of *Prensa Libre*, there was "Chaos in the Justice System" ("*Caos en la Justicia*"). At that time there was not a full-fledged commitment to the reform: "The lack of political will by the state agencies to implement the new criminal procedure, with the backing of conservative sectors tied to traditional practices of criminal justice, was the main reason implementation was marked by so much improvisation."⁵⁴

Another flaw was that it was anticipated that all cases in the investigative phase ("*sumario*" was the term used at that time for the investigative phase) would be removed to the Attorney General's Office, which meant that the new system started off congested. According to César Barrientos Pellecer, one of the mistakes made at that time was "the case of the transitory provision of the 1992 Code of Criminal Procedure of Guatemala that provided that proceedings under way in the investigative phase would be passed on to the new procedure, and that those in the trial phase (*etapa de plenario*) would continue in the previous system. This provision resulted in the historical backlog asphyxiating new procedure. The same mistake was repeated in other countries."⁵⁵

The first attorney general (*fiscal general*), Ramsés Cuestas Gómez, was appointed on May 15, 1994, just a month-and-a-half before the entry into force of the Code. The profile of the first attorney general was very far from what was required to direct the institution entrusted with criminal prosecution. He had practically no experience in criminal law, criminal investigation, or the management of

54 Luis Ramírez and Miguel Ángel Urbina, Informe nacional, Guatemala, in Julio Maier, et al. *Las Reformas Procesal Penales en América Latina*, Buenos Aires, Editorial Ad-Hoc, 2000, p. 443.

55 César Barrientos Pellecer, Evaluación de la Reforma Procesal Penal en Guatemala. *Revista de Ciencias Penales de Costa Rica*. San José, October 2003, Year 15 No. 21, p. 45.

public institutions. According to MINUGUA, the Attorney General's Office had an inadequate understanding of the basic information required for developing a political strategy for investigating crime, little knowledge of how to organize this effort, and a very poor relationship with the National Civilian Police.⁵⁶

Accordingly, in order to comply with the requirements of the Code of Criminal Procedure, the Attorney General's Office quickly grew to the point of becoming a white elephant, i.e. a costly institution that contributed little to the aim for which it had been established, namely to clear up crimes.⁵⁷ In 1994, it had only 47 prosecutors⁵⁸ plus administrative staff. In its first three years of operations it came to have more than 1,700 employees, without adequate training, without adequate controls over who was being hired, and without adequate operational methods that would make it possible to manage the avalanche of cases coming from the judiciary.

Even though the Attorney General's Office had outside advisers, in this case technical assistance channeled through MINUGUA initially, and then the United Nations Development Program (UNDP), it was unable to turn back the inertia of improvisation.⁵⁹ One of the flaws could have been the urgency of implementing the changes, which left little space for a planned and orderly implementation making it possible to evaluate and adjust strategies mid-stream. Another was that not enough weight was attributed to the political will of the authorities of the Attorney General's Office. This variable was generally expressed in the signing of an agreement, which then did not have the resources or political support to be implemented.

Pásara clearly describes it when analyzing international judicial cooperation in Guatemala: "the external actors often clung on to the leadership or influence of a given national figure for the purposes of carrying out a project, with scant

56 MINUGUA, Third Report on Human Rights, Guatemala City, 1995. On the weaknesses of the Attorney General's Office in the reform processes, see Alberto Binder. *Funciones y Disfunciones del Ministerio Público Penal*, in *El Ministerio Público para una nueva Justicia Penal*. Santiago, Corporación de Promoción Universitaria, Fundación Paz Ciudadana and Law School Universidad Diego Portales, 1994, p. 68

57 According to the Royal Academy of the Spanish Language, "*elefante blanco*" ("white elephant") means "Being costly to maintain and not producing any utility whatsoever."

58 Elvin Diaz, Estado de situación del Ministerio Público en Guatemala Valoraciones críticas y desafíos, in *Sistemas Judiciales*, No. 15, Santiago de Chile, 2011, p. 202.

59 During the implementation of the Peace Accords the Technical Assistance Unit was established through a MINUGUA/UNDP agreement with the Attorney General's Office; it operated within the Attorney General's Office.

attention to the overall conditions, both institutional and social, that placed certain limits on the possible development of the proposed legislation. In response to the initial finding that there was not sufficient will or commitment to carry out changes and reforms, often the external actors decided to believe that the implementation of the projects would bring about such changes. It was shown that this option led to funds being granted to ill-designed and technically deficient projects.”⁶⁰

This trend did not change over time. In 2002, according to the UNDP, of the 2,217 persons who worked in the institution, 67% were engaged in administrative tasks and only 774, i.e. 33%, in investigative tasks.⁶¹ On top of that, those who performed these functions did not have adequate training, which resulted in “a theoretical deficit” that translated into “a wound to due process” (“*una lesión en el debido proceso*”).⁶² The curricular design of the Institutional Training Unit of the Attorney General’s Office was geared to repeating those subjects that should have been studied in undergraduate courses, not at giving them tools to carry out the aims of the institution. Nor was there a performance evaluation to make it possible to gauge the success or failure of the trainings. In the best of cases it was *a la carte*, based on the needs expressed by the prosecutors, or the offer of courses from external cooperation sources was simply accepted.

Improvisation, ignorance of the new rules, and the lack of a genuine commitment to eradicate impunity made it possible for the processing of the file, which was at the center of the inquisitorial system, to remain practically intact as investigative responsibility was shifted from the investigative courts (*los juzgados de instrucción*) to the prosecutors at the Attorney General’s Office. This culture survived, immune from legislative modifications; the so-called “justice based on filling out forms” (“*justicia de formularios*”) remained intact.⁶³

60 Luis Pásara. La cooperación internacional en materia de justicia en el ámbito latinoamericano. Encuentro de Latinoamericanistas Españoles (12, 2006. Santander): Viejas y nuevas alianzas entre América Latina y España, 2006, p. 8.

61 United Nations. La justicia y el desarrollo humano, in *Informe Nacional de Desarrollo Humano, Guatemala, Desarrollo Humano mujeres y salud*. Guatemala City, UNDP, 2002, p. 157.

62 Manuel Garrido. Actuación y perfil de los fiscales, in Pásara Luis, et al. *Funcionamiento del Sistema de Justicia en Guatemala, Un análisis de Comportamientos Institucionales*, Guatemala City, MINUGUA, 2000.

63 This is what Alberto Binder and Julio Maier called the old inquisitorial culture. *Exposición de Motivos al Presidente de la Corte Suprema de Justicia*. March 23, 1989. At the Regional Congress on Criminal Justice Reform, San José, ILANUD. Guatemala City, Judicial Branch, 1991, p. 39.

The investigation continued to be a written, bureaucratic, and formalistic process of accumulating papers without a clear and well-defined purpose of discovering the truth. The test for evaluating a good investigation was the number of official notes sent to other government offices, not the inquiry into an incident or the determination of liability of a person. The UNDP described it in the following terms: "Albeit with some exceptions, the investigations are routine, without a concrete line of investigation or the formulation of hypotheses as the starting point for the work. In many cases, the investigation is limited to performing three or four 'boilerplate' investigative steps and continuing to shelve the case, formally or informally."⁶⁴

Even though the organization in the Attorney General's Office was flexible, and it could have been separated from the investigative courts, a "mirror organization" was established.⁶⁵ The new prosecutorial agencies were composed of one prosecutor (*agente fiscal*), three assistant prosecutors (*auxiliares fiscales*), and three administrative officers (*oficiales*). The prosecutor did not direct the investigation, but simply delegated cases and tasks to his or her subordinates, who in turn delegated them to the administrative officers, who performed their function by sending an official note to the police to investigate. This delegation of functions quickly became a problem furthering the ineffectiveness of the system, as noted by the Commission for the Strengthening of Justice in 1998: "There is a notable delegation of functions. This phenomenon can be attributed to inherited practices, the excessive written procedure that was retained in the initial stages of the procedure, and also the organizational structure of the prosecutorial offices, which have few prosecutors and assistant prosecutors compared to administrative staff."⁶⁶

The distribution of the work among prosecutors continued to be done as in the old investigative courts: the assistant prosecutors and their administrative

64 Technical Assistance Unit of the Attorney General's Office. *Líneas de Acción para el Diseño de Políticas de Persecución Penal en el Ministerio Público, Informe de Monitoreo y Acompañamiento*. Guatemala City, UNDP, 2002, p. 57.

65 Different research studies have documented how this is a problem common to reform processes: "A general trend identified in the majority of countries included in the study was the tendency of the Attorney General's Office to repeat the working methods of the inquisitorial system, which represents one of the key problems in the reform process." Cristian Riego, Seguimiento de los Procesos de Reforma Judicial en América Latina, in *Sistemas Judiciales*, CEJA, 2003, p. 37.

66 Comisión de Fortalecimiento de la Justicia. *Una nueva Justicia para la Paz*. Guatemala City, Comisión Nacional para el seguimiento y apoyo al fortalecimiento de la Justicia, 1997, p. 25.

officers were assigned cases. The cases were not distributed based on the seriousness of the matter, the possibility of resolving it, or the use of simplified mechanisms. Even less consideration was given to grouping the cases by type of crime or criminal phenomenon. In other words, an assistant prosecutor could be assigned homicide cases along with cases involving damages to property or refusal to pay child support, with no criterion regarding which should be accorded priority. Moreover, several prosecutorial staff members could be investigating, in isolation, one of the many homicides committed by a single person or criminal group, with no communication or coordination, ignoring the evidence collected in the investigations carried out by their colleagues.

These flaws are an expression of a more important shortcoming: even though it was a recently-created institution, the objectives and priorities of the Attorney General's Office were not made explicit in a plan for criminal prosecution that would have made it possible to give it direction. Even though the Code of Criminal Procedure allowed for various ways of proceeding depending on the seriousness of the crime, no clear guidelines were adopted on what should be investigated in the regular procedure and those crimes with respect to which it was preferable to apply a measure that would be an alternative to criminal prosecution. Each section prosecutor (based on subject matter) and district prosecutor (one for each of the country's 22 departments) had the discretion to define his or her priorities, or no priority at all.

The successive removal of the various persons who held the position of attorney general further contributed to this lack of direction and institutional weakness. The amendment to the 1993 Constitution that created the Attorney General's Office also established that the president of the republic would appoint the attorney general and could remove him or her for just cause (Article 251). This power, excessively broad and discretionary⁶⁷, made it possible for all the attorneys general (with one exception, Adolfo González Rodas, 1998-2002)⁶⁸ to

67 The Organic Law of the Attorney General's Office defined just cause as "committing an intentional offense during the performance of one's function, for which one has been convicted at trial and the poor performance of the obligations of the position established by this law" (Article 14). The possibility of the president having the power to remove the attorney general for "poor performance" was excessively broad and arbitrary, since the procedure for determining this evaluation was not established, nor the criteria for judging whether the performance was good or bad.

68 Adolfo González Rodas was the only attorney general who completed his term, from May 15, 1998 to May 17, 2002; he was appointed by President Álvaro Arzú.

be removed or forced to resign each time a new president took office.⁶⁹ This clause also seriously limited the independence of the attorneys general, who feared removal when a new president was elected, or on making decisions that could have been considered harmful to the president's interests. This authority was finally modified in March 2016, when what could be considered cause for removal was limited to committing a wrongful act with intent (*delito doloso*).

In summary, while the creation of the Attorney General's Office could have been a great opportunity to reduce impunity and strengthen citizen trust in the justice system, the old practices of the inquisitorial system seeped into the new institution. In addition, due to the inadequate profile of the attorneys general, or their successive replacement, the Attorney General's Office suffered from a lack of independence, a failure to define goals and policies, an organization that favored bureaucracy, and a formalistic method of investigation that contributed to its ineffectiveness.

2. Creation of the National Civilian Police

Both the criminal procedure reform and the Peace Accords required the creation of a new police institution and the dissolution of the previous police, who had been responsible for serious human rights violations during the war. This was indicated in the Agreement for strengthening the Civilian Power and on the Role of the Armed Forces in a Democratic Society: "the restructuring of the country's existing police forces into a single National Civil[ian] Police, which would be responsible for public order and internal security, is necessary and cannot be delayed. This new police force should be professional and under the authority of the Ministry of the Interior."

In 1997 the National Civilian Police (PNC: Policía Nacional Civil) was established by Decree 11-97. Its role, according to the text of the Agreement, is "to protect and guarantee the exercise of the rights and freedoms of the

69 While I was not forced to resign, my term was abbreviated seven months. I was appointed on December 10, 2010, and the Constitutional Court ruled that I had to turn over the post on May 17, 2014. While the Constitutional Court argued that the reduced term answered to the need to respect the constitutional term, which had to be counted from the appointment of the first attorney general, and not as of my appointment, the decision was more political than juridical. One could not replace an attorney general who had not been removed from the post, but rather only one whose appointment, including the process for his or her nomination and designation, had been annulled. See Case 461-2014, Constitutional Court, resolution of March 7, 2014.

individual; prevent, investigate and combat crime; and maintain public order and internal security.”

There were also flaws from the outset in the establishment of the National Civilian Police that resulted in its weakness when it came to attaining its new aims and meeting citizen expectations. The most important was what came to be known as the “recycling.” In 1997, when the new police institution was created, the government prioritized quick deployment over aspects that were crucial for its professionalization; in that context it hired applicants who had belonged to the former security forces. “As a result, and contrary to the recommendations of international experts, the National Civilian Police (Policía Nacional Civil, PNC) was composed mostly of members of the old police force, who transitioned after receiving a scant three months of training”⁷⁰. Even more serious, former military officers from the Presidential General Staff (Estado Mayor Presidencial) and former members of the Ambulant Military Police (Policía Militar Ambulante) were incorporated in the new force, even though the law expressly prohibited hiring them.⁷¹

The same situation occurred with the police agencies entrusted with investigations: “The Criminal Investigation Service (SIC: Servicio de Investigación Criminal) was basically made up of former members of the Department of Criminal Investigation (DIC: Departamento de Investigación Criminal) of the National Police after having passed a “recycling” course of three months duration and subsequently another one-month specialization course.”⁷²

Just two years later, according to the MINUGUA reports, the PNC was the principal organ responsible for attacks on the rights to life, integrity, and liberty. MINUGUA indicated that one of the main reasons was the process of “recycling of the former personnel of the National Police for establishing the new security force, which led, among other difficulties, to the agents having been trained in a repressive policy to become members of the new police corps.”⁷³

70 Adriana Beltrán, *Protect and Serve? The Status of Police Reform in Central America*. Washington DC, Washington Office on Latin America (WOLA), 2009, p. 5.

71 Indeed, former members of the Army were allowed to join the force, as MINUGUA denounced: “the Mission conveyed to the Ministry of the Interior its objection to the fact that 40 former members of the armed forces, including 22 former sergeants of the Presidential General Staff, were admitted, against the rules.” MINUGUA, Third Report of the United Nations Verification Mission in Guatemala, Guatemala City, 1998.

72 Faniel García, *Delitos contra la vida*. Guatemala, ICCPG, 2001, p. 161.

73 MINUGUA. *Final report on the activities of the United Nations Verification Mission in Guatemala*, Guatemala City, 2004, p. 6.

Without an adequate process for assuming responsibilities and punishing the serious crimes committed during the war by state agents – torture, forced disappearances, extrajudicial executions, rape – it was extremely difficult to expect that those officials who were from the former National Police and Treasury Police would change their *modus operandi*.⁷⁴ According to MINUGUA, in 2000 the PNC was made up of 16,205 members. Of these, 6,273 (39%) were new hires as police, while 9,932 (61%) came from the former security forces.⁷⁵

One case that illustrates the problematic history of the officers of the National Police who became members of the National Civilian Police is the forced disappearance of Fernando García. On October 28, 2010, Héctor Roderico Ramírez Ríos and Abraham Lancerio Gómez Calix were given 40-year prison terms for this crime. On February 18, 1984, both officers participated in the disappearance of student and union leader Fernando García. Despite their direct involvement in this serious human rights violation⁷⁶ they continued working in the National Civilian Police for more than 10 years, attaining the ranks of commissioner (*Comisario*) and deputy commissioner (*Sub Comisario*) respectively. When arrested in March 2009 one of them, Ramírez Ríos, was still on active duty and was commander of the police in Quetzaltenango.

President Álvaro Arzú's real reasons for allowing the recycling were never made explicit. In due course it was argued that it was urgent to have a police institution, given the situation of citizen insecurity, and that it was advisable to retain the experience and knowledge of the former investigators.⁷⁷ Evidently these reasons do not justify a mistaken political decision that set the new institution on a course of continued criminal practices by police authorities.

Yet one of its effects was absolutely foreseeable: the survival of the military intelligence networks that were established during the war, which operated

74 Iduvina Hernández, *La Policía Nacional Civil de Guatemala: vida, pasión y muerte de una institución desdeñada*. Guatemala, Friedrich Ebert Stiftung, p. 7.

75 MINUGUA, *Fifth Report of the United Nations Verification Mission in Guatemala*. Guatemala City, 2000.

76 His then-chiefs asked that he be decorated for having detained Fernando García. The official note in which the recommendation was made was one of the key pieces of evidence in the trial in which they were convicted. See Judgment 01069-1997-00001, October 28, 2010, by the Eighth Court for Criminal Matters, Drug Trafficking, and Crimes against the Environment of the department of Guatemala.

77 MINUGUA, *Second Verification Report*, Guatemala City, 1998, para. 60.

from the National Police and the Treasury Police. This resource enabled the Army to continue performing intelligence functions from within the National Civilian Police for various purposes, including controlling the population and conducting criminal activity, whether to fight crime or for their own personal benefit.⁷⁸ It should be recalled that Marco Tulio Espinoza, at the time chief of the Presidential General Staff, the intelligence entity accused of serious human rights violations⁷⁹, was then appointed minister of defense in 1999⁸⁰; in that capacity he exercised control over various intelligence networks within the Army and other security forces.⁸¹

The decision to go forward with the recycling process allowed the illegal security forces and clandestine security apparatuses, referred to as the CIACS (*cuerpos ilegales y aparatos clandestinos de seguridad*) in the Peace Accords, to continue to operate within the National Civilian Police, as described in the next section.

Since the creation of the National Civilian Police was a commitment of the Peace Accords it was up to MINUGUA to verify its effective implementation, especially to ensure against any betrayal of the civilian nature of the new institution. Even though it was MINUGUA itself that documented the serious problems that stemmed from the “recycling,” it was ultimately considered that Commitment No. 26 of the Agreement for Strengthening Civilian Power, which provided for the creation of the new police force, had been carried out.⁸²

78 Just three years after the establishment of the National Civilian Police it was already clear that the Army intelligence agencies continued to be involved in investigating criminal activity, especially kidnappings, which were not within their purview, while also continuing to be involved in illegal activities. Hugh Byrne, et al. *Rescuing Police Reform: A Challenge for the New Guatemalan Government*. op. cit. pp. 43 ff.

79 Including the assassinations of anthropologist Myrna Mack, in 1991, and Monsignor Juan José Gerardi, in April 1998.

80 See International Crisis Group. *Guatemala: Squeezed between Crime and Impunity*. Latin America Report No. 33, June 22, 2010, p. 10. Solano, Luis and Solís, Fernando. Tres décadas después Viejas y nuevas oligarquías, redes militares e intelectuales orgánicas de la contrainsurgencia participan en las elecciones generales 2003. *El Observador Electoral* No. 4, year 1, October 2003, pp. 14-19.

81 Luis Solano, *Caso SAT: La punta del iceberg?* Guatemala, Centro de Medios Independientes, April 21, 2015. Rachel Sieder et al. *Who Governs? Guatemala Five Years After the Peace Accords*. Cambridge, Hemisphere Initiatives, 2002, p. 11.

82 Iduvina Hernández, *La Policía Nacional Civil de Guatemala: vida, pasión y muerte de una institución desdeñada*. Guatemala, Friedrich Ebert Stiftung, p. 6.

The lax requirements were another problem. In 2002, of the 18,000 members of the PNC, more than 11,500 had no more than primary schooling. Worse still, many of the members of the police who had belonged to the National Police had not even completed their primary education.⁸³ According to García: “Among the former members of the DIC [Department of Criminal Investigation] who became part of the SIC [Criminal Investigation Service] are persons whose academic level is sixth grade of primary school.”⁸⁴

The efforts to consolidate the separation of the functions of the Army and Police were frustrated with the 1999 defeat of the constitutional referendum. Thereafter several provisions allowed for coordination, among them Legislative Decree 40-2000, the Law for Support of the Civilian Security Forces. Nor did the model that was adopted favor a civilian approach to the operation of the security forces within the State. The Civil Guard (Guardia Civil) of Spain was the main source of foreign assistance in the process of creating the National Civilian Police⁸⁵; yet the Civil Guard is “considered by several international experts to be a highly militaristic police force.”⁸⁶

Efforts were never made to create a professional corps of detectives, with independence and moral integrity, to bolster investigative capacity. According to MINUGUA reports, in 2001 the criminal organization unit had 742 agents; as of June 2003 it had 637 members, and as of September 2008, the Bureau of Criminal Investigation (DINC) had 662 agents, 262 of whom were assigned to administrative functions.⁸⁷ This chronic weakness was not by chance; several reports documented how activities intrinsic to criminal investigation continued

83 Lucia Dammert, “Informe Nacional: Guatemala,” in *Reporte Sector Seguridad en América Latina y el Caribe 2006*. Santiago, FLACSO-Chile, 2006, p. 25.

84 Fanuel García, *Delitos contra la Vida*, op. cit., p. 166.

85 Among other things it was in charge of executing \$32 million project financed by the European Union. Hugh Byrne, et al. *Rescuing Police Reform: A Challenge for the New Guatemalan Government*. Washington, DC. WOLA, 2000, p. 53 ff.

86 Adriana Beltrán, *Protect and Serve? The Status of Police Reform in Central America*. op. cit. p. 5.

87 MINUGUA, *Informe Final de Asesoría de Fortalecimiento del Poder Civil*, Guatemala, MINUGUA, 2005, p. 33.

to be carried out by military intelligence units, especially prosecutions of kidnappings.⁸⁸

It is likely that for this reason it was very difficult to coordinate among the two institutions responsible for criminal investigation. As documented by practically all the MINUGUA reports, there was a problem of lack of coordination, distrust, and duplication of functions as between the two institutions: “The conflicts with the Attorney General’s Office with respect to the jurisdiction and responsibility of the criminal investigations have contributed to the poor quality and prolonged delays in the presentation of evidence for prosecutions, and, accordingly, have favored the persistence of impunity.”⁸⁹

Communication between the Attorney General’s Office and the National Civilian Police was extremely formal and bureaucratic; it was through official notes that took weeks or months for a response to come back.⁹⁰ Various efforts were made to overcome this situation. Three coordination agreements were signed between the Attorney General’s Office and the Ministry of Interior, in 2002, 2003, and 2004, yet they were purely formal agreements that did not facilitate operational coordination.⁹¹ These agreements could not overcome the profound distrust between the institutions; there were mutual accusations of infiltration by organized crime and gaps derived from the systematic weakening of the Bureau of Investigation of the National Civilian Police (DINC) that impeded effective coordination in vast regions of the country, where there were practically no police investigators.

88 MINUGUA documented the existence of these illegal structures that carry out parallel investigations: “An example of this parallel system is the group known to the public as “La Oficinita”, which is allegedly composed of agents and former agents of the State, professionals and individuals linked to powerful economic groups. Verification has established that, in many cases, this group conducts illegal activities either to obtain a conviction of accused criminals or even to have them eliminated.” Eleventh Report on Human Rights, Guatemala, 2000, para. 83. The IACHR, in its country report, also documented the “improper influence from the military in matters unrelated to their specific functions, especially through the use of military intelligence in criminal investigations.” IACHR, *Report on the Situation of Human Rights in Guatemala*, 2003.

89 MINUGUA, Fourteenth Report on Human Rights of the United Nations Verification Mission in Guatemala (July 2002-June 2003), Guatemala City, 2003.

90 Luis Ramírez García, Informe de Seguimiento de la Reforma Procesal Penal en Guatemala, in *Revista Centro Americana Justicia Penal y Sociedad* No. 19, Guatemala City, 2003.

91 Javier Monterroso, *Investigación Criminal*, Guatemala, ICCPG, SEDEM CAFCA, 2008, p. 109.

As with the creation of the Attorney General's Office, the political will needed to create an independent, professional, and effective institution wasn't there. The recycling was the main factor responsible for the swift corruption of the new institution, as it allowed for the survival of operational and intelligence networks associated with human rights violations, a militarized culture, and illegal practices supposedly aimed at controlling crime and also intended to benefit their members personally.

3. Creation of the National Institute of Forensic Science

In Guatemala forensic services, especially forensic medicine, were part of the judicial branch, and although as of the entry into force of the 1994 Code of Criminal Procedure the authorities of the Supreme Court of Justice intended to transfer them to the Attorney General's Office, "no specific decision was ever made in this respect."⁹²

There were three forensic services until 2006, one under the Attorney General's Office; another in the National Civilian Police; and a third in the judiciary. This dispersion of laboratories resulted in a series of shortcomings, such as redundant activities, lack of consistency among the services, inefficiency, and dubious quality of the services provided.⁹³

In 2006, the National Institute of Forensic Science of Guatemala (INACIF) was established by Legislative Decree 32-2006, issued August 31, 2006, which came into force on September 17, 2006. The first director of that institution, Miriam Ovalle, was appointed on July 19, 2007.

Nonetheless, the INACIF was established isolated from both the Attorney General's Office and the National Civilian Police. Even though its governing body included, among others, the attorney general and the minister of interior, the first person to serve as director, as the result of a poor understanding by the experts of their own impartiality, broke off all communication with the teams of prosecutors and investigators of the National Civilian Police. As one assessment of INACIF described it: "The doors of the institution are closed ... thus there can be no direct coordination between the forensic experts and the prosecutors.

92 Fanuel García, et al. *Reorganización del servicio de Ciencias Forenses para la Administración de Justicia en Guatemala*, Guatemala City, ICCPG, p. 83

93 Id., pp. 97 ff.

Everything must be requested in writing.”⁹⁴ This translated into unnecessary, reiterative, and onerous requests from prosecutors. And the experts produced incomplete reports that were incomprehensible for the prosecutors, who had to ask time and again that reports be expanded upon.

Due to budgetary considerations services were concentrated in Guatemala City and some departmental capitals in the first years, with no services in the interior. In particular, the expert examinations needed to determine the crimes of violence against women were only performed in Guatemala City and during working hours, resulting in the re-victimization of women who had suffered such crimes.⁹⁵

The creation of this new institution did not generate the resources needed to eliminate the near-total reliance on witness testimony in criminal investigations. There was practically no scientific evidence, despite the creation of the INACIF, whether due to ignorance, lack of coordination, or budgetary limitations. Most trials focused on the statements of eyewitnesses and character witnesses, with all the problems this entailed in terms of risk to persons without a genuine witness protection program. Accordingly, in its first years the young institution did not fulfill its purpose.

4. The role of judges in the new criminal procedure

In the new design set out in the Code of Criminal Procedure judges, in addition to their traditional constitutional function of handing down judgments and seeing to their enforcement, are to uphold guarantees in the preparatory or investigative stage. Any decision that might affect citizen rights regarding arrest warrants, pretrial detention, review of communications, attachment of assets, and searches, among others, required judicial authorization. Similarly, the legislation shifted investigative authority from the investigative judges (*jueces de instrucción*) to the Attorney General’s Office, turning those judges into judges for upholding guarantees (*jueces de garantías*).

Though it was a sound design, which allowed for external oversight of the decisions of the Attorney General’s Office, the judges, especially in the first stage, continued to engage in inquisitorial practices. So the judicial file continued to be the main source of information and decision-making, the system continued

94 ICCPG, “Instituto Nacional de Ciencias Forenses de Guatemala: Estado de Situación 2012,” Guatemala City, *Revista El Observador Judicial* 84.

95 *Id.*, p. 29.

to be written in the preparatory stage, and the delegation of judicial functions to subaltern officials continued to be a widespread practice. These three characteristics were such that the excessive duration of procedures and the limited capacity to resolve cases continued to be the most pressing judicial problems in the criminal justice system.⁹⁶

As regards the independence of judges, while the Constitution established the economic and functional independence of the judiciary and a complex system for appointing judges through nominations committees that were an improvement over the previous direct appointment by the Congress⁹⁷, the system continued to be plagued by major limitations. In 1999, as part of the implementation of the Peace Accords, a Law on Judicial Career Services was passed (Decree 41-99).

Nonetheless, a resolution of the Constitutional Court limited the judicial career service to appointment as a judge of first instance (*juez de primera instancia*). This was one result of doing away with the possibility of evaluating appellate judges (*magistrados de sala*) and members of the Supreme Court of Justice as a criterion for their re-election, and the requirement to include those who have received positive evaluations in the lists sent to Congress.⁹⁸

The process of selecting judges was quickly co-opted and politicized, often ignoring merit as a selection criterion. In particular, the participation of Congress resulted in “serious meddling in the independence of the highest-level judicial body.”⁹⁹ To this were added internal and external meddling aimed at judicial officers: “the external influences denounced consist of pressure being brought to bear by the media, the military, the political parties, the economic sectors, and all other branches of the Government, with the objective of protecting private interests or certain groups through the administration of justice.”¹⁰⁰

96 Mauricio Duce summarizes and documents these problems. See *La oralización de las etapas previas al debate: la experiencia de la Ciudad de Quetzaltenango en Guatemala*. Santiago, CEJA, 2007, p. 2

97 Article 241 of the 1965 Constitution.

98 The judgment of January 31, 2007 (cases 1903-2003, 2183-2003, and 2261-2003) of the Constitutional Court found Article 32 of the Law on the Judicial Career Service unconstitutional. This article established that judges’ performance evaluations would be a consideration for their re-election; the Court found it to be at odds with Articles 207 and 208 of the Constitution.

99 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.3, October 1, 2009.

100 IACHR, *Report on the Situation of Human Rights in Guatemala*, 2003, para. 32.

The weaknesses in the actions of judges and in the performance of the judiciary reflected not only technical flaws, shortcomings in the appointments process, and external and internal meddling that was an affront to their independence. The very design of the institution included what would eventually become a structural problem. On the one hand, the judges of the Supreme Court of Justice were assigned administrative and judicial functions, which meant that they often sacrificed their judicial functions to devote time to the administrative ones. In addition, the 193 constitutional reforms determined that the presidency of the Supreme Court of Justice would be on a rotating basis, elected by the plenary of members, without any re-election.

This combination – a Supreme Court that assumes administrative functions and the rotating presidency – has hindered the adequate development of institutional capacities. The policies pushed by each president are not followed up on by the successor, who ends up wasting his or her first months trying to understand his or her new powers and how the institution works. Replacement of the president without clear rules for succession has opened the way to internal divisions within the Court that have sometimes held up the election process for months.¹⁰¹

And so at different times the judiciary drifted along without any clear road map, which impeded the development of policies that would make it possible to confront the serious problems besetting the justice system, including judicial delay, the weak capacity to respond, and the existence of internal and external attacks on judicial independence.

D. Infiltration of organized crime in the justice system, institutionalization of impunity

The weakness of the institutions entrusted with the prosecution and punishment of crime soon took its toll, and the criminal justice system did not attain its main purpose, namely to clarify the facts of criminal conduct and ensure it is punished. To the contrary, over time impunity became even more entrenched. Since the first attorney general, Ramses Cuestas, the media denounced how he had become a “pharaoh of impunity”: “On enclosing himself in a sarcophagus

101 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.3, October 1, 2009, para. 38.

of immobility, Ramsés Cuestas has lent himself to reinforcing impunity.”¹⁰² The situation did not change with the replacement of high-level officials.

In response to citizens’ demands, the highest-level authorities merely blamed one another: the judges blamed the prosecutors for not pulling together sufficient evidence for a conviction; the prosecutors blamed the police citing allegations of corruption; the police blamed the judges, accusing them of protecting the criminals, without the system as a whole taking on the problem.

1. Impunity, an endemic problem

Ten years after the coming into force of the Code of Criminal Procedure, the justice reform had not succeeded in improving the effectiveness of the system. As Luis Ramírez explained: “One of the main problems to which the criminal justice reform, ten years after it began, has not been able to respond effectively is that of the high levels of impunity, especially in respect of acts related to human rights violations committed during the internal armed conflict, criminal organizations dedicated to kidnapping and eliminating persons, corruption in the high echelons of politics, and others with a serious social impact. Many of these problems are due, among other factors, to the institutional weakness of the justice sector in the system of criminal investigation.”¹⁰³

Various research studies have documented the ineffectiveness of the system, especially in relation to serious crimes, such as homicides. One study by the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (Institute of Comparative Studies in Criminal Sciences of Guatemala) published in 2000 established the effectiveness of prosecuting crimes against life at 3% in Guatemala City and 1% in the interior.¹⁰⁴

At the same time, the number of violent deaths climbed. Upon the creation of the new institutions in the wake of the signing of the Peace Accords there was a

102 Fourteen months after his appointment Ramsés Cuestas was facing harsh criticism: “Sluggishness and inactivity in the investigation of judicial proceedings are the regular fare at the Attorney General’s Office which, with its inefficiency, favors criminal conduct and allows the perpetrators to continue, without punishment.” Iduvina Hernández and Silvio René Gramajo, “El Faraón de la Impunidad,” *Revista Crónica*, July 28, 1995, p. 20.

103 Luis Ramírez García. *El Problema de la Investigación Criminal en Guatemala*. Guatemala City, 2004.

104 Fanuel García Morales. *Delitos Contra la Vida*. op. cit. 2001.

decline from 3,998 homicides in 1997 to 2,655 in 1999, equivalent to 24.2 per 100,000 population, yet this drop was not sustained. As of 1999 there was a steady increase, such that by 2006 the annual number of homicides had doubled to 5,885, or 44 per 100,000 population.¹⁰⁵ The number of violent deaths of women doubled from 303 in 2001 to 603 in 2006.

Impunity was the result of the serious technical and political mistakes made during the implementation of the Code of Criminal Procedure and the establishment of the new institutions, which have been described in the previous section; it also resulted from the infiltration of structures associated with organized crime in the National Civilian Police, the judiciary, and the Attorney General's Office.

2. Illegal Security Forces and Clandestine Security Machinery

The Comprehensive Agreement on Human Rights had anticipated this issue and had expressly included the need to dissolve what the agreement called "illegal security forces and clandestine security machinery." Commitment IV stated: "In order to maintain unlimited respect for human rights, there must be no illegal security forces or any clandestine security machinery. The Government of Guatemala recognizes that it has an obligation to combat any manifestation thereof."

The illegal security forces and clandestine security machinery, or apparatuses, are a legacy of the internal armed conflict. These are long-standing structures created within the security forces and the state apparatus that in principle were designed to carry out counterinsurgency operations, and which continued operating to generate profits through organized crime. After the signing of the Peace Accords they continued operating from the state institutions and in the private security companies.

In its 2003 country report the Inter-American Commission on Human Rights described them in the following terms: "In Guatemala there exist illegal units and a clandestine security apparatus that operate as a parallel power to the State. These groups have been associated with drug trafficking, kidnapping, 'social cleansing' assassinations, smuggling, large-scale larceny, and attacks and threats against human rights defenders, justice workers, witnesses, journalists, labor leaders and other social sectors ... there is public information linking the activities of these illegal units and clandestine structures with senior spheres of

105 Elvin Diaz, Estado de situación del Ministerio Público en Guatemala Valoraciones críticas y desafíos, in *Sistemas Judiciales*, No. 15, Santiago, Chile, 2011, p. 204.

government, PNC employees, military intelligence, the judicial system and the Attorney General's Office."

Even though the obligation to dismantle these groups was expressly established, they continued operating and even expanding the scope of their illegal operations. As established by MINUGUA: "The Mission reiterates, furthermore, that the operational capacity of these groups, their links with public officials at the local and national level and the impunity which prevails for most of their actions are all factors that contribute to the people's growing perception of insecurity. The cases verified indicate that clandestine State structures similar to those that existed during the internal armed conflict continue to exist, as do other structures which seem to be related to organized crime and which have corrupt ties to State apparatus, including the judicial system...; they appear to be motivated by economic, political or even personal interests."¹⁰⁶

Already during the war, when their main purpose was to combat the "internal enemy" and control territory, the illegal security forces and clandestine security apparatuses began their involvement in criminal businesses to finance their activities, including contraband, human and arms trafficking, and illegal adoptions, among others.¹⁰⁷ For this reason, despite the process of democratic transition they continued exercising control over strategic areas of the State – the ports, customs, tax collection, and the General Bureau of Migration, among others. And so they could continue growing rich from the criminal activities they engaged in from those positions.

While the survival of these groups may have answered initially to the intent of the political and economic elites to maintain the status quo, i.e. to ensure that the conditions that allowed for the exclusion of a large part of Guatemalan citizens would remain unchanged, some of the groups soon became associated with transnational organized crime, giving rise to new sources of corruption and violence. Thus new fortunes were amassed, political parties were financed, and the prevailing institutional weakness soon opened the way to new groups, clearly associated with organized crime, that were vying with the political and economic elites for power.

106 Eleventh Report on Human Rights, United Nations Verification Mission in Guatemala. Guatemala, September 2000.

107 Marielos Monzón, *CIACS: ¿de dónde vienen?* *Prensa Libre*, June 7, 2016. See Susan C. Peacock and Adriana Beltrán, *Hidden Powers Illegal Armed Groups in Post-Conflict Guatemala and the Forces Behind Them*, Washington, WOLA, 2005.

3. “Social cleansing” actions and extrajudicial executions

These illegal security forces and clandestine security apparatuses participated actively in operations for the “social cleansing” of alleged criminals, especially members of gangs devoted to kidnapping or youths who were apparently gang members. This is why one can infer that the extrajudicial executions carried out by these groups were related to the progressive increase in the number of violent deaths.

MINUGUA documented these practices: “Verification revealed the existence of at least three types of illegal groups related to this practice in the department. The first appears to be linked to the National Civil[ian] Police in the department and also to have support from a former military commander. The second structure appears to operate under the protection of powerful agroindustrial groups and is characterized by the systematic use of kidnapping, torture and terror, including the beheading or mutilation of the victims’ bodies. The last group unites elements of a military detachment of the zone with a group of local hired assassins.”¹⁰⁸

The active participation of officers from the security forces and the penetration of the illegal security forces and clandestine security apparatuses in key institutions such as the Attorney General’s Office and the National Civilian Police would explain, in turn, the high figures of impunity in crimes against life. Officers of the Attorney General’s Office would “render official” the investigations carried out by parallel groups, i.e. they would sign off on, so that it could be presented at trial, the evidence collected or fabricated by persons not authorized to perform criminal investigations. As indicated, intelligence groups were formed that took charge of criminal investigation such as the so-called “*oficinista*” (or little office)¹⁰⁹, from which investigations were conducted with major flaws that later culminated in acquittals, or false investigations were fabricated to cover up the persons actually responsible by punishing scapegoats.¹¹⁰

108 MINUGUA, Eleventh Report on Human Rights. Guatemala City, September 2000.

109 “After the signing of the Peace Accords, the number of kidnappings for ransom increased. In 1997, the existence of an ‘office’ allegedly led by Luis Alberto Mendizábal, that operated within the no-longer-extant Presidential General Staff, at the time directed by Marco Tulio Espinoza, was denounced; it was said to carry out parallel investigations by military intelligence on kidnappings, and coordinated with the Minister of Interior at the time.” Iduvina Hernández, Guatemala: Crimen e inseguridad, un legado de muerte y una política díscola. *El Observador*, Guatemala City, February-April 2009, p. 43. Mendizábal is currently a fugitive in the biggest contraband case brought to justice in the country, “La Línea”; it was discovered that he participated as a member of the network.

110 MINUGUA, Thirteenth Report on Human Rights. Guatemala City, September 2003.

A paradigmatic case involving the activities of these structures is the 1999 assassination of Edgar Alfredo Ordóñez Porta. According to the United Nations special rapporteur on judicial independence: “His brother, the journalist Hugo Ordóñez Porta, has publicly recounted how the military unlawfully conducted the investigation to cover up their own involvement, and how they fabricated a case against two innocent persons who were later acquitted by the court, which acknowledged that the investigation had been unlawful.”¹¹¹ These groups continued acting within the Attorney General’s Office for several years, associated with the top echelons of the institution.¹¹²

The networks of illegal security forces and clandestine security apparatuses extended into the prison system; there they enjoyed the acquiescence or tolerance of the prison authorities. Prison officials and inmates who before being incarcerated had been state agents or had some type of relationship with the public administration participated in these networks. Major criminal networks were run from prison, such as those engaged in extortion and paid killings.¹¹³ Structures involved in “social cleansing” also operated from the prisons.

The continued existence of these illegal networks, which became part of organized crime, and which were responsible for new human rights violations – and which moreover were capable of guaranteeing impunity – was due not only to technical failings or the improvisation and lack of experience of the national and international personnel who accompanied the creation of the new institutions of the justice system; there were also factors that determined their continued existence. One crucial factor that determined their survival was the decision of the political and economic elites to create weak and dependent institutions incapable of acting as oversight mechanisms external to power capable of sitting in judgment of criminal acts from the war as well as organized crime and corruption.

Another factor was the decision to keep intact the old intelligence networks supposedly to fight crime or to control and use them, as often ended up happening. The best example is the enrichment of successive administrations

111 Report of the Special Rapporteur on the independence of judges and Lawyers, Mr. Param Cumaraswamy. E/CN.4/2002/72/Add.2, December 21, 2001.

112 “The ICJ also received information on the alleged ties between certain members of some government offices with politicians, business groups, and organized crime.” International Commission of Jurists. *La Justicia en Guatemala, un largo camino por recorrer*. Geneva, ICJ-CIJ, 2005.

113 MINUGUA, Eleventh report on human rights. Guatemala City, September 2000.

from fraud in the payment of import duties, which facilitated the survival of the networks engaged in contraband through the appointment of known intelligence officers to control customs.¹¹⁴

These factors made it indispensable to have the presence of an outside actor present with sufficient backing both internally and externally capable of using the national justice system to combat these extensive illegal networks.

4. One aim of the illegal security forces and clandestine security apparatuses: Attacks on Human Rights Defenders

Among the main victims of the attacks by the illegal security forces and clandestine security apparatuses were human rights defenders.¹¹⁵ In their day-to-day work, whether defending the right to truth and justice or protecting the environment, human rights defenders were the target of many attacks ranging from threats to assassination.¹¹⁶

This situation led several civil society organizations, along with the Human Rights Ombudsperson (Procurador de Derechos Humanos), to request the establishment in Guatemala of an international commission to fight the illegal security forces and clandestine security apparatuses.¹¹⁷ The idea was to establish an international commission with sufficient investigative powers and autonomy

114 The “La Línea” case is emblematic in this regard. A network of public servants and private persons facilitated a system for evading import duties at the top of which was the then-President of the Republic Otto Fernando Pérez Molina, who had been an intelligence officer during the war. Other former military officers had been brought in anew to belong to the network, such as Lieutenant Jerez. CICIG. *Informe de la Comisión Internacional contra la Impunidad en Guatemala con ocasión de su octavo año de labores*. Guatemala City, 2015.

115 See Amnesty International, *Guatemala: Guatemala’s Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, 2002. <https://www.amnesty.org/en/documents/AMR34/001/2002/en/>.

116 “[T]he Special Representative notes a deteriorating situation of human rights in the country, an increase in cases of violations against human rights defenders in the past two years and a decline in the commitment of the Government to pursue the goals set by the Comprehensive Agreement on Human Rights.” Report by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2003/104/Add.2, December 6, 2002.

117 Press release of the Human Rights Ombudsperson of Guatemala, Guatemala City, January 16, 2003.

to avoid any dependence of the institutions entrusted with investigations; it was to be established under the auspices of the United Nations.¹¹⁸

The negotiation process was undertaken during the administration of President Alfonso Portillo. The agreement was signed with the United Nations right at the end of his term, on January 7, 2004. Recently-elected President Oscar Berger sent the document for consultation to the Constitutional Court amidst criticisms according to which the powers conferred on the Commission violated Guatemala's sovereignty. In an opinion more political than technical¹¹⁹ the Constitutional Court issued an unfavorable opinion that kept the Commission from being established.¹²⁰

The Constitutional Court found that the agreement was incompatible with the Constitution: "the Agreement's provisions seek to grant powers which, under the Constitution, correspond exclusively to the Judicial Branch and the Attorney General's Office."¹²¹

Several years had to go by, and a new scandal involving acts committed by the illegal security forces and clandestine security apparatuses, for the situation to change.

118 In early 2003 the Government of Guatemala asked the Department of Political Affairs of the United Nations to develop a mechanism that would help the State investigate and prosecute the members of the illegal security forces and clandestine security apparatuses. The first agreement was signed after discussions and a technical exploratory mission; it was later found to be unconstitutional. <http://cicig.org/index.php?page=antecedentes>.

119 ICCPG. *Fundamento Jurídico de la Comisión de Investigación de los Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*. Guatemala City: ICCPG, 2004.

120 The Constitutional Court considered that the Agreement was incompatible with the Constitution: "the content of the provisions of the Agreement seeks to grant powers which, under the Constitution, correspond exclusively to the judiciary and the Attorney General's Office." Case No. 1250-2004 Advisory opinion on the text of the agreement between the United Nations and the government of Guatemala regarding the establishment of a Commission for Investigation of Illegal Security Forces and Clandestine Security Machinery in Guatemala ("CIACS") requested by the President of the Republic.

121 Case No. 1250-2004 Advisory opinion on the text of the Agreement entered into by the Government of Guatemala regarding the establishment of a Commission to Investigate Illegal Security Forces and Clandestine Security Machinery ("CIACS") requested by the President of the Republic.

E. Establishment of the CICIG in Guatemala, replacing the highest-level authorities of the justice system

Despite the decision of the Constitutional Court scrapping the agreement already signed with the United Nations, discussions continued in Guatemala with a view to approving an international commission that would make it possible to clean up the justice system, especially because the situation of insecurity and impunity present in the administration of President Alfonso Portillo did not change when Óscar Berger became president in 2004.

1. The increase in violent deaths

As noted, homicides continued to climb until 2006, when one of the highest rates was reached, 44 per 100,000 population. The state response to these violent deaths continued to be impunity. Ricardo Mendaña, a former Argentine prosecutor who in 2006 carried out a study on criminal justice in Guatemala, noted that the effectiveness of the justice system in homicide cases was 3% to 4%.¹²²

The statements by Philip Alston, United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, in his August 2006 visit to Guatemala¹²³, with respect to the justice system, were incisive: “Guatemala is a good place to commit a murder, because you will almost certainly get away with it.” Alston also noted, regarding “social cleansing” actions continued during the new administration: “Based on my interviews with victims and others, I must conclude that allegations that personnel working for the División de Investigación Criminal (DINC) of the PNC are engaged in social cleansing are highly credible.”¹²⁴ The same was true of violent deaths in prisons; in 2005 alone 45 prisoners were murdered.¹²⁵

The Pavón case is emblematic in this regard. In 2006 an “elite corps” directed by high-level authorities of the Ministry of Interior and the National Civilian Police entered a prison and executed six prisoners who were allegedly directing

122 Mendaña, Ricardo. *Los delitos contra la vida y la investigación criminal en Guatemala*. unpublished document, Guatemala City, 2006.

123 Report of Rapporteur Philip Alston, A/HRC/4/20/Add.2, February 19, 2007, p. 18.

124 Id, p. 18. See, Claudia Samayoa. *Las ejecuciones extrajudiciales de jóvenes estigmatizados*. Guatemala, CALDH, ICCPG, SEDEM, 2007.

125 Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy. E/CN.4/2002/72/Add.2, December 21, 2001.

organized criminal operations from prison. The official version indicated that it was a confrontation with the inmates.¹²⁶ Nonetheless, soon thereafter a resolution of the Human Rights Ombudsperson characterized these acts as extrajudicial executions: “During the operation to recover state control over the model prison farm Granja Modelo de Rehabilitación Pavón carried out on September 25, 2006, the authorities of Guatemala violated the rule of law and acted unlawfully, engaging in serious human rights violations violating the right to life by extrajudicial execution.”¹²⁷

Then-prosecutor Álvaro Matus participated in processing the crime scene and in simulating the confrontation; he was later promoted to Chief of the Office of the Prosecutor for Crimes against Life.¹²⁸ Four years later he was prosecuted for altering the crime scene in the assassination of Víctor Rivera, a former adviser at the Ministry of Interior.¹²⁹

2. Approval of the International Commission against Impunity in Guatemala (CICIG)

Due to the large number of violent deaths, the mounting allegations of extrajudicial executions, especially of youths, and the persistent impunity, human rights organizations insisted on the need for an independent investigative commission that would make possible an effective dismantling of the illegal security forces and clandestine security apparatuses. Finally, on December 12, 2006, the government of Guatemala signed an agreement with the United Nations to establish an International Commission against Impunity in Guatemala.

In order for the agreement to enter into force and the Commission to be installed and start up operations it had to be ratified by the Congress. Critical voices in Guatemala continued to oppose the establishment of a commission of this nature and it was precisely in the Congress that the new institution met the greatest

126 “Despite the surprise factor the agents were met by gunshots fired by prisoners who were members of the Committee for Order and Discipline (COD)”. *Prensa Libre*, September 26, 2006.

127 Resolution of the Human Rights Ombudsperson, Guatemala City, December 27, 2006.

128 Attorney General’s Office, *Memoria de Labores 2007*, Guatemala City.

129 Press release by CICIG, April 8, 2010.

resistance.¹³⁰ Once again the president sent the agreement to the Constitutional Court to determine whether it was compatible with the Constitution.

A violent incident in February 2007 led to a decisive change favorable to the approval of the CICIG.¹³¹ On February 19, 2007, three Salvadoran members of the Central American Parliament, Eduardo D'Abuisson, William Pichinte, and José Ramón González, and their driver Gerardo Napoleón Ramírez, were assassinated in Guatemala. Their bodies were found burned on a private property. The main suspects of this crime were four members of the Unit against Organized Crime of the Division of Criminal Investigation (DINC) who were arrested and placed in pretrial detention on February 22, 2007, and assassinated at the "El Boquerón" maximum security prison on February 25, 2007. The crime scene was altered and the bodies suffered postmortem wounds to make them appear to be victims of an attack by gang members held at that prison.¹³²

The scandal caused by the assassination of these eight persons led to the removal of the chief of the DINC and the chief of the Office of the Deputy Director for Criminal Investigation (Subdirección General de Investigación Criminal) on March 2, and the resignations of the minister of interior and the director general of the National Civilian Police on March 25, 2007.

As it was an election year, positions in Congress quickly shifted in favor of establishing the Commission, as those who opposed it were accused of having ties to organized crime.¹³³ In May 2007 the Constitutional Court issued a favorable opinion and the agreement was subsequently ratified by the Congress of the Republic on August 1, 2007.

And so the CICIG was finally created, as an independent international organ. The main aim of the Commission was defined as supporting the Attorney General's

130 Such resistance came above all from the Frente Republicano Guatemalteco, a party chaired by the former *de facto* head of state Efraín Ríos Montt. Its opposition culminated in the unfavorable opinion from the Committee on Foreign Relations of the Congress. Martín Rodríguez Pellecer and Ana Lucía Blas. "FRG consigue dictamen negativo para ratificación de acuerdo de creación de la Cicig." Guatemala City. Prensa Libre, July 19, 2007.

131 WOLA, *A Case Study on Human Rights Organizing in Guatemala*, Washington D.C., 2008, p. 2.

132 See Claudia Samayoa. *Deudas de la Transición; Ejecuciones Extrajudiciales de personas Estigmatizadas*. Guatemala, ODHAG, 2007.

133 Prensa Libre, July 23, 2007.

Office, the National Civilian Police, and other state institutions in investigating the crimes committed by members of the illegal security forces and clandestine security apparatuses. This included helping to bring about actions aimed at dismantling these groups. The first Commissioner appointed was Carlos Castresana, an attorney and prosecutor of Spanish nationality (2007-2010). The second was Costa Rican attorney Francisco Dallanese (2010-2013); and the third, Colombian lawyer Iván Velásquez (2013 to date).

3. Actions for replacing the high-level authorities of the judicial system

Based on a clear understanding that the illegal security forces and clandestine security apparatuses were carrying out their operations from state institutions, especially justice and security agencies, it was proposed that the functions of the CICIG include bringing complaints against those public officials or employees who had committed administrative infractions. It was also authorized to act as a party in disciplinary proceedings. The purpose of these powers was for the CICIG help drive out those officials committed to ensuring impunity.

The CICIG made progress with respect to this aspect of its mission, but by different means; the power to be a party to administrative proceedings was never used. Nonetheless, in its first years of operation it succeeded in helping to bring about important replacements at the top levels of the three most important institutions for criminal prosecution, the Attorney General's Office, the Ministry of Interior, and the Supreme Court of Justice. These changes were accomplished by taking political actions, furthering criminal investigations in which high-level officials were implicated, and taking advantage of the new spaces for participation opened up by the new Law on Nominations Committees.¹³⁴

The first change, and symbolically one of the most important, was that of the attorney general. On July 29, 2008, Juan Luis Florido stepped down from his position. His resignation came after then-Commissioner Carlos Castresana denounced the attorney general's responsibility for the impunity that prevailed in Guatemala.¹³⁵ Many civil society organizations joined in leveling such accusations.

134 Decree 19-2009, Law on Nominations Committees, adopted in May 2009.

135 "Those days, it was a well-known secret that he had resigned at the request of the president of the Republic, who took into consideration the absence of cooperation by the Attorney General's Office with the CICIG." Impunity Watch, International Center for Transitional Justice, Dutch Platform against Impunity. *Cambiar la cultura de la violencia por la cultura de la vida: Los primeros dos años de la Comisión Internacional contra la Impunidad en Guatemala*. Guatemala, 2009, p. 45.

President Álvaro Colom appointed a career prosecutor, Amílcar Velásquez Zárate, to replace him. Major changes ensued with Zárate at the head of the Attorney General's Office, including the creation of a prosecutorial unit to work with the CICIG, the Special Unit of the Office of the Attorney General Assigned to the CICIG (UEFAC: Unidad Especial de Fiscalía adscrita a la CICIG) in September 2008, implementation of the system for wiretapping¹³⁶, the restructuring of the Analysis Unit¹³⁷, and improved coordination with the National Civilian Police.¹³⁸

When in October 2009 members of the Supreme Court of Justice were chosen, the CICIG provided relevant criteria and data to ensure that recognized moral character would prevail in the selection of members of the Supreme Court of Justice and the appellate courts. It even acted vis-à-vis the Congress of the Republic, where after a decision by the Constitutional Court three of the judges selected were replaced.¹³⁹ The new composition of the Court, with Judge César Barrientos heading up the Criminal Chamber, would be fundamental for implementing the High Risk Courts (Tribunales de Mayor Riesgo), which was crucial for the proceedings against organized crime and corruption.

Judge Barrientos also gave impetus to the approval of the reforms to the Code of Criminal Procedure (Decree 18-2010) that promote oral procedure and ensure speedy trials and the reforms contained in Decree 7-2011, which tripled the capacity of the criminal judges on providing that only cases involving very serious crimes would be heard by collegial courts (made up of three judges); all other cases would be heard by single-judge courts. It also accorded the victim greater participation and recognition, providing for more expeditious handling of less serious crimes.

136 Through Order 65-2007, modified by Order 115-2008, the Special Methods of Investigation Unit of the Attorney General's Office was established; it started up operations on April 24, 2009. Attorney General's Office, *Memoria de Labores*. Guatemala, 2009, p. 29.

137 *Id.*, p. 28.

138 Germán Garavano, Marco Fandiño Castro, Leonel González Postigo. *Evaluación del Impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala*. Guatemala City, CEJA, 2014, p. 37.

139 On October 5, the CICIG sent a letter to Congress stating the reasoning and grounds for the accusations made against six of the judges elected. On October 7, 2009, the Congress voted anew, replacing three of the judges selected against whom there were strong accusations, and forwarded all the information received to the Attorney General's Office. CICIG, *Informe proceso de elección de Magistrados a la Corte Suprema de Justicia y Cortes de Apelación y otros Tribunales Colegiados de igual categoría*. Guatemala City, 2009, pp. 86-87.

The largest number of changes in high-level personnel came at the Ministry of Interior. During the administration of President Álvaro Colom there were five ministers of interior. The first, Vinicio Gómez, from January to June 2008, died in an accident. The next ones, Francisco Jiménez, in office from July to December 2008, and Salvador Gándara, from January to September 2009, resigned. The fourth, Raúl Velázquez, in office from September 2009 to February 2010, was replaced. The latter two ministers are now facing criminal proceedings, for money laundering and corruption.¹⁴⁰ Finally, Carlos Menocal was appointed, serving in office from February 2010 to January 2012.

There were also successive replacements in the top echelons of the police. In the four years of the administration of President Álvaro Colom there were six directors of the National Civilian Police, three of whom were subsequently prosecuted, Marlene Blanco Lapola¹⁴¹, Porfirio Pérez, and Baltazar Gómez.¹⁴² Gómez was convicted and sentenced to 16 years in prison for having participated in a theft (“*tumbe*”) of drugs on April 24, 2009 in the municipality of Amatitlán.¹⁴³

Finally, there was a new change in the Attorney General’s Office: Attorney General Amílcar Velázquez Zárata stepped down in May 2010, and Conrado Arnulfo Reyes took over. Two weeks after taking office he was accused by CICIG Commissioner Carlos Castresana of having ties to organized crime.¹⁴⁴ This led the Constitutional Court to annul the election of the attorney general and to order that a new nominations committee be convened.¹⁴⁵

These successive changes in the top officers at various institutions of the justice system and their removal and investigation by criminal justice authorities shows both the efforts to control those institutions, and the tensions within the political

140 Fraijanes Case, Case No. 01070-2010-00997 and Maskana Case, Case 01070-2010-00309.

141 Marlene Blanco Lapola, Director of the National Civilian Police from September 2008 to June 2009, is facing criminal prosecution for extrajudicial executions. CICIG, Press Release 18, March 23, 2012.

142 He is facing prosecution for the theft of 119 packages of cocaine on the bulevar Las Bugarvillas, zone 6, http://www.prensalibre.com/noticias/justicia/Confirman-ex-director-Porfirio-Perez-Paniagua_0_542345937.html.

143 CICIG, Press Release 53, Guatemala City, September 30, 2013.

144 <http://www.plazapublica.com.gt/content/estados-unidos-pidio-un-fiscal-fuerte-y-colom-nombro-claudia-paz-y-paz>.

145 Constitutional Court, Resolution of June 10, 2010, proper implementation, Cases joined, 1477,1478,1488,1602, and 1630-2010.

and judicial authorities and their interests in maintaining practices. In other words, although there was major pressure from CICIG, social organizations, and media to clean up the system using powerful tools for clarifying the facts in cases of corruption and human rights violations, it was not an easy task, nor did it occur on the first try.

On December 9, 2010, I was appointed attorney general of the republic by President Álvaro Colom, from a slate of six candidates drawn up by the Nominations Committee.¹⁴⁶

In my first year as attorney general five women and ten men were appointed directors of district prosecutorial offices, of a total of 22; along with eight women and six men as section directors, of a total of 15. In other words, there was an overhaul in the leadership of the institution. All the new section and district directors were career prosecutors promoted based on their performance evaluations.

In just over three years the CICIG had succeeded in bringing about fundamental changes in the highest-level justice-related authorities, be it by resignation, removal, or prosecution. A process of vetting was undertaken of persons holding top-level positions in the main institutions, i.e. the Ministry of Interior, the Attorney General's Office, and the Supreme Court of Justice. New appointments based more on merit and moral character meant gains in the independence and autonomy of the institutions. Along with independence, a key factor was the possibility of forming teams with the proper technical background for running the institutions.

The cases in which high-level authorities were prosecuted not only made it possible to replace the individual, but also sent a strong message that certain conduct would not be tolerated. Especially in the trials on charges of corruption, theft of drug shipments, and extrajudicial executions, the message to the security authorities was clear: they had to operate within the rule of law, public posts are not for personal enrichment, and fighting crime does not justify committing new offenses.

The new authorities at the Supreme Court of Justice, the Ministry of Interior, and the Attorney General's Office were very firmly committed to fighting organized crime and strengthening the rule of law. For the first time these new top-level authorities of the justice system were all on the same page when it came to

146 Executive Order 90 of December 9, 2010.

the implications of the accusatory procedure and the changes needed for the criminal procedure reform to go further, in addition to having an awareness of the main obstacles to an effective system for criminal investigation.

Ties of cooperation and trust were built between the highest authorities of the Ministry of Interior and the Attorney General's Office that replaced the old antagonisms between these institutions.¹⁴⁷ While coordination between the leadership teams did not translate immediately and automatically into collaboration among all the staff at the two institutions, it sent a clear message regarding the desirable new relationship between the institutions and it made it possible to put clear channels of communication in place.

4. A second opportunity for justice?

The entry into force of the new Code of Criminal Procedure, in 1994, represented a great opportunity to transform the criminal justice system in Guatemala. The new legislation sought to replace the inquisitorial system by the accusatory system, which was supposed to guarantee access to justice for Guatemalans respecting due process guarantees. The signing of the Peace Accords in 1996 gave new political impetus to this process, and included new actors, among them MINUGUA and a civil society that was more organized after its participation in the negotiations.

New institutions were created, specifically the Attorney General's Office, the National Civilian Police, the Institute of Criminal Public Defense, and the National Institute of Forensic Science, the coverage of the judiciary was expanded, and additional laws were passed to shore up the reform.

These transformations were insufficient. The haste and improvisation that accompanied the creation of the new institutions made it possible for the old practices associated with the inquisitorial culture to take root in the new system, especially in the criminal investigation stage. Even more serious, political decisions that were set forth in constitutional provisions facilitated institutional weaknesses that were hard to overcome and that had a serious detrimental impact on the independence of the institutions, such as the rotating presidency of the Supreme Court of Justice, the mechanism for selecting judges, and the presidential power to remove the attorney general. In the case of the National

147 "Sin duda, Claudia Paz y Paz ha logrado coordinar esfuerzos con el Ministro de Gobernación, Carlos Menocal" <http://dinafernandez.com/2011/05/01/%C2%BFnuevos-vientos-en-el-mp/>.

Civilian Police, allowing the reincorporation of former members of the National Police, the Treasury Police, and military intelligence facilitated the continued operations of networks associated with serious human rights violations and organized crime.

The presence of a powerful outside actor that was independent and had sufficient alliances both internal and external – the CICIG – made it possible for new teams, with greater independence and technical capability, to assume the direction of the justice institutions. It also succeeded, from its first investigations, in breaking down the cultural barrier that made it impossible to clarify cases involving complex crime.

It was a relationship in which needed the other: Without the presence of the CICIG in Guatemala it would have been difficult to have achieved the changes in leadership and greater autonomy for the institutions. Yet it would not have been possible to carry out lasting transformations without the internal actors who were firmly committed to change.

And so old reforms were given impetus once again, and new ones were set in motion. There was a coordinated effort on the part of the justice institutions to bring about change. Career staff were identified in the institutions who could deal with the new challenges. More than 15 years after it was begun, the criminal justice reform in Guatemala had a new chance.

Chapter II

Prosecutorial management and strategic prosecution



The Attorney General's Office was born a "white elephant": A large, tedious, costly institution that provided few benefits to the citizenry, since most of the cases reported did not obtain adequate responses. It grew as an institution isolated from other parts of the justice system, without clear strategies for managing the conflictive situations that it had to address, and infiltrated by members of organized criminal groups. This led to an ever-greater distance from citizen demands and mounting distrust of its activity.

The situation was continuous, despite the successive changes in attorney general. Only with the appointment of Amílcar Velásquez Zarate were the first actions taken to strengthen the institution. Nonetheless, the appointment of Conrado Arnulfo Reyes in May 2010 foreshadowed a major setback. The crisis brought on by the resignation of the Commissioner of CICIG, Carlos Castresana, and the subsequent annulment of the election of the attorney general by the Constitutional Court, ushered in a new process of convening nominations committees.

It was a public process with different conditions and intense oversight by national and international actors. The crisis once again was an opportunity to progress, especially to address citizen fears of backsliding with respect to the incipient reforms. Various sectors, including academics, justice, security, and human rights, as well as the CICIG, were watching the election closely, and called for the appointment of an independent person. It was in these circumstances that I submitted my résumé; I was included in the list of six candidates, and then appointed attorney general. The eyes of the citizens were fixed on the new performance of the Attorney General's Office. Expectations were high; it was the first time a woman had been appointed attorney general. It was also the first time that a person with a history of working for human rights had come to hold the position. There had to be a turnaround in the response offered by the Attorney General's Office, in both quantity and quality, to the conflictive situations that were brought to its attention through the specific complaints lodged by citizens and police authorities.

To turn things around in this way two major initiatives were announced in the 2011-2014 Strategic Plan: first, modifying the case management system through a new model for managing the prosecutorial service, introducing a new

methodology for criminal prosecution, defined as strategic prosecution; and second, bringing the institution to the victims, implementing mechanisms for regaining their trust and effectively protecting their rights.

This chapter analyzes the first initiative, changing the case management system by adopting a new model of prosecutorial management and strategic prosecution. This initiative was fundamental for better managing the large number of cases coming into the Attorney General's Office each year (approximately 370,000) and to improve the response to them. One must bear in mind that in 2010 the effectiveness of the Attorney General's Office was less than 5%, which is to say that 5 of every 100 cases turned out positively through a diversion-type mechanism or an indictment. This strategy entailed major changes that had to be accompanied by other measures: clear policies, training, access to and analysis of information, inter-institutional coordination, performance goals, and performance evaluation so as to make it possible, among other things, to focus the prosecutors' work on the results being delivered to the citizens.

This chapter describes the theoretical and normative principles underlying the change, and identifies the problems sought to be resolved, the changes made, the results obtained, and the tasks still pending.

The analysis is focused on the Office of the Prosecutor for Crimes against Life (*Fiscalía de Delitos contra la Vida*)¹⁴⁸, since the violent deaths of men and women constitute one of the most serious security problems the country faces, and in relation to which the lack of an effective response facilitates more violence. Traditionally the problem of homicides and femicides has been conceptualized as a matter of public security, a matter for the police forces, in which the Attorney General's Office has little or no involvement. Nonetheless, and as argued in this and the following chapter, impunity is a factor that impacts on the increase of crimes against life. The Attorney General's Office cannot fail to grapple with it since investigating crimes is an essential part of its functions in the accusatory system.

No doubt reducing impunity goes beyond the work of the Attorney General's Office. It depends on adequate laws, sufficient resources, clear policies, police, judges, independent experts and prosecutors who are capable and honest. Nonetheless, the driving force behind efficient criminal prosecution in the

148 The changes were implemented in all the district and subject-matter prosecutorial offices (*Fiscalías Distritales y de Sección*) and in some of the municipal prosecutorial offices (*Fiscalías Municipales*).

accusatory system is the prosecution; the prosecutor is in charge of directing the investigation, requesting forensic services, and putting solid and relevant cases before judges. This was the experience during the years in which the Attorney General's Office had a deficient performance; in fewer and fewer cases were the facts clarified in crimes against life, until it practically did not happen at all, yet the judges could do very little without solid cases presented by the Attorney General's Office.

For this reason, clearing up crimes against life was one of the priorities during my term, along with addressing violence against women and clarifying serious human rights violations. This priority translated into the allocation of resources and the implementation of various changes to gradually increase the number of cases resolved.

Implementing this strategy required strengthening units and bureaus that supplement the traditional work of prosecutors: the Bureau of Criminalistic Investigations, the Bureau of Crime Analysis, the Special Methods of Investigation Unit, the Computerized Case Management System of the Attorney General's Office (SICOMP), and the Performance Evaluation Unit. All of these existed at different levels of development before the management model was implemented, and were strengthened in the change process to improve their contributions to clearing up cases and to strategic prosecution. Their role and how they were strengthened are described in this chapter.

Finally, another main area of the 2011-2014 Strategic Plan was inter-institutional coordination. The Attorney General's Office had gradually become isolated from the rest of the institutions of the justice system. Since they were established, coordination with the National Civilian Police and the National Institute of Forensic Science was extremely difficult due to distrust and a poorly understood autonomy, as described in Chapter I. There was practically no coordination with the judiciary. Even though all of these institutions were part of the Coordinating Mechanism for Modernization of the Justice Sector (*Instancia Coordinadora para la Modernización del Sector Justicia*), this was more a space for seeking donations and loans than for defining and following up on policy matters.

To obtain the results anticipated it was essential to re-establish these relationships of communication and coordination. The last section of this chapter makes reference to both the changes implemented in the other justice institutions that facilitated the changes in the Attorney General's Office and the relationship with the Ministry of Interior/National Civilian Police, and with the judicial branch, especially the courts working round the clock (*tribunales de turno*) and the high risk courts, and with the National Institute of Forensic Science.

A. Establishment of the Office of the Prosecutor for Crimes against Life and the Integrity of Persons

The lack of an effective response to crimes against life after the war became one of the greatest concerns of citizens in Guatemala. Just five years after the signing of the Peace Accords, in 2001, the IACHR placed emphasis on the impunity and insecurity prevailing in the country: “citizen security remains one of the most pressing issues for the population. There is intense popular dissatisfaction with the vulnerability many Guatemalans feel, coupled with the perception that the institutions charged with administering justice are incapable of providing it. In fact, reports suggest that fewer than 10% of violent homicides reach the courts, and even fewer are actually tried.”¹⁴⁹

In order to address this situation from different state institutions, decisions were made to establish specialized teams, improve the processing of crime scenes, ensure access to scientific evidence, facilitate coordination with the National Civilian Police, and re-establish new working dynamics. All these changes – both useful and necessary – were insufficient, since there was no substantial change in the way in which the cases were investigated, and the political will necessary for clearing them up did not exist.

Accordingly, in 2004 the Office of the Prosecutor for Crimes against Life and the Integrity of Persons (hereinafter “Office of Prosecutor for Crimes against Life”) was established by Attorney General Juan Luis Florido, by Order 2-2004; it started up operations in October 2004. It was established as a subject-matter based prosecutorial office (*Fiscalía de Sección*), i.e. a prosecutorial office specialized in taking cognizance of cases based on the legal interests protected, as per a list of crimes that includes the crimes of homicide, attenuated homicide (including negligent homicide), aggravated homicide, and intentionally-inflicted injuries.¹⁵⁰

The Office of the Prosecutor for Crimes against Life would take in all cases that occurred in the department of Guatemala except for the municipalities of Mixco, Villa Nueva, Amatitlán, San Juan Sacatepéquez, San Raymundo, and San Pedro Sacatepéquez.

149 Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev., April 6, 2001. Chapter 5, Paragraph 2. The same situation was documented in other studies, for example in the investigation into crimes against life the ICCPG concluded that only 3.6% of the cases were being resolved. Fanuel García. *Delitos contra la Vida*. op. cit.

150 Article 5 of Order 2-2004 of the advisory council to the Attorney General’s office.

The purpose of the Office of the Prosecutor for Crimes against Life was “to make criminal prosecution more efficient in cases of social importance and complexity using specialized teams, concentrating information, and unifying criteria.”¹⁵¹ It was made up of ten prosecutorial agencies (*agencias fiscales*), each of which had one prosecutor, four assistant prosecutors, and two administrative officers. It also had the Crime Scene Support Unit, the Unit for Analysis of Information, and the Financial-Administrative Support Unit.

Nonetheless, its creation did not represent an improvement in the handling of and response to such crimes. A research study by the Inter-American Institute of Human Rights that analyzed 478 cases from 2005 and 2006 documented how in many investigations the only information available was the report of the official act of removing the body; in very few cases was the police report part of the record. According to this study the main problems were the lack of a will to clarify homicides, shortcomings in the handling of crime scenes, lack of scientific evidence, and the lack of coordination among the institutions of the justice system. Regarding the activity of the Attorney General’s Office, the report emphasized that “prosecutors take a ‘desk-based’ [*de escritorio*] attitude and leave the investigation in the hands of the police detectives, without issuing the guidelines.”¹⁵²

In 2006 the National Institute of Forensic Science of Guatemala (INACIF) was established, by legislative decree 32-2006, to facilitate access to scientific evidence.¹⁵³ Due to budget constraints it was not until a year later, on July 19, 2007, that the first director of this institution (a woman) was appointed. INACIF was aimed at addressing “the need to create an independent agency to take responsibility for all aspects of the technical and scientific investigation.” Yet at least in its first years INACIF refused to coordinate with the prosecutors of the Attorney General’s Office, “to keep them from exercising influence in the content of the expert reports.”¹⁵⁴

In addition, in 2007 the Office of the Prosecutor for Crimes against Life was assigned teams of investigators from the Bureau of Criminalistic Investigations of the Attorney General’s Office to investigate directly the cases under the direction of the assistant prosecutors, with four placed in each prosecutorial

151 Attorney General’s Office, *Memoria de Labores*. Guatemala City, 2004.

152 Claudia Acuña. Radiografía de los delitos contra la vida en Guatemala. Guatemala, *Revista Albedrio*, Year 5, January 19, 2008.

153 Adopted August 31, 2006, and came into force on September 17, 2006.

154 Luisa María Leiva Mazariegos et al. Instituto Nacional de Ciencias Forenses de Guatemala: Estado de Situación 2012. *Revista el Observador Judicial*. ICCPG, p. 21.

agency. In July 2007 vehicles and equipment were purchased to process crime scenes, and 162 new technical personnel were trained.¹⁵⁵

Nonetheless, all these changes did not significantly change the rate at which cases were being cleared up.¹⁵⁶ Indeed it remained practically unchanged before and after the Office of the Prosecutor for Crimes against Life, with or without the crime scene teams, with or without the INACIF, and with or without specialized investigators (see *infra* Table 2). This impermeability to change was no doubt determined in large measure by the fact that there was no change in either the management model or the method of investigating. Nor were appropriate goals set. When the Office of the Prosecutor for Crimes against Life was established there was no measurement of performance, and subsequently efficiency was measured by indictments, no matter the crime, and so indictments increased for low-impact offenses, such as negligent homicide and injuries.¹⁵⁷

On top of these limitations the prosecutors not only did not have the political support needed to clear up homicides, but the messages they were sent clearly discouraged an independent and committed effort. For example, in September 2006 Álvaro Matus was promoted as the Chief of the Office of the Prosecutor for Crimes against Life after he was the prosecutor in charge of processing the crime scene in the Pavón case. The CICIG showed that the crime scene in that case was manipulated to simulate a confrontation, when in fact what had occurred

155 According to the Memoria de Labores, 17 sets of equipment for crime scene processing were acquired for the Department for Collection of Evidence which, along with the recently-acquired vehicles, are now part of the Evidence Collection units. In addition 157 cameras and 76 personal computers were acquired with their respective printers. Attorney General's Office, Memoria de Labores 2008, p. 58.

156 According to a report submitted by Convergencia por los Derechos Humanos, 102 cases were resolved in 2005, 156 in 2006, and 133 in 2007. They define as cases resolved those that have a final resolution, alternative outcomes, convention of public to private actions, suspensions of the criminal proceeding, and verdicts. Convergencia por los Derechos Humanos, Ministerio Público, Estado de situación 2008. *Revista El Observador Judicial*, No. 72, Guatemala, March-April 2008, p. 10.

157 This was documented by a research study by ASIES on recognizing a slight increase in indictments from 2007 to 2008: "that increase is may be due to the demand for a minimum number of indictments monthly, which affects their quality, and to the investigation of the statutory crimes they look into, according priority to low-income offenses, over those which, like homicides and assassinations, have not been technically investigated." ASIES, *Desafíos actuales de la justicia penal - Proceso de fortalecimiento del sistema de justicia: avances y debilidades julio 2006 - octubre 2008*. Guatemala City, ASIES, p. 160.

was an extrajudicial execution of seven prisoners within the prison.¹⁵⁸ The then-director and then-chief of investigations of the National Civilian Police, Erwin Sperissen¹⁵⁹ and Víctor Soto Diéguez, respectively, were convicted in that case.¹⁶⁰ Carlos Vielman, who was minister of interior at the time, is awaiting trial before the Audiencia Nacional of Spain.

Without the political will needed and without adequate mechanisms for managing and investigating cases, the other tools, despite being useful, were not effective. Of the absent variables, which was determinant for bringing about the change? The will to clear up the facts in the cases? Or having adequate mechanisms for managing them? Was it a technical or a political problem?

As described throughout this chapter, the experiences of the Office of the Prosecutor for Crimes against Life show that both factors are determinant. In July 2008 Amílcar Velásquez Zárate took over as attorney general after his predecessor Juan Luis Florido resigned in the wake of multiple accusations, including by the Commissioner of the CICIG, that he had acted to obstruct cases.¹⁶¹ Under Amílcar Velásquez's term as attorney general important strides were made transforming the institution so as to improve its performance, for example the Special Methods of Investigation Unit was established and the new team had a will to prioritize clearing up the facts in the cases.¹⁶² Nonetheless, while for the two years of his term as attorney general the number of indictments increased, the number of homicides and murders resolved was less than 10% of all cases taken in (see *infra* B.1.b).

158 For example, prisoners executed, with gunshot wounds in the thorax, were wearing clothes without impacts or appeared with weapons in hand when they did not have them in prior photographs. See CICIG, Informe Fotográfico. www.plazapublica.com.gt/sites/default/files/pavon_cicig_informe_fotografico.pdf.

159 On June 6, 2014, seven judges at the court of Geneva, Switzerland upheld the conviction.

160 Judgment of August 8, 2013, C 17857-2006, First High Risk Court B.

161 According to a report by Ivan Briscoe and Marlies Stappers this was the case of "Juan Luis Florido between 2004 and 2008, whose management of the MP [Attorney General's Office] has been described by insiders as a reign of terror in which cases were blocked in order to service numerous favours." *Breaking the wave: Critical steps in the fight against crime in Guatemala*. Amsterdam, Clingendael Institute, Impunity Watch, 2012, p. 26.

162 A new prosecutor was appointed to head up the Office of the Prosecutor for Crimes against Life, since the previous prosecutor in charge, Álvaro Matus, was prosecuted for the poor management of the crime scene in the assassination of Víctor Rivera, former adviser to the Ministry of Interior. CICIG, *Dos años de labores: un compromiso con la justicia*. Guatemala City, CICIG, 2009, p. 18.

B. Model of prosecutorial management

This section describes the new model of prosecutorial management that was implemented in the Attorney General's Office, in particular in the Office of the Prosecutor for Crimes against Life. Prosecutorial management is understood as how one organizes the work teams and material resources available within the prosecutorial offices to attain certain purposes or goals.¹⁶³ It entails directing institutional resources so as to accomplish the institution's strategic objectives. In other words, transforming the model of prosecutorial management was aimed at having the prosecutorial offices be more effective, that is, to give them the capacity to achieve certain goals and to do so efficiently, making the most of the always-scarce existing resources.

The importance of prosecutorial management is a lesson learned in those countries of Latin America where the criminal procedure reform has been implemented. According to various studies, on examining the various reform processes in Latin America, it is clear that "the management of the institutions is absolutely vital for the success of the new model."¹⁶⁴ While this involves all criminal justice institutions, it is particularly relevant in the case of the Attorney General's Office, which is the institution entrusted with managing the huge number of cases entering the justice system. In the words of Duce and Riego "the main variable that conditions the correct operation of an Attorney General's Office, and of the criminal justice system as a whole, is the management and control of this flow of cases."¹⁶⁵ Attaining adequate management of a large volume of cases is directly related to the way in which the work of the prosecutorial offices is organized.

In order to describe the implications of the new model of prosecutorial management, first is a description of the problems that stem from the "traditional management model." This description is followed by an analysis of the foundations of the "new model of prosecutorial management," how it was implemented, and a discussion of its main results.

163 This definition is based on the definition of public administration used by Koontz, who understands it as "the creation and maintenance of an internal environment in an enterprise where individuals working together in groups can perform efficiently and effectively towards the attainment of group goals." Koontz, O'Donnell, Weihrich. *Essentials of Management*. New York, Mc Graw Hill, 1990.

164 See CEJA, *Modulo de Gestión Fiscal*. Santiago, Chile, CEJA, 2009, p. 1.

165 Mauricio Duce and Cristián Riego, *Desafíos del Ministerio Público Fiscal en América Latina*. Santiago, Chile, CEJA, 2006, p. 32.

1. Model of management by prosecutorial agencies (*agencias fiscales*)

The Organic Law of the Attorney General's Office (LOMP: Ley Orgánica del Ministerio Público), on referring to the organization of prosecutorial offices (*fiscalías*), distinguishes between subject-matter-based prosecutorial offices (*fiscalías de sección*) (each covering certain types of crime) and district prosecutorial offices (*fiscalías distritales*) (covering geographic areas). The legislators, when designing the operation of the Attorney General's Office, imagined that the prosecutorial offices, like the courts of justice, should have a territorial jurisdiction, either by department or by municipality (Article 24 LOMP). Alongside these they added prosecutorial offices with jurisdiction based on subject matter, for complex criminal phenomena, such as those for administrative offenses, economic offenses, and offenses against the environment. And prosecutorial offices for women and children were established to handle cases of perpetrators with special characteristics, or to handle certain specific matters, such as enforcement and constitutional issues (Articles 27 and 30 LOMP).

The law also indicates that in those prosecutorial offices with territorial jurisdiction there should be an office of permanent attention, open 24 hours a day, seven days a week, for taking in complaints and distributing cases, as well as an office for providing information and urgent attention to victims (Articles 25 and 26 of the LOMP).

Finally, the law describes three categories of officials: first, subject-matter or district prosecutors (*fiscales de sección y de distrito*), who are the chiefs; second, *agentes fiscales*, or prosecutors entrusted with the actual prosecution of cases, directing investigations, and actions at trial; and third, the assistant prosecutors, whose functions correspond primarily to the investigative stage (Articles 42 and 45 LOMP). As observed, the rules that regulate the organization of the prosecutorial offices assign different functions to assistant prosecutors and full prosecutors, with the first focusing their activity on the preparatory phase, i.e. the investigation, while the second focus on the trial phase, their function being limited to directing the investigation in the prior phase. The law prohibits assistant prosecutors from participating in the trial unless they are licensed attorneys and notaries (Article 45 of the LOMP).

As in other countries of the region, the subject-matter and district prosecutorial offices took on an organizational structure that reflects the courts: two or more prosecutorial agencies (*agencias fiscales*) are entrusted to one full prosecutor (*agente fiscal*), who has a number of assistant prosecutors under him or her, without clarity as to the role of each one in that structure (everyone did

everything).¹⁶⁶ Each prosecutorial agency operated without any interaction with the others, and within them each assistant prosecutor investigated his or her cases without any connection or communication with the other assistant prosecutors and certainly not with any assistant prosecutors from the other prosecutorial agencies.

In this structure the cases were distributed by the Office of Permanent Attention (OAP: Oficina de Atención Permanente) as they came in; the only criterion for distribution was that each prosecutorial agency have the same number of cases, similar to a desk for intake of cases in the courts, which distributed the cases among the various offices one by one. This model has also been called the “traditional” form of organization, according to which a prosecutorial office takes cognizance of all the cases in a given territorial unit; the prosecutors gradually create a portfolio of cases, and each prosecutor handles each case assigned to him or her from beginning to end. Each one organizes his or her work and that of his or her subordinates as he or she sees fit, without taking into account what superiors and/or peers do or say.¹⁶⁷

In the management model based on prosecutorial agencies the only function assigned to the Office of Permanent Attention was to distribute the cases equitably among the prosecutorial agencies without any initial analysis based on the importance of the case, its seriousness, or unimportance, or its similarity to other cases. The prosecutorial agency would subsequently be in charge of analyzing whether the case that had been assigned to it merited opening up an investigation, was susceptible to diversion, or should be dismissed because the facts reported did not amount to criminal conduct (dismissal *in limine*).

a. Problems stemming from the application of the prosecutorial agencies model

One of the problems stemming from the application of this management model is that all the cases that came into the prosecutorial agencies and from there were distributed to the assistant prosecutors were “the same,” that is, there was no mechanism for preliminary analysis that would allow one to determine which were more serious or simpler to resolve. According to Lorenzo: “As each prosecutorial agency had the power to work on all the cases using all the

166 On the difficulties of establishing the organization in the prosecutorial authority that mirrors the judicial structure, CEJA, *Desafíos del Ministerio Público Fiscal en América Latina*. Santiago, Chile, 2007, pp. 40 ff.

167 Erick Ríos Leiva. *Gestión de Fiscalías*. Santiago, Chile, CEJA, 2012, p. 39.

existing mechanisms ... what happened is that absolutely every case went from the Office of Permanent Attention to a prosecutorial agency were on an equal footing, which in turn meant that all received the same treatment.”¹⁶⁸

There was no adequate system of filters, the result of which was that an offense of damages, an offense of threats, a rape, and a homicide could all come to the desk of the same prosecutor. The portfolio of cases of each prosecutorial agency could include disputes varying in magnitude, without a method for prioritizing, managing, or responding to them.¹⁶⁹

Nonetheless, the Code of Criminal Procedure includes an array of outcomes for cases: (1) those that facilitate the vetting of cases presented to the Attorney General’s Office, such as dismissal *in limine* and shelving; (2) those focused on early solutions, such as an alternative mechanism, conversion from public to private action, suspension of criminal prosecution; (3) those that simplify the process, such as abbreviated procedures; and (4) those that require an oral trial.

Each case requires different levels of evidence and therefore a more or less in-depth criminal investigation. The investigation required to request an alternative mechanism is greater than what is required to dismiss a case, yet less than needed for an abbreviated procedure. Oral trial is the mechanism that requires the highest level of investigation and is, accordingly, the most costly for the system, and should be reserved for very serious cases.

And so the 1994 Code of Criminal Procedure abandoned the principle of procedural legality, which required the State to file criminal charges in all cases that met the criteria for a criminal offense, and replaced it by the principle of prosecutorial discretion (*principio de oportunidad*).¹⁷⁰ Actually, the principle of legality was impossible to attain, so cases were always selected, but the

168 Leticia Lorenzo, *Informe del Nuevo Modelo de Gestión del Ministerio Público*. Guatemala City, CEJA, 2012, p. 15.

169 In this regard, German Garavano, Marco Fandiño, Leonel González. *Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala*, op. cit., p. 33.

170 According to Julio Maier the principle of legality means that: “When there is news of an incident that may be punishable and is subject to public prosecution, it is compulsory to pursue the criminal prosecution and, after the appropriate procedural steps, arrive at the judicial decision that resolves the case ... and put an end to the proceeding.” Julio Maier, *Derecho Procesal Penal*. Buenos Aires, Editores del Puerto, 2002, Vol. I, p. 830.

selection was arbitrary and obscure.¹⁷¹ In other words, given the impossibility of investigating all cases the police or prosecutorial officers determined in which cases criminal charges would be pursued without it being clear, based on pre-established criteria, whether these cases deserved such attention.

Unfortunately, the principle of prosecutorial discretion contained in the legislation did not translate into clear instructions for criminal prosecution, and when there were such instructions there were no consequences for failing to adhere to them. Accordingly, all the cases continued to receive the same treatment, without distinguishing their seriousness or complexity. The prosecutorial officers received large numbers of cases without an appropriate method of work that included immediately examining every case. The effect on the system's response was ineffectiveness; there were very few positive outcomes, very few cases diverted, and few indictments. Table 1 illustrates the under-utilization of early solutions in the years prior to 2011; in some years, such as 2007, they were used in only 1.1% of the cases that came into the Attorney General's Office and in no year did they even reach 3%.

171 As Alberto Binder notes, the discussion on the principle of procedural legality goes beyond the factual possibility of its attainment, and finds at its basis its legitimation depending on "a symbolic control at the core of which is not dispute resolution but various forms of intimidating the population, or controlling or shaping consciences." *Sentido del principio de oportunidad en el marco de la reforma de la justicia penal de América Latina*. Santiago, Chile, CEJA, 2004.

**Table 1. Motion for alternative mechanisms
Attorney General's Office, 2003-2010**

	2003	2004	2005	2006	2007	2008	2009	2010
Received	229.572	247.179	224.274	238.342	315.519	358.833	392.126	377.865
Motion for diversion	5.233	4.076	4189	3.113	2.597	5.012	7.409	9.846
Motion for conditional suspension	NR	NR	462	639	804	764	665	542
Motion for conversion from public to private action	NR	NR	50	50	33	24	20	24
Total	5.652	4.395	4.701	3.802	3.434	5.800	8.094	10.412
Percentage	2.5	1.8	2.1	1.6	1.1	1.6	2.1	2.8

Based on data from the Memoria de Labores.

While efforts were made to increase such solutions, for example creating the Agencies to Support Diversion in 2004¹⁷², their presence did not mean an increase in the use of such measures. To the contrary, as observed in the table just above, the use of such solutions fell off both nationally and in the Office of the Prosecutor for the Guatemala City metropolitan area, where the numbers fell from 1,346 in 2003 to 764 in 2004 and 465 in 2006.¹⁷³ Nor did General Instruction 1-2005, "Use of the Mechanisms for Simplifying Criminal Procedure," appear to have any effect. The year after its approval, in 2006, the application of these measures continued to decline.

In this case it is clear that it was not just a problem of organizing teams, since the diversion units were precisely specialized teams. Nor was it a problem of an instruction or guideline, because the attorney general approved instruction 1-2005, which indicated those cases in which an alternative mechanism should be pursued. While human resources were earmarked to addressing cases that allowed for diversion, the profiles of the members were not taken into account

¹⁷² According to the Memoria de Labores of the Attorney General's Office for 2004, 15 prosecutorial agencies (*agencias fiscales*) were established with the aim of expediting the processing of those cases that qualify for resolution by applying a measure alternative to the regular criminal procedure, p. 10.

¹⁷³ Data from Memorias de Labores, 2003 and 2004.

when forming the teams, nor were they given a work method or any training. There was no follow-up on their activities to determine whether there had been any change in how cases were handled and, where called for, adopting the appropriate corrective measures.¹⁷⁴

Moreover, the general instruction was not accompanied by specific and measurable goals to be able to determine in a timely manner whether there was improved performance in the new units.¹⁷⁵ The administration was indifferent to the prosecutors' performance; it was said, colloquially, and illustrating an organizational culture, "whether it turns out well, or if it turns out poorly, at the end of the month the check is paid in full" ("*salga bien, salga mal, a fin de mes el cheque sale cabal*"). In 2006, for example, each prosecutorial officer produced 6.5 alternative outcomes per year, i.e. would process one case via an alternative mechanism every two months. In other words, if a prosecutorial officer did not do his or her work there were no consequences, and if he or she did it, the action wasn't necessarily valued or supported.

This lack of control over the performance of prosecutors facilitated corruption, especially in dismissals *in limine* or when no progress had been made in investigations. There were networks of lawyers who engaged in influence-peddling from their law firms or offices in their dealings with prosecutorial officers. In some cases, whether or not there was an offense to prosecute, without this incentive cases remained shelved for a long time, with no resolution at all.¹⁷⁶

Accordingly, even though the management approach was changed and new units were created, and an instruction was issued from the highest-level authority of the institution, the attorney general, the changes were ineffective because of flaws both in establishing the units – profile, training, and work methods – and in the follow-up to the changes proposed, namely establishing goals and periodic evaluation reports, and identifying and prosecuting cases of corruption.

174 Interview with Alejandro Rodríguez Barillas, Secretary for Criminal Police of the Attorney General's Office, 2009-2014.

175 It was described in the following terms by the CEJA report to monitor the reforms: "there is a clear lack of familiarity with and confusion concerning the instructions among the ministry staff; an effective system of implementation and control of the general instructions is lacking." CEJA, *Reformas procesales penales en América Latina: resultados del proyecto de Seguimiento*. Santiago, Chile, CEJA, 2005, p. 122.

176 See Fundación Myrna Mack. *Consideraciones sobre la impunidad en Guatemala. La configuración de una masiva violación de derechos humanos*. Guatemala, FMM, 2008, para. 2.

Finally, the case management system by prosecutorial agencies, together with the system of shifts implemented at the Attorney General's Office, facilitated the historical selectivity of the system, allowing for cases of *flagrante delicto* to be accorded priority no matter the seriousness of the offense. Once a person had been detained and subsequently arraigned, procedural time frames began to run that were subject to expiry. This indirectly sparked the abandonment of the other cases which perhaps required a bit more investigation.¹⁷⁷

In response to this situation, it was the police who actually determined the agenda of the Attorney General's Office and the judges, on exercising their power to arrest *in flagrante delicto*. Without adequate controls and proactive work methods those cases in which a person was being held were given priority and the rest continued to be shelved.

While the selective character of the criminal justice system is structural¹⁷⁸ and the process of secondary criminalization¹⁷⁹ operates by selecting persons who suffer from various forms of exclusion (youths, the poor), a traditional case management model facilitates the survival of these arbitrary selection criteria. In this model the prosecutors do not have incentives to check for the legality or arbitrariness of police action in arrests *in flagrante delicto*, by seeking a quick mechanism; rather, they wait for the time periods of the investigation to run so as to close the cases or they may even bring them to trial so as to "justify" their day-to-day activities.

177 As described by Leticia Lorenzo: "each prosecutorial agency had to complete a shift ... during which all the cases taken in had to be processed by that unit. This organizational arrangement ...resulted in ... the flagrant cases having preeminence over cases with an unknown perpetrator or that required some type of investigation. With that, most of the work time of the prosecutorial agencies ended up being dedicated to flagrant cases, whereas the rest of the cases were handled in a rather bureaucratic manner, without much strategic planning." *Informe del Nuevo Modelo de Gestión del Ministerio Público*, op. cit., p. 15.

178 According to Alberto Binder there is a "consistently arbitrary concern with respect to some cases, and the systemic and persistent neglect of others, independent of the seriousness of one over and above the others...." *Sentido del principio de oportunidad en el marco de la reforma de la justicia penal de América Latina*. Santiago, CEJA, 2004, p. 2.

179 The processes of secondary criminalization are those in which specific persons are selected, and include the process that goes from the arrest to the imprisonment of the accused. The police agencies are the ones in charge of making this selection. See Eugenio Raúl Zaffaroni. *Derecho Penal (Parte General)*. Buenos Aires. Ediar. 2002, p. 7.

B. Model of prosecutorial management by agencies in the Office of the Prosecutor for Crimes against Life

The situation was similar in the Office of the Prosecutor for Crimes against Life. Even though it was a subject-matter prosecutorial office and even though it had specific jurisdiction over crimes against life and the integrity of persons that occurred in Guatemala City, it received both intentional homicides and negligent homicides, which were distributed randomly to the various prosecutorial agencies (*agencias fiscales*). As of its creation it adopted the traditional model, which led it to work primarily on a case-by-case basis. Nor was there a clear definition of goals, objectives, or processes.¹⁸⁰ The very prosecutors working in the Office of the Prosecutor for Crimes against Life stated: "It's 15 years of working case by case, without any analysis or initial determination in the case. There is a small group that changed the approach to working and presenting cases two years ago; now they identify the criminal phenomenon, the persons responsible, and the degree of participation, and then make specific decisions based on that analysis."¹⁸¹

One important group of cases that came into the Office of the Prosecutor for Crimes against Life did not involve violent or criminal deaths. The physicians at the public hospitals refused to perform autopsies on those who died while coming into the hospital or within 24 hours of coming in (death on arrival). Even if it was clearly a clinical (not criminal) death, they would call in the prosecutors and the forensic experts to determine the cause of death, when this was clearly a hospital function, diverting resources and unnecessarily creating more work for the Office of the Prosecutor for Crimes against Life. This was the main reason for dismissal *in limine* of a considerable number of cases. In 2009 there were 1,232 dismissals *in limine* and in 2010, 1,705.

In addition, nearly 20% of the deaths that constituted offenses were negligent homicides, in which it is possible to recur to alternative mechanisms.¹⁸² Accordingly, a large number of cases qualified for a quick mechanism, either immediate, for dismissed cases, or via diversion, as in the case of negligent homicides.

180 Attorney General's Office, *Proyecto Reestructuración de la Fiscalía de Sección de delitos contra la Vida*, op. cit., p. 14.

181 Leticia Lorenzo, *Informe del Nuevo Modelo de Gestión del Ministerio Público*, op. cit., p. 15.

182 In 2010 a total of 1,308 intentional homicide cases came into the Office of the Prosecutor for Crimes against Life, compared to 333 negligent homicides.

Nonetheless, except for the specialized agencies¹⁸³ all the others worked all types of proceedings, without functional specialization, and without a clear intent in terms of the purposes of their action. The prosecutorial agencies were to perform different case management functions: dismissal *in limine*, conciliation in those cases in which it was possible to apply an alternative measure, and investigation of intentional deaths. One and the same assistant prosecutor performed several functions, devoting little time to each one, squandering efforts and resources.¹⁸⁴ The dispersion made it difficult to focus on investigating violent deaths, which was the most important of their tasks.

Similarly, the full prosecutors had a hard time administering and managing their units. They had to litigate cases in the courts, and ended up failing to give their assistants direction for the investigative tasks. Trials and hearings took time that might otherwise be devoted to investigation, and much of their time was taken up forwarding documents to courts, where they had to attend hearings that were generally delayed or suspended.¹⁸⁵ The agency model was a form of organization functional to the bureaucratic culture that revolves around the case-file and written procedure in which what is protected is formality, not the search for quality information that could help clear up the facts of the cases. Most investigations were carried out from the desk, through *oficios*, or official notes, to other parts of the system, whose responses were days or weeks in coming.¹⁸⁶

As in the rest of the Attorney General's Office, in the Office of the Prosecutor for Crimes against Life one of the consequences of the traditional management model is that there were very few positive outcomes, as observed in Table 2:

183 In 2010 there were six specialized prosecutorial agencies: two pilot ones (units 19 and 20) and four on the deaths of women (units 14, 15, 16, and 17). Attorney General's Office, *Proyecto Reestructuración de la Fiscalía de Sección de delitos contra la Vida*, Guatemala City, February 2011.

184 Attorney General's Office, *Proyecto Reestructuración de la Fiscalía de Sección de delitos contra la Vida*, op. cit., p. 16.

185 On the suspension of hearings see ASIES, *Desafíos actuales de la justicia penal. Proceso de fortalecimiento del sistema de justicia: avances y debilidades julio 2006 - octubre 2008*, op. cit., p. 79.

186 Convergencia por los Derechos Humanos, Ministerio Público, Estado de situación 2008. *Revista El Observador Judicial*, No. 72, Guatemala, March-April 2008, p. 11.

Table 2. Case management . Office of the Prosecutor for Crimes against Life, 2006 and 2010

	2006	2007	2008	2009	2010
Received	3.687	3.616	3.332	3.965	4.257
Motion to dismiss in limine	582	1.003	1.045	1.232	1.705
Actual cases	3.105	2.613	2.287	2.733	2.552
Total cases resolved	231	216	271	400	430
Motion for diversion	54	33	40	46	65
Motion for conditional suspension	5	3	4	4	2
Motion for conversion from public to private action	1	0	0	1	0
Motion for indictment	171	180	227	349	363
Total handled by other means	1.291	1.028	1.045	845	797
Motion to shelve	1.111	915	961	737	662
Motion for dismissal without prejudice	52	42	29	23	21
Motion to dismiss with prejudice	128	70	51	84	110
Transferred to justices of the peace	0	1	4	1	4
Total Judgments	97	n/s	134	161	229
Judgments Regular Procedure	79	n/s	88	97	156
Judgments Abbreviated Procedure	18	n/s	46	64	73
Total Persons	n/s	n/s	138	184	259
Effectiveness*	7.43	8.26	11.84	14.64	16.85
* Effectiveness is measured by establishing the percentage of cases with positive outcomes (indictment, authorization for alternative mechanism, conditional suspension of criminal prosecution, conversion from public to private action) of the total actual cases (cases that came in minus cases dismissed <i>in limine</i>).					

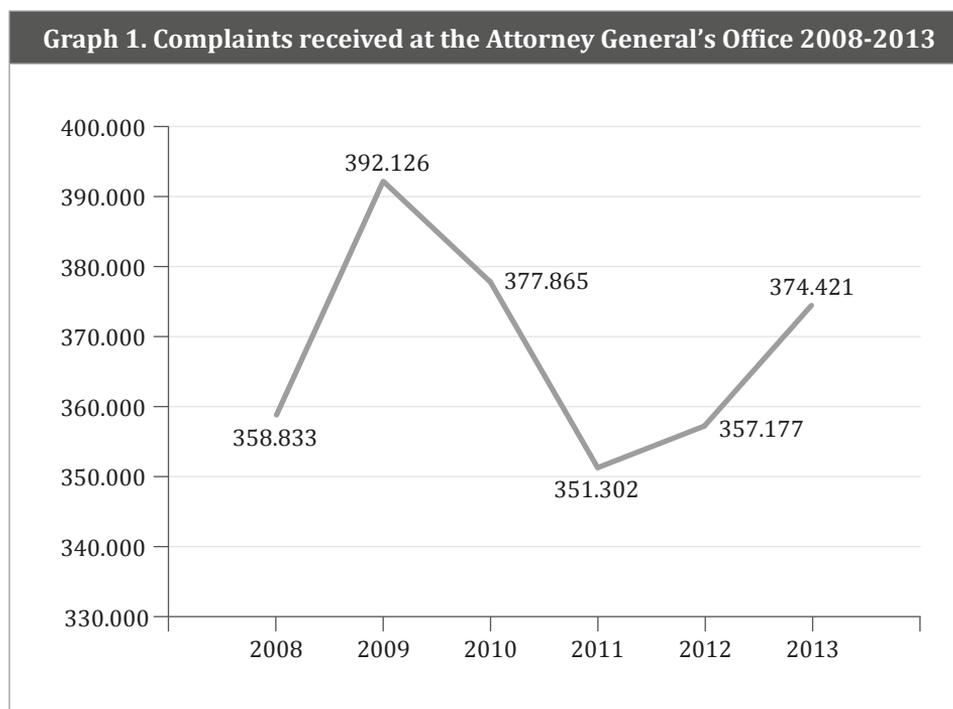
From data published in the Memorias de Labores of the Attorney General's Office.

According to these figures, despite all the efforts made to strengthen the Office of the Prosecutor for Crimes against Life, even though its effectiveness had climbed to 14.64 in 2009 and 16.85 in 2010 compared to 8.26 in 2008, in many cases these were indictments for less serious offenses, negligent homicides, injuries, aiding and abetting, and bearing arms. Moreover, cases *in flagrante delicto* continued to prevail, such that in 2010, 58% of intentional crimes (*delitos dolosos*) in which a person had been arrested involved flagrancy, and 100% for negligent offenses (*delitos culposos*).¹⁸⁷

187 Analysis Unit. *Informe de la Criminalidad en Delitos contra la Vida, ocurridos durante el año 2010 en la Ciudad de Guatemala*. Guatemala City, Attorney General's Office, 2010.

2. New model of prosecutorial management

In order to better manage the intake of thousands of cases at the Attorney General's Office the strategy proposed in the 2011-2014 Strategic Plan was to reorganize the model of prosecutorial management. In the most recent years the Attorney General's Office received more than 350,000 complaints each year. With these numbers of complaints there was a pressing need to establish effective management mechanisms. The Graph 1 illustrates the steady flow of cases into the Attorney General's Office since 2008, with peaks at 350,000 in 2011 and 390,000 in 2009.



Source: Memoria de Labores, 2013, Attorney General's Office.

As indicated, the model of prosecutorial management based on the units drew no distinction among the thousands of cases coming into the criminal justice system; they were all treated the same. Nonetheless, if one analyzes the data on the type of offenses reported, about two-thirds of the cases reported qualify for an early solution or abbreviated procedure, and only one-third should be resolved through an oral trial. The Table 3 refers to the two criminal offenses most commonly reported; they account for 85% of all complaints coming into

the Attorney General’s Office. One notes that just under one-third of the offenses require the outcome that is most costly to the system, an oral trial.¹⁸⁸

Table 3. Offenses based on seriousness, Attorney General’s Office, 2010-2013

	2010	2011	2012	2013
Early solutions*	34,97%	33,73%	28,27%	30,16%
Abbreviated Procedure**	18,67%	19,59%	26,46%	25,75%
Oral Trial***	25,54%	27,58%	28,29%	29,01%

* Threats, injuries, mistreatment of minors, unlawful appropriation and retention, coercion, fraud.
 ** Robbery, burglary, aggravated burglary, material falsehood, ideological falsehood, denial of economic assistance.
 *** Violence against women, aggravated robbery, extortion, rape, sexual assault, homicide.

Based on information published in the Memoria de Labores, 2013, Attorney General’s Office of Guatemala.

Given that approximately two-thirds of all cases coming into the Attorney General’s Office allow for such solutions, it was essential to establish a case management system that recognized those differences, specifically a mechanism that would facilitate applying all the procedures for resolving cases provided for in the Code of Criminal Procedure through specialization of the teams and establishing functions based on the different stages of the process.

Along with the purpose of improving management of the volume of cases, the new model of prosecutorial management was the strategy we, as the central team at the Attorney General’s Office, used to transmit to the district and subject-matter prosecutorial offices that it was a priority of the new administration to combat the main problems of the criminal justice system in Guatemala, namely impunity and arbitrariness. Implementing the new model was the opportunity for conveying this message and for providing them with tools that would enable them to work on these priorities.

188 As regards the resources required for investigating and litigating, the oral and public trial is no doubt the most costly outcome in the criminal justice system. This is why the Code of Criminal Procedure provides for less costly solutions such as abbreviated procedures and diversion measures.

As has already been said, several studies documented impunity in Guatemala at approximately 95%, with only 5% of the cases receiving an effective response. The functional division of labor was a tool for increasing effectiveness: on earmarking specific resources for solving the less serious cases with quick outcomes and creating specialized teams for handling the most serious cases, one could anticipate an increase in both alternative outcomes (for the less serious cases) and indictments (for the more serious ones).

Earmarking resources to investigate the serious cases was an effort to end arbitrariness in the selection of cases entering the criminal justice system. As indicated, the agenda of the Attorney General's Office and the judiciary is set by cases involving persons detained in flagrancy; it is the police who, on exercising the power to detain in flagrancy, determine which cases will be taken in and accorded privileged treatment. In general cases involving flagrant acts are not the most serious crimes; rather, they involve the persons who are weakest vis-à-vis the criminal justice system, especially youths and the poor, and the offenses for which persons are generally caught *in flagrante delicto*, such as possession for consumption, illegal possession of a weapon, and misdemeanors.

The establishment of units specialized in investigation was aimed at focusing the prosecutors' attention on serious crimes. The idea was that they should be the ones to select such crimes through solid investigations that would lay the foundation for seeking arrest warrants.¹⁸⁹ As stated in the Project on Reorganization of the Office of the Prosecutor for Crimes against Life: "Due to the limitations of material resources, the Attorney General's Office, on defining the policies for criminal investigation, should rank the offenses to be prosecuted starting from the seriousness and importance of the legal interests at stake. This means prioritizing those offenses committed by criminal organizations, those that affect more persons, etc."¹⁹⁰

In other words, implementing the model of prosecutorial management went beyond the purpose of screening the cases coming into the criminal justice

189 This is one of the objectives set forth in the Plan for Reorganization of the Office of the Prosecutor for Crimes against Life: "the principle of proactivity not only reinforces the control of legality of the police action, but also seeks to develop the functional direction of the investigation and guarantee the effectiveness of the system.... In the current context a large part of the definition of criminal prosecution is determined *de facto* by the action of the police, which selects the crimes or which often floods the criminal justice system with cases of flagrancy, with no prospect of judicial success." Attorney General's Office, *Proyecto de reorganización de la Fiscalía de Delitos contra la Vida*, Guatemala City, 2011, p. 25.

190 *Id.*, p. 25.

system and sought “to strengthen processes of institutional transformation that would make it possible to attain other strategic objectives such as improving attention to victims, criminal investigation, litigation before the courts [and] supporting inter-institutional coordination...”¹⁹¹

As mentioned, the change in the management model is a mechanism to facilitate tackling impunity and arbitrariness. Nonetheless, it is not a magic potion that resolves these serious problems alone. It was already noted how the creation of diversion units at the Office of the Prosecutor for Metropolitan Guatemala City was a change in the management model that had no effect increasing responses. For this reason it was necessary for the new model to be accompanied by other aspects. These aspects can be summarized as clear policy guidelines for criminal prosecution, an evaluation system that recognizes the gains and rewards results-based performance, support for prosecutors investigating complex cases or cases that may entail threats, as well as effective inter-institutional coordination. First and foremost was conveying to the prosecutorial officers the new priorities for criminal prosecution: concentrating investigative efforts on investigating the most serious crimes and the use of alternative mechanisms for less serious crimes. This message, which seemed obvious, had never been communicated with such clarity. To the contrary, some prosecutors suffered internal reprisals for clearing up the facts in serious cases if their investigation might discover the involvement of powerful persons.¹⁹² Moreover, despite Instruction 1-2005, which indicated in which cases diversion measures should be applied, effectiveness was measured based solely on the number of indictments, not by the use of these mechanisms.

Accordingly, these priorities were set forth in the 2011-2014 Strategic Plan, and they were disseminated in various meetings. Even more important, goals were established by Office of the Prosecutor for Crimes against Life, based on the cases that came in, which were evaluated in monthly meetings of the prosecutors. Positive responses were analyzed and there was an examination of why, for example, an indictment had been handed down in a regular proceeding for offenses that are not very serious, such as drug possession for personal use, or cases that had been dismissed *in limine* without having met the requirements.

191 Attorney General’s Office, *Programa Gestión Fiscal*, Guatemala City, 2012.

192 This was documented by the Rapporteur in his 2009 visit to Guatemala: “The Special Rapporteur learned of a case in which the defense attorneys of a powerful industrialist were the ones who informed agents of the Attorney General’s Office that they would be removed for having carried out an investigation against the interests of their client.” Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.3 October 1, 2009, para. 63.

In seeking to attain the goals there was a major change of leadership at the Attorney General's Office: 19 new district prosecutors were appointed (nine women and 10 men) of a total of 22 such offices, and 14 new heads of subject-matter prosecutorial offices (eight women and six men) of a total of 15 in those offices. Effectiveness was taken into account in decisions on promotion. Many of the heads of the prosecutorial offices (*los jefes de las fiscalías*) who did not achieve their goals resigned.¹⁹³ The changes in those positions made it possible "to strengthen the work of honest prosecutors with a vocation for service, leadership, and a willingness to work for change."¹⁹⁴

Implementing the management model was accompanied by complementary strategies such as support for follow-up on cases, meetings with local organizations, coordinating with other justice officers, and adapting the performance evaluation system to the new roles based on working with specialized teams.

As described at the end of this chapter, the changes in the high-level authorities in other parts of the justice sector were crucial for attaining the purposes of reducing impunity and arbitrariness. In the case of the Criminal Chamber (Cámara Penal) of the Supreme Court, presided over by then-Judge César Barrientos, there was an agreement of aims. Accordingly, the 2009-2014 judicial policy put forward as the main line expediting and simplifying the procedure for diverting cases. It proposed a reform to the Code of Criminal Procedure that was then adopted by Decree 7-2011.¹⁹⁵ Coordination meetings were held with prosecutors and judges to facilitate the implementation of these reforms that helped them arrive at common criteria for interpretation.

193 For the three years and five months of my term the Congress of the Republic did not constitute the advisory council to the Attorney General's Office, which made it impossible to remove any staff member through a disciplinary proceeding. Nonetheless, in the face of new goals several prosecutors availed themselves of the possibility of receiving the compensation upon termination, after their resignation, as provided for in the collective bargaining agreement.

194 Interview with Elvin Leonel Díaz Sánchez, assistant private secretary with the Attorney General's Office, November 2014.

195 The gist of the reform was "to implement a system of criminal procedure that ensures the active participation of the victim, and that includes the possibility of effective and adequate reparation, in addition to prioritizing speedy process and other procedural guarantees." Criminal Chamber. Memoria de Labores 2010-2011. Guatemala, Judicial Branch, 2011, p. 6.

Success implementing the management model required complementary strategies both within the Attorney General's Office and outside it, in particular in the Criminal Chamber of the Supreme Court of Justice and the Ministry of Interior. In 2011 there was a shared vision, with both, on the overall objectives, strategies proposed, and a mechanism for coordination and communication at the highest level.

To achieve these important changes – screening cases, increasing effectiveness, and reducing arbitrariness – the new model of prosecutorial management had to create the conditions that would make it possible:

1. To immediately examine cases so as to select, from the first moment of processing, those that are not under the jurisdiction of the Attorney General's Office, and which are therefore subject to dismissal *in limine*.
2. To resolve those cases that can be resolved by the alternative approaches provided for in the Code of Criminal Procedure through agreements between the parties.
3. To distribute the work based on functions in a well-defined sequence, making it possible to specialize in investigation and litigation.
4. To systematize and analyze the information to identify criminal phenomena and to determine the connections among cases so as to be able to go forward with strategic investigation.¹⁹⁶

These four functions were translated into five specialized units in which work teams were distributed in a way that represented a break with the organizational structure based on the prosecutorial agencies, or *agencias fiscales*. The new units are: comprehensive attention, early decision, investigation, litigation, and liaison with the analysis unit.

Implementing the new organizational model was entrusted to the Managerial Committee for Prosecutorial Management, which was in charge of the strategic and executive direction of the process. The Committee was made up of the attorney general, who presided, the secretary for criminal justice policy, the chief of the Performance and Evaluation Unit, and a group of advisers.¹⁹⁷ To

¹⁹⁶These four functions were described in the Memoria de Labores of the Attorney General's Office for 2011, when explaining the main changes entailed in the new model of prosecutorial management. Attorney General's Office, Memoria de Labores 2011, p. 35.

¹⁹⁷Programa Gestión Fiscal 2012 of the Attorney General's Office of Guatemala.

bolster the changes “the strategy was to implement it in those prosecutorial offices that had the highest volume of cases, and then move on to those where it would impact fewer cases.”¹⁹⁸

a. Background: Model of Prosecutorial Management in Quetzaltenango

The first effort to modify the management system based on prosecutorial agencies was in Quetzaltenango, during the administration of Attorney General Amílcar Velásquez Zarate. Through an agreement with the Instituto de Estudios Comparados en Ciencias Penales de Guatemala¹⁹⁹, with the support of the Justice Studies Center of the Americas, this pilot effort was carried out in Guatemala’s second largest city. Quetzaltenango was chosen because other major reforms had been consolidated there, such as the judicial management system based on oral hearings.²⁰⁰ In addition, the district prosecutor for Quetzaltenango, Jorge Alberto Molina Canales, exercised leadership and was very capable.

The process began in May 2009, with the adoption of Order 23-2009, Management and Operations Manual of the Office of the District Prosecutor for Quetzaltenango, as a pilot plan that would offer lessons learned for future implementation nationwide. The proposal was based on the functional division of labor organized around critical tasks that require specialization: conciliation, investigation, and litigation.²⁰¹ Management by functional units had already been tried in Guatemala with the diversion agencies in the Office of the Prosecutor for Metropolitan Guatemala City, without success. Other countries of Latin America made similar efforts with better results, for example in Chile mechanisms for evaluation and early decision of cases had been put in place that had facilitated better workload management.²⁰²

The Office of the District Prosecutor for Quetzaltenango was organized in five units:

198 Interview with Luis Ramírez, UNDP Adviser for Management Model, November 2014.

199 This effort was undertaken with the support of Open Society Foundations.

200 Elvin Díaz. Estado de situación del Ministerio Público en Guatemala. Valoraciones críticas y desafíos. In *Sistemas Judiciales*, No. 20, Santiago, Chile, CEJA, 2009, p. 206.

201 On the different models for managing prosecutorial services, see Erick Ríos Leiva. *Gestión de Fiscalías*. Santiago, Chile, CEJA, 2012, pp. 38 ff.

202 Mauricio Duce. *El Ministerio Público en la Reforma Procesal Penal en América Latina: Visión General acerca del Estado de los Cambios*. In: *Sistemas Judiciales*, Santiago, Chile, 2004, p. 5.

1. **Services for the Public**, where one receives and registers complaints and provides comprehensive services for victims. This unit analyzes and distributes the cases to the Early Decision Unit, or to the Unit of the Bureau of Investigation.
2. **Early Decision**, where mechanisms are sought for simplifying criminal procedure (authorization for alternative mechanism, conditional suspension of criminal prosecution, and abbreviated procedures), and impetus is given to reparation agreements.
3. **Investigation Bureau**, where cases are concentrated that do require an investigation, and which directed and coordinated the officers of the police and the Attorney General's Office in investigating crimes.
4. **Investigation**, where the operational investigators were situated.
5. **Litigation**, where the prosecutors were concentrated who must go to the courts to litigate hearings in the investigative phase or in the trial phase.²⁰³

The most important results were an increase in the number of cases diverted and an improved capacity to screen, through dismissals *in limine*.²⁰⁴ According to the Memoria de Labores for 2009, an evaluation of this model documented as accomplishments the "641% increase in the number of cases in which diversion mechanisms were authorized in the exercise of prosecutorial discretion and 57% through the regular procedure (indictment)."²⁰⁵ So Quetzaltenango's experience was the starting point that showed that a new prosecutorial management model was not only possible but desirable, since it significantly improved the indicators for positive responses.

203 Attorney General's Office. Memoria de Labores, 2009, p. 34.

204 Elvin Díaz. *Estado de situación del Ministerio Público en Guatemala. Valoraciones críticas y desafíos*. In: *Sistemas Judiciales*, No. 20, Santiago, Chile, CEJA, 2009, p. 206. Along the same lines, Kosovsky indicates that "while in 2008 the Office of the District Prosecutor was able to provide a response to 3.3% of the cases coming in annually, in 2010 the number of effective outcomes quadrupled to the point of providing effective responses to 12.6% of the cases received." Dario Kosovsky, *Evaluación de la implementación y resultados del modelo de reorganización y gestión de la Fiscalía Distrital de Quetzaltenango*. Guatemala City, ICCPG, 2011, p. 35.

205 Attorney General's Office. Memoria de Labores, 2009, p. 34.

b. New model of prosecutorial management at the Office of the Prosecutor for Crimes against Life

The Office of the Prosecutor for Crimes against Life and Integrity began to implement the prosecutorial management model in February 2011. It was the first subject-matter prosecutorial office to do so. At that time it was made up of 22 prosecutorial agencies (*agencias fiscales*), each with one prosecutor (*agente fiscal*), four assistant prosecutors, and one administrative officer. Of these, six prosecutorial offices specialized by subject matter: two in charge of killings of public bus drivers, a serious problem stemming from extortions, and four to handle the violent deaths of women.

As in Quetzaltenango, the reorganization was based on creating specialized functional units; a small team focused on resolving the less serious cases; while the lion's share of resources was earmarked to investigating serious cases. So the reform entailed an effort to redistribute the resources of the Office of the Prosecutor for Crimes against Life to "use only 10% of the institution's resources..., for addressing cases that were less serious and had less of an impact, and 90% of the institutional resources for the more serious cases," and thereby give meaning to the "criterion of selection based on seriousness of the dispute."²⁰⁶

These changes sought to increase the number of positive outcomes, especially the number of indictments and convictions. The reorganization was also aimed at modifying the methodology of the criminal investigation through strategic criminal prosecution, which is explained in the next section. This is what gave rise to the new role, in the work of prosecutors, namely analysts, whose main role is to systematize information so as to characterize the different criminal phenomena, and from there suggest the connections among cases, the priorities for investigation, and coordination with other specialized prosecutorial offices.

As detailed next, implementing the new model was a complex process, at the core of which was the change in organizational structure and the assignment of new functions. Guaranteeing its success required prior processes (assessment and inventory of cases, and inter-institutional coordination) and subsequent processes (training, new work methods, performance evaluation, follow-up, adjustments in implementation). In its implementation the leadership relied on the heads of each prosecutorial office.

206 Attorney General's Office, *Proyecto de reorganización de la Fiscalía de Delitos contra la Vida*. Guatemala City, 2011, p. 27.

i. Committee for implementing the model

The reorganization process was entrusted to a committee for implementing the management model. This committee was formed within each of the prosecutorial offices that participated in the new structure. At the Office of the Prosecutor for Serious Crimes it was made up of the head prosecutor (*fiscal de sección*), and the unit chiefs (Permanent Attention, Early Decision, Investigation, and Litigation). The Committee for Implementing the Management Model worked in close coordination with the Managerial Committee for Prosecutorial Management and was in charge of developing the general plan of reorganization, monitoring activities, and evaluation.

The advantage offered by the Office of the Prosecutor for Crimes against Life was that the head prosecutor and the leadership team were committed to the new model. This aspect is determinant for institutional change strategies, given that training, support, and motivation for change are crucial for bringing about strategic transformations and changes in organizational culture. The initial experience of the prosecutorial offices working on bus drivers' deaths due to extortion were already a seed of specialized units to address crime caused by gangs, which had proven productive in ways that yielded lessons learned.

ii. Assessment and inventory of cases

The process began with an inventory of cases and an assessment to measure the workloads of each of the prosecutorial officers and establish the goals.²⁰⁷ The inventory of cases was a fundamental step, since it involved checking the electronic list of case files assigned to each person in the computer system, SICOMP, with the physical file, organizing the case files and classifying them in one of the following: subject to diversion, dismissal *in limine*, termination (due to running of statute of limitations), and investigation. Then cases were referred under supervision. As the referral occurred while the prosecutors were still in office, priority was given to those that had hearings scheduled, to guarantee their attendance.

iii. Coordinating with other authorities

The initial reorganization required coordinating with other agencies, especially the National Civilian Police, whose teams had to work in tandem with the new

207 According to the Performance Evaluation Unit, in 2010 each assistant prosecutor received, on average, cases involving 1.5 violent deaths each month.

groups of investigators in the prosecutors' offices. When the Department on Crimes against Life was established in the Investigations Division of the National Civilian Police one of the priorities was to improve coordination between police and prosecutorial investigators. To achieve this "mirror teams" were established in the two institutions; they would work with the same system of shifts and investigate the same cases, so as to build trust by working together. So the Police had to adapt to the changes to ensure coordination the new investigative units.

At first there was resistance on many fronts to accepting the new management model. It was manifested in annoyance on having to adapt teams and shifts, since the new model meant reducing the number of days without any shift and increasing the size and number of the teams. Actually there was fear on the part of the police investigators that the prosecutors would exclude them from the investigation once again, relegating them to carrying out orders, and feeling bothered due to the possible greater oversight to ensure the quality of the investigations.²⁰⁸ These difficulties were overcome in coordination meetings at the highest level and with meetings 24 hours and 72 hours into an investigation. Such meetings are essential for ensuring that a theory of the case has been developed and that all possible investigative steps have been taken to clarify the facts.

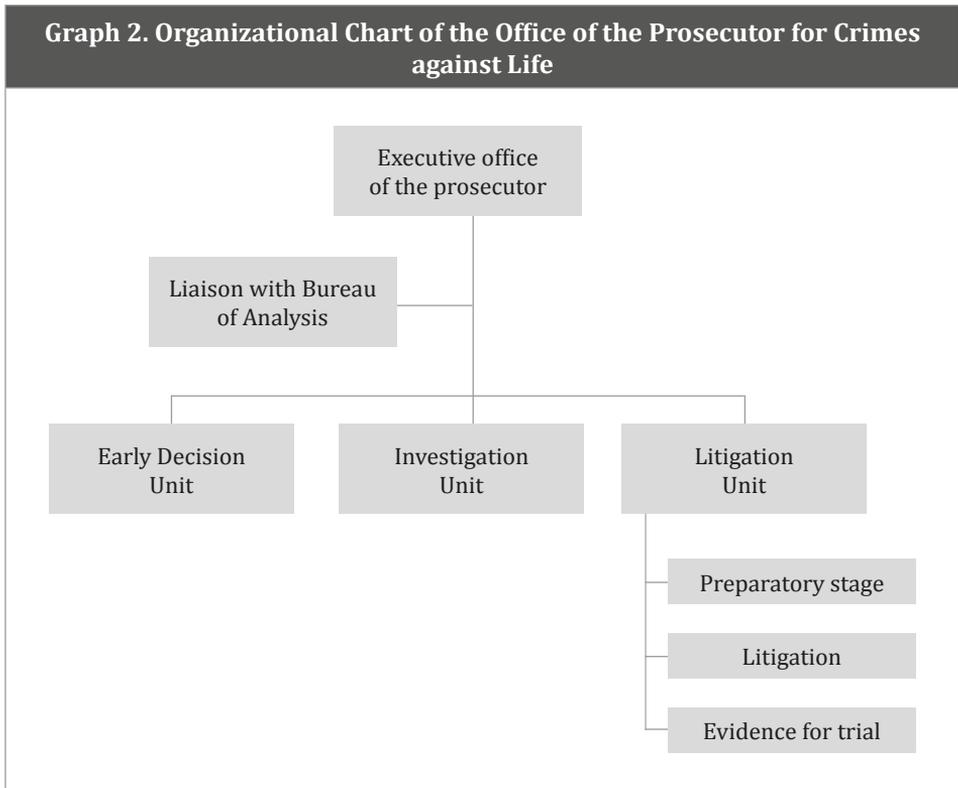
iv. Implementation of the Functional Units

The five units were established in February 2011: the head office, which included the area for liaison with the Crime Analysis Unit, the Early Decision Unit, the Investigations Unit, and the Litigation Unit. Following is a description of the work and composition of each of these units.²⁰⁹

The following organizational chart shows the new organizational structure:

208 Interview with Ricardo Guzmán, First Deputy Secretary General, November 2014.

209 As it is a specialized prosecutorial office, the Office of the Prosecutor for Crimes against Life was not designed with a unit for comprehensive attention; most cases enter through the processing of crime scenes.



Based on data from the Plan for Reorganization of the Office of the Prosecutor for Crimes against Life.

Head office and area of liaison with the Analysis Bureau

The head of a prosecutorial office (*jefatura de sección*) is a key element in the traditional organizational structures of the prosecutorial authorities, for both subject-matter prosecutors and district prosecutors. Their role is to direct the prosecutorial work and manage the administrative resources.²¹⁰ The innovation in the new model was the creation of the area of liaison with the Analysis Bureau (*Dirección de Análisis*), under the head office, to provide information needed for strategic decision-making in investigating and determining the connections among serious cases.

²¹⁰Traditionally the head office also directed a small administrative unit entrusted with allocating material resources, control of vehicles, expenditures, and others.

The mission of the Liaison Area is to systematize data obtained by the Office of the Prosecutor itself after the meetings 72 hours into an investigation and from other sources of information, such as, for example, the IBIS ballistic correlation system, which makes it possible to associate a weapon with various crime scenes. Analyzing information makes it possible to learn more about criminal organizations, identify illegal markets, and map crime. Based on this information the head of a prosecutorial office can give direction to the work of the investigative unit, establishing the objective priorities and specific work plans.

The Liaison Area was not exclusive to the Office of the Prosecutor for Crimes against Life, yet it was the largest of all those created during the implementation of the new management model. It was made up of three professional analysts, three assistant analysts, and 10 technical analysts.

Early Decision Unit

The Early Decision Unit (UDT: Unidad de Decisión Temprana) is in charge of dismissal *in limine* and diversion of those cases where dismissal is required or diversion allowed. Dismissals are for those cases that do not constitute a criminal offense, and diversion for cases of negligent homicide and injuries. The role of this unit is to bring the parties together, look into the possibility of agreements, and, if called for, to pursue diversion apply prosecutorial discretion or another alternative mechanism. The Early Decision Unit may receive cases from the Investigation Unit if it is determined that a given case under investigation may qualify for an early solution or a case may be referred to the Investigations Unit when it is determined that it is more serious than originally anticipated. The Early Decision Unit was established with the structure of one prosecutor, five assistant prosecutors, and two investigators; in 2014 it came to have one prosecutor, 12 assistant prosecutors, and one administrative officer.

Investigations Unit

The role of the Investigations Unit (UDI: Unidad de Investigación) is to direct the investigation and to conduct strategic and operational investigations into the cases assigned with the aim of preparing for litigation. It was established with 24 investigative teams made up of three assistant prosecutors each. Each prosecutor directs two teams; so when it started out 12 prosecutors were in charge of directing the investigations. Working with staff of the Attorney General's Office, the Department of Investigators of Crimes against Life of the National Civilian Police was reorganized so as to have mirror teams that worked the same shifts. Each team of investigators at the Attorney General's Office was assigned four police investigators.

These investigative teams worked 24-hour shifts for processing crime scenes; at that moment they were assisted by a crime scene team. During the 24-hour shift they handle all the cases of deaths reported by the monitoring unit, independent of whether they were intentional, negligent, or to be dismissed *in limine*. Unlike the other prosecutorial offices, at the Office of the Prosecutor for Crimes against Life cases come in through the processing of crime scenes; that's where the first decision is made on dismissal or referral to the Early Decision Unit, if it's not possible to make an immediate decision.

Litigation Unit

The Litigation Unit is in charge of litigating the cases before the courts, in the preparatory and intermediate phases, and at trial. It has three areas: preparatory phase, litigation, and evidence for trial. The first is entrusted with litigating all hearings arising during the preparatory phase and the second is in charge of litigation at trial. The area in charge of evidence for trial is in charge of custody and coordination of any evidence to be introduced at trial. Initially it was made up of nine prosecutors, eight assistant prosecutors, and 10 administrative officers.

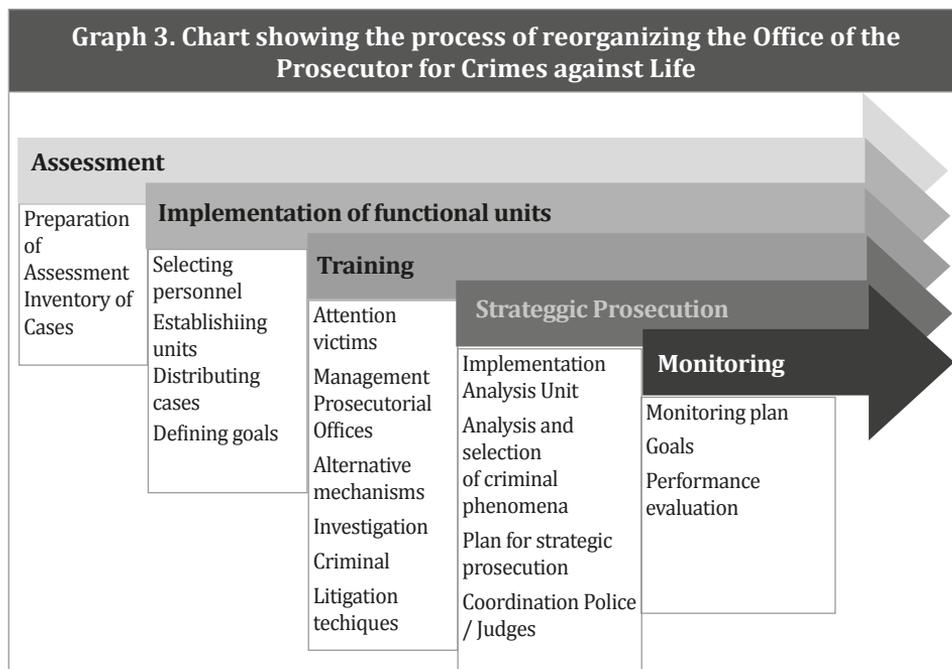
v. Training

The training processes were designed in keeping with the aptitudes to be developed in light of the functions of the new units.²¹¹ Indeed, the new curriculum of the Training Unit of the Attorney General's Office was redesigned with these contents. A manual for managing investigations of serious crimes was produced (Manual de Gerencia de Investigación para delitos graves).²¹² The training used by the Office of the Prosecutor for Crimes against Life included sharing experiences with prosecutors from Quetzaltenango. Some of the analysts had done internships in Canada and Puerto Rico.

The following chart summarizes the reorganization process:

211 Attorney General's Office. Proyecto de reorganización de la Fiscalía de Delitos contra la Vida. Guatemala City, 2011, p. 27.

212 This Manual was drawn up by Héctor Soto, who provided specialized training for investigation.



Source: Based on data from the plan for reorganizing the Office of the Prosecutor for Crimes against Life.

vi. Difficulties and challenges

The greatest difficulty implementing the management model was bringing about the cultural change required for the reorganization. Prosecutors were accustomed to working in isolation, without supervision. Many were bothered by others examining their work; they wanted to maintain absolute control of their investigations, of their cases.²¹³ This made teamwork hard for them. They argued that the goals led the institution to work like an assembly plant, or factory. Nonetheless, after the reorganization the specialized model of management, in addition to improving the efficiency and effectiveness of the work, was recognized as an achievement in professional performance that “enables each officer to play a role, not only specializing but also becoming empowered in his or her position.”²¹⁴

213 Interview with Juan Francisco Solorzano Fopa, November 2014.

214 Interview with Edgar Borrayo, Analyst, Office of the Prosecutor for Crimes against Life, November 2014.

The most complex separation in the new model of prosecutorial management was between the team that investigated a case and the team that was to litigate it. As noted, the prosecutors were the “owners of their investigations,” they did not want other eyes reviewing their case files. Those who received the investigations considered the evidence was insufficient or that they were given cases at the last moment, without enough time to prepare.²¹⁵

The separation between investigation and litigation units resulted from both the distribution of work in sequenced tasks and the division of functions provided for in the Organic Law of the Attorney General’s Office, which prohibits the assistant prosecutors from litigating at trial and reduces their role to the preparatory phase. In other words, the law already regulated this specialization and the new model of prosecutorial management merely brought the assignment of tasks into line with the statutory and regulatory provisions.

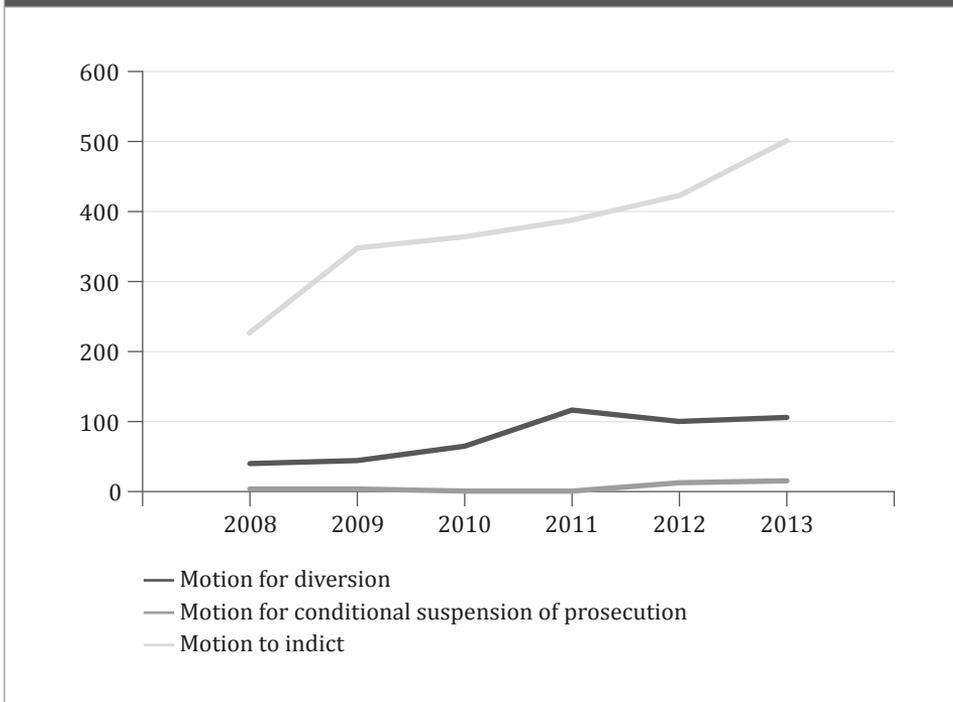
Various mechanisms were designed to overcome these problems, such as periodic meetings that weren’t held and minimal time periods that were not respected, among others. Finally, the Office of the Prosecutor for Crimes against Life decided that the Litigation Unit should draw up the indictments and that from then on the prosecutor would take on the case and he or she would subsequently litigate. In addition, the prosecutors in litigation exercised a prior check on requests for arrest warrants, since they were in charge of setting forth the charges in the initial statement. This structure enabled those who were in charge of litigation to evaluate the solidity of the evidence in each case and to request investigative measures if they considered that the evidence was still weak.

c. Results of the model of prosecutorial management in the Office of the Prosecutor for Crimes against Life

The most important accomplishment resulting from the new model of prosecutorial management in the Office of the Prosecutor of Crimes against Life was the increase in positive outcomes, which rose from 271 in 2008 to 620 in 2013. There was a 119% increase in the number of indictments (227 in 2008 compared to 498 in 2013) and a 165% growth in the number of cases for which alternative mechanisms were approved (from 40 in 2008 to 106 in 2013). As illustrated in Graph 4, the three main types of positive outcomes saw major increases.

215 See Leticia Lorenzo. *Informe del Nuevo Modelo de Gestión del Ministerio Público*. Guatemala City, CEJA, 2012, p. 51. Along the same lines, CIEN. *El Ministerio Público y la Fiscalía de Delitos contra la Vida*. Guatemala City, CIEN, 2015, p. 29.

Graph 4. Positive Outcomes, Office of the Prosecutor of Crimes against Life, 2008-2013



Based on data from the Memorias de Labores.

As observed in Table 4, the number of cases that came into the Office of the Prosecutor for Crimes against Life dropped off, with the highest figure of 4,257 cases coming in 2010, and the lowest, 2,663 cases, in 2013. The factors that could influence this decline are, first, an agreement with the Ministry of Health in 2011 in which a commitment was made to perform clinical autopsies in cases of death on arrival, and, second, a decline in violent deaths in the municipality of Guatemala City, which is analyzed in Chapter III. According to CEJA, “These figures for the number of the cases received mark a major downward trend of this type of unlawful act in Guatemala City during the period, mindful of the special intervention of the Office of the Prosecutor for Crimes against Life.”²¹⁶

216 German Garavano, Marco Fandiño, Leonel González. *Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala*. op. cit. p. 85.

Table 4. Case Management Office of the Prosecutor for Crimes against Life, 2008-2013

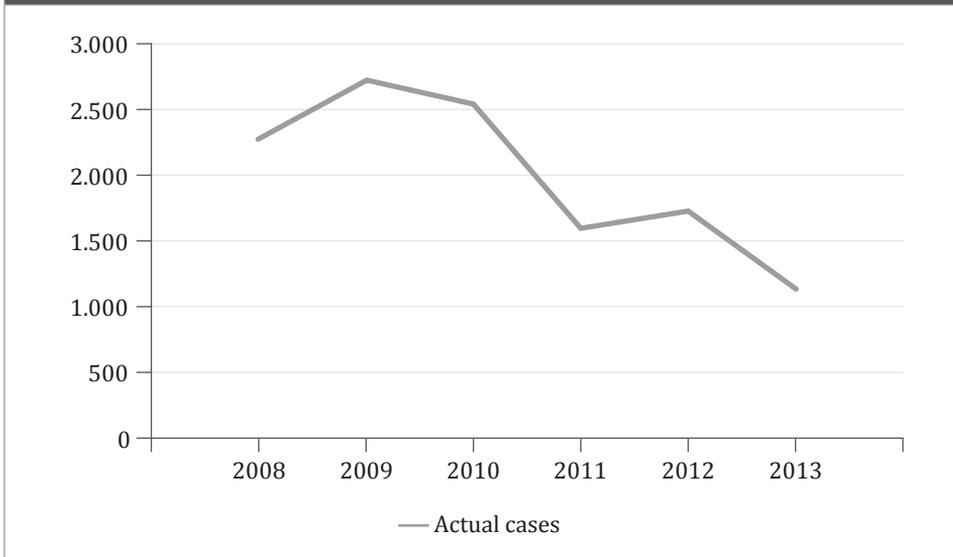
	2008	2009	2010	2011	2012	2013
Received	3,332	3,965	4,257	3,064	2,665	2,663
Request to dismiss in limine	1,045	1,232	1,705	1,461	928	1,515
Actual cases	2,287	2,733	2,552	1,603	1,737	1,133
Motion to authorize diversion	40	46	65	118	99	106
Motion to suspend prosecution	4	4	2	2	13	16
Motion for conversion from public to private action	0	1	0	1	1	0
Motion to indict	227	349	363	386	420	498

Based on data from the Memorias de Labores of the Attorney General’s Office 2008-2013.

The effect of the reduction in actual cases and the increase in positive responses is that the gap between the number of cases taken in and the number of cases resolved diminished over time, as shown in Graphs 5 and 6. In 2008, 2,287 cases were taken into the Office of the Prosecutor for Crimes against Life and in 2013, 1,133 came in, i.e. there was a 50.3% reduction in the number of cases coming in to this prosecutorial office.²¹⁷ At the same time the number of cases with outcomes went from 271 in 2008 to 671 in 2013, for a 247.6% increase.

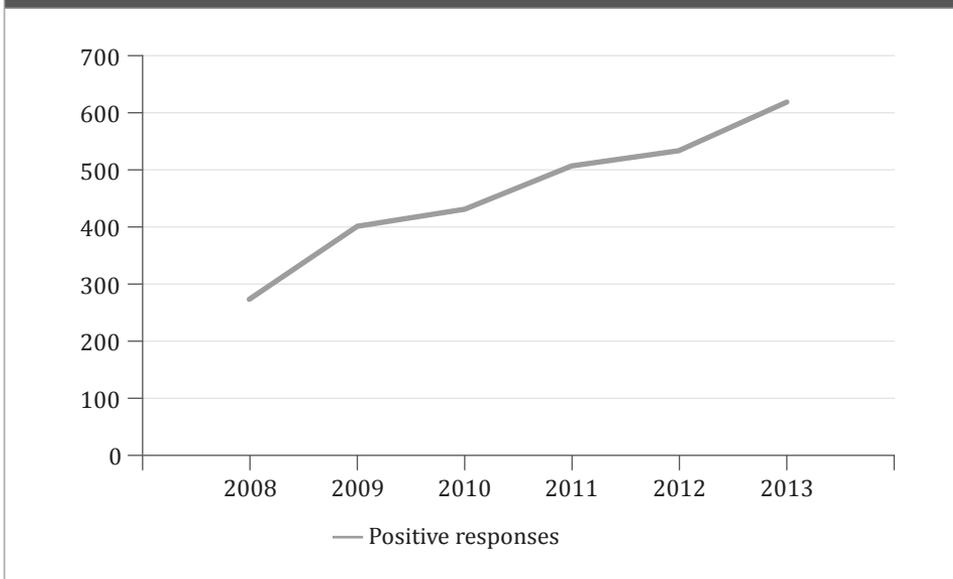
217 In 2012 there was a slight upturn in cases with respect to 2011. This reflected the transfer of 383 cases from the prosecutorial authorities in various municipalities of the department of Guatemala, and from other departments of the country to be investigated with the Strategic Plan for Prosecution of Gangs (Plan Pandillas). Liaison Unit, Office of the Prosecutor for Crimes against Life. Plan Estratégico de Persecución de Pandillas. Guatemala City, Attorney General’s Office, 2011.

Graph 5. Cases constituting criminal offenses Office of the prosecutor for Crimes against Life, 2008-2013



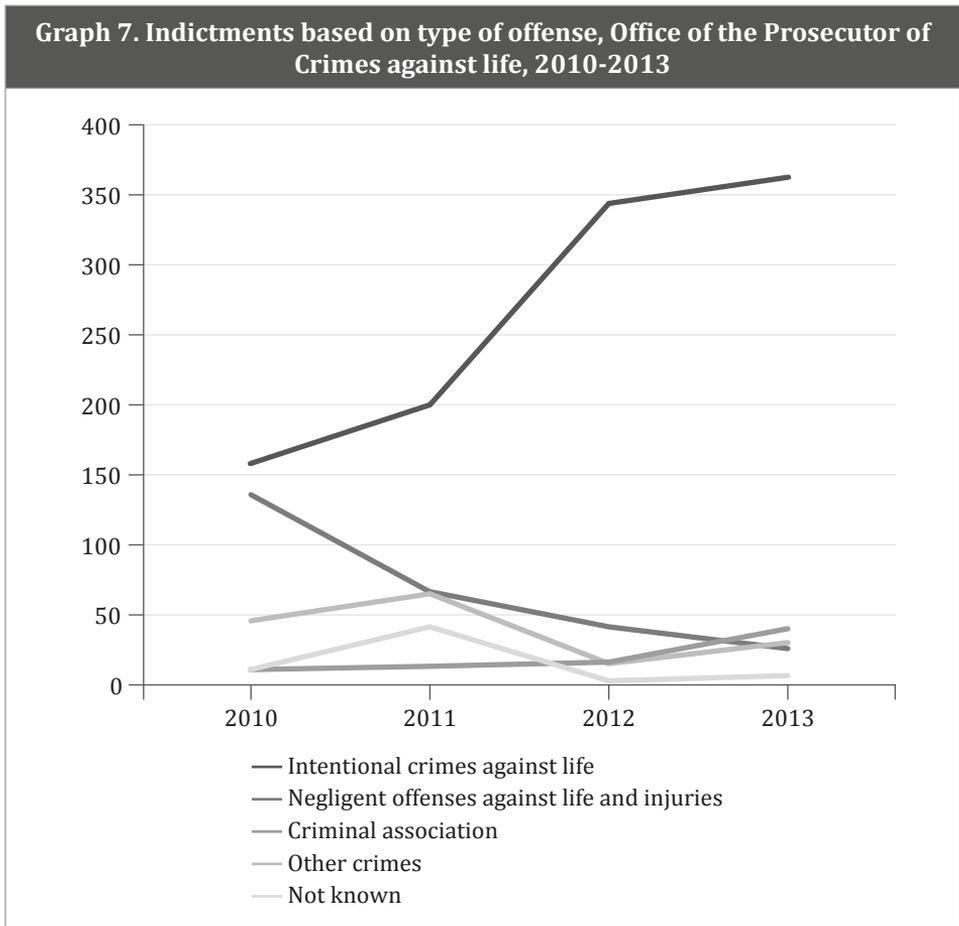
Based on data from the Memorias de Labores of the Attorney General's Office.

Graph 6. Cases resolved, Office of the Prosecutor for Crimes against Life 2008-2013



Based on data from the Memorias de Labores of the Attorney General's Office.

Moreover, thanks to the new model the different units distinguished the different levels of seriousness of the cases coming in, reserving indictments for intentional crimes against life, and using other mechanisms for cases of negligent homicide and injuries. As observed in Graph 7, indictments for intentional crimes against life increased 131% (from 157 in 2010 to 362 in 2013) and in negligent offenses and injuries they diminished 80% (from 135 in 2010 to 26 in 2013). In other words, indictments concentrated on serious crimes, applying measures of reparation for less serious or moderate offenses.



Based on data provided by SICOMP.

It should be noted that the Justice Studies Center of the Americas (JSCA/CEJA) makes the following assessment: “It is no longer a management model that only facilitates disposing of minor cases and their rapid exit from the system, but

fundamentally it is a working dynamic that seeks to provide adequate responses for each type of conflict. With respect to the less significant and low-intensity cases, early decisions are adopted both for ending cases by the application of prosecutorial discretion and by using alternative mechanisms. The most relevant cases are investigated from a broad conception, based on their complexity and scope more than on the specific incident, and taken to trial to seek convictions of those ultimately responsible.”²¹⁸

As can be observed, the new model involved establishing different organizational structures that made it possible to better manage the flow of cases entering the Office of the Prosecutor for Crimes against Life. Given the results it was not only a change in the organizational structure of the prosecutorial agencies, but a transformation in the way of earmarking and prioritizing resources. This reorientation, in turn, was translated into an improved response to the cases coming in, in quantity and quality, i.e. an increase in the number of cases resolved either through conciliation or because the facts had been established.

C. Strategic Prosecution

Strategic prosecution was the other strategy for improving case management. Even with the prosecutorial offices reorganized in keeping with the new management model, the case-by-case approach was inefficient for taking on the prosecution of the criminal networks and structures that were responsible for a large part of the crime in Guatemala. For this reason the change in the prosecutorial management model was accompanied by an initiative to change the method of investigation.

Following is a detailed description of this methodology. The starting point is a description of the main weaknesses of the traditional model of investigation, which includes, first, formalistic and bureaucratized investigation, and second, the weaknesses in the case-by-case method of investigation. Following is an explanation of strategic prosecution. It ends with an explanation of the main results of the use of this methodology in “The Gangs Plan” (“*El Plan de Pandillas*”), which was the most finished example of this new approach to investigating.

218 German Garavano, Marco Fandiño, Leonel González. *Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala*. op. cit, p. 52.

1. The traditional approach to investigation, formalistic and bureaucratic

One of the legacies of the inquisitorial system was the formalistic and bureaucratic approach to investigation. The transfer of the judicial officers who had worked in the judiciary to the Attorney General's Office brought with it the inquisitorial culture and reproduced the working methods of the investigative judges.²¹⁹ The investigation was carried out mainly through official notes to the police requesting investigations, to the forensic services requesting expert examinations and reports, and to records asking for information generally. It would take weeks or months before a response could be expected. And such responses were often insufficient or obscure, or simply non-existent, requiring that the request be reiterated.²²⁰

This meant losing valuable time for the investigation, and it delayed and threw obstacles in the way of the effort to clear up the facts in the cases. When investigating violent crimes the first 24 hours are fundamental for finding the truth. Due to the antiquated way investigations were conducted those first 24 hours were not used other than formally, from the desk, requesting information. This situation resulted in evidence being lost, and with it the possibility of clearing up the facts of the crime, for in many cases evidence could not be reproduced.

One of the mechanisms that was attempted to overcome these shortcomings was establishing an inventory of steps or actions to perform in investigations, depending on the type of crime; even so, it was not possible to dismantle the ritualistic approach to investigation. In other words, if 10 activities were required to clarify a homicide, 10 official notes were sent with requests that they be carried out, and it was considered that they had done their job. Nonetheless,

219 Mauricio Duce and Cristián Riego, *Desafíos del Ministerio Público Fiscal en América Latina*. Santiago, Chile, CEJA, 2006, p. 61.

220 The report monitoring the Office of the Prosecutor for Crimes against Life, produced by the Fundación Myrna Mack in 2009, analyzing case files, documented how "the most common step take is the 'request for Reports' from different institutions of the State, including the General Archive of Protocols (*Archivo General de Protocolos*), *DECAM*, the judicial branch (criminal records), the National Civilian Police (Police Records), Civil Registry, Property Registry, and tax authority (SAT)." Third were administrative transactions, that is, "delivery and return, official notes, records, forwarding memos, certifications." The same study documented that only 18% of the requests received an answer in less than a month. Fundación Myrna Mack. *Informe de monitoreo sobre la gestión de casos de muerte violenta de mujeres y hombres en el departamento de Guatemala*. Guatemala City, FMM, 2009, pp. 40 ff.

the concern was that it would be noted in the record that the steps were taken, but not that they had helped to clear up any facts.

Attainment of goals was gauged by the number of requests or official notes sent. For example, the activity of the Bureau of Criminalistic Investigations (Dirección de Investigaciones Criminalísticas) of the Attorney General's Office was measured by "number of rulings sent" ("*número de providencias enviadas*") and not by the number of cases clarified.²²¹

As Mendaña described it in a 2006 research study on the State's response in crimes against life: "Investigations continue to be bureaucratic. Priority is accorded to process more than results. Many formalities are required to obtain certain information; the production of information is sluggish the reality generally shows us that "what should be a creative activity has become a routine activity, a mere accumulation, more or less mechanical, of papers that transcribe records." This phenomenon of bureaucratization of the investigation, of ossification, is a consequence of written procedure and the inquisitorial culture."²²²

De-bureaucratizing criminal investigation has been extremely difficult not only because it is part of the culture of the judicial officers, but also because it performs an essential function: rendering public servants unaccountable for their actions. As efficiency is gauged formally, if all the procedures provided for were performed, the work assigned was considered to have been carried out, even if the case remains in impunity. As explained by Alberto Binder, "the [prosecutorial] officers are convinced – in a sort of ideological intoxication – that they only perform the procedures prescribed by law, and in this way they wash their hands of the effects of their decisions. The 'record' – which is the material object of the ideology of administrative transactions – makes its way through all the offices and mechanisms of the criminal justice system, from the police to the prison system, hiding those who suffer the decisions and those who make them."²²³

Instruction 1-2006, "Methodology for Criminal Investigation" was issued to overcome this and other problems of criminal investigation, based on developing a preliminary hypothesis that should guide the investigation, and drawing up

221 For example, the Memoria de Labores for 2008 indicated that more than 3,173 rulings were sent, p. 188.

222 Ricardo Mendaña. *Los delitos contra la vida y la investigación criminal en Guatemala*. Guatemala City, ICCPG, 2006, p. 7.

223 Alberto Binder. *Análisis Político Criminal*. Buenos Aires, Astrea, 2011, p. 52.

a plan for investigation that includes the determination of legal, factual, and evidentiary elements. In addition, various trainings promoted management of the investigation, teamwork, and meetings 24 and 72 hours after an incident with violent death.

While there was an increase in the number of cases in which the facts were clarified, it was not to the extent one would have expected. In 2010, 363 indictments were handed down in the Office of the Prosecutor for Crimes against Life, twice as many as the 180 indictments filed in 2007, but only 151 were for intentional violent deaths. In other words, introducing these methodologies brought about an increase in the clarification of cases, but the results were still far from what was expected.

2. The case-by-case method

Along with the problem of a formalistic and bureaucratic approach to investigation was a limitation in the method of investigating cases. Even if the prosecutors were to faithfully comply with the provisions of Instruction 1-2006 and expeditiously carry out all the steps needed to clarify the case, given the number of violent deaths coming into the Office of the Prosecutor for Crimes against Life daily²²⁴ and the complexity of the criminal phenomena causing them, it would have been difficult to clarify a significant number of cases using this method.

Cases were investigated reactively and in isolation, i.e. each incident resulting in death became an investigation. There were no mechanisms to facilitate connecting cases, for example by looking at the profile of the victims (poor youth) or the victimizers (members of a single criminal organization) and even less was there any inquiry into the criminal phenomenon causing these violent deaths. The method was case by case: each incident was a self-contained unit, disconnected from and unrelated to the other cases coming into the Office of the Prosecutor for Crimes against Life.

This methodology also ignored the situation of violence in the country, in which the action of criminal groups, many of them based in or related to long-standing

224 In 2010, for example, each prosecutorial agency had to resolve, on average, five cases each month, 1.3 on average per assistant prosecutor. To this one had to add the cases to be dismissed *in limine* and negligent homicides. Analysis Unit of the Attorney General's Office. Informe de criminalidad en delitos contra la vida ocurridos durante el año 2010 en la Ciudad de Guatemala. Guatemala City, Attorney General's Office, 2010.

clandestine structures in parts of the State, was resulting in the spread of crime in Guatemala.

The investigation of cases individually was no doubt influenced by the distribution of cases: a prosecutorial agency (*agencia fiscal*) would take cognizance of all incidents that occur during a given shift, whether intentional or negligent, and was obligated to investigate each of them until clarifying the facts. Equally important is the way lawyers have been trained, particularly those of us who have specialized in criminal law.²²⁵

The construct of the “criminal justice doctrine” (*la “Dogmática penal”*) is based on a case, in which the protagonists are an active subject or perpetrator of the crime, and a passive subject or victim. In this construct one analyzes the criminal act, the statutory definition of criminal conduct, the unlawfulness, and guilt. While there is extensive development of the forms of perpetrating and participating in an offense, the prevailing view is that of various persons participating in a criminal act. Sentencing guidelines for concurrent crimes, though referring to a plurality of criminal acts, are rules for determining the penalty, not analytical categories that allow us to inquire as to how the offenses are interrelated. The analysis of context or of criminal networks is not important for this isolated vision of cases, when in reality it is a higher level strategy for criminal investigation that makes it possible to identify the *modus operandi* and mechanisms that make possible large-scale violence.

The construct on which the criminal law was developed, and which, consequently, informs its teaching in the universities, conveys the image of a duel, a hunter going into the forest, or a shooter stalking his or her victim from a distance: A perpetrator, an act, a victim. Indeed, the categories that were constructed to explain criminal profiles, which have been repeated for over 100 years, refer to a person who commits one or several offenses as a “passional offender,” an “occasional offender,” or a “habitual offender.”²²⁶

225 Alberto Binder notes that this view is influenced by a moralist understanding of the criminal law: “For historical reasons, which have now become bureaucratic reasons, we focus these tasks on cases or persons. On the one hand the long-standing moralist tradition (*mala in se*) makes us think that the problem is that of conduct that merits reproach and therefore that must be punished. If we read between the lines we can observe that a good part of the criminal law literature is still tied to this kind of view, albeit implicitly...” Alberto Binder. *El control de la criminalidad en una sociedad democrática: Ideas para una discusión conceptual. Revista de Ciencias Penales de Costa Rica*, No. 29, San José, Asociación de Ciencias Penales de Costa Rica, 2014, p. 19

226 Franz Von Liszt. *Textbook of German Criminal Law*. 1881.

This vision of criminal law doctrine is useful for performing the task that has been assigned of constructing categories that serve as filters making possible an orderly interpretation of the criminal law. Each doctrinal category places limits on the punitive power of the State. It is necessary for a person to be clearly accused of given conduct, for which he or she may answer before the criminal justice system. In a state under the rule of law the criminal law provides that guarantee, and criminal justice doctrine provides the categories that facilitate that task. Nonetheless, this vision is utterly useless for designing effective strategies for criminal prosecution, which require a broader and deeper understanding of crime.

3. Ineffectiveness of the case-by-case method

The case-by-case method of investigation “inexorably leads to ineffectiveness,”²²⁷ as noted by Alberto Binder. This ineffectiveness is caused by at least three factors: first, this method ignores the complex web of relationships woven around criminal activity and the ties with other criminal acts; second, investigating in isolation squanders resources, which are always scarce; and third, one loses sight of the policy goal pursued by the investigation and punishment of criminal acts, namely reducing crime. Following each of these is explored further.

a. The complex reality of criminal activity

Even though the criminal law manuals describe a criminal event as an offense between two persons, the reality is far from this vision. Violations of the criminal law generally occur to obtain something in return, be it an economic benefit, reinforcing power in a given territory, preserving a privilege, inspiring terror, etc. To achieve this aim not only is a single act committed, but a whole set of acts, many of them criminal, that enable the person or criminal organization to attain that purpose. Crime is not committed individually and in isolation; rather, often several persons come together; it may be carried out by criminal networks or influenced by social factors that facilitate the criminal phenomenon.

²²⁷ Alberto Binder. *Análisis Político Criminal*. Buenos Aires, Astrea, 2011, p. 233. The same author, on analyzing the object of criminal justice policy: “Even though it may seem contradictory, when criminal justice policy is based on the case perspective it takes on a highly artificial aspect and therefore becomes ineffective. This is not because cases don’t exist – quite to the contrary – but because acting on the individual attributes of the case takes away any aspect of generality from the policy, that is, it annuls it as a policy, however much it continues acting as ‘punishment’ of that individual action.” *Id.*, p. 234.

One example, to illustrate these ideas, is the phenomenon of extortions. It's not that Juan calls Pedro and threatens to kill him if he does not make a deposit into his bank account. It is an organized group of persons seeking a monthly payment of a sum of money; they kill one person so that the local residents understand the seriousness of the threat, and they collect the money through bank accounts. In this simple example there is a group of persons (the organization), multiple victims (the residents), and a series of criminal acts (extortion, homicide, money laundering). If we add to that bribes paid to the security authorities to allow them to act, we would have another profile of perpetrators (public servants) and other types of crime (bribes).

This complexity is not resolved if every time that a resident receives a call the police intervenes and arrests the collector. And it would not be resolved on clearing up the facts of the homicide, and determining the identities of the gunmen of the organization who executed the victim; nor by prosecuting the collectors who deposited the money in the bank. To solve it as an expression of crime, as a criminal phenomenon, one must take into account this whole set of relationships, persons, and conduct.

Therefore, if one ignores the complexity of criminal action, interactions among persons, conduct, and relationships, an investigation is going to be inefficient and ineffective. While this problem occurs in many countries, in the case of Guatemala the influence of these criminal networks in crime patterns made it necessary to accord strategic priority to criminal investigations.

b. Efficient management of resources

The second reason is that with the case-by-case method of investigation the system becomes unnecessarily saturated and there is a waste of always-scarce resources. In the traditional method of investigation each call asking for money in an extortion scheme leads to a complaint, which in turn forms a case, which is to be investigated by a prosecutorial officer in isolation. The next complaint could be assigned to his colleague, in the neighboring prosecutorial agency, which would open an independent investigation. In the case of prosecutorial offices that divide the work based on subject matter, as in Guatemala, there is greater complexity because homicides would be investigated by one prosecutorial office, extortions by another, money-laundering by yet another, and bribes by a fourth.

Assuming all the prosecutors were diligent, they would be unnecessarily repeating the investigative steps already performed by their colleagues, and would still end up with no more than a partial view of a complex phenomenon. At an optimal point, if they solved each incident of extortion and were to file an indictment for each one, the judges would be overwhelmed hearing individual cases.

In addition, the information compiled in each case, whether or not it is imputable to a single criminal organization, is no doubt of interest for clearing up the facts in other cases.

c. Crime-reduction approach

The third reason is that you can be as effective as you wish when it comes to resolving a specific case, without necessarily helping to reduce crime; indeed, an approach focused on individual cases may aggravate the phenomenon in the case of criminal structures. For example, arresting only the highest-level persons in a drug-trafficking organization, leaving the rest of the criminal organization in impunity, may result in its fragmentation and an increase in violence to secure control of the criminal organization or of a given territory, without such clashes having any impact reducing the flow of drugs.

Another example of this approach in investigating cases of extortion, arrests *in flagrante delicto*, and the collectors is that they only tend to fill the jails, for since they are at the bottom of the criminal hierarchy, they are fungible. Their arrest was generally followed by a quick replacement by some family member or minor, aggravating the crime.

For these reasons it was necessary to bring about a change in paradigm, to move from case-by-case prosecution to strategic prosecution.

4. Strategic prosecution

The term “strategic prosecution,” which on the one hand makes reference to “prosecution,” understood as the full set of actions carried out by state institutions in response to a crime, and includes both the investigation and the prosecution of cases; and on the other hand includes the term “strategic,” meaning that these actions are geared to attaining a given purpose or objective.

Strategic prosecution (*persecución penal estratégica*) is an expression coined by Alberto Binder as part of redefining the bases for a democratic criminal justice policy. It is a concept for designating a type of prosecution counterposed to traditional prosecution, which is blind and brings together intelligent prosecution and community-based prosecution. Intelligent prosecution is based on information and analysis of the criminal phenomenon.²²⁸ Community-based

228 On intelligent prosecution and crime analysis, see Fundación Paz Ciudadana, *Análisis Delictual: Enfoque y metodología para la reducción del Delito*. Santiago, Chile, Fundación Paz Ciudadana, 2010.

prosecution starts by identifying the problems that affect the community and seeks to resolve them, in a partnership with relevant actors, using measures that are not exclusively punitive.²²⁹

According to Binder strategic prosecution consists of “organizing the many resources of the prosecutorial offices in a manner integrated with other preventive, deterrent, or reactive actions of other institutions, based on precise knowledge of a given area of crime, to dismantle that phenomenon, make it difficult to expand, or keep it under control.”²³⁰

Strategic prosecution means directing prosecution towards a given purpose which, given the aims of punishment and the criminal law, can be none other than reducing or controlling crime. The accepted theories on the aims of the criminal law point to crime deterrence through criminal law prohibitions, which inhibit persons from committing criminal acts, penalties that inhibit specific individuals who have been punished from continuing to engage in criminal conduct, and preventing acts of private revenge.²³¹

The 2011-2014 Strategic Plan of the Attorney General’s Office expressly included, as the first main line for implementing strategic prosecution, seeking to establish a method of “proactive prosecution aimed at fighting criminal phenomena and dismantling illicit markets.” And so the main thrust was introducing a change in the “paradigm of prosecutorial action for going after crime: from the case-by-case paradigm to the paradigm of identifying criminal phenomena and connecting cases.”²³²

229 “By Community-based Criminal Prosecution we understand the integration of the work of the prosecutors, in specific communities, forming alliances with other social and state actors to respond comprehensively (not just with prosecution) to a given area of crime.” Alberto Binder. *Análisis Político Criminal*. Buenos Aires, Astrea, 2011, p. 236. The concept of community-based prosecution is based on the “*problem-oriented policing*” proposal. See Herman Goldstein. *Problem Oriented Policing*. New York, McGraw-Hill, 1990. And the works published at <http://www.popcenter.org>.

230 Alberto Binder, Cooperación Internacional en materia penal. In *Contra la Inquisición II*. Buenos Aires, Ad Hoc, 2015, p. 10.

231 Along with the traditional aims of punishment and of the criminal law, Ferrajoli adds a third one, which is inhibiting violence at the hands of victims or groups close to them if the state does not hold a monopoly over punishment. See Luigi Ferrajoli. *Derecho y Razón*. Madrid, Trotta, 1995.

232 Attorney General’s Office, Memoria de Labores 2011, p. 34.

The most important elements of this transformation consist of a change in the target of prosecution, from specific offenses to the criminal phenomenon; which requires using new tools such as intelligence and analysis of criminal conduct, and a change in position vis-à-vis the investigation of criminal acts, from reactive to proactive. Next is a description of each of these.

a. From the offense to the criminal phenomenon

At the center of the criminal law is the concept of the offense; yet, as indicated, this is insufficient in the context of strategic prosecution. To better grasp the objectives of strategic prosecution it is useful to turn to the concept of criminal phenomenon.²³³ It includes not only the conduct selected by the criminal law as meriting punishment, but also how that conduct actually unfolds, how it is part of a more complex context, and how it is manifested along with other lawful and unlawful conduct attributable to an individual or a group of individuals.

The criminal phenomenon consists, then, of “a set of criminal acts which, in a given social context, and associated with a well-defined space and time, manifest common characteristics in relation to their elements (victims, *modus operandi*, profile of the offenders, physical spaces, objects used to commit the crime, objects towards which the criminal action is oriented, etc.); which, when identified and delimited, facilitate detecting them, acting on them, and even, in certain circumstances, anticipating their trends.”²³⁴

Within the criminal phenomenon one must identify what Binder calls a social regularity, that is, “the constant recurrence of the same kinds of occurrences or of the same type of opportunity”²³⁵ and attempt to discover the “rationales that produce or are inscribed in those regularities.”²³⁶ The idea is to understand how the criminal phenomenon is manifested, what persons are involved, what conduct they engage in, and what relationships they construct, all to try to understand their logic in light of the aims they are pursuing. It is also important to determine the social factors that support or facilitate their existence.

The purposes of the various forms of criminal conduct may vary, from obtaining an economic benefit, securing territorial control, maintaining or acquiring

233 Alberto Binder. *Análisis Político Criminal*. Buenos Aires, Astrea, 2011, pp. 245 ff.

234 Attorney General’s Office, Memoria de Labores 2011, p. 33.

235 Winch, cited by Binder. *Análisis Político Criminal*. Buenos Aires, Astrea, 2011, p. 228.

236 Id., p. 230.

privileges, and strengthening ties of identity or group belonging, to reinforcing forms of exclusion and discrimination, among others. Similarly, various factors facilitate its appearance, from the most obvious, such as geographic location of a given territory, or the lack of control over the transfer and possession of weapons, to structural ones such as inequality or exclusion based on class, gender, or ethnicity.

Given that oftentimes the aim of criminal activity is profit, to understand criminal phenomena one must also understand the illicit markets for the purchase and sale of weapons, the purchase and sale of drugs, money laundering, contracting services (hit men), or for the purchase and sale of protected species or archeological artifacts.²³⁷ Finally, the criminal conduct may be carried out with the complicity of or aiding and abetting by state authorities, which gives rise to another array of criminal conduct, such as failure to file a report, bribery, and obstruction of justice, among others.

A prosecutorial policy that seeks to be effective should develop strategies with respect to this map of actors and these forms of conduct, relationships, purposes, times, and places. To achieve it, one must become acquainted with and understand the criminal phenomenon in the greatest possible detail.

The first task in order to incorporate the methodology of strategic prosecution was to identify different criminal phenomena by analyzing cases. This exercise was carried out annually starting in 2012. Each district and subject-matter prosecutorial office had to identify the criminal phenomena that were most common in their respective territorial jurisdictions or areas of action, and from there develop a plan for strategic prosecution. Among the criminal phenomena identified in the district prosecutorial offices were identity theft, motorcycle theft, extortion, contract killings, and stolen trucks.

Following is an example of the form used to define criminal phenomena with the section and district prosecutors. This was done at the Office of the Prosecutor for Crimes against Women in 2012.

237 According to Binder, “urban crime is largely regulated by illegal markets of all sorts. Even the most common incidents such as a robbery in the street have to do with the market for stolen objects. It’s clearest in the case of stolen vehicles. It is impossible to achieve results without strategic prosecution. And this requires knowing the structure of the market and knowing clearly what is the segment most sensitive to prosecution and then direct resources there.” Alberto Binder, *Cooperación Internacional en materia penal*. In: *Contra la Inquisición II*, op. cit., p. 11.

“Twelve basic questions for defining a criminal phenomenon”

Criminal Phenomenon: Rape of young women along the street Calzada Roosevelt, Guatemala City, March and April 2012

1. Time Frame: March-April 2012

2. Territorial Scope: Calzada Roosevelt, Guatemala City

3. What is the problem? Young women are victims of robbery and rape along Calzada Roosevelt, Guatemala City.

4. What is the quantitative scale of the problem? Fourteen cases of rape have been reported.

5. The victims' profile: Young university women who have been driving recent model-year vehicles.

6. Profile of the suspects: Young men, well-built, very short hair.

7. What is the *modus operandi* that stands out?

The perpetrators choose their victims in parking lots of shopping centers or restaurants and when they come out of those places they proceed to follow them in vehicles and on motorcycles. They intercept them, force them to bring their vehicle to a stop, threaten them with firearms, and using physical and psychological violence they take control of the victim's vehicle. As the vehicle is being driven they take all the victim's belongings, including jewelry, money, and credit and debit cards, they demand to be told the PIN numbers of the victim's cards, so as to then withdraw money at ATMs. Then, while the vehicle is being driven, they take advantage of the defenselessness of their victims, sexually abuse them, and then leave them in unpopulated areas.

8. What are the consequences?

There is great fear on the part of the population as a result of the rapes and robberies of vehicles in this zone.

9. What are the problems encountered by the Attorney General's Office when it comes to prosecuting these incidents?

The victims fear reprisals from the criminal group. Among the strong evidence of this are the survivors' statements. They do not wish to appear in a proceeding for they fear that their identities will be found out; they wish to avoid the secondary revictimization stemming from the stigma of being a rape victim. Complicity of police officers in covering up the facts.

10. What are possible strategies for compiling information that would make it possible to determine with precision the scope of the criminal phenomenon?

- a. Filling in information missing in the SICOMP for the cases selected.
- b. Working meetings with the Office of the Prosecutor for Crimes against Women, the Stolen Vehicles Unit of the Office of the Prosecutor for Organized Crime, investigators from DICRI to identify the car theft gangs that operate in this place and possible antecedents.

11. What are the strategies for criminal investigation?

- a. Police sketches of the perpetrators.
- b. Collecting videos from the zone, identifying possible suspects.
- c. Forensic medical exams of the victims.
- d. Forensic psychological exams of the victims.
- e. Genetic reports to establish a possible match between DNA collected from the victims' clothing and the assailants' profiles.
- f. Wiretaps on the persons alleged to be responsible.
- g. Visit with the survivors by the prosecutor on the case accompanied by a woman psychologist and inform them that their identity will be kept confidential if they wish to testify at trial.
- h. Provide survivors medical and psychological accompaniment.
- i. Identify persons and vehicles used by the persons alleged to be responsible.

12. What recommendations might there be to diminish the risks that this type of act will be committed?

Identify the persons responsible and dismantle the gang. Through the media, inform the public of how the criminal organization operates and of its dismantling.

Results

The investigation identified as the persons responsible for these acts a criminal gang that was dedicated to stealing vehicles. Nineteen members of the criminal organization were arrested in the months of June and July 2012. In July 2013 a conviction was obtained of all of them for the crimes of aggravated robbery, rape, and criminal association (*asociación ilícita*). By analyzing the communications among the members of the criminal gang, intercepted with a judicial order, it was determined that two agents of the National Civilian Police collaborated in covering up the facts.

The investigation of this case suggested a change in the way in which this prosecutorial office was organized in the management model. A specific team on sex crimes was established in the Investigations Unit. Within this work team, those cases in which the assailant was a person close to the victim whose identity was known were separated out from the cases of unknown identity. This facilitated the identification of patterns of action by place, *modus operandi*, time when crimes were committed, and profiles of the victims and victimizers.

b. Information and crime analysis

Strategic prosecution requires intelligence information and the tool of crime analysis. Crime analysis is a systematic process of data processing and production of reports on a complex case, a group of cases, or a criminal phenomenon. This process begins with the search for and identification of relationships between data and sets of data – for example, on crime incidents and acts and the patterns of occurrence in a given time and place. Crime analysis ends with certain outputs, reports that describe the main findings once one has correlated the data, and courses of action are recommended.²³⁸

The role of analysis in prosecution is useful both for correlating information in a complex case – facilitating elements for connecting cases through profiles of victims or victimizers, instruments of the crime, weapons, telephones, bank accounts, etc. – and for determining crime patterns and trends, so as to establish priorities for prosecution.

A critical factor for good crime analysis is having quality information. The

238 See María Luisa Maino. Desafíos del análisis criminal para una mayor eficacia en la persecución penal. In: Carlos Guajardo García, et al. *Recomendaciones y Estándares para un análisis criminal más eficaz en organizaciones de prevención del delito y la persecución penal en América Latina*. Santiago, Fundación Paz Ciudadana, 2015, p. 46.

main sources of information that were used were the data entered into the Computerized Case Management System of the Attorney General's Office (SICOMP). Although at first it was a tool for monitoring cases, it was adapted to generate information that would make it possible to analyze crime trends, as analyzed in section D.4 (*infra*). While it was not exact information, since the prosecutors often did not update the records, it did make it possible to have general data on crime.

Data bases also received input from the management of information in complex cases, with which crime maps were drawn up and criminal networks identified. This provided useful background for investigating and clearing up similar cases.

One of the tools used to identify the members of a criminal organization and their relationships was the "analysis of social networks." Information as simple as the existence, frequency, and nature of contacts among members of the criminal group was useful for establishing its internal structure, the sub-groups that are part of it, the members who hold the greatest power, and the persons who are most essential.²³⁹ These relationships were established by inter-communicational analysis of phone calls or data on coinciding ballistics identified through the Integrated Ballistics Identification System (IBIS). These analyses were supplemented by information from wiretaps.

The following box presents the network analysis work done with respect to the criminal structure of the Zetas.

Att. Z.200

Los Zetas criminal organization

Background

Los Zetas are a group of drug traffickers of Mexican origin, a breakaway from the Gulf Cartel. Originally they were made up of former members of the Aeromobile Special Forces Group (GAFES: Grupo Aeromóvil de Fuerzas Especiales). They also recruited former members of the Guatemalan Army, especially from an elite unit known as the "Kaibiles."

239 On the usefulness of the analysis of social networks in criminal investigation, see Andrea Giménez Salinas Framis and José Luis González Álvarez. *Investigación Criminal*. Madrid, LID, 2015, p. 35.

The Zetas entered Guatemala in 2007. In March 2008 they participated in the assassination of Juan José León Ardón and 10 other persons. In November 2008 they were involved in the Agua Zarca massacre, in the department of Huehuetenango, where 17 persons were assassinated. In April 2009, the Zetas assassinated five antinarcotics police investigators in Amatitlán, supposedly in retaliation for stealing a cocaine shipment. Among those implicated and arrested was Baltazar Gómez Barrios, then-director of the PNC (all these facts have been prosecuted and there was a conviction).

Cases May 2011

1. On May 10 the Zetas kidnapped Luis Carlos Bardales Chacón and subsequently assassinated him. They asked for a ransom, and a payment was agreed upon of 350,000 quetzals, which was delivered on May 11, 2011, by Keiry Eunice Franco Salguero and Luis Alberto Bardales Tobar (the father), who they assassinated. Along with the bodies they left a note that said "I'm going after your head *Otto Salguero. Att. Z.200.*"
2. On May 15, in the early morning hours, they entered the farm Finca Los Cocos, in the department of El Petén, in northern Guatemala, where they assassinated 27 workers. Using one victim's leg, they wrote on the wall "What's up Otto Salguero? I'm going to find you and I'm going to leave you like this Att. Z 200."
3. On May 20 they put up banners in the departments of Huehuetenango and Quetzaltenango with messages intimidating the population: "*The war is not against the civilian population, nor the government and much less the press, so let's take it easy, it's against those persons who are with the Gulf Cartel and it is against Otto Salguero he's one of the most important suppliers of cocaine to the Gulf Cartel and those who paid with their lives are his workers who his organization maintains; press, stop fussing so much before the war is against you, one who gives notice is not a traitor Att. Z 200.*"
4. On May 23 they kidnapped Alan Iskander Stowlinsky Vidaurre, a prosecutor with the Attorney General's Office in the department of Alta Verapaz, and then they assassinated him. On May 24, they left his body in front of the Mayor's Office of Cobán with a message that said: "This is for all those who are making mistakes with Z-200 I told you that one by one I was going to kill you, keep thinking you're gringos if they feel like fighting leave them alone and don't be jerks because the ones who are tiresome are you, I have respected your family, I am collecting the 800 kilos they took from me, I will continue collecting the debt, take care of yourselves Att. Z 200."

Investigation and prosecution

After the Los Cocos massacre we at the Attorney General's Office and the Ministry of Interior established a working group at the highest level to clear up these cases and to determine who the members of the Zetas's criminal network in Guatemala were, and which criminal acts they had committed. With the assassination of prosecutor Alan Stowlinsky, clarifying the case and dismantling the criminal organization was all the more pressing, since it had threatened all prosecutorial officers.

An investigation that included wiretapping, immunized witnesses, crime analysis, ballistic evidence, analysis of photography and videos succeeded in clarifying the aforementioned criminal acts, for which there are now convictions (May 25, 2012, and February 21, 2014) and 76 members of this criminal organization were arrested, prosecuted, and convicted, among them eight commanders and/or local chiefs (*jefes de plaza*), 17 of Mexican nationality and 59 Guatemalans (Memoria de Labores 2011, p. 69).

Arsenals of firearms, money, and drugs were also seized. On April 3, 2012, Walter Horst Overdick Mejía, alias El Tigre, was apprehended for extradition to the United States of America for the crime of conspiracy to bring one kilogram or more of cocaine into the United States. He was the lead partner of the Zetas in Guatemala, and was extradited in December 2012 (Memoria de Labores 2012, p. 72).

The strategy entailed not only clarifying serious crimes, but also dismantling the criminal organization. While at first the effort was reactive, after the above-noted events a strategy was designed and carried out that went beyond clarifying the facts, aimed now at identifying and prosecuting the members of this criminal network. Today, while they still have a presence in Guatemala, their influence has been notably diminished.

c. From reaction to planning

As has been explained, traditionally investigation was reactive. The intervention of the police and the Attorney General's Office would come after the victim filed a complaint. In the case of deaths, the intake of cases happens through the crime scene teams called in by other authorities in the event of a violent death or deaths, and in Guatemala City in cases of attempted homicide or injuries caused by firearms.

The first consequence of reactive investigation, without a method for prioritizing cases that allows for managing large numbers of incoming cases, is that the

system is overwhelmed. Prosecutorial officers get the sense that their job is impossible, and they end up carrying out urgent investigative measures even if they are not important or strategic for clarifying the facts of a case.

For these reasons it was essential to move to a proactive model of investigation²⁴⁰: Identifying, based on analyzing cases in a given place and time, the criminal phenomenon (or phenomena) that provides the larger context, and from there developing a plan that includes the various actions needed to investigate the cases.

Adopting this approach meant that the priorities of strategic prosecution would be planned in January of each year. In the case of the district prosecutorial offices, planning was done by region, attempting to identify whether there were phenomena that extended beyond the geographic limits of a given department. In some of the subject-matter prosecutorial offices planning was done with the respective teams of investigators from the National Civilian Police; this happened in kidnappings, extortions, cases of stolen vehicles, and homicides. It was not possible to do so with all units, in some cases because no specific units had been created, for example, for addressing gender violence, and in others because adequate channels of cooperation did not exist, for example, with the unit focused on drug trafficking.

The main difficulties for such inter-institutional planning included the reluctance in some areas to share intelligence information. At times when the police investigators had a fuller picture of the criminal phenomenon, the prosecutorial officers tended to downplay their importance. One mechanism used to overcome this difficulty was to validate it through the particular prosecutorial office's own information.

In all cases, especially the first year these exercises were undertaken, it was difficult for the prosecutors and investigators to engage in coordinated planning. It was a challenge, as planning was not part of their work culture, and because it was difficult for them to take on goals that reflected strategic objectives, which would be the basis for evaluating their performance. It was also difficult to draw up the plans together, and although they were asked to come up with a single

240 The UNODC understands a proactive investigation to mean "law enforcement initiatives being intelligence-led: the collection and analysis of information on the history (if any), composition, means, objectives and *modus operandi* of criminal groups, as well as on illicit networks and markets." Carrying out such investigations requires "assembling existing information and gathering, analyzing and exploiting new information about the target activity or person, leading to direct enforcement actions or to development of information sources to permit future enforcement action of high value." UNODC. *Digest of organized crime cases*. New York. United Nations, 2012, p. 38.

plan, on several occasions two plans were presented, one drawn up by the police and the other by the prosecutors.

While the strategic objective was to diminish crime in specific areas, in these exercises no goal was established, i.e. by how much one was going to seek to reduce certain criminal conduct. The goals were established with a view to dismantling criminal organizations. Even so, notable reductions were obtained in some crimes, such as kidnappings, stolen vehicles, and violent deaths.²⁴¹

d. The case of the plan for confronting gangs

The most finished example of strategic prosecution was the “Plan for Prosecuting Gangs” or “Gangs Plan,” implemented in January 2012 by the Office of the Prosecutor for Crimes against Life. The plan stemmed from the cumulative experience in that Office. Already in 2009 two special units had been assigned to investigate the assassination of bus drivers; these incidents generated strong pressure in the media to produce results. The purpose of designating these special units was to concentrate the cases in the units to “develop common patterns so as to make connections among cases and dismantle the gangs that provoke this type of crime.”²⁴²

In a similar arrangement two teams of prosecutors were designated to handle these cases, one specialized in the Mara Salvatrucha gang and another in the Pandilla 18 gang. These teams were dedicated exclusively to what came to be called “special cases” and they were taken off shift duty. Specific investigators from the National Civilian Police were also designated.

The objectives of the plan were:

1. To provide an effective response to the Guatemalan population in response to the violence brought upon society by the gangs.
2. To prevent an increase in the rate of assassinations and other violent incidents in the country caused by the gangs.
3. To reduce impunity for criminal acts committed by the gangs, specifically murders and extortion.²⁴³

241 Attorney General’s Office, Informe de Gestión, 2011-2014, p. 35.

242 Attorney General’s Office, Memoria de Labores, 2009, p. 61.

243 Unit for Liaison with the Analysis Unit of the Office of the Prosecutor for Crimes against Life and Integrity. *Plan de Pandillas*. Guatemala, Attorney General’s Office. 2012.

Four aspects were proposed as part of the investigation: showing the existence of both gangs as criminal organizations; identifying their members and their roles in the organization, sub-units, or “cliques”²⁴⁴; identifying the cases attributable to each of the gangs; and individually identifying which members were responsible for each criminal incident.

Based on the information provided by the ballistic correlation system and by a crime map showing territorial control, a total of 718 cases were identified and selected that involved one or another of the two organizations. Of these cases, 376 were associated with the Mara Salvatrucha and 342 with Pandilla 18, mostly in Guatemala City (335) and the municipalities of Villa Nueva (148), Villa Canales (71), and Mixco (49), but cases had also been reported throughout the country.

Table 5. Attorney General’s Office - Office of the Prosecutor for Crimes against Life . Cases included in the 2012 plan to fight gangs

Prosecutorial Office	Mara Salvatrucha	Pandilla 18	Total
Crimes against Life	221	114	335
Municipal, Mixco	11	38	49
Municipal, Villa Canales	28	43	71
Municipal, Villa Nueva	89	59	148
Others	27	88	115
Total	376	342	718

Source: Plan pandillas 2012

The results, in terms of clearing up cases, were as follows:

Table 6. Attorney General’s Office. Office of the Prosecutor for Crimes against Life. Results of the plan to fight gangs 2012-2013

	Pandilla 18	Mara Salvatrucha	Total
Prosecuted	195	76	355
Convicted	128	27	267
Cases resolved	323	103	622

Source: Memoria de Labores, 2013, Attorney General’s Office.

244 This is what each “cell” or subgroup in the gangs of one and the same criminal organization is called.

In 2011 there were 386 indictments in the Office of the Prosecutor for Crimes against Life²⁴⁵, drawn up by 12 prosecutorial agencies (*agencias*) of the Investigations Unit of that Office, an average of 32 cases per prosecutorial agency. In two years the two special prosecutorial agencies each resolved 155 violent deaths, five times the regular prosecutorial agencies.

No doubt the success of these prosecutorial agencies was in drawing them away from the case-by-case logic. They were assigned three times more cases than the regular prosecutorial agencies, that is, the number of cases to be investigated is not as important as the method with which they are investigated.

Factors that no doubt contributed to the success of these investigations were the use of special methods of investigation (immunized witnesses and wiretaps); the use of scientific evidence (matching ballistics, videos, fingerprinting, and DNA testing); coordination with special investigation teams of the National Civilian Police; and the work of the analysts, who systematized the information coming from criminal intelligence (immunized witnesses, wiretaps, ballistics, etc.) and integrated it into new plans that were proposed for strategic prosecution.

The most important challenge was to ensure an even more efficient and effective reactive investigation and in tandem implement a proactive investigation. According to CEJA both were accomplished: “the initial processing of the crime scene, the collection of evidence duly safeguarded, through the new system for assuring the chain of custody, as well as the development of an in-depth investigation that goes beyond the specific case to determine what is behind it and how it is related to others, and clearly seeks to fight what is at the root of the criminal conduct detected.”²⁴⁶

Yet in particular the idea that change was impossible was proven wrong: “the differential value in this case is determined by the importance of structuring the system to be able to successfully address the cases that are most important in social terms.... The weakness of the agencies in charge of criminal prosecution and confronting such cases, lack of motivation, of resources, or an inappropriate structure has been a reality in our region and in Guatemala.... This also generates a pattern of conduct that can be summarized in the often heard phrase ‘we don’t have a way or the capacity to resolve that type of case.’ The prosecutorial

245 Most – 200 – are crimes against life, but the figure also includes other crimes.

246 German Garavano, Marco Fandiño, Leonel González. *Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala*. op. cit. p. 89.

management model is showing that it is possible, and that it can be done without having to sacrifice the smaller cases.”²⁴⁷

e. Investigation of the violent deaths of women

Ten years ago the violent deaths of women were not clarified to any greater extent than the violent deaths of men. In 2008 and 2009 they reached the highest rates, 11.88 and 10.9 per 100,000 population, that is, far less than for males, at 46 per 100,000, but among the highest in the region for women.²⁴⁸ While this figure dropped off to 8.69 in 2012, it was not a sustained decline, for in 2013 it climbed once again, to 9.46 per 100,000 population. One of the strategies for investigating violent deaths of women as a criminal phenomenon was to discern which were covered by the Law against Femicide (*Ley contra el Femicidio*). It was a matter of distinguishing between those violent deaths that involved ordinary violence and those in which the perpetrator selected the victim because she was a woman or that occurred in a context of unequal power relations between men and women.

With this aim, in 2012 a data base was put together at the national level to record basic data on all cases of violent deaths of women on record with the Office of the Prosecutor for Crimes against Life. The main weaknesses in the investigation of these crimes were identified based on an analysis of the cases. These included:

- Prejudices: the officers in charge of the investigation tended to blame the victim because of her way of dressing, where she was, her prior conduct, or her prior or family relationship with the perpetrator. It was common to hear phrases like “she must have done something” (“*algo haría*”), “she was looking for it” (“*ella se lo buscó*”), “she brought it on” (“*ella lo provocó*”) with respect to women survivors of gender violence.
- Minimizing the importance of violence against women: the regular judges considered that these were cases of little importance, which translated into delays before evidence could be collected or to issue an arrest warrant or a search warrant; these cases were “the last in line” on the agenda of court hearings.
- Failure to take account of the context: the investigation was not informed by the context in which the assault occurred. As a result, there was no inquiry into whether there had been prior acts or reports of violence against

247 Id., p. 96.

248 Overtaken only by El Salvador and Colombia. See Julio Jacobo Waiselfisz. *Mapa de Violencia 2015*. Basilia Flacso, 2015, p. 28.

women or sexual violence concurrent with the femicide, nor whether the victim resided in an area where any criminal organization, gang, or drug-traffickers operated, or an area under the control of any such group or activity.

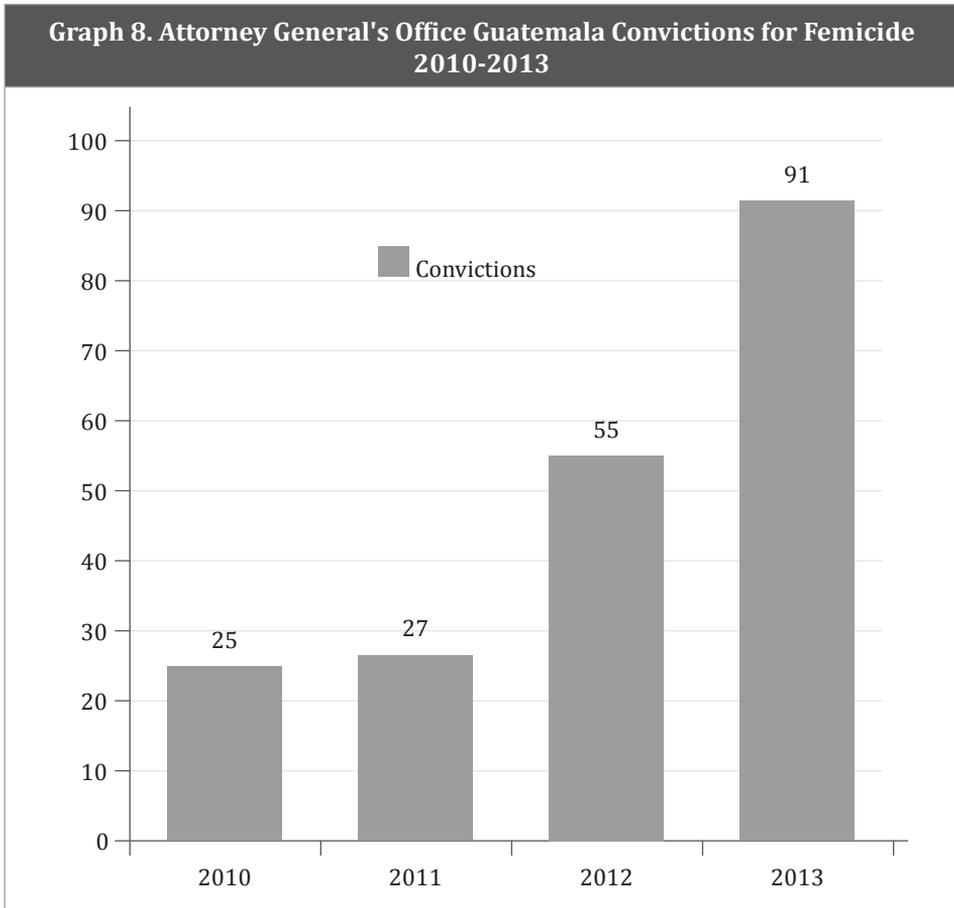
Three strategies were pursued to overcome these three weaknesses in the criminal investigation of the violent deaths of women:

1. Training of prosecutorial officers for investigating cases of sexual violence, violence against women, and femicides.²⁴⁹ The strategy was to see to it that once the victim approached the Attorney General's Office she would feel protected: "The women always have to feel comfortable if they are to return. It doesn't matter what happens. It doesn't matter if they return several times and reiterate the charges. I have to make sure that they feel that we are on their side."²⁵⁰
2. Coordination with the Supreme Court of Justice to establish a 24-hour court at the headquarters of the Attorney General's Office in Guatemala City to handle urgent investigative measures required in gender violence crimes immediately; that court started up operations in October 2012. Its presence completed the model of comprehensive services: forensic experts, police, psychologists, clinical physicians, and prosecutors were all brought together in a single space to serve the survivors in such cases. It was the institutions that revolved around the women, rather than the women having to go to dozens of windows or having to choose between medical care and access to justice.
3. Issuing a general instruction, Instruction No. 6-2013, which sets forth the main characteristics of this criminal phenomenon and puts out guidelines for effectively investigating it, starting from the three categories: intimate femicide (perpetrated by the spouse or partner, former partner, or one who aspired to be a partner); sexual femicide (the death is concurrent with sexual violence); and femicide in the context of a criminal group or organization, especially gangs or organizations associated with drug trafficking.

249Diplomate program of specialization in attention to and investigation of crimes of violence against women and sex crimes, given to 90 prosecutors nationwide, in coordination with UN Women. On the results of training see Andrea Suárez et al. *Diagnóstico para la incorporación de la perspectiva de igualdad de género en los servicios y atención del Ministerio Público*. Guatemala City, 2013.

250Andrea Suárez et al. *Diagnóstico para la incorporación de la perspectiva de igualdad de género en los servicios y atención del Ministerio Público*. Guatemala City, 2013.

The main result of these actions was an increase in convictions for crimes of femicide, as illustrated Graph 8:



Source: Based on data from Memoria de Labores, 2013.

The increase in convictions translated into far fewer cases (seen through to the conclusion, or brought but not concluded) at the Office of the Prosecutor for Crimes against Life, from 393 (178 resulting in death) in 2010 to 193 (103 resulting in death) in 2013.²⁵¹ This trend was not observed at the national level, where the model had yet to be fully implemented. These data are analyzed in Chapter III.

²⁵¹Data provided by the Unit for Liaison with the Bureau of Analysis of the Office of the Prosecutor for Crimes against Life.

D. Support units

The implementation of these investigative strategies also entailed establishing structures or units for support, or strengthening already-existing ones. The main support units that were strengthened with the implementation of the new model of prosecutorial management and strategic prosecution were the Bureau of Criminalistic Investigations, the Special Methods of Investigation Unit, the Analysis Bureau, the Computerized Case Management System of the Attorney General's Office (SICOMP), and the Performance Evaluation Unit. Next is a description of the main changes they underwent.

1. Bureau of Criminalistic Investigations (DICRI: Dirección de Investigaciones Criminalísticas)

The Organic Law of the Attorney General's Office already provided for the Bureau of Criminalistic Investigations at Article 40, as "a corps of experts in different scientific fields." In its original design the Bureau of Criminalistic Investigations was made up of experts in forensic sciences who worked in the Attorney General's Office as experts in scientific investigation for clearing up the facts in criminal cases. The law did not clearly provide that this function corresponded exclusively to the Attorney General's Office, which meant in practice that these expert services coexisted with those that already existed in the judiciary and in the National Civilian Police. This situation led to dispersal of resources, confusion of roles, duplication of functions, and lack of uniform standards for handling similar cases, since each forensic service was subject to the performance criteria and evaluation mechanisms of the institution to which it belonged, i.e. the judiciary, the National Civilian Police, or the Attorney General's Office.²⁵²

The creation of the National Institute of Forensic Science (INACIF) in 2007 was a response to the need to overcome these shortcomings; experts who were originally situated in the DICRI were transferred to INACIF. All the resources had to be transferred, except those "used for processing the crime scene," that is, those needed "to identify, fix, remove, and transfer the evidence."²⁵³

Even though the old function of "*levantamiento del cadáver*" (official act of removal of the body) corresponded to the Attorney General's Office, for many

252 See ICCPG, *Por ser Mujer, Limitantes del Sistema de Justicia ante muertes violentas de mujeres y víctimas de delitos sexuales*. Guatemala City, ICCPG, 2007, p. 121.

253 Article 26, Decree 36-2006, Organic Law of the National Institute of Forensic Science of Guatemala.

years in the most remote parts of Guatemala it was the justices of the peace who would perform it, condemning all such cases to impunity, for the justices of the peace did not have either the knowledge or adequate equipment for processing crime scenes.²⁵⁴ It was only in 2007 that the Attorney General's Office acquired 17 sets of equipment and trained 162 technical personnel in crime scene management²⁵⁵; the number of technical staff increased to 470 in 2010 and 600 in 2013 (180 teams). That year the processing of crime scenes in cases that included violent deaths was done almost exclusively by the Attorney General's Office.²⁵⁶

As of 2010 there were still major shortcomings managing crime scenes: the failure to protect the scene to avoid any contamination²⁵⁷; the delay in arriving (average of four hours in Guatemala City); the documentation in the form of photographic prints; the delays submitting reports (45 days); and insufficient training of assistant prosecutors and technical personnel in modern methods to ensure adequate processing.

Starting in 2011 three strategies were implemented to overcome these shortcomings: upgrading technical skills, de-bureaucratization, and training. Digital video and photographic cameras were acquired for the crime scene units, along with equipment for digitizing the photo albums and editing videos. One basic measure, such as purchasing the digital equipment, slashed the time for producing reports from a month-and-a-half in 2010 to 24 hours in 2013.²⁵⁸ Similarly, GPS equipment and forensic lamps were acquired to detect indicia, and resources were secured for electronic wrapping. The use of the GPS for locating the place of the crime scene was done to prevent errors in digitizing and to facilitate its reading by digital maps of the Bureau of Crime Analysis.

In order to reduce the time for arrival at crime scenes, unnecessary steps were suppressed that had only bureaucratized the notice of a violent death. For example, an agreement was signed with the municipality of Guatemala

254 Javier Monterroso, *Investigación Criminal*. op. cit. 90.

255 Attorney General's Office, *Memoria de Labores*, 2008, p. 58.

256 Until 2012, in some municipalities of the department of Petén, due to the distance to the offices of the Attorney General's Office, the justices of the peace continued performing the official act of removing the body ("*levantamiento del cadaver*").

257 Fundación Myrna Mack, *Contaminación de la Escena del Crimen*. Guatemala City, FMM, 2011.

258 Performance Evaluation Unit. *Monitoreo de Escenas del Crimen*. Guatemala City, Attorney General's Office, 2013.

City²⁵⁹ pursuant to which both the municipal police and the firefighters would give immediate notice of the occurrence of a criminal death to the monitoring unit of the Attorney General's Office.²⁶⁰ In addition, officers from the Attorney General's Office monitored the situation, working from the Transit Department of the municipality. So a direct channel of communication was established and a chain of unnecessary phone calls – that had doubled the time it took for the first team to show up at a crime scene – was eliminated. The arrival time was cut from an average of four hours to an average of one hour and 40 minutes.

Along the same lines, to avoid contaminating crime scenes training was given to more than 800 firefighters on protecting crime scenes, since they were the first authorities to arrive on the scene.²⁶¹ A manual for processing crime scenes ("*Manual para el procesamiento de Escenas del Crimen*") was updated, and a practice laboratory was built.

2. Special Methods of Investigation Unit (UME: Unidad de Métodos Especiales de Investigación)

In 2006 the State of Guatemala adopted the Law against Organized Crime, Decree 21-2006, to carry out the obligations it had contracted on ratifying the United Nations Convention against Transnational Organized Crime, which suggests to the states parties that they establish special investigative techniques. The Law against Organized Crime provided for three special methods of investigation: undercover agents, deliveries under surveillance, and the use of wiretaps.²⁶²

Nonetheless, it was not until 2009, three years after its entry into force, that the use of wiretaps was implemented. An agreement among the Attorney General's Office, the Ministry of Interior, and the International Commission against Impunity in Guatemala facilitated the implementation of this method of investigation.²⁶³ These three actors engaged in intense lobbying of the telephone companies, which refused to make the technological changes needed for the

259 In April 2011.

260 Attorney General's Office, *Memoria de Labores*, 2011, p. 158.

261 Attorney General's Office, *Memoria de Labores*, 2012, p. 158.

262 Article 20(1) of the Palermo Convention. This Convention was signed by Guatemala on December 12, 2000.

263 Order 65-2007, signed November 24, 2008.

central wiretapping facility to start up operations. The Special Methods of Investigation Unit started up operations in April 2009.²⁶⁴

Wiretapping is an investigative method highly invasive of the rights of persons, especially the right to privacy, which is why Guatemalan legislation requires judicial authorization for it to be used. Though it was used unlawfully by military intelligence units during the war and afterwards, its use for criminal investigation is relatively recent and novel. According to the law, the prosecutors of the Attorney General's Office must seek authorization of this measure, and it is up to the police officers to conduct the wiretapping. As described, the legislator had in mind a complex system of control, and the intervention of judges, police, and prosecutors, to ensure against its misuse. The law also established that wiretapping is exceptional by nature, and therefore answers to the principles of necessity and adequacy (Article 51).

One of the dilemmas with the startup of the work of the Special Methods of Investigation Unit was whether the information collected through wiretaps would be used as criminal intelligence, only for analysis, or whether it would be presented as evidence at trial. Favorable to the first interpretation was the importance of protecting the method, i.e. that the members of the criminal organizations should not come to learn that their conversations were being heard so that they would not feel inhibited when talking. In favor of the second interpretation was the compelling force of the information obtained from a wiretap for clarifying the facts in a particular case.

After almost five years of experience, wiretaps have proven to be especially useful for identifying criminal networks, characterizing their composition and *modus operandi*, and identifying their members, both as evidence at trial and for preventing criminal acts.

The criminal intelligence information coming from wiretaps has made it possible to learn the composition, organization, and *modus operandi* of especially violent criminal organizations such as the Zetas. In designing proactive investigations it is fundamental to understand the thinking of the members of criminal structures that tend to endure for many years, such as the various gangs or *maras*. Based on wiretapping the prosecutors and police investigators can identify the incentives for their action, get a full picture of their criminal activity, and design effective mechanisms for investigating the illegal acts that they commit.

264 Amended by Order 115-2008.

The information obtained has also been useful for preventing unlawful acts, whether preventing a plan learned of through wiretapping, or because law-enforcement measures can be designed based on an understanding of the *modus operandi*. In terms of prevention, it has been useful for rescuing crime victims from kidnappings and preventing violent deaths. As for understanding the *modus operandi*, wiretapping provides information on the logic of the criminal activity, which makes it possible to identify the most sensitive points, i.e. where preventive measures can be most effective. For example, keeping tabs on the communications that persons incarcerated conduct from prison is fundamental for preventing incidents of extortion and homicide. Even though it has been especially difficult, due to technical difficulties or corruption, during the time that blocking cell phones was implemented, there was a considerable reduction in the incidence of these crimes. By way of contrast, when inmates have succeeded in breaking down the measures of isolation and efforts to block the telecommunications signal criminal activities have increased.

This situation makes it apparent that it is not enough to investigate, prosecute, and punish criminal organizations if other measures are not taken, especially security at the prisons, to keep the structures tied to organized crime from being able to continue operating from prison.

Finally, wiretaps have undeniable probative value, providing compelling evidence for proving a criminal act. To hear the planning, the order, or the reporting of a criminal act shows in a way that is difficult to refute one's participation in a criminal organization or criminal conduct. Moreover, it avoids the complications that could arise with other forms of evidence, for example witnesses, who may be intimidated or bribed.

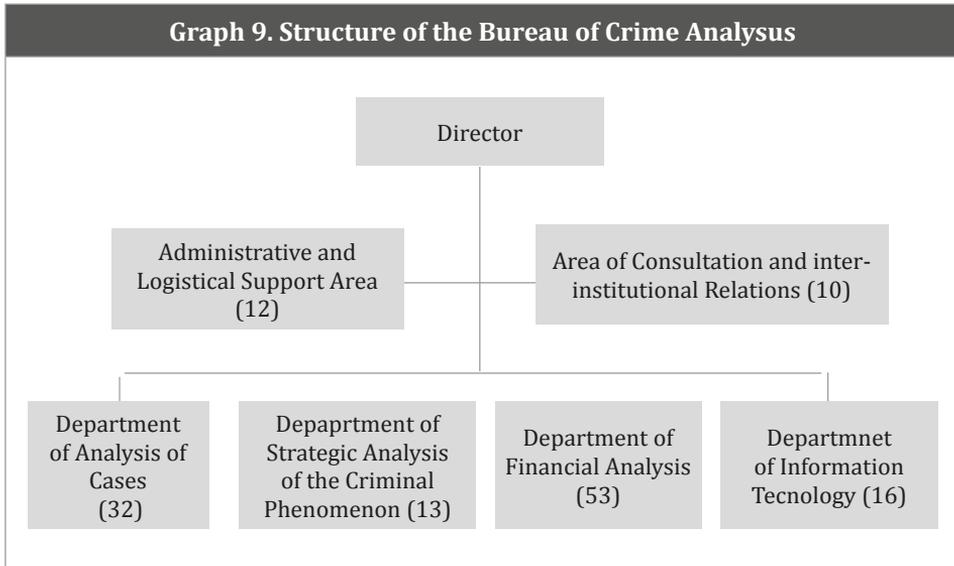
3. Bureau of Crime Analysis (DAC: Dirección de Análisis Criminal)

The Bureau of Crime Analysis is the entity entrusted with compiling, processing, systematizing, analyzing, producing, and communicating relevant information, in a timely fashion, to the different prosecutorial offices of the Attorney General's Office to give orientation and strategic and operational support to the investigations and the prosecution of the case. It was established on January 10, 2013 (Order 07-2013) for the purpose of attaining better levels of efficiency and effectiveness in fighting organized crime and crime in general.

The Analysis Unit was established in 2006.²⁶⁵ At that time the Attorney General's Office did not have a clear area for analysis of criminal phenomena; the brunt of the work involved putting out requests through international judicial assistance mechanisms and following up on them. This Unit was reformed in 2009 (Order 48-2009) so as to assign it functions of compilation, organization, analysis, and production of information on crime, and providing support for the prosecutorial offices in the form of strategic guidance and, in specific cases, in the actual prosecution of a case. Nonetheless, in 2012 it operated with a staff of only 15.

When the Bureau of Crime Analysis was established in 2013 it had a staff of 127 persons, which implied an increase in the budget from 2 million to 25 million quetzals. The International Commission against Impunity in Guatemala (CICIG) participated in transforming the Analysis Unit into the Bureau of Crime Analysis, designing protocols for action and setting up the data base; CICIG's team of analysts merged with the analysts of the Attorney General's Office in 2014 to form a single team.

The Bureau of Crime Analysis was structured as follows:



Source: Based on data from the Memoria de Labores, 2013, Attorney General's Office.

265 Order 1-2006 of the Attorney General.

The functions of the Bureau of Crime Analysis are to analyze complex cases and the criminal phenomena. Analyzing information has made it possible to draw out the connections among cases that have been perpetrated by one and the same criminal structure, by managing information systems, for example, in cases of violent deaths the IBIS (the ballistics correlation system), or in cases of extortion phone numbers and bank accounts. The Bureau of Crime Analysis also performs geo-localization of criminal acts through software for making crime maps.

Access to other data bases of state institutions, such as the National Registry of Persons, General Registry of Property, General Bureau of Migration, Superintendency of Tax Administration, was also concentrated in the Bureau of Crime Analysis, which substantially increased the information available for investigations and reduced the time required to obtain it.

4. Computer Case Management System of the Attorney General's Office (SICOMP: Sistema Informático de Control de Casos del Ministerio Público)

In Guatemala the Attorney General's Office is the only institution within the justice system that has developed a computerized case management system. In 2002 the establishment of the Computer Case Management System of the Attorney General's Office (SICOMP) was designed as part of the IT System to Support the Justice Sector (SIASEJU: Sistema Informático de Apoyo al Sector Justicia). At that time its main purpose was administrative oversight of the prosecutors' work, but it also included as one of its outputs "statistical indicators of quality."²⁶⁶

The IT System to Support the Justice Sector never started up operations because there was no real political commitment to its start-up on the part of the other relevant authorities, and priority was accorded to purchasing software over developing its own computer programs, which entailed high costs and quickly became outdated. It was not until 2008, six years after it was first used at the Attorney General's Office, that the SICOMP came to be the only case management system in use. The computer record and oversight of the case begins with the intake of the complaint at the Office of Permanent Attention, and continues in the analysis done of the case and its referral to the early decision or investigation units, as the case may be. With data entry a virtual record is generated reflecting the various procedural stages. The system serves two purposes: having a

266 Attorney General's Office. Síntesis de la Memoria de Labores de 2002. Guatemala City, Attorney General's Office, 2002, p. 29.

computer record of the various acts within an investigation, and, based on them, generating statistical information on complaints, procedural outcomes, offenses, places, times, etc.

The use of this system by all prosecutorial officers represented a substantial gain in the recording and control of the files and in generating statistical data. For example, the performance evaluation system is based on the information in the SICOMP, as is the determination of workloads and times considered for resolving cases.

Despite its limitations, especially the lack of adequate control of the updating of information entered in the system, the SICOMP is a useful source for gauging crime trends.²⁶⁷ To enhance its use, a tool called “FdX” was adapted to SICOMP, produced on the Qlikview platform of the Business Intelligence family. This tool enables prosecutors to access all the data in the SICOMP configuring different variables and in this way extract information useful for connecting cases and identifying criminal phenomena.²⁶⁸

A liaison with the Bureau of Crime Analysis was placed in those prosecutorial offices that were adopting the new model of prosecutorial management; their task was to help the heads of the prosecutorial offices (Jefes de la Fiscalía) identify and delimit criminal phenomena. The quantitative information that the SICOMP provided on the profiles of victims, profiles of victimizers, *modus operandi*, places, weapons, telephones, etc. was being supplemented by qualitative information from informants, immunized witnesses, wiretaps, experts, and even information collected by the prosecutors in earlier investigations.

267 A comparative analysis of the different systems in Latin America reveals that one of the weaknesses is precisely the absence or precarious state of information systems, even when they have data bases. As Binder notes, one can “easily observe the enormous divergence between the quantity of the data base (and therefore the enormity of the data available) and the genuine use of these data. Information is not used because there is not a real need to use it, because the institutions are not geared to results but to procedures [*el trámite*], because the management control systems are almost non-existent (they are always confused with disciplinary control) and, therefore, the data do not come into play in decision-making processes, that is, they are pure data, not information in a system of communication.” Alberto Binder, *Cooperación Internacional en materia penal*. In: *Contra la Inquisición II*, op. cit., p. 11.

268 Attorney General’s Office. Memoria de Labores, 2012, p. 35.

5. Performance Evaluation Unit

One of the factors contributing to the scant productivity of the Attorney General's Office was the absence of controls on case management and compliance with general instructions. Prosecutors' performance made no difference when it came to promotions, transfers, and access to courses. An eloquent example of the inefficacy of the Attorney General's Office was the performance of the diversion units in the Office of the Prosecutor for Metropolitan Guatemala City. According to the Memoria de Labores 2006, the 75 persons who were working there dismissed 9,638 cases *in limine* and diverted 465 cases. Each officer had dismissed *in limine* 2.6 cases per week, which is not even one a day, and adopted one diversion measure every two months. Despite these data nothing was done to increase effectiveness, nor did the prosecutorial officers suffer any consequence for not working.

The Performance Evaluation Unit was established in 2009, during the administration of Attorney General Amílcar Velásquez Zarate (Order 52-2009). The objective of the unit was "to measure and evaluate effectively, systematically, and continuously the job performance of the workers of the Attorney General's Office and the various sections of the institution, making it possible to recognize, support, and develop individual and institutional potential." (Article 4)

Results-based evaluation criteria were established to evaluate performance, that is, there is no evaluation of the conduct of the workers, nor is the perception of the superiors or subalterns taken into account. What is evaluated is the number of positive outcomes, use of alternative mechanisms, suspensions of prosecution, conversions of public to private actions, and indictments. At the beginning of the year goals are established based on the workload of each prosecutorial office and their attainment is evaluated by prosecutorial office and by officer. In addition, a system of phone calls to users was established to verify the quality of service.

This information is fundamental for the prosecutorial career service, promotions, transfers, and access to training. In those cases in which performance was very poor, supervision was sought from the Attorney General's Office. If it was very high, the work was reviewed to verify the accuracy of the information.

E. Coordination with other parts of the justice system

The increase in the extent to which facts were being clarified in crimes against life would not have been possible without coordinated action with other parts of the justice system, especially the National Civilian Police, the judiciary, and

INACIF. Nor would the changes have begun without the presence of a powerful outside actor, the CICIG. The CICIG, through different mechanisms, including investigating criminal cases and taking initiatives vis-à-vis nominations committees, gave impetus to the legislative reforms and helped bring about the conditions for the struggle against impunity to go forward in Guatemala. Following is a description of the relationships with and the contributions of each of these other institutions that are also part of the justice system.

1. National Civilian Police

One of the most serious problems in criminal investigation after the entry into force of the Code of Criminal Procedure was the lack of coordination between the investigators of the National Civilian Police and the prosecutors of the Attorney General's Office. This lack of coordination reflected the unclear roles of police and prosecutors, and the duplication of functions: "Before, the Police, mainly the DEIC, was not seen as supportive of the investigation; its role was to preserve the crime scene, communicate subpoenas, and make arrests."²⁶⁹

The lack of coordination was also fed by the mutual distrust²⁷⁰ that stemmed from the infiltration of both institutions and by the discriminatory attitudes of the prosecutors towards the police investigators, who had, or were perceived by the prosecutors as having, a lower level of education. As one investigating officer of the Police explained: "They didn't believe in us merely because we were police, they thought we had little education and training."²⁷¹

Various agreements were signed that did not work until the Department of Crimes against Life was established in 2009, in the Office of the Deputy Director for Criminal Investigation of the National Civilian Police (DEIC-Vida).²⁷² The first 100 investigators were officers who had recently graduated from the Academy of the National Civilian Police. These officers received specific training

269 Interview with Estuardo Sánchez, Deputy Secretary for International Affairs, November 2014.

270 Interview with Aura Teresa Colindres, Chief of the Office of the Prosecutor for Crimes against Life, November 2014.

271 Interview, November 2014.

272 In May 2009 General Order 12-2009 was adopted. It was issued to "*Organize and designate the functions of the Bureau of Criminal Investigation of the Office of the Deputy Director General for Criminal Investigation of the National Civilian Police, which is known by the acronym DEIC.*" Article 7 creates the "*Department of Investigation of Crimes against Life and Integrity of Persons.*"

for investigating crimes against life. They were given infrastructure separate from the rest of the police institution; they were isolated to keep from being infiltrated.²⁷³ Mirror teams were created with the prosecutors and an effort was made to keep people in this unit for a time to foster relations of trust by working together.

Finally, the much-desired coordination between police and prosecutors was gradually accomplished. The renewal of prosecutorial staff in the Office of the Prosecutor for Crimes against Life in 2011, in the wake of the promotion of those who had the highest level of attainment of their goals, facilitated relationships characterized by mutual respect and camaraderie.²⁷⁴ In the words of one investigative officer in the Police, “the magical word in coordination was the merger of the DEIC and prosecutorial teams.”

No doubt the mirror teams of police investigators and prosecutorial officers, with the same system of shifts and holding meetings for analyzing cases at 24 and 72 hours from the incident resulting in violent death, were fundamental for clearing up the facts in many more crimes against life.

2. Judicial Branch

The relationship between the Attorney General’s Office and the judicial branch had not been optimal either. The judiciary had its own problems, since the oral system had not reached all stages of the process, which increased the delay in the resolution of cases, in addition to which there were serious threats to judicial independence that translated into delays or resolutions contrary to the law. Faced with controversial decisions resulting in the dismissal of cases for insufficient evidence or the acquittal of the defendants, there was a mutual reproach that increased the distrust of the justice authorities on the part of the population.

Three changes that were promoted by the Supreme Court of Justice (Criminal Chamber) facilitated the clarification of cases. The first, judicial management by hearings with the preparatory phase being oral. “Through the judicial policy implemented by Dr. César Barrientos Pellecer, Presiding Justice of the Criminal Chamber (2009-2014), standards for managing hearings were consolidated for almost the entire country, which made possible the use of oral procedure in the

273 AECID, *Sistematización Programa Justicia y Seguridad. Reducción de la Impunidad, 2006-2011*. Guatemala City, AECID, 2015. p. 26.

274 Interview with Ricardo Guzmán, Deputy Secretary General, November 2014.

preparatory phase, greater transparency, and expediting time frames to resolve the requests of the Attorney General's Office."²⁷⁵

The second were the reforms to the Code of Criminal Procedure, also promoted by the Criminal Chamber. Decree 18-2010 armored the hearing-based model of judicial management and favored oral procedure and speedy proceedings. In addition, the reforms contained in Decree 7-2011 tripled the capacity of the criminal judges, as they provided that only cases of very grave offenses (high-risk) were heard by three judges sitting on a single court. They also accorded the victim more participation and facilitated the application of diversion measures, allowing for more expeditious treatment of less serious offenses.

The courts situated in Guatemala City with nationwide jurisdiction constituted the third mechanism. As noted, there was a problem related to the independence of judges, whether out of fear or out of corruption; cases were impacted by information leaks, delays, or denial of well-founded motions. The 24-hour collegial courts provided one way of overcoming these difficulties. They were established in 2006 to enforce judicial oversight of the detention and to avoid arbitrary arrests, torture, and mistreatment.²⁷⁶ In 2007 they were given national jurisdiction to "authorize urgent investigative acts," and to issue arrest and search warrants.²⁷⁷ Due to the fact that the judges were appointed mindful in particular of their suitability and independence, and since they were located in Guatemala City, where the tightest security measures are available, the 24-hour judges have made it possible for high-impact investigations to obtain urgent authorizations without leaks, and in less than six hours.

The High Risk Courts (*Juzgados y Tribunales de Mayor Riesgo*) were established, at the request of CICIG, in 2009. The courts are an exception to territorial jurisdiction, since they have jurisdiction over criminal proceedings for serious crimes, independent of where the facts occur. The procedure for a case to be removed to these courts is a request by the attorney general to the Supreme Court of Justice, which authorizes it. The reason is to ensure the security of judicial officers, prosecutors, police, judges, witnesses, and victims.

275 Interview with Estuardo Sánchez, Deputy Secretary for International Affairs, November 2014.

276 Rule of Law Program. Annual Report and Eighth Quarterly Report (July 1-September 30, 2006). Guatemala City, USAID, 2006, p. xx.

277 Decision 44-2007 of the Supreme Court of Justice.

At first there was a discussion as to whether those judges violated the principle that a tribunal must be competent by its constitution, since the jurisdiction was established *ex post facto*, in view of the risk implicit in a case, and decisions were made on a case-by-case basis; it was said that “they would be the judges of the CICIG.” Nonetheless, the genuine risk involved in judging some cases in the interior²⁷⁸, as well as the existence not of one but of several courts, helped overcome these criticisms. In general, these courts have meant that cases with major social impact are judged and punished through the independent activity of the judges.²⁷⁹

3. National Institute of Forensic Science (INACIF: Instituto Nacional de Ciencias Forenses)

INACIF was established in 2006. During its first administration it failed to engage in successful coordination with the Attorney General’s Office, the main reason being a poor interpretation of the “autonomy” set forth in the organic law of INACIF. Nonetheless, efforts were made to establish spaces for coordination to address not specific investigations but structural problems in requesting forensic services and in interpreting expert reports, and the role of the expert at trial when giving his or her statement.

According to Elvin Díaz, deputy private secretary to the attorney general: “With the current administration of INACIF there were important gains on three fronts. The first was the direct relationship of the director with the attorney general, so as to improve coordination between the institutions and address problems of management, methodology, and interpretation. The second was the relationship between heads of the subject-matter prosecutorial offices and the Technical-Scientific Department of INACIF for the purpose of coordinating efforts in the collection, preparation, and production of scientific evidence. And the third was constituted by having the private secretary represent the attorney

278 For example, during the arrest of his wife and son in 2008, in the municipality of Cobán, department of Alta Verapaz, Mr. Overdick took over the local radio station and threatened to kill the judges if they did not release the persons detained. They were released in the next 24 hours, even though several high-caliber weapons were found at the family residence. www.todanoticia.com/38198/guatemala-capturan-al-presunto-narcotraficante/

279 Except for Judge Patricia Flores, who is facing proceedings for illicit enrichment, the judges in the high-risk courts have acted with independence and impartiality. CICIG, Press Release 014, Guatemala City, April 2015.

general on the Board of INACIF to support the internal policies of the current administration.”²⁸⁰

Increasing the technical capabilities of INACIF also resulted in access to scientific evidence that before one had to outsource abroad, such as DNA tests, which took months to come back from Spain, or which simply did not exist, and the IBIS system for ballistics identification, which is fundamental for clarifying homicides.

4. International Commission against Impunity in Guatemala (CICIG)

The presence of the CICIG in Guatemala has been one of the great driving forces of change in favor of strengthening the justice system. Its role in the nominations committees and in the cases brought against various ministers of interior made it possible for new leadership at the three most important justice institutions for fighting impunity, the Criminal Chamber of the Supreme Court of Justice, the Attorney General’s Office, and the Ministry of Interior. This new leadership made possible hitherto non-existent relationships of coordination and trust.

At the Attorney General’s Office the joint action of prosecutors and CICIG officials also brought about capacity-building within the institution, especially in investigating organized crime using the new tools provided for in the legislation (wiretaps, immunized witnesses, witness protection, and analysis of bank records). The teams from CICIG-Office of the Special Prosecutor against Impunity (FECI: Fiscalía Especial contra la Impunidad) would jointly design investigations, interrogations, searches, and strategies for managing cases, especially complex ones, such as the Rosenberg case²⁸¹ and the Pavón case.²⁸²

280 Interview, November 2014.

281 Attorney Rodrigo Rosenberg Marzano was assassinated on May 10, 2009. His homicide created a polemic when a posthumous video came to light in which he said that those responsible for his death, if he were to die, would be Gustavo Alejos, private secretary to the President of Guatemala; businessman Gregorio Valdés; then-First Lady Sandra Torres; and then-President Álvaro Colom. In January 2010, after an investigation based on scientific evidence, CICIG concluded that it was actually Rosenberg himself who planned his own murder.

282 See *supra*.

As for institutional strengthening, CICIG's support was key for strengthening the witness protection system, accompanying the restructuring of the unit, the selection of personnel, the drawing up of protocols, the redefinition of security measures, and the drawing up of criteria for hiring and firing. With CICIG's support, a road map was drawn up for the exit and relocation of witnesses, in Guatemala and abroad; staying in the program was extremely burdensome for the witnesses and their families.

CICIG also accompanied the transformation of the Analysis Unit into a Bureau of Analysis. It participated in designing the structure of the Bureau, selecting its staff, developing the protocols for handling data, and designing and creating the data base. The last step in the strengthening stage has been the joint analysis, by CICIG staff and analysts of the Attorney General's Office, of macro corruption cases, such as the case known as "La Línea," in which, through bribes, public servants facilitated tax evasion when bringing merchandise into the country through customs offices.²⁸³

Finally, CICIG accompanied the restructuring of the Department of Security of the Attorney General's Office. It collaborated in the selection and training of the institution's security agents and in drawing up protocols for risk analysis and the determination of security measures.

5. Summary

On reviewing the actions taken by the various parts of the justice system one can recognize similar and convergent strategies that sought to have trained teams or officials, with strict controls on hiring, who in their actions would distinguish themselves from the regular functioning of its institutions or remain isolated, so as to prevent infiltration by organized crime. Accordingly, the Supreme Court of Justice created the 24-hour courts (*juzgados de turno*) and the high risk courts, judges who were specially appointed to avoid influence-peddling and to ensure security, given their concentration in Guatemala City. The Attorney General's Office and the National Civilian Police created units specialized in crimes against life with integrated teams of police and prosecutors who jointly investigated the cases, with strong controls over hiring and operations, and with privileged access to resources.

283 This case was investigated after my term. Nonetheless, the installed capacities at the Bureau of Crime Analysis Unit were fundamental for processing large volumes of confidential information in a short time. The use of this process has led to criminal charges against former President Otto Pérez Molina and former Vice President Rosana Baldetti Elias.

These units, in principle, became virtuous islands within the institutions. Nonetheless, what initially were good practices became working methodologies for other areas. In addition, showing that it was possible to investigate complex cases respecting procedural guarantees and doing so swiftly, such as clarifying the facts in the killing of Facundo Cabral²⁸⁴, opened the horizon for other police investigators and prosecutorial officers who felt they had the backing they needed to further investigations in other areas of crime. Accordingly, mirror teams were established to investigate extortions, violence against women, trafficking, and kidnappings.

Access to technology and the analysis of information were also crucial for increasing the number of cases of crimes against life in which the facts were clarified. At both the homicide unit of the PNC (“DEIC-vida”) and in the Office of the Prosecutor for Crimes against Life the analysis units were strengthened to make it possible to examine patterns and interconnections among cases. To these efforts was added the scientific evidence produced by the INACIF, especially DNA tests and the IBIS ballistics correlation system, in addition to information obtained through the use of special investigative methods, immunized witnesses, and wiretaps.

So it was the combination of political will, inter-institutional coordination, qualified human resources with political backing and minimal guarantees so as to be able to do their work, and access to technology, that made it possible to begin to crack the underpinnings of impunity.

284 The singer-songwriter of Argentine nationality was murdered in Guatemala City on July 9, 2011. In the following 72 hours Guatemalan prosecutors and investigators determined the identity of the hit men. The target of the criminal act was Henry Fariñas, a Nicaraguan businessman later convicted on drug trafficking charges in Nicaragua. The crime was directed by Alejandro Jiménez González, alias *el Palidejo*, a Costa Rican national who belonged to an opposing criminal organization. The four hit men and Jiménez González were convicted of this crime in April 2016.

Chapter III.

Reduction in homicides
2010-2015



This chapter analyzes the sustained reduction in homicides in Guatemala since 2009. The hypothesis put forward is that one factor that has contributed to this reduction has been the set of transformations made in the criminal investigation system that have led to an increase in the clarification of crimes against life. As described in Chapter II, the changes in the system of criminal investigation were implemented as of 2011. They consisted of a new model of prosecutorial management in the Office of the Special Prosecutor for Crimes against Life, a new methodology of investigation (strategic prosecution), greater use of scientific evidence, the use of special methods for investigating organized crime, such as wiretapping, a system for evaluating the performance of prosecutors, and better and more coordination with the investigators of the National Civilian Police.

Another factor that has likely contributed to the reduction of homicides also related to the justice system is the de-structuring, through prosecution and punishment as of 2010, of criminal organizations that operated within the Ministry of Interior and that have been involved in extrajudicial executions, as explained in the text.

The foundations of criminal law include deterrence theories, according to which in order for a sanction to be justified, it must serve certain purposes: a general deterrence, geared to the citizens in general, so that the threat of suffering a sanction will deter them from committing criminal acts; and special deterrence, aimed at the individuals who have broken the law, who refrain from continuing to commit crimes because the sanction they are serving, incarceration, impedes the criminal conduct.²⁸⁶

Trends in homicides are analyzed over 15 years, from 2001 to 2015, both the increase as of 2001 and the decline as of 2010. In order to establish whether there is a relationship between the changes in the system of criminal investigation and the reduction in homicides, homicide data are analyzed with respect to three variables: the years in which the trends were modified, the places where this change found clear expression, and the profiles of the victims in terms of both age and sex, with respect to whom there was a reduction in the incidence of crimes against life.

Homicide trends are also contrasted with the appointments and removals of the various ministers and high-level officials at the Ministry of Interior to establish

286 On the purpose and justification of punishment, see Claus Roxin. *Derecho Penal, Parte General*. Madrid, Civitas, 1997, p. 85.

whether there is a relationship between the persons holding these positions and the increase or decrease in homicides.

The information is analyzed nationally, and then it is broken down by department and there is an evaluation of whether they have followed the same trends. The department of Guatemala is examined in its municipalities, because it is the geographic area of the country with the largest population (21.4% of the total) and the largest number of criminal acts. From 2001 to 2015 the department of Guatemala accounted for more than one-third of all homicides and injuries in the country.

Subsequently, these data are examined based on the variables of sex and age bracket of the victims. This information is only described for the country as a whole, since there is no information by age and sex for each of the departments.

The crime of homicides is also analyzed in relation to the crime of injuries and the category that the National Civilian Police calls “missing” or “disappeared” (“*desaparecidos*”). Homicides and injuries are only analyzed when committed intentionally, i.e. negligent homicides and injuries are excluded. These two crimes, which are interrelated, given that many instances of injuries result from attempted homicide that have not been registered as such, and some homicides are injuries that culminated in death (*homicidios preterintencionales*, a form of manslaughter). Since the two offenses address similar phenomena, it is possible that there will be analogous variations. In addition, the Office of the Prosecutor for Crimes against Life, which has the lead responsibility for clearing up the facts of the cases, investigates both crimes against life (homicides) and crimes against the integrity of persons (injuries).

There is an analysis of the dynamics of the phenomenon of missing and disappeared persons because it could be the case that the decline in homicides is due to a change in the *modus operandi* of the perpetrators, who to guarantee impunity hide the victims’ bodies. Unlike homicides and lesions, “missing” refers to an act that may or may not constitute a crime, depending on whether it was a kidnapping or forced disappearance, yet when recorded by the National Civilian Police reference is made merely to a person whose whereabouts are known.

The figures include both absolute figures and rates per 100,000 population. Changes in the rates are calculated in absolute percentages (rate in base year minus rate in final year) and in relative percentages (rate in base year minus rate in final year, divided by rate in base year and multiplied by 100). In addition, the average rate over the 15 years analyzed is also used. The total sum of cases occurred in the years analyzed is used to calculate the geographic concentration of homicides.

The data are from the records of the National Civilian Police, because they are the official statistics on violent deaths in Guatemala, and they exist from the creation of this institution in 1997. The population data are from the National Institute of Statistics (INE: Instituto Nacional de Estadística), based on the 2002 census, the 2008 and 2011 municipal censuses, and INE's population projections. These are the official figures on population in Guatemala.²⁸⁷

From the moment it opened its doors in 2007 the National Institute of Forensic Science (INACIF) has also produced information on autopsies performed in matters subject to criminal investigation. They include in these data possible cases of suicide and accidents with firearms, since the data are not updated with information from the Attorney General's Office as to whether or not it was a criminal act.²⁸⁸ For this reason the INACIF data are included to compare them to the information generated by the National Civilian Police and to determine whether the reduction in homicides is real or whether it is a statistical artifice. It could be that the incidents are counted or characterized differently in different years, leading to an apparent reduction.

To determine whether the trends observed for homicides and injuries were observed in other causes of death that should not be affected by changes in the system of criminal investigation we use data from the National Institute of Statistics that includes the trends in death due to causes other than homicide (illness, traffic accidents, other causes such as suicide for 2009 to 2014), which is the information that is available.

A. Homicides

Homicides are the principal phenomenon to be analyzed. The geographic concentration in the different departments of the Republic of Guatemala, the rates, and the profile of victims in terms of sex and age are examined for their trends from 2001 to 2015.

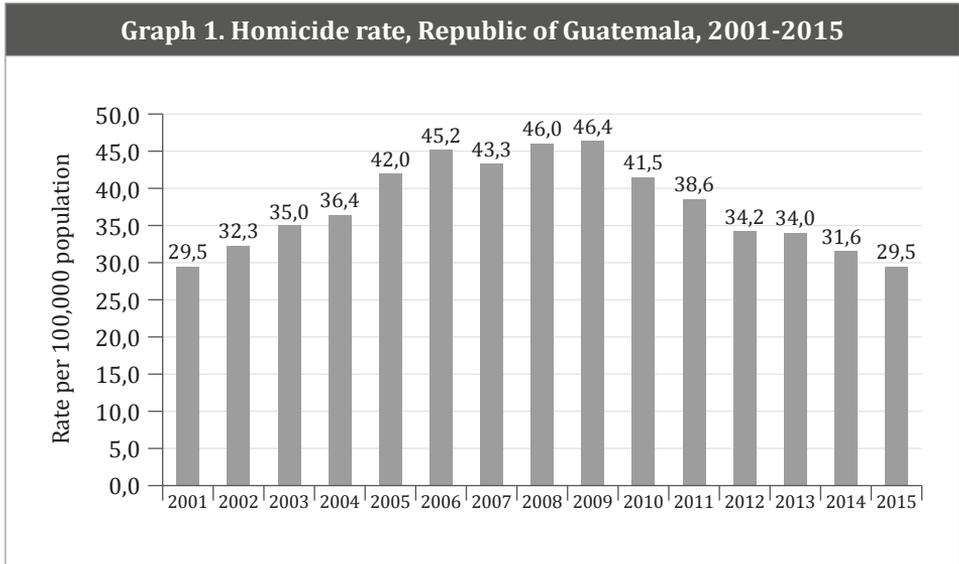
1. Homicide Trends 2001 to 2015

Guatemala saw a sustained increase in homicides from 2001 (3,230) to 2009 (6,498), 2009 being the year with the largest number of violent deaths since

287 This information can be consulted at <https://www.ine.gob.gt>.

288 This information can be consulted at <http://www.inacif.gob.gt>.

the signing of the peace agreement in 1996.²⁸⁹ In those years the homicide rate climbed from 29.5 per 100,000 population in 2001 to 46.4 per 100,000 in 2009 (Graph 1), a 57% increase. The year that saw the largest increase was 2005, with respect to 2004, when the rate jumped 5.6 per 100,000. Since 2009 there has been a steady decline up until 2015. The reduction is observed nationally, from 6,498 homicides in 2009 to 4,778 homicides in 2015, from a rate of 46.4 per 100,000 to 29.5 per 100,000, a 36.3% reduction.

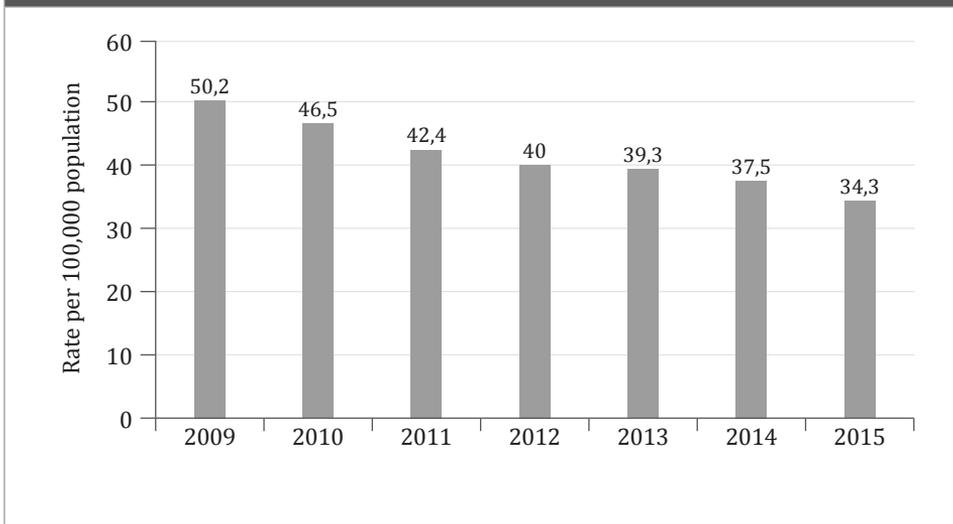


Source: National Civilian Police.

Comparing this information with the number of autopsies performed by the INACIF, while the number of autopsies is greater, the trends are similar. In 2009, 7,035 autopsies were performed related to criminal acts under investigation, for a rate of 50.2 per 100,000 population; that figure fell to 5,718 in 2015, corresponding to a rate of 34.3 per 100,000, a 31.6% decline (Graph 2). The figures for autopsies are greater, since they record cases associated with criminal acts under investigation and include suicides and accidents with firearms. Those are not included in the figures provided by the National Civilian Police.

²⁸⁹ The lowest homicide rate was recorded in 1999; the 2,655 homicides that year made for a rate of 24.2 per 100,000 population.

Graph 2. Rate of autopsies performed by INACIF, Republic of Guatemala, 2009-2015



Source: National Institute of Forensic Science.

The fact that the data from the National Civilian Police and the INACIF show similar trends suggests that the reduction in homicides is real and not an artifact of changes in the registry. If the data evolved differently one might think that mistakes were made in the registry or that deaths were not classified as homicides, instead as accidents or suicides, so as to record an artificial decline in the homicide rate. The comparison of the INACIF and National Civilian Police data shows that there were fewer violent deaths as of 2009.

2. Factors that influenced these trends

As explained in Chapter I, various factors are associated with the increase in violence from 2001 to 2009. Some are tied to the increase in crime associated with the gangs (*pandillas* or *maras*), principally the Barrio 18 gang and the Mara Salvatrucha, which were engaged in extortions and paid killings, as occurs in the neighboring countries Honduras and El Salvador.²⁹⁰ Others are related to the entry to Guatemala of Mexican drug-trafficking cartels beginning in 2006, in particular the Zetas and the Gulf Cartel, which is said to have broken down the balance of power among the local criminal organizations, provoking clashes

²⁹⁰World Bank. *Crime and Violence in Central America: A Development Challenge*. Washington DC, World Bank, 2011, p. 15.

for the control of routes. Together with this, the *modus operandi* of these two criminal organizations, known for the use of violence, is also likely to have contributed to the increase in homicides.²⁹¹

Nonetheless, along with these factors, the State's responses also contributed to the increase. As indicated in Chapter I, impunity in crimes against life was over 95%, that is, in fewer than 5% of the cases did the Attorney General's Office file an indictment. This further fueled homicides, since the perpetrators in these cases were convinced that they would not be clarified.²⁹² Moreover, the persistence of the illegal security forces and clandestine security apparatuses within the security institutions was a source of violence coming from the state institutions themselves, both for contesting criminal organizations' control of merchandise, routes, or illegal earnings²⁹³ and for carrying out extrajudicial executions of the alleged criminals supposedly to control crime.²⁹⁴

The peaks or moments when the highest homicide rates were reached corroborate the assertion that part of the homicidal violence was carried out by or controlled from the high-level security authorities. For example, in 2006 the rate was 45.2 homicides per 100,000 population, and in 2009, 46.4 per 100,000; these were periods that coincide with the appointment and replacement of authorities in the Ministry of Interior and with the action of structures tied to organized crime from within, as explained through the following cases, and as observed in Graph 3.

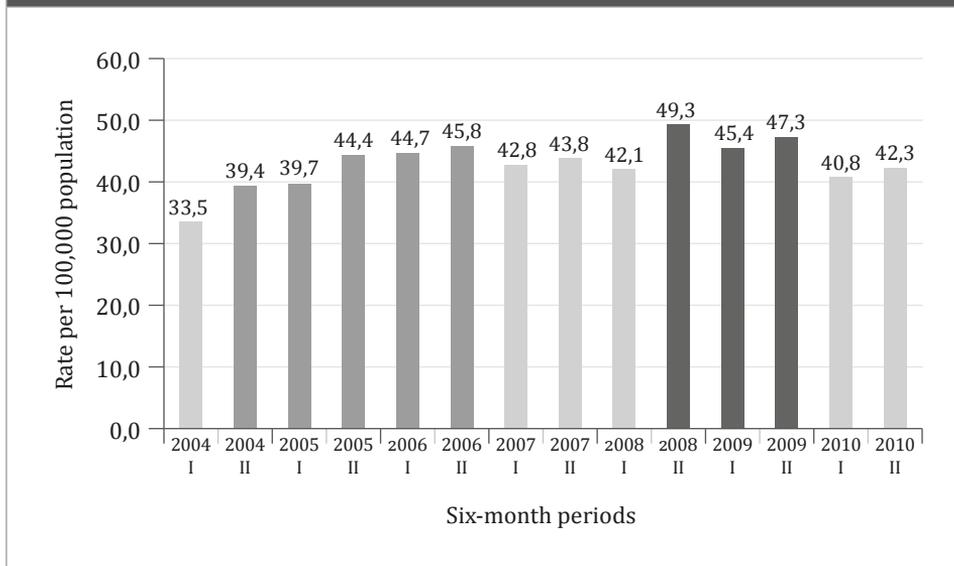
291 International Crisis Group. *Guatemala: Drug Trafficking and Violence* – Report on Latin America No. 39 – October 11, 2011, p. 4.

292 The UNDP expressly ties the increase of violence in Latin America to high rates of impunity: “When a high percentage of violent and criminal acts against the citizenry are not investigated, processed, and when justified, punished, it creates a sensation of vulnerability. While no country solves all its crimes and punishes all offenders, a minimal threshold is required to avoid generalized distrust, fear, and even contempt for the law among citizens.” UNDP. *Citizen Security with a Human Face: Evidence and proposals for Latin America*. New York, 2013, p. 36.

293 As described in Chapter I, there were organizations within the State engaged in illicit businesses such as drug-trafficking, intercepting and steal drugs and money, contract killings, and contraband. See IACHR, Report on the Situation of Human Rights in Guatemala, 2003.

294 Report by the Rapporteur on Extrajudicial Executions, Philip Alston, A/HRC/4/20/Add.2, February 19, 2007, p. 18.

Graph 3. Homicide Rate per six-month period, Republic of Guatemala, 2004-2010. Authorities of the Ministry of Interior



Source: National Civilian Police.

Note: The data are presented by six-month period, for example the first six months of 2004 is 2004 I, and the second six months 2004 II. Dark grey indicates the periods during which Carlos Vielmann was Minister of Interior black, show the periods when Marlene Blanco was director of the PNC and Vice-Minister of Interior, and grey shows periods with other authorities.

Carlos Vielmann was appointed Minister of Interior in July 2004 and resigned in March 2007, after the scandal caused by the assassination of three Salvadoran parliamentarians and their driver on February 19, 2007, and the assassination six days later of four members of the police, allegedly responsible for the crime, inside a maximum security prison.²⁹⁵ Carlos Vielmann is being prosecuted at the Audiencia Nacional of Spain for the extrajudicial execution of seven prisoners at the Pavón jail in September 2006. The then-director of the National Civilian Police, Erwin Sperinsen, has been convicted and found liable in these events before the courts of Switzerland²⁹⁶ and the chief of the Investigations Division,

²⁹⁵ CICIG. Press Release No. 18, August 9, 2010.

²⁹⁶ The conviction was handed down by a court in Geneva, Switzerland, in June 2014.

Víctor Hugo Soto Diéguez, has been convicted by the Guatemalan courts, for these same facts.²⁹⁷

According to the CICIG, since 2004 “a criminal organization [was operating] from the Ministry of Interior and National Civilian Police ... dedicated to extrajudicial executions...”²⁹⁸ This organization was said to be involved in the extrajudicial executions of alleged criminals and persons deprived of liberty and in other criminal actions, such as robberies (known as “*tumbes*”) of drugs and money from drug traffickers.

The figures for violent deaths support this assertion. Thus in the first six months of 2004, before Carlos Vielmann was minister, the homicide rate was 33.5 per 100,000; then it climbed to 39.4 per 100,000 in the second six months, after his appointment²⁹⁹ and continued to increase to 45.8 per 100,000 in the second half of 2006 (Graph 3). In 2007, when Adela Torrebiarte was minister, the upward trend stopped and there was a slight downturn, to a rate of 42.8 per 100,000 population in the first six months.

In September 2008, Marlene Blanco Lapola was appointed director of the National Civilian Police, and held the position until June 2009, when she was appointed vice-minister. She served as vice-minister until her resignation in February 2010. In March 2012 CICIG and the Attorney General’s office also presented a criminal case against Blanco Lapola for her participation in a “a parallel structure within the Police and the Ministry of the Interior which conducted hired killings.... The structure was allegedly under the command of Blanco Lapola and worked to locate and murder people suspected of extorting money from urban transport businesspersons.”³⁰⁰ No judgment has yet been handed down in this matter.

In this case, as in the previous one, the homicide rate increased as of her appointment from 49.3 per 100,000 population in the second six months of 2008 and it remained high until 2009, dropping to a rate of 40.8 per 100,000 population in the first half of 2010, after her resignation. In March 2010 Carlos Menocal was appointed minister. He held the post until January 2012, during which time there was a steady decline in homicides, as illustrated in Graph 1.

297 In January 2015 the Supreme Court of Justice upheld the judgment handed down by High Risk Court B, against Soto Diéguez, in 2013.

298 CICIG. Press Release No. 18, August 9, 2010.

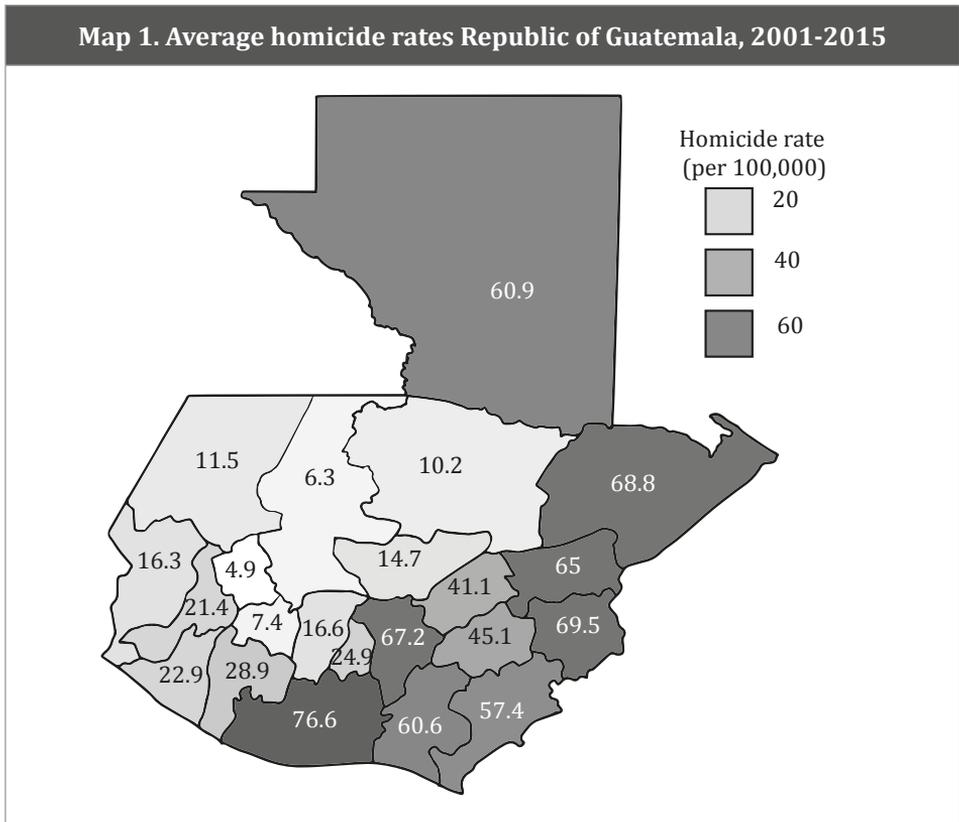
299 Carlos Vielmann was appointed minister of interior in July 2004.

300 CICIG. Press Release, March 23, 2012.

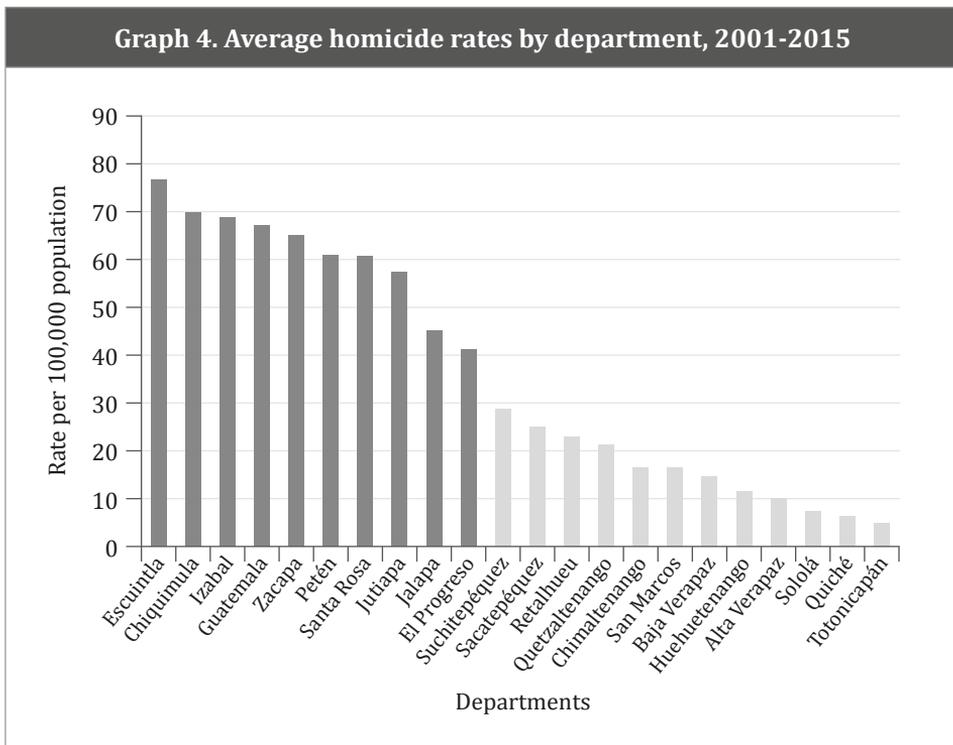
The figures suggest that the reduction in homicides was the result, at least in part, of a change in the high-level authorities at the Ministry of Interior and of the criminal cases against these criminal organizations. Both because they ceased operating structures devoted to extrajudicial executions that were associated with the high-level command positions in the security institutions; and because by clarifying the facts and prosecuting the cases, and with the convictions in the Pavón case, a message was sent, that these acts would not remain in impunity, as had occurred in the past; and that the members of the police involved in them would face the consequences of having violated the law.

3. What are the most violent regions in Guatemala?

Based on all the homicides that occurred from 2001 to 2015, the departments with the largest number of incidents are Guatemala (38.2% of all the homicides in the country from 2001 to 2015), including Guatemala City; and six border departments, namely Escuintla (9.7%), Petén (6.4%), Izabal (5.2%), Chiquimula (4.8%), Jutiapa (4.6%), and Santa Rosa (3.9%). The remaining 15 departments account for 27.8% of all homicides; and 10 of them each has less than 2% of total homicides.



As regards average rates per 100,000 population during those years, the departments with the highest incidence are Escuintla 76.6, Chiquimula 69.5, 75.9, Izabal 68.8, Guatemala 67.2, and Zacapa 60. The departments with the lowest average rates are Totonicapán with 4.9 per 100,000 population, Quiché 6.3, Sololá 7.4, Alta Verapaz 10.2, and Huehuetenango 11.5 (Graph 4).



Source: National Civilian Police.

Note: Black indicates a rate greater than the national average of 37.1 per 100,000 population. Grey indicates a rate below the national average.

Escuintla is the department with the highest homicide rate. Here violence is related to drug trafficking, since one of the maritime routes uses its coasts for transshipping cocaine. Other phenomena also contribute to the magnitude of violence in this area: robbery of merchandise, contract killings, vehicle thefts, and extortion. It is one of the richest departments in the country, home to give large sugar mills, coffee plantations, and cattle ranches.³⁰¹

As regards the high homicide rates in Chiquimula, Izabal, Zacapa, Petén, Santa Rosa, Jutiapa, and Jalapa, these are areas by the borders with Honduras and El Salvador. In these cases the violent acts are associated with criminal organizations engaged in drug trafficking that operate in this strip and dispute control over routes for transshipment of drugs to Mexico and the United States. Central

301 Natalie Southwick. *Escuintla: Guatemala's New Murder Capital*. Washington DC, In-sight Crime, 2013.

America is the corridor for 90% of the drugs heading north.³⁰² These places had a presence of groups established around families such as the “Mendoza” family in Izabal and southern Petén, the “Lorenzana” family in Zacapa and Chiquimula, and organizations from Mexico such as the Zetas.³⁰³ The arrests of the leading members of these organizations in recent years have led to their restructuring, but not necessarily to a reduction in violence, as analyzed in the next section.

The department of Guatemala, as indicated, has the highest concentration of homicides nationally, and the fourth-leading average rate per 100,000 population. Homicidal violence in this department is related to the activity of the Pandilla 18 and Mara Salvatrucha gangs, the two largest criminal organizations, predominantly youths, and rivals to the death. They also operate in Honduras and El Salvador.³⁰⁴ The gangs obtain economic benefits, mainly from extorting small merchants and passenger transport companies both urban and extra-urban, as well as from retail-level drug sales and contract killings.³⁰⁵

Gang violence occurs for various reasons: fighting for territorial control and confrontations with the rival gang; because of discipline within the gangs, against those members who break the rules or wish to abandon leave; against the residents of the most impoverished areas and against bus drivers, for failure to pay the extortion money or “rent”³⁰⁶; due to paid killers, ready for hire; and against the authorities, especially police, if they are discovered in their territory.

In places with a gang presence violent deaths also increase due to the violence their members suffer through what are poorly labeled “social cleansing” killings

302 See UNODC, *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*. Vienna, 2012, p. 11. On violence associated with drug trafficking in this region, see World Bank, *Crime and Violence in Central America: A Development Challenge*. Washington, DC, World Bank, 2011, p. 14.

303 Steven Dudley. *Guatemala's New Narco-map: Less Zetas, Same Chaos*. Washington DC, Insight Crime, 2013.

304 According to Aguilar: “Both gangs arose in Central America in the early 1990s, influenced by the return of Central American gang members from Los Angeles, California, who ended up gradually imposing the U.S. gang identities on the local gangs.” Jeanette Aguilar and Marlon Carranza. *Las maras y pandillas como actores ilegales de la región*. San Salvador, UCA, 2008, p. 1.

305 Id.

306 That is the term used within the gang to refer to the sum of money that small merchants and the owners of bus companies have to pay in exchange for not being murdered.

due to the acts by neighbors organized in Security Boards, paid assassins hired to eliminate them, or security forces personnel carrying out extrajudicial executions.³⁰⁷ The increase in violent deaths in the department of Guatemala as of 2009 (Graph5) was linked to these two phenomena, violence by gangs and violence against gangs.

The departments with the lowest average homicide rates from 2001 to 2015 are Totonicapán with 4.9 per 100,000 population, Quiché 6.3, Sololá 7.4, Alta Verapaz 10.2, and Huehuetenango 11.5. These averages are closer to the world average of 6.2 homicides per 100,000 inhabitants³⁰⁸ and much lower than the national average of 37.1 per 100,000. These departments coincide with the departments with the largest indigenous population in the country³⁰⁹, those hardest hit by poverty³¹⁰, and the areas whose population suffered the violations of human rights committed during the war with the greatest intensity.³¹¹ In other words, there does not appear to be a relationship of more poverty, more violence. Various studies on violence in Guatemala find a correlation, instead, of violence with inequality.³¹²

Nor does there appear to be a relationship between the areas where the war was suffered with greatest intensity and those with higher homicide rates. In post-conflict Guatemala violence has been a result, rather, of the weakness of the security and justice institutions.³¹³

307 Report by the Rapporteur on Extrajudicial Executions Philip Alston, A/HRC/4/20/Add.2, February 19, 2007, p. 18. Claudia Samayoa and Arturo Aguilar, *Deudas de la Transición; Ejecuciones Extrajudiciales de personas Estigmatizadas*. Guatemala, ODHAG, 2007, p. 15.

308 UNODC. *Global Study on Homicide 2013. Trends, Contexts, Data*. Vienna, 2013, p. 12.

309 According to the National Institute of Statistics of Guatemala, in Totonicapán 97% of the population is indigenous, in Quiché 88.6%, in Sololá 96.5%, in Alta Verapaz 89.7%, and in Huehuetenango 57.5%. *Caracterización Departamental de Guatemala*. Guatemala, INE, 2014, p. 14.

310 INE, *Encuesta Nacional de Condiciones de Vida 2014. Principales resultados*. Guatemala City, INE, 2015, p. 6.

311 CEH. *Memoria del Silencio*. op. cit. Conclusiones y Recomendaciones. p.100.

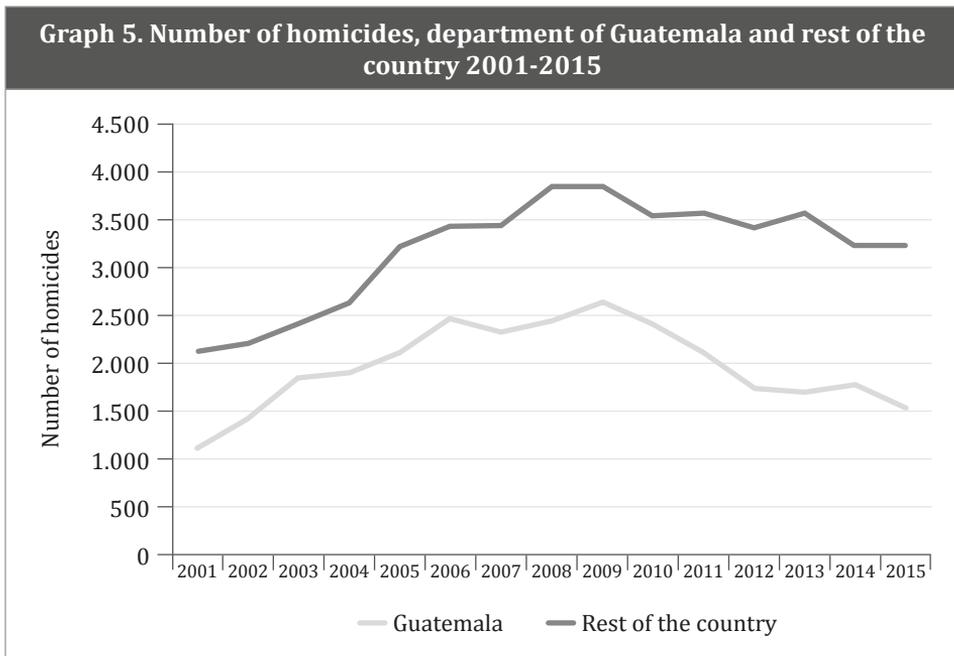
312 UNDP. *Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and proposals for Latin America*, op. cit., p. 17.

313 Id., p. 36.

These lower homicide rates are associated with the presence of mechanisms for managing conflicts through indigenous authorities who are closer to the population and more effective.³¹⁴

4. The largest reduction of homicides in the department of Guatemala

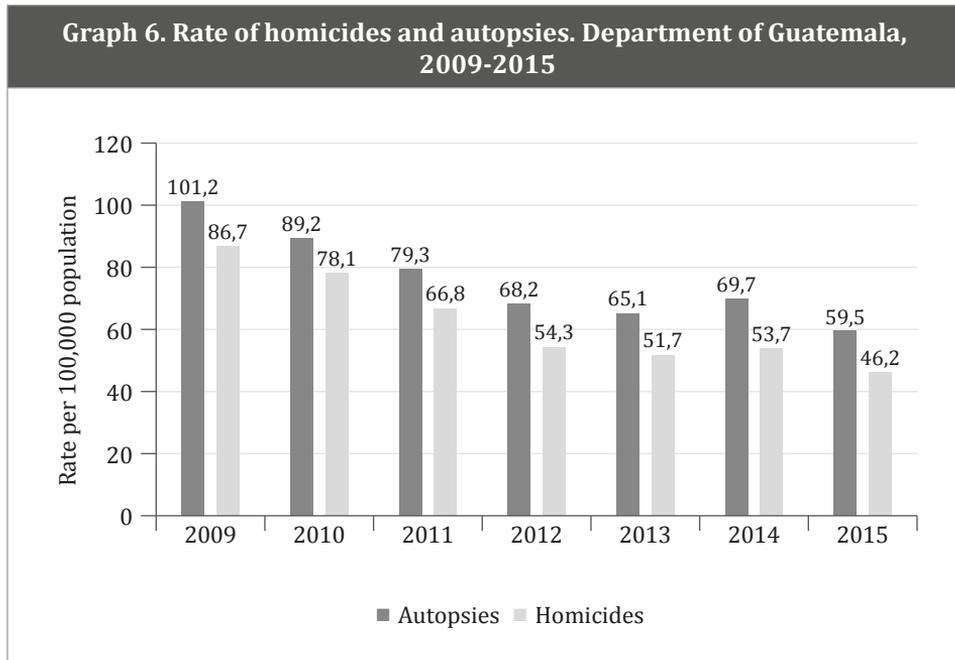
Homicide trends varied by department. In 19 of the 22 departments there was some reduction of homicides from 2009 to 2015, while in three there were increases (Escuintla, 2.4%, Retalhuleu, 17.4%, and Zacapa, 1.5%). The most evident reduction was in the department of Guatemala, both the number of homicides and the homicide rate: from 2,644 in 2009 to 1,550 in 2015, for a reduction in the rate from 86.7 to 46.2 per 100,000 population (40.5%). While in the rest of the country, excluding the department of Guatemala, the reduction was from 3,853 to 3,228, for a reduction in the rate from 35.1 to 25.1 per 100,000 population (28.3%), as illustrated in Graph 5.



Source: National Civilian Police.

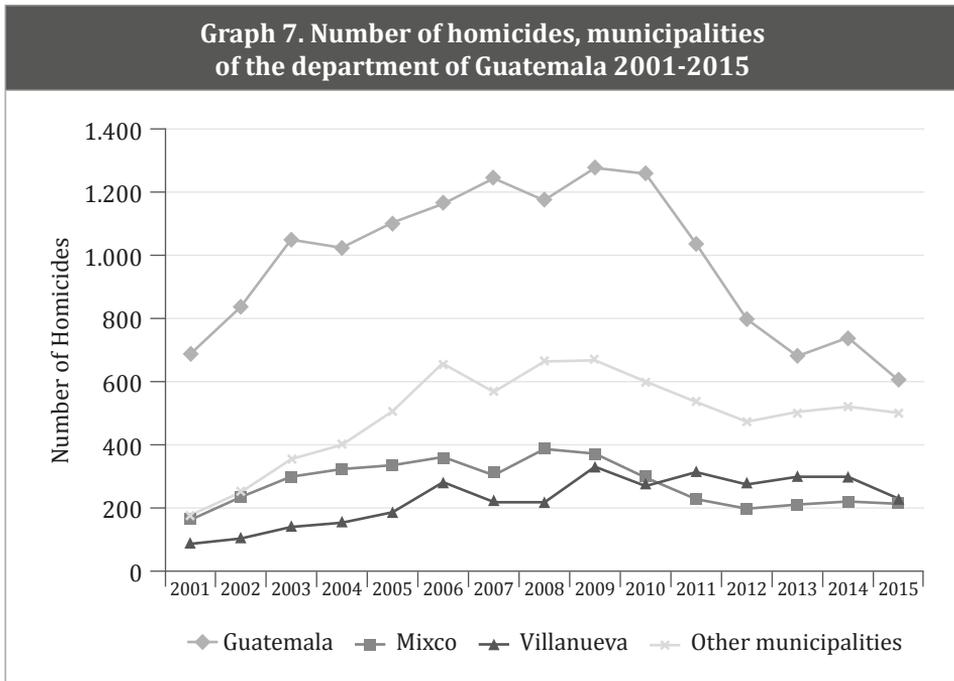
314 Claudia Paz y Paz Bailey and Silvina Ramírez. *Gestión de la conflictividad local en la Guatemala de la post guerra*. Guatemala, ICCPG, 2007. On the territorial distribution of violence and ethnicity, see Arturo Matute Rodríguez and Iván García Santiago. *Informe estadístico de la violencia en Guatemala*. Guatemala, UNDP, 2007, p. 28.

As is the case with homicides nationally based on data from the National Civilian Police, the data from INACIF on autopsies performed in the department of Guatemala report a larger number, yet the trend in rates is similar to that for homicides (Graph 6). In 2009, 2,644 autopsies were performed associated with criminal acts under investigation, corresponding to a rate of 101.2 per 100,000 population; this figure dropped to 1,995 in 2015, for a rate of 59.5 per 100,000, equivalent to a 41.2% reduction.



Source: National Civilian Police and INACIF.

If one examines the homicide data for the period analyzed by municipality in the department of Guatemala, it is in the municipality of Guatemala that one finds the highest concentration of homicides, 49.6%, followed by the municipality of Mixco with 14.0% and the municipality of Villa Nueva, with 11.6%. The municipality of Guatemala saw the largest reduction in homicides, from 1,272 in 2009 to 609 in 2015, which in terms of rate is a drop from 129 to 61 per 100,000 population (52.7% decline). In the other two municipalities, Villa Nueva and Mixco, there were also reductions in both numbers and rates, in the case of Villa Nueva, from 335 in 2009 to 228 in 2015 with a rate of 68.6 to 40.4 per 100,000 population (41.1%); and in Mixco from 374 in 2009 to 212 in 2005, with the rate falling from 79.7 to 42.8 per 100,000 population (46.2%), as illustrated in Graph 7.



Source: National Civilian Police.

The reduction of homicides in 2010 could be related, as explained, to the changes in the highest level authorities in the Ministry of Interior with the clarification, prosecution, and punishment of illegal structures that had been operating within that institution, and that had perpetrated violence in the form of extrajudicial executions and other illegal activities associated with organized crime. The sustained drop as of 2011 may be due to the improvement in the system of criminal investigation, which allowed for an increase in the clarification of crimes against life.³¹⁵

315 Carlos Mendoza, on examining the reduction in homicides in Guatemala, indicates: “Among the specialists, one plausible hypothesis is the fact that better coordination of work between the Attorney General’s Office and the Ministry of Interior, also with the scientific support of the INACIF for criminal investigation, has contributed to reducing impunity and, therefore, the incentives for committing crimes. On the one hand, several criminal structures have been arrested and convicted, taking them out of circulation. On the other hand, a clear message has been sent from the justice system to the remaining criminal organizations, thereby increasing the cost of engaging in criminal activity in Guatemala and, consequently, [impacting] their net profits.” Carlos Mendoza. *Informe anual sobre la violencia homicida en Guatemala 2015*. Guatemala, 2016, p. 7. Along the same lines, see Carmen Rosa de León-Escribano. *Disminución de homicidios en Guatemala: una mirada desde la prevención*. Guatemala City, 2013, p. 9.

As analyzed in Chapter II, in 2010 the investigative unit specialized in crimes against life of the National Civilian Police was already up and running, and the Special Methods Investigation Unit of the Attorney General's Office, the unit in charge of wiretapping, was also operating. Nonetheless, the implementation of the new model of prosecutorial management in the Office of the Prosecutor for Crimes against Life in early 2011, and implementation of the Gangs Plan allowed for prosecution to be strategic: designed based on accumulating information on the workings of this criminal phenomenon and aimed at breaking up the "cliques"³¹⁶ that held territorial control in certain urban areas.

The biggest reductions, in both the number of homicides and the rate, coincided with the places where the Gangs Plan was implemented and where the Office of the Prosecutor for Crimes against Life had jurisdiction. Accordingly, it was the department of Guatemala where the homicide rates were reduced 40.5%, compared to a 28.3% reduction in the rest of the country. And in the department of Guatemala it was the municipality of Guatemala where the Office of the Prosecutor for Crimes against Life operates, that saw the biggest reduction (52.7%), along with the neighboring municipalities of Mixco (46.2%) and Villa Nueva (41.1%), which were also included in the Gangs Plan.³¹⁷

The reduction reflected, among other causes, a general deterrent effect in response to greater clarification of crimes against life; there was a deterrent effect in terms of the possible consequences of violent criminal activities. There was also a major specific deterrent effect, on arresting the members of the criminal organization and prosecuting them in large-scale operations that break up a whole "clique," which prevented the continuation of its criminal activity in certain areas.³¹⁸

Along with arresting and prosecuting, complementary measures had to be implemented such as solitary confinement of the gang leaders in maximum security prisons to keep them from continuing to engage in criminal conduct even

316 "Clicas" (cliques) is the primary group into which a *mara* or *pandilla* is divided, and which exercises control over a territory in the district or neighborhood. Marcela Gereda, et al. *Violentas y violentadas. Relaciones de género en las maras Salvatrucha y Barrio 18 del triángulo norte de Centroamérica*. Guatemala City, Interpeace, 2013, p. 7.

317 See Chapter II(c)(4)(d).

318 See Caso "Clica Solo Raperos," Pandilla 18, Memoria de Labores Ministerio Público 2011; Caso Clica Pewes Locos, Mara Salvatrucha, Caso Clica Little Psico Criminal, Caso Canalitos, Memoria de Labores 2012, Attorney General's Office, pp. 77 and 78; Caso Solo para Locos y Caso Crazy Gansters, Memoria de Labores Ministerio Público. Guatemala City, 2013, p. 87.

while incarcerated. For example, the destruction of the Fraijanes II Maximum Security Prison in November 2012, which ended their isolation, coincided with an increase in homicides. December 2012 with 494 homicides and January 2013 with 505 were the most violent months in those years (in November 2012 there were 476 homicides, and in February 2013, 441). In addition, efforts were made to control the cell phone signals at prisons. This last measure was not very successful, due to a combination of technical difficulties and corruption.

In the vast majority of gang-associated homicide cases that have been cleared up convictions have already been handed down³¹⁹, while some are still awaiting trial. Nonetheless, the specific deterrent effect is achieved from the moment of arrest and prosecution, when they have been prevented from continuing to engage in criminal conduct. The strategic proposition is to identify the places with the greatest concentration of homicides, identify the groups or organizations responsible for this violence, in this case the gangs, and dismantle these organizations through criminal investigation, prosecution, and punishment.

Along with these measures there was a need to implement measures to prevent youth violence, to keep youths from joining gangs. Some programs were started up in 2008, but did not have continuity in the next administration, such as the Open Schools program.³²⁰ It is also essential to establish prison programs that help youths leave gangs and access education and employment. At present no such programs exist in Guatemala's prisons.

The reduction in homicides is also related to the information accumulated through criminal intelligence. As indicated in Chapter II, another measure especially important both for clearing up criminal acts and preventing them has been the creation of the Special Methods of Investigation Unit, which is responsible for wiretaps. With this method it is possible to identify when criminal organizations are going to attack a rival organization, citizens, or authorities, and so to plan and implement police operations to make it impossible for them to carry out the killings. In 2013 the Unit reported that at least 231 violent deaths had been prevented.³²¹

319 See Chapter II.

320 See Carmen Rosa de León-Escribano. *Disminución de homicidios en Guatemala: una mirada desde la prevención*, op. cit., p. 11

321 Memoria de Labores 2013, Attorney General's Office, p. 38.

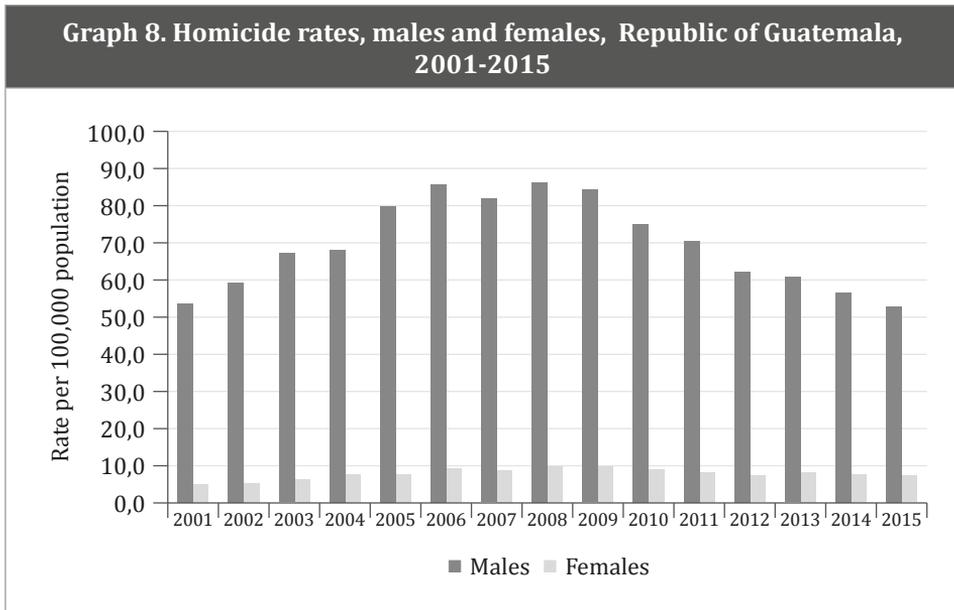
5. Greater reduction of homicides in male victims than in female victims

Of all homicides that occurred from 2001 to 2015, 89.1% were of males, and 10.8% females. This distribution of homicides in men and women has changed by 3.2 points during these years. In 2001 the violent deaths of women constituted 9.4% of the victims, and in 2015, 12.6%. The distribution of homicides by sex is very close to the distribution for the Americas, 88% males and 12% females.³²²

In males there was an upward trend in both absolute numbers and the homicide rate from 2001 to 2009, from 2,927, with a rate of 53.8 per 100,000 population in 2001, to 5,778 with a rate of 84.5 per 100,000 in 2009. Later one notes a reduction in 2015 to 4,177 homicides with a rate of 52.8 per 100,000. This means a 57.1% increase from 2001 to 2009, and a 37.5% decline from 2009 to 2015.

In females one observed a similar pattern albeit in different dimensions: from 2001 to 2009 there was an increase of 303 homicides, with a rate of 5.1 per 100,000 population in 2001 to 720 with a rate of 10.0 per 100,000 population in 2009, and then a reduction in 2015 to 601 homicides for a rate of 7.2 per 100,000. In other words, there was an increase similar to that which occurred in the case of males (96.0%) from 2001 to 2009, and a small reduction (28.0%) from 2009 to 2015.

322 The distribution worldwide is 21% female victims and 79% male victims. See UNO-DC, *Global Study on Homicide 2013. Trends, Contexts, Data*, op. cit., p. 13.



Source: National Civilian Police.

The larger percentage of male victims compared to female is explained by the fact that the criminal organizations associated with drug trafficking and gangs, with which a large part of the homicidal violence is related, are made up mostly of males, although they have some participation of women. In the case of drug trafficking, women mostly participate at the lowest level, as mules and as micro-traffickers.³²³ The gangs are also made up primarily of males³²⁴, though in recent years there has been an increase in the participation of women in response to the actions of the security forces directed, initially, against the male members.³²⁵

The greater reduction in male victims compared to female victims could indicate that the actions to clear up the facts in crimes against life, in the context of gang-related violence, have been more effective. These are investigations and proceedings against criminal organizations that have incorporated violence

323 Nischa Jenna Pieris. *Women and drugs in the Americas: A policy working paper*. Washington DC, OAS, 2014. p. 27.

324 Marcela Gereda, et al. *Violentas y violentadas. Relaciones de género en las maras Salvatrucha y Barrio 18 del triángulo norte de Centroamérica*. Guatemala, Interpeace, 2013, p. 7.

325 Rocío Pérez Domenech. *Las mujeres y las maras: otra vuelta de tuerca en el complejo mundo de las pandillas centroamericanas*. Global Voices, 2015.

into their *modus operandi* as a mechanism of territorial control, vis-à-vis the rival gang, the local residents, and the authorities. The leaders of the gang or “*ranfleros*” are responsible for ordering dozens of homicides, and the hit men for carrying out those orders.³²⁶

In the case of women victims, while some of these violent deaths are the result of patterns of crime associated with drug trafficking or gangs that affect men equally, others are the result of gender violence, which has a different logic. Approximately half of the violent deaths of women are related to gender violence.³²⁷ In these cases the perpetrators are the spouse or partner, former spouse or partner, or a person seeking to initiate a sentimental relationship, and, to a lesser extent, other family members, fathers, sons, or brothers.

These are offenses that occur in the context of unequal power relations between men and women, in a sexist context that facilitates such violence. In these offenses there is one perpetrator and one victim, not multiple perpetrators and multiple victims, as occurs in the violence related to criminal organizations. So the special deterrence effect is less, because it affects the direct relationship between perpetrator and victim; whereas in the case of criminal organizations, dismantling them can prevent many deaths.

Gender violence manifests structural factors profoundly rooted in patriarchy, exclusion, and discrimination against women whose transformation requires comprehensive and sustained public policies. In particular, preventive measures are needed, both education and immediate action in cases of violence against women. The violent deaths of women in the context of gender violence generally “have a tendency to remain fairly stable, meaning that in contexts of decreasing homicide rates the share of this type of homicide increases in proportion to others.”³²⁸ As mentioned, this has happened in Guatemala, which saw an increase in the percentage of female homicide victims from 9.4% in 2001 to 12.6% in 2015, despite the overall decline in homicides.

326 For example, of the case of the district known as Colonia El Limón, zone 18 of Guatemala City, in 2012 43 members of the Barrio 18 were detained and prosecuted who were responsible for at least 26 victims, 11 females and 15 males, during 2011. Memoria de Labores 2012, Attorney General’s Office. Guatemala City, p. 77.

327 In its Global Study on Homicide the United Nations Office on Drugs and Crime estimates: “Almost half (47 per cent) of all female victims of homicide in 2012 were killed by their intimate partners or family members.” UNODC. *Global Study on Homicide 2013. Trends, Contexts, Data*, op. cit., p. 14.

328 UNODC. 2011 *Global Study on Homicide 2011. Trends, Contexts, Data*. Vienna, UNODC, 2011, p. 12.

Though there is no data from the National Civilian Police for the different departments of Guatemala disaggregated by sex, information from the Office of the Special Prosecutor for Crimes against Life reflects a decline in the number of cases of women victims of both injuries and homicides from 393 (178 resulting in death) in 2010 to 193 (103 resulting in death) in 2013.³²⁹ This reduction suggests that the measures adopted in the Model of Comprehensive Care for addressing gender violence³³⁰ that operates in the same geographic zone as the Office of the Prosecutor for Crimes against Life has had a major impact preventing violent deaths of women, which would suggest the advisability of extending it to the whole country.

While an increase in the clarification of cases and in imposing punishment in cases involving the violent deaths of women has contributed to reducing these incidents³³¹, the percentage was less than in relation to the male victims, for the reasons indicated. The reduction in cases of women victims entering the Office of the Prosecutor for Crimes against Life suggests that adequate attention to cases of violence against women has a special preventive effect on the increasing violence against women, since measures are implemented that are needed to protect victims from their assailants.

6. Youths, the main victims of homicides

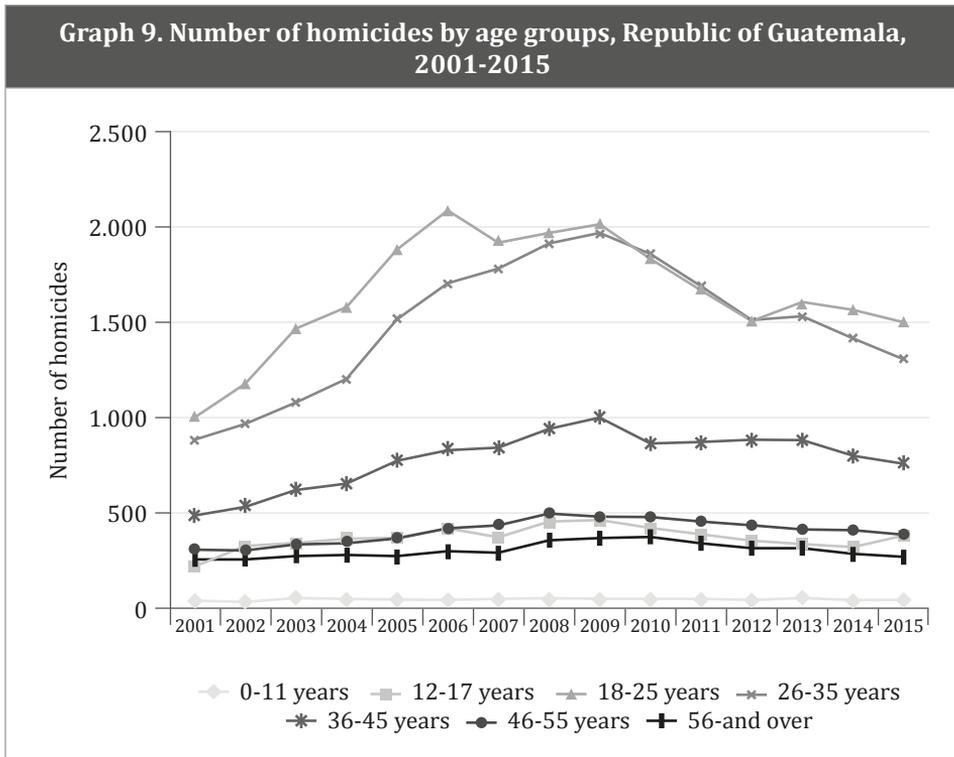
A large part of the victims of homicides are ages 18 to 35 years (62%), fewer are under 18 years of age (8%) and 30% are 36 years of age or older. The concentration in young adults is similar to the percentages in the Americas, 43% in the 15-to-29 years age bracket and 30 % in the 30-to-44 year age bracket.³³²

329 Data provided by the Unit for Liaison with the Analysis Bureau of the Office of the Prosecutor for Crimes against Life in July 2015.

330 The Integral Care Model (MAI: Modelo de Atención Integral) brings together medical, psychological, and legal services for assisting victims of violence against women and sexual violence in a single office. The office operates 24 hours a day, 365 days of the year. See Memoria de Labores 2013, Attorney General's Office, 2013, p. 38.

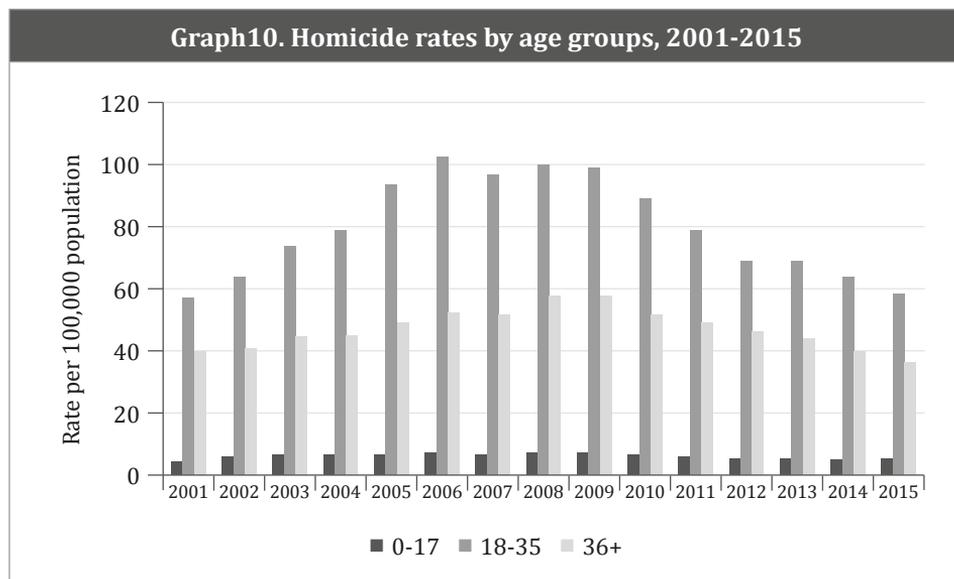
331 See Chapter II.

332 UNODC. 2011 *Global Study on Homicide. Trends, contexts, data*. Vienna, UNODC, 2011, p. 13.



Source: National Civilian Police.

As regards average rates per 100,000 population, for persons under 18 years of age it is 6.2, from 18 to 35 years it is 80.0, and in the over 35 age group it is 47.0. These rates also turn upward beginning in 2001, nonetheless a first peak was reached in 2006 for the 18-to-35 year age group, with 102.0 homicides per 100,000 population, as illustrated in Graph 10.



Source: National Civilian Police.

The concentration of victims in young adults suggests that these deaths are associated with the phenomenon of gangs, given that they are mostly made up of persons in that age range. While in the early days of the gangs in the 1990s the members were mostly adolescents, current trends shown by various studies indicate that “their members are no longer mostly adolescents, but rather young adults, some of who began their life in the gang as adolescents.”³³³

Given that the sharpest increase from 2001 to 2009 (73%) occurred in the 18-to-35 age bracket, one can infer that the increase in violent deaths is related to the increase in violence by gangs against their members and against the rival gang as well as against the gangs by state actors, in extrajudicial executions or private killings, in the poorly-labeled “social cleansing” operations.

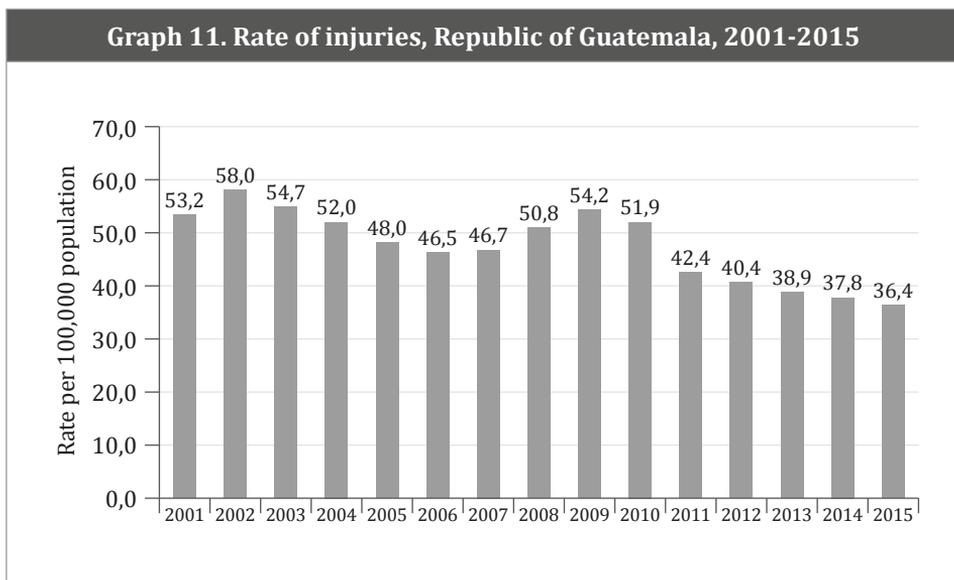
The steepest decline in violent deaths (41.3%) also occurred in this age group, which is consistent with the drop in violent deaths in the department of Guatemala. In other words, it would appear to be an effect of specific deterrence with respect to gang actions, together with a general deterrent effect on private and state actors.

333 Jeannette Aguilar and Marlon Carranza. *Las maras y pandillas como actores ilegales de la región*. San Salvador, UCA, 2008, p. 4.

B. Injuries

As indicated, an analysis of injuries is included because homicides and injuries, as they are both expressions of violence against persons, are closely related and should show similar trends. Next is a closer look at whether injuries show similar trends, concentration, and profiles of victim by sex and age as homicides.

Injuries increased from 2001 to 2009, from 5,823 to 7,601 cases when the largest number of injuries in the last 15 years was reported. The increase was constant from 2006, and previously had increased significantly in 2003, when there were 6,612 injuries. As for the rate, the highest was in 2002, when it reached 58 per 100,000 population nationally. In those years the rate of injuries increased from 53.2 per 100,000 population in 2001 to 54.2 per 100,000 in 2009. Since 2009 there has been a steady decline up until 2015, when there were 5,888 instances, for a rate of 36.4 per 100,000, a 32.8% reduction.

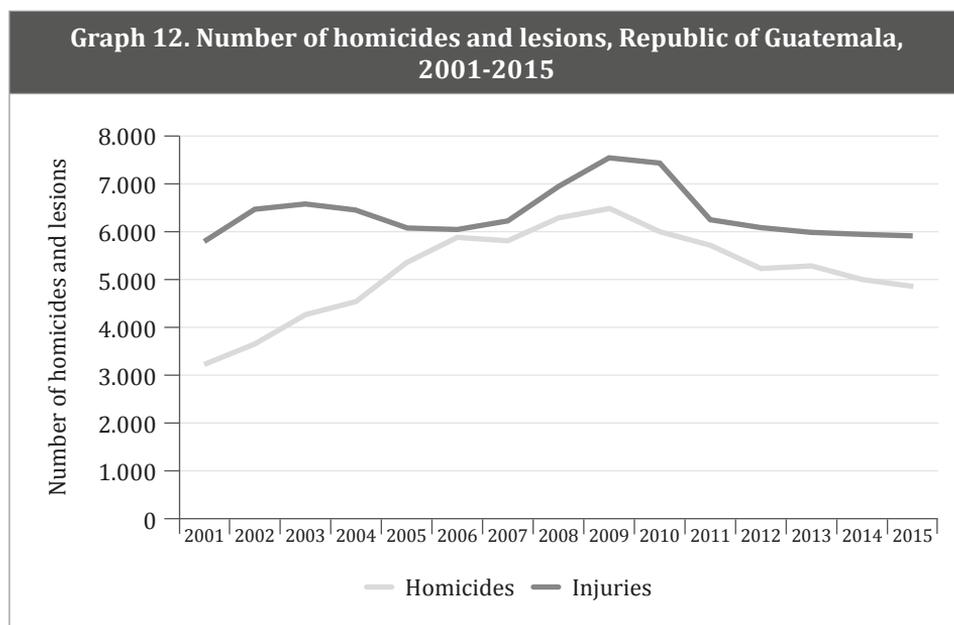


Source: National Civilian Police.

The trend in injuries prior to 2009 was different from that for homicides. While both offenses reached their highest point 2009, with 7,601 cases of injuries and 6,498 cases of homicide, as observed in Graph 12, in rates the peak for injuries was reached in 2002. Given that the greatest growth occurred in the department of Guatemala (Graph 14) and the age bracket that saw the greatest increase was persons ages 18 to 25 (Graph 16), one can infer that these figures reflected

violence associated with gangs, who at that moment had mainly homemade weapons.³³⁴

Beginning in 2009 injuries and homicides showed a similar downward trend. In the case of homicides the drop was 16.9 points in the rate (36.3%) and in injuries equivalent to 17.8 points in the rate (32.8%).



Source: National Civilian Police.

The fact that homicides and injuries reached almost the same levels in 2006 (Graph 12), with a 24.7% drop in injuries from 2003 to 2006 in tandem with a 39% increase in homicide, suggests that in this period violence against persons was perpetrated by entities with greater lethal capacity whose conduct, unlike ordinary interpersonal violence, was specifically intended to cause death.

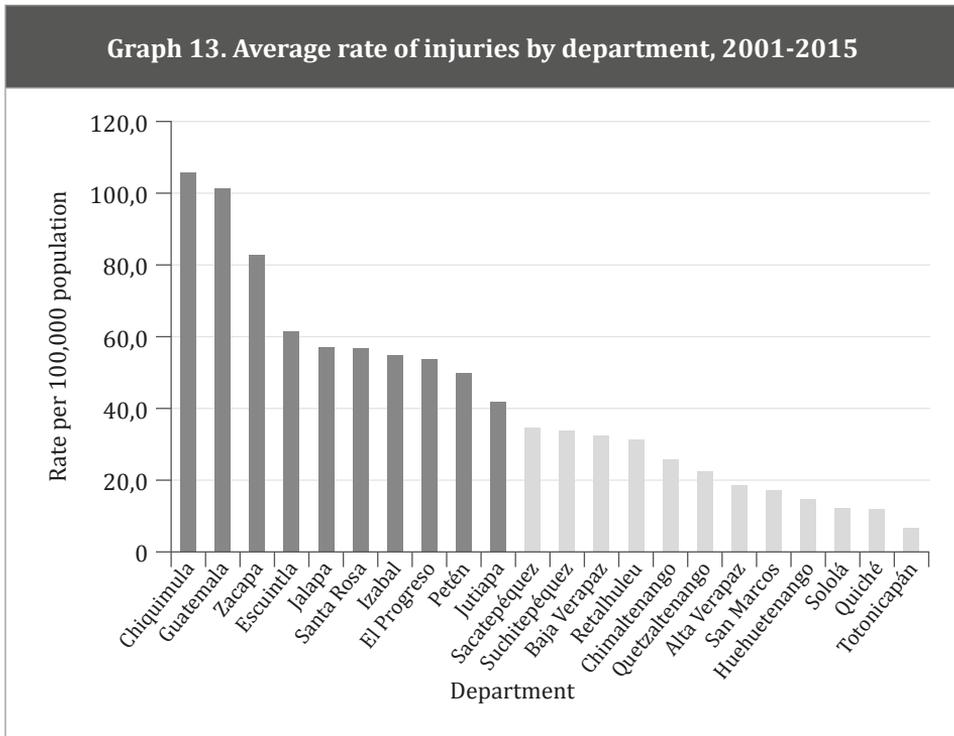
As mentioned (supra A.2), during those years “a criminal organization ... [was operating] from the Ministry of Interior and the National Civilian Police

334 Elin Cecilie Ranum. *Pandillas juveniles transnacionales en Centroamérica, México y Estados Unidos. Diagnóstico Nacional Guatemala*. Guatemala City, Instituto Universitario de Opinión Pública, 2006, p. 16.

... dedicated to extrajudicial executions....”³³⁵ Extrajudicial executions carried out by members of the security forces would be a possible explanation for the pronounced increase in homicides without a similar increase in the crime of injuries. In other words, the increase in the crimes from 2001 and 2003 may reflect the ordinary evolution of crime, while the increase in homicides and reduction in the number of injuries in 2006 reflects the action of entities trained to kill.

As for territorial distribution, the departments with the greatest concentration of the crimes of homicide and injuries coincide, except for Alta Verapaz. Thus, the department that accounts for the largest share of injuries is the department of Guatemala, with 46.8%, followed by Escuintla 6.2%, Chiquimula 5.7%, Petén 4%, Izabal 3.2%, Santa Rosa 2.9%, Alta Verapaz, and Zacapa with 2.7%. The other 14 departments account for 22.7% of injuries. As regards the average rates, the departments with the greatest prevalence are Chiquimula, 110.8 per 100,000, Guatemala 101.3, Zacapa 82.9, Escuintla 61.1, Jalapa 56.9, Santa Rosa 56.6, Izabal 54.5, and El Progreso 53.7.

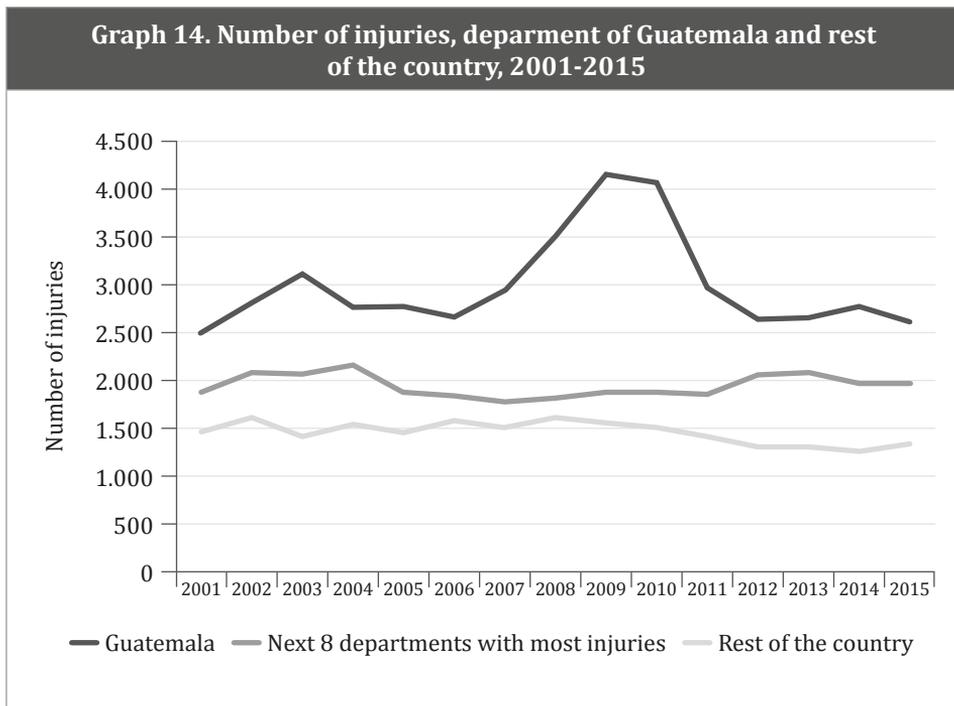
335 CICIG. Press Release No. 18, August 9, 2010.



Source: National Civilian Police.

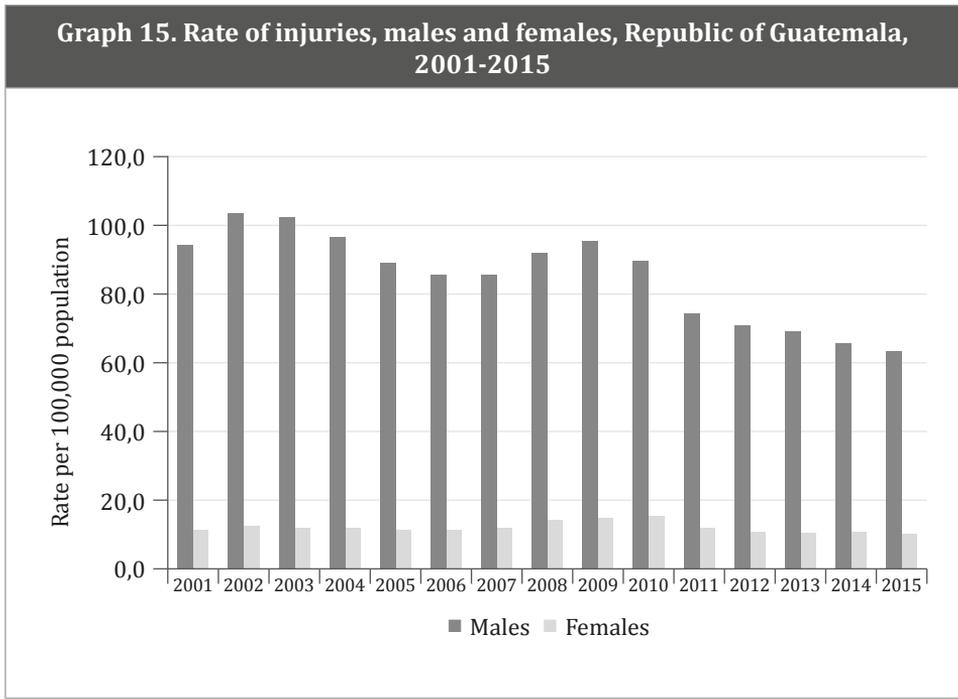
Note: Black indicates a rate greater than the national average of 42.0 per 100,000 population. Grey indicates a rate below the national average.

The trends in injuries varied by department. Sixteen of the 22 departments reflected the downward trend from 2009 to 2015 and in six there was an increase: Escuintla (46.5%), El Progreso (21.4%), Izabal (4.7%), Jutiapa (2.4%), Retalhuleu (37.4%), and Sacatepéquez (1.6%). Escuintla and Retalhuleu also saw an increase in homicides. The reduction was most evident in the department of Guatemala, in both the number and the rate of injuries, from 4,163 to 2,636 in absolute numbers, with the rate falling from 136.5 per 100,000 population to 77.8 per 100,000 (43.0%). The reduction in homicides in the department of Guatemala was 41.1%.



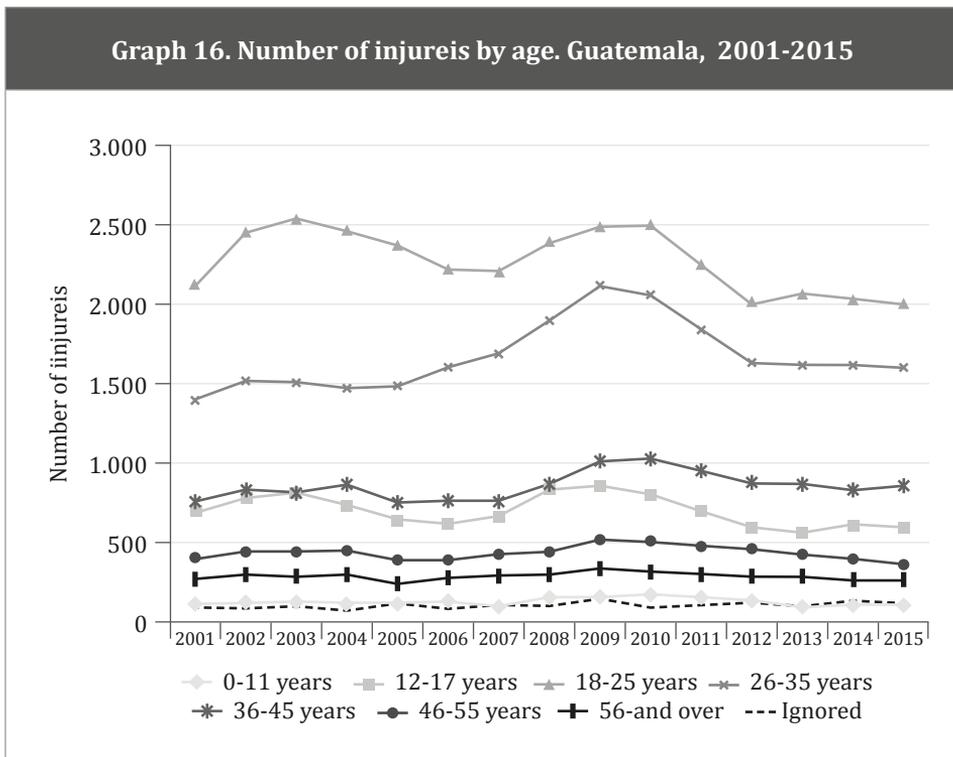
Source: National Civilian Police.

Of the total injuries, 86.6% were in males and 13.4% in females. The distribution of victims by sex is very similar to the distribution for homicides (89.1% and 10.8%). In males one observed an upward trend in the number and rate of injuries from 2001 (5,143 injuries, with a rate of 91.7 per 100,000) to 2009 (6,515, with a rate of 95.3; for a 3.9% increase), so as to then fall from 2010 to 2015 (5,020, with a rate of 63.5 per 100,000, for a 33.3% decline). In women a similar pattern was observed from 2001 (680, with a rate of 11.2 per 100,000) to 2010 (1,088, with a rate of 15.2 per 100,000, for an increase of 35.7%) and it fell in 2013 (to 868, for a rate of 10.5 per 100,000, a 30.9% decline). The trends also coincide with homicides.



Source: National Civilian Police.

The victims’ ages are concentrated in the 18-to-35 year bracket (62.2%), with the least concentration in persons under 18 years (12.9%), while 24.7% of the victims are 36 years and over. This distribution coincides with the age brackets that account for the largest share of homicides. As for average rates, in persons under 18 it is 12.6 per 100,000; for 18 to 35 years 100.7 per 100,000; and for over 35 years, 50.2 per 100,000. These rates also climb as of 2001, yet the peak in the rate was reached in 2002 for the 18-35 year bracket, with 117.8 injuries per 100,000 population.



Source: National Civilian Police.

The coincidences between the crimes of homicides and injuries in terms of geographic concentration and distribution by sex and age of the victims indicate that they are closely interrelated criminal phenomena. As explained, many attempted homicides are recorded as injuries, and some injuries that result in death (*homicidios preterintencionales*, a type of manslaughter) are recorded as homicides. The reduction of both crimes from 2009 to 2015, 36.6% in the case of homicides and 32.8% for injuries, corroborates that there was a reduction of violence during this period.

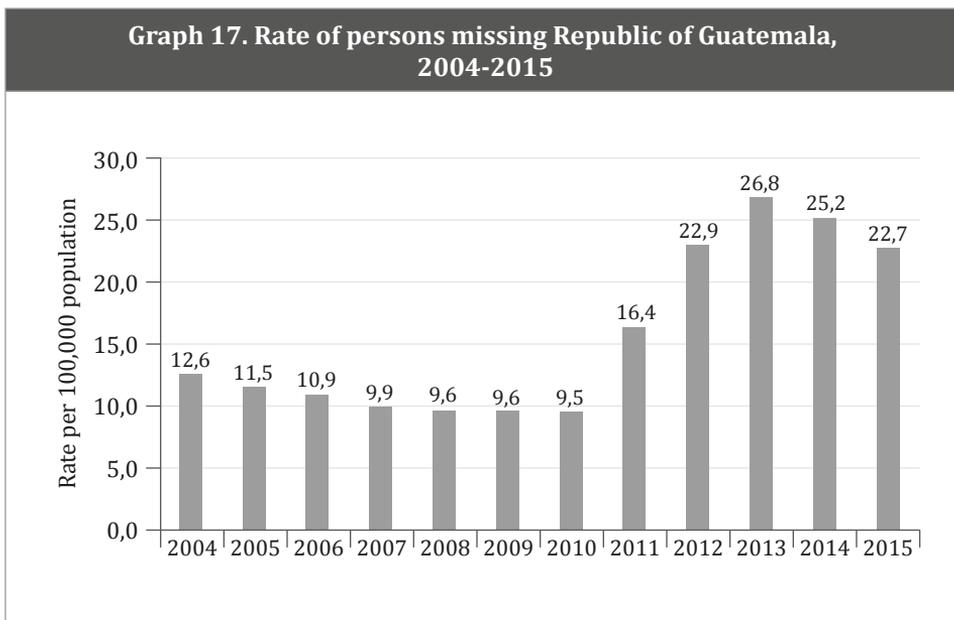
C. Persons missing or disappeared

The phenomenon of persons missing or disappeared is analyzed here since it could happen that a drop in homicides would be correlated with an increase in persons missing or disappeared due to changes in the perpetrators' *modus operandi*, i.e. that the perpetrators would disappear the corpse to cover up the homicide. The phenomenon of persons disappeared or missing could be related

to voluntary causes, such as migration, or youths who leave home without informing their parents; or involuntary, such as forced recruitment to gangs, forced disappearances, and those caused by international human trafficking networks.

This phenomenon is analyzed using the same variables, trends, geographic concentration, and profiles of the victims in terms of sex and age with which homicides were examined to determine whether there is a correlation.

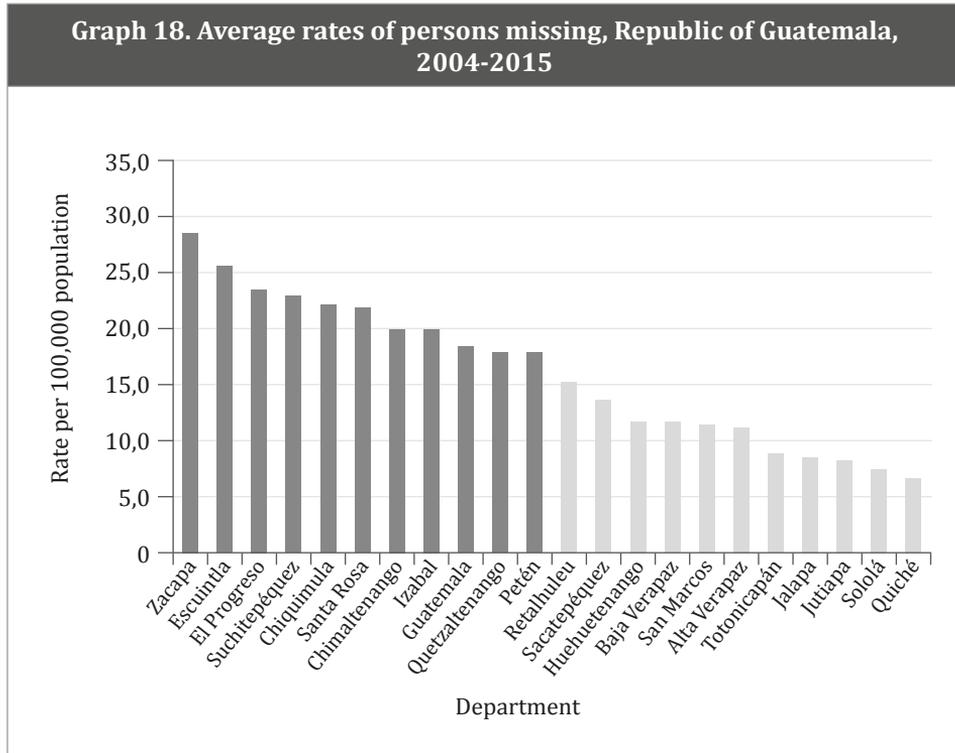
In the phenomenon of persons missing or disappeared, there is only data since 2004. They showed a sustained increase from 1,362 in 2010 to 4,137 in 2013, with the totals dropping off again in 2015 to 3,667. During these years the rate of persons missing or disappeared increased from 9.5 per 100,000 population in 2010 to 26.8 per 100,000 (182%) in 2013 and then fell again, to 22.7 per 100,000 in 2015 (15.2%).



Source: National Civilian Police.

The departments with the greatest concentration of persons missing are Guatemala (26.3%), which includes Guatemala City, and four other departments: Escuintla (8.1%), Huehuetenango (6.0%), Alta Verapaz (5.8%), and Chimaltenango (5.5%). The other 17 departments account for 46%. In terms of

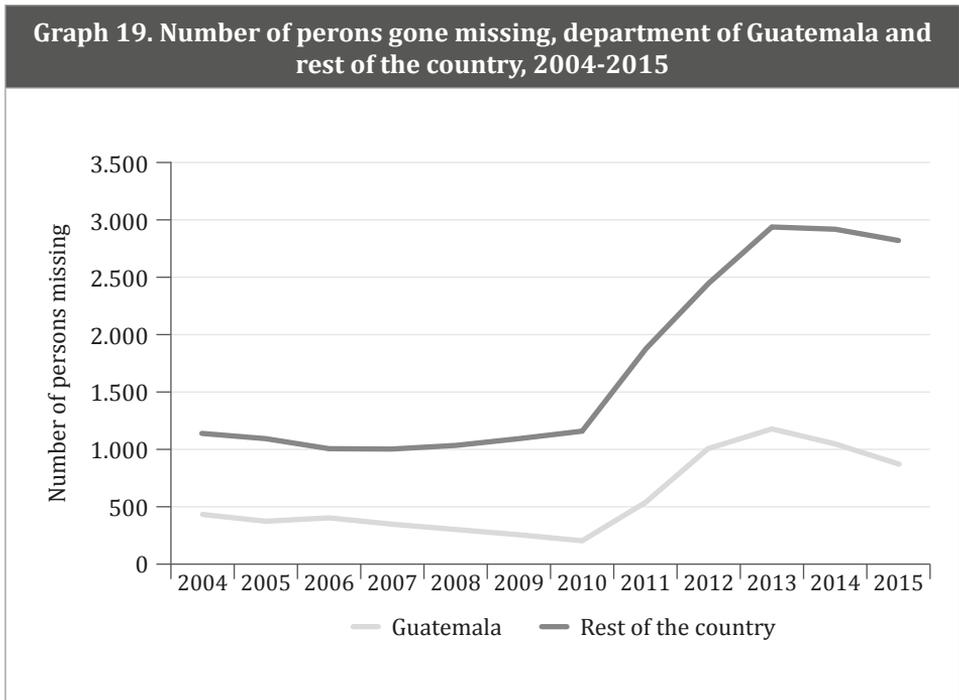
average rates, the departments with the highest rates are Zacapa 28.6, Escuintla 25.6, El Progreso 22.9, Suchitepéquez 22.9, Chiquimula 22.2, Santa Rosa 22, and Guatemala 16.4.



Source: National Civilian Police.

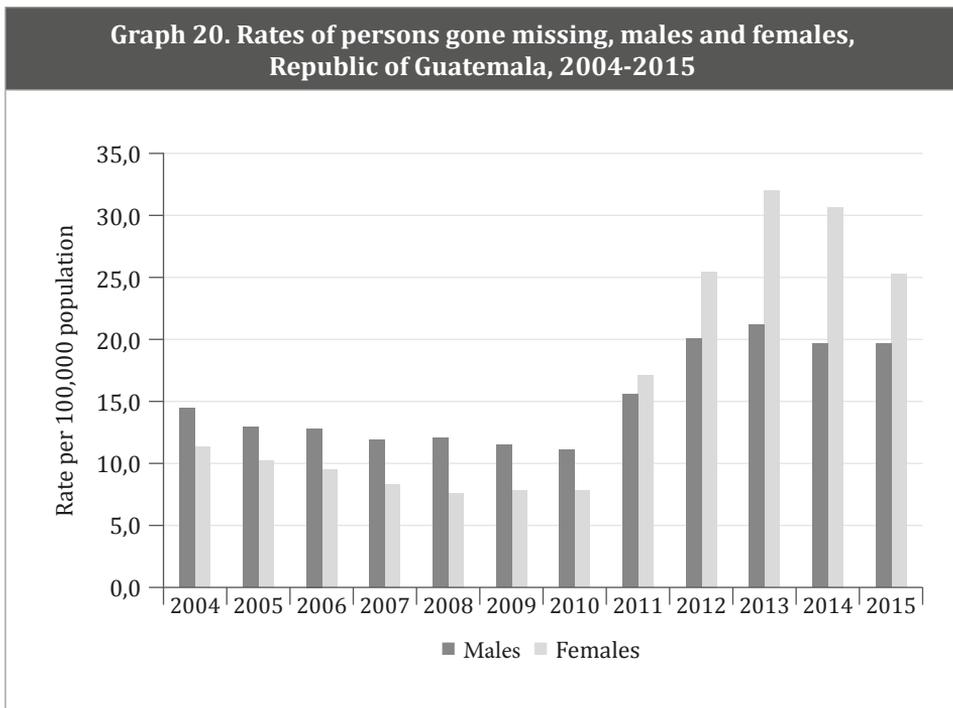
Note: Black indicates a rate higher than the national rate of 15.6 per 100,000 population. Grey indicates a rate below the national rate.

The trends did not vary substantially by department. Twenty-one of the 22 departments reflected the national upward trend, and one, Jalapa, saw a reduction. The department of Guatemala saw an increase both in the number and rate of persons missing, from 200 in 2004 to 1,192 in 2010, which is an increase, in terms of rate, from 6.4 per 100,000 to 36.6 per 100,000, for a 471% increase, and a slight decline by 2015, with 866 persons gone missing, for a rate of 25.8 per 100,000, i.e. a reduction of 29.5%.



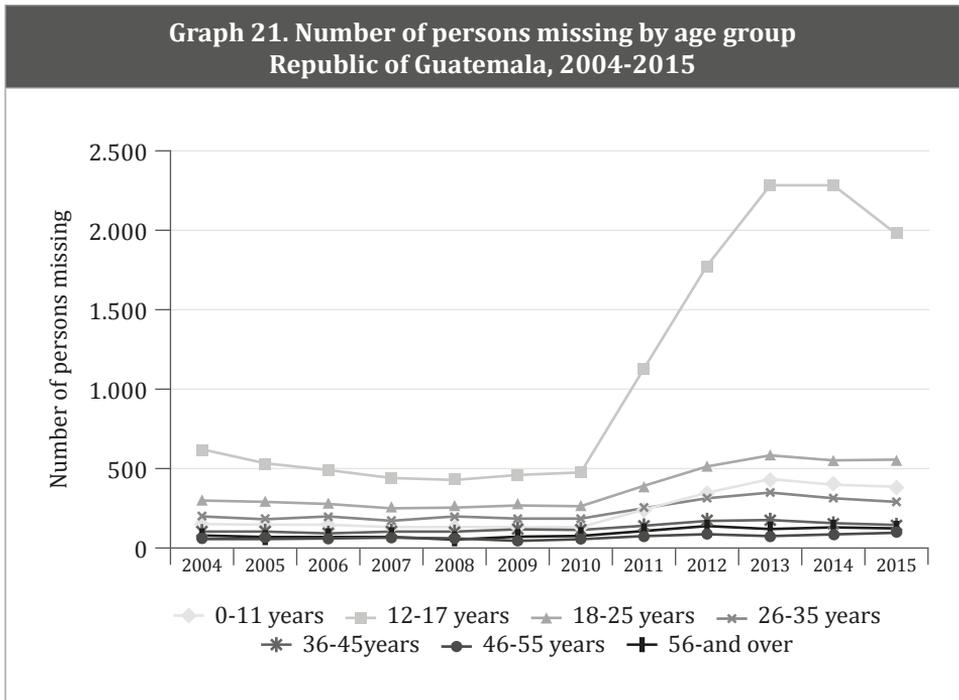
Source: National Civilian Police.

Of all persons missing, 53% were female and 47% male. In both groups one observed an increase as of 2010, more pronounced in females from 575 (7.8 per 100,000 population) in 2010 to 2,532 (32.0 per 100,000) in 2013, a 310% increase. There was then a decline by 2015, with 2,100 cases and a rate of 25.4 per 100,000, for a 20.6% reduction. At the same time there was an increase, for males, from 789 (11.2 per 100,000 population) in 2010 to 1,605 (21.3 per 100,000), a 90.1% increase, and a slight reduction in 2015 to 1,567 cases, with a rate of 19.8 per 100,000, for a 7.0% decline.



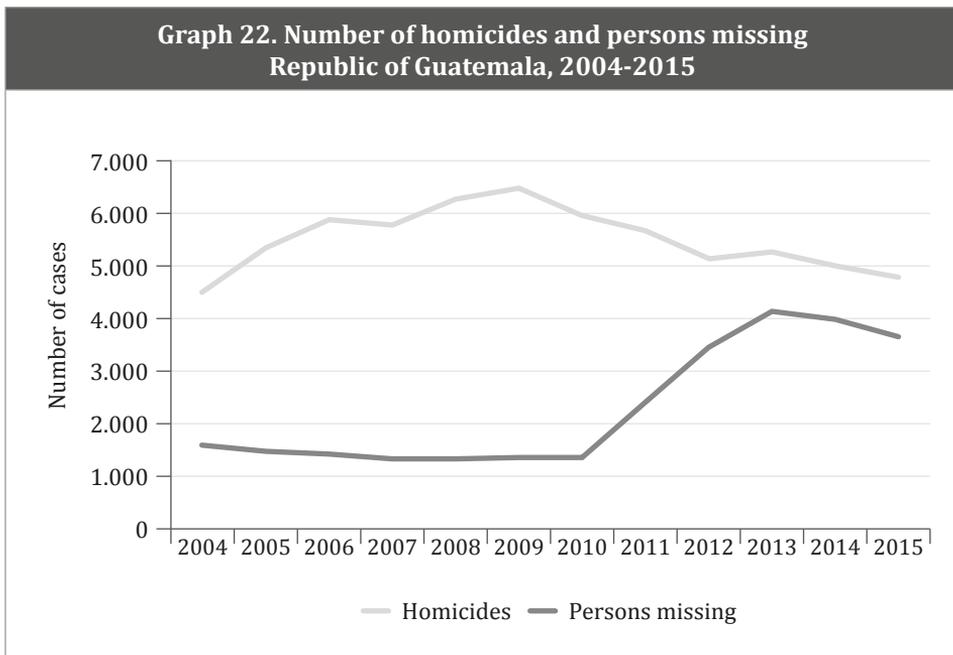
Source: National Civilian Police.

The victims are primarily in the 0 to 17 age group (57%), with the lowest concentration in persons over 35 years of age (13%), while 27% correspond to persons ages 18 to 35 years. As for the higher rates in 2013, they came to 37.5 per 100,000 in persons under 18 years of age, 20.7 per 100,000 for persons 18 to 35 years of age, and 10.8 per 100,000 in persons over 35. The greatest increase was in victims ages 0 to 17 from 2010 to 2013, when it climbed from 611 cases, for a rate of 8.8 per 100,000, to 2,719 for a rate of 37.5 per 100,000, which means a 326% increase; then there was a slight decrease by 2015, with 2,361 cases and a rate of 31.7 per 100,000, for a 15.4% reduction.



Source: National Civilian Police.

The decline in homicides has coincided with an increase in the phenomenon of persons missing or disappeared. Given that this increase came as of 2010 and coincides with the reduction in homicides, one might think that it reflects a change in the *modus operandi* of the perpetrators, who hide the victim's corpse to guarantee impunity. If that is so, homicides would not have declined due to factors related to the effectiveness of the system of investigation, but simply because what were previously homicides would now be persons disappeared.



Source: National Civilian Police.

Nonetheless, the victims' profiles do not correspond in terms of sex, for of the persons missing or disappeared 51% are female, whereas females account for 10.8% of homicides; nor in terms of age, as 57% of the missing or disappeared are under 18, compared to 8% in homicides. Therefore, they are different phenomena, as explained next.

In September 2010 the Congress of the Republic adopted the Law on the Alba-Keneth Alert System (Decree 28-2010), whose purpose is to provide immediate protection for children and adolescents who have been kidnapped or are missing. It requires the police to register immediately all reports of a missing child or adolescent, and to alert the inter-institutional system for search and protection. Before the adoption of this law, the police often waited 24 hours before acting.

Given the profile and sex of the victims the increase in persons missing is tied to the now compulsory and immediate registration of reports of children and adolescents who have gone missing. According to data from the Office of the Chief Government Counsel (Procuraduría General de la República), the agency that coordinates the alert, 76% have been located.³³⁶ In other words, almost 8 of every

336 Memoria de Labores, Procuraduría General de la República 2013. Guatemala City, p. 17.

10 persons missing are located, and their localization is recorded; there may be other persons who have been located, but who do not advise the authorities, and so the alert is not deactivated. The increase in persons missing would then not be the result of an attempt to cover up homicides as disappearances, but rather reflects changes in the legislation and the creation of a mechanism devoted to keeping cases of persons missing from becoming deaths.

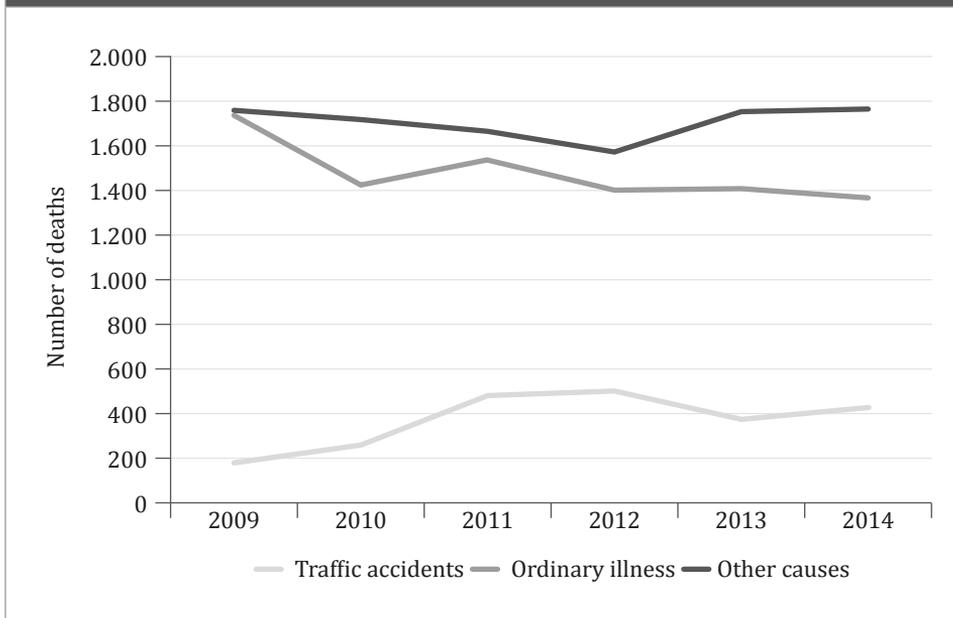
According to information from the Procuraduría General de la República, one of the biggest reasons for activation of the alert is adolescents who run away from home, followed by family problems and subtraction by one of the parents. There are also cases of kidnapping, coercion, abuse, migration, trafficking and sexual violence.

D. Other causes of death in the male population ages 15 to 34 years

To determine whether the reduction in homicides in young men from 2010 to 2015 was related to the diminution of factors independent of the system of criminal prosecution, an analysis was done of deaths from 2009 to 2014 in the population ages 15 to 34 years, using the statistics of the National Institute of Statistics. Those ages were examined since that is the classification used by the National Institute of Statistics; and that bracket is closest the age bracket examined in homicides (18-35). As for the years, the years covered are those for which the information was accessible, and they constitute a period similar to that examined for homicides. The causes of death were organized in three groups, ordinary illness, traffic accidents, and other causes that don't fit in these categories, or that are not specified in the official statistics.

On examining the data there was an increase in deaths caused by traffic accidents from 251 in 2009 to 429 in 2014; while deaths due to ordinary illness (1,721 in 2009 and 1,375 in 2014) and due to other causes (1,768 in 2009 and 1,781 in 2014) remained stable, that is they did not undergo significant variations.

Graph 23. Deaths of males ages 15 to 34 years due to causes other than homicide, Republic of Guatemala, 2004-2015



Source: National Institute of Statistics.

If one compares violent deaths with other causes of death in the male population of similar ages, in the context of the decline from 2010 to 2015, one observes that there have not been significant variations, as illustrated in Graph 11.³³⁷ In other words, the decline in violent deaths of young adults in the same population, from 2010 a 2015, does not answer to factors associated with the general trends in deaths of youths, which seen had only minor variations.

E. Conclusion

It has been possible to show, using the figures of the National Civilian Police on homicides and of the National Institute of Forensic Sciences on autopsies, that there was a real decline in violence against persons as of 2009, in the form of both violent deaths and injuries.

³³⁷Data recorded by the National Institute of Statistics of Guatemala.

It was possible to discard, first, that the reduction was due solely to a change in the characterization of the facts in deaths due to unnatural causes, because the INACIF data, which includes autopsies in such situations, show the same trend. These data also include possible suicides and accidents with firearms.

Second, the possibility that the decline in homicides was related to a change in the perpetrators' *modus operandi*, covering up the crime by hiding their victims' bodies, has been discarded. Although there was a major increase in cases of persons going missing, this was due to the adoption of the Law on the Alba-Keneth Alert System, which requires immediately registering a report of a child or adolescent missing, more than to an increase in the phenomenon. Accordingly, the victims of the phenomenon of persons going missing are mostly under 18 years of age, and almost equally divided as between males and females. The victims of homicide, to the contrary, are mostly males ages 18 to 35.

Before this decline in the homicide rates there was a major increase from 2001 to 2009. Mindful of the age and sex of the victims (males ages 18 to 35) in the places that experienced the greatest changes (department of Guatemala, municipalities of Guatemala City, Mixco, and Villa Nueva) one can infer that the increase in homicides is related to the violence caused by the gangs. On top of that, the development, not always in tandem, of homicide cases and injuries cases, at a time when groups engaged in extrajudicial executions were operating within the Ministry of Interior, allows one to infer that in addition to the gang violence is the violence perpetrated by officers of the State against them.

Moreover, the decline in homicides in this population and in this place suggests that the reduction was the result of two phenomena and the policies implemented at that time. First was the reaction to the extrajudicial executions through the prosecution of the members of these criminal organizations as of 2010, and second, in response to the homicides perpetrated by the gangs, beginning in 2011 Plan Pandillas was implemented, making it possible to clarify more cases, and to prosecute and punish several of those responsible.

And so one finds a general deterrence effect: the fact that public servants are prosecuted and in some cases convicted for their involvement in extrajudicial executions had a deterrent effect, sending a message that these crimes were going to be prosecuted and punished independent of whether they were perpetrated by security officers or regular citizens. The data also suggest a special deterrence effect vis-à-vis the violence carried out by gangs in the department of Guatemala. The dismantling of some "cliques" and the jailing of their members has kept them from continuing to commit crimes. These measures must be supplemented by prevention policies that keep young people

from joining gangs, and education and work opportunities for the persons now incarcerated that offer them opportunities outside the gang.

Since the reduction in homicides in the rest of the country, while real, was much less than in the department of Guatemala, one can conclude that the actions to dismantle criminal structures dedicated to drug trafficking, while effective (homicides did not continue to increase, and there was a slight reduction), must be accompanied by other measures that involve recovering and maintaining control over the territory so that the control of routes not be taken over quickly by other criminal organizations.

The violent deaths of women, while in some cases due to the same factors, mostly have to do with gender violence. The reduction in the number of cases with women victims at the Office of the Prosecutor for Crimes against Life indicates that the measures implemented in the Model for Comprehensive Attention to address violence against women have had a deterrence effect in cases of homicide and femicide, as has the increase in the number of cases clarified and convictions. Nonetheless, given that the reduction in violent deaths of women has been slower than for men, the Model of Comprehensive Attention for addressing gender violence needs to be implemented nationwide. This deployment should be accompanied by non-criminal measures for preventing violence against women, such as educational policies and those aimed at greater gender equality in economic and political matters.

Conclusions



After 30 years of war, the signing of the Peace Accords in 1996 was an opportunity to transform the justice and security institutions, from institutions that had covered up the serious human rights violations that took place during the war to institutions that would carry out their fundamental purpose of protecting persons. New legislation was adopted, including the Code of Criminal Procedure and supplemental statutes; new institutions were established, such as the Attorney General's Office, the National Civilian Police, the Institute for Criminal Public Defense, and the National Institute of Forensic Science; and the coverage of the judiciary was expanded in the interior.

These transformations were insufficient. The improvisation that accompanied the creation of new justice institutions made it possible for the inquisitorial system to survive within the accusatory system, especially in the stage of criminal investigation. The investigation did not cease to be written, bureaucratic, formalistic, and inefficient. In addition, the political will that is needed to create efficient and independent institutions did not exist. The very design of the Attorney General's Office and the Supreme Court of Justice as laid out in the Guatemalan Constitution included measures that undermined their independence and weakened their strategic leadership. The successive appointment and removal of attorneys general and the inadequate profile of those designated to the post helped to ensure that the institution would not have clear direction, internal rules to ensure the accountability of its officers, or methods of work to ensure efficiency.

In the case of the National Civilian Police, allowing the so-called "recycling" process, which consisted of re-hiring members of the security forces that had operated during the war, such as agents of the National Police and the Treasury Police, and former military intelligence officers, promoted the survival of networks tied to serious human rights violations and organized crime within the institutions. From there they continued carrying out criminal acts, challenging the criminal organizations for control of routes, merchandise, or profits, and carrying out human rights violations.

These institutional weaknesses soon played out in the increase in violent deaths, especially those linked to gangs and organized crime, which saw a sustained increase as of 2001. The justice system's response to this situation was impunity; more than 95% of all homicides were not investigated or clarified, which caused greater fear in citizens and distrust in the institutions, as well as the conviction that there was no alternative and that the situation could not change.

The security authorities, far from being part of the solution, were part of the problem. The measures implemented to counter the violence were massive

and arbitrary detentions of youths, with no real basis in criminal conduct, and the involvement of the Army in internal security. Both of these measures were ineffective.

The mounting insecurity, and impunity as the main response, favored a climate of tolerance for violent private responses: there was an increase in lynching, contract killings, revenge killings, and killings in the poorly labeled “social cleansing” operations. The authorities were also involved in extrajudicial executions of purported criminals, supposedly to fight crime and violence.

A crisis ensued that was driven by impunity and violence. The crisis was what led the State to ask the United Nations to set up the CICIG in Guatemala. The presence of a powerful, independent outside actor with sufficient internal and external alliances made it possible for new teams, with greater independence and technical capacity, to be appointed at the top of the justice institutions, namely the Criminal Chamber of the Supreme Court of Justice, the Ministry of Interior, and the Attorney General’s Office.

During my term as attorney general the most important change in the Attorney General’s Office was to give the institution direction. This included transmitting to the prosecutors the priorities for prosecution and the expected results, and giving them the resources and tools needed to attain those results. The new model of prosecutorial management was key for achieving this change, since it directed the largest sum of resources to investigating the most serious crimes. Along with this organizational change, the methodology of strategic prosecution made it possible to overcome the reactive, case-by-case approach to investigating, so as to move to an intervention based on knowledge of the criminal phenomenon and aimed at reducing crime.

The new model of prosecutorial management was implemented at the Office of the Prosecutor for Crimes against Life, and the Gangs Plan was organized. The reorganization of this Office and the new methodology for prosecution allowed for an increase in positive outcomes from 430 in 2010 to 620 in 2013; and the number of indictments in intentional crimes against life climbed from 157 in 2010 to 362 in 2013. The improved and expanded coordination with the National Civilian Police, the improvement in the capacity of INACIF to provide scientific evidence, and the existence of professional and independent judges, as in the high risk courts, were necessary measures for the Attorney General’s Office to be able to make these gains in efficiency and effectiveness.

CICIG, in addition to ushering in changes in the highest-level authorities of the justice system, made fundamental contributions to the Attorney General’s

Office. On investigating and clarifying complex cases it broke the cultural barrier according to which it was not going to be possible to solve those cases, and it set out a technical road map of how they should be investigated, which was then followed by the prosecutors. In other words, CICIG showed how to go about investigating cases involving organized crime; in institutional strengthening, it supported the Attorney General's Office in redesigning the Witness Protection Program, in creating the Bureau of Analysis, and in strengthening the Department of Security. After I left office as attorney general the CICIG presented case after case of contraband, corruption, and illegal political party finances that involved the then-president and vice-president of the country, and revealed how the State had been co-opted by corruption networks that involved political parties, judicial officers, businesspersons, and media owners. This case has yet to go to trial.

The improvement in the criminal investigation system led to a reduction in homicides for two reasons. First, investigations carried out by the Attorney General's Office and CICIG made it possible to dismantle groups that operated within the Ministry of Interior that were responsible for extrajudicial executions of purported criminals. Clarifying these cases and prosecuting the gang members involved sent a message to the security officers that acting outside the law was not allowed, even on the grounds that it is to fight crime.

Second, actions undertaken by the Office of the Prosecutor for Crimes against Life in the context of the plan to fight gangs identified sub-groups or "cliques" that operated in specific neighborhoods of Guatemala City and in the municipalities of Mixco and Villa Nueva who were responsible for a considerable share of the homicides in those places, and which were dismantled through investigation and prosecution. These actions resulted, as of 2010, in a reduction in homicides nationally, but even more accentuated in the department of Guatemala, and specifically in the municipalities of Guatemala City, Mixco, and Villa Nueva. In terms of the profile of victims, the decline was sharpest among young men.

Reducing impunity and clarifying the facts in more cases have been effective for reducing homicides, both because these criminal organizations cannot continue operating, and because a message is sent that if they break the law there will be consequences.

Prosecution should be supplemented by preventive measures aimed at keeping youths from entering the gangs, and measures to ensure access to education and work – which as yet do not exist in Guatemala – for those who are incarcerated.

As regards the increase in the number of persons missing or disappeared, an analysis of the pattern of such incidents showed that they were not due to a

change in the perpetrators' *modus operandi*, now hiding the fate of their victims, but to the adoption of a new regulation, the Alba-Keneth law, that requires recording reports of missing persons immediately. This is why the statistic includes situations such as migration, family matters, or abandonment of the home, which in large measure are resolved with the reappearance of the person.

The decline in the deaths of women was less than for male victims. This is because in at least half the cases these deaths are related to gender violence. Therefore preventing them requires implementing measures that immediately and adequately address the crimes of violence against women, which are often the antecedent to femicide.

The measures implemented in Guatemala and their results show that one of the keys to reducing violent deaths is reducing impunity and increasing the effectiveness of the justice system. They also show that it is possible to implement actions that are effective and that are also respectful of human rights. In response to those who consider human rights violations a lesser evil compared to the violence, this experience shows that it is just the opposite. Human rights violations, organized crime, and corruption are part of new forms of violence in which there is clearly state responsibility. The criminal investigation regimes are a powerful tool for transforming the institutional and psychological structures that consider such situations to be inevitable.

The circle of violence, corruption, drug trafficking, and human rights violations can be broken if impunity is ended, and this is an objective that may be within reach for Guatemala or other countries by adopting and implementing effective policies. These measures not only reduce crime, but also re-establish citizen trust in the institutions and strengthen the rule of law. Guatemala's experience can be an example for other countries in which the dimension of violence and the structural factors behind it have similar characteristics. Security strategies should be closely related to efforts to reduce impunity. What is at stake in these situations is not only the justice system, but the quality of democracy.

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