



# Transitional Justice: What Do the People Want?

*Views from the ground in Guatemala, Nepal, and Northern Ireland*

Not long ago, ordinary people's thoughts about transitional justice were left ignored. More recently, however, there has been a move among students and practitioners of transitional justice toward greater emphasis on victims' needs and preferences, as well as a greater involvement of civil society. This brief provides an update about the implementation of transitional justice in Guatemala and some general reflections about accountability in a post-conflict society. It also extends the evidence to Nepal and Northern Ireland to show that, overall, punitive transitional justice enjoys widespread support.

## Brief Points

- Overall, there is strong support for punishing perpetrators of war-time crimes.
- Socio-demographic characteristics are not consistent predictors of support.
- Lack of accountability may lead to continued violence and conflict in the post-war period.
- Implementing transitional justice may increase knowledge about war-time abuses and help shift public opinion towards greater support for justice.

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## Post-Conflict Transitional Justice

A central question in the aftermath of internal armed conflict is what should happen to perpetrators of human rights violations. This is often considered the most controversial form of transitional justice. We examine public support for mechanisms that attempt to ensure that perpetrators of human rights violations are held accountable. The main part of the brief reports findings from Guatemala, while the last part extends the evidence to two other contexts: Nepal and Northern Ireland.

The analyses are based primarily on original survey data and municipality-level data from Guatemala. The Post-Conflict Attitudes for Peace survey was conducted in Guatemala, Nepal, and Northern Ireland during the period January–July 2016 (combined N = 3,229). These countries represent three different regions of the world, are relatively peaceful and democratic, and share a history of internal armed conflict that ended with a peace agreement.

## Transitional Justice: The Case of Post-War Guatemala

The Guatemalan *Accord for a Firm and Durable Peace* (1996) ended 36 years of civil war between left-wing guerrilla groups and the state, which caused more than 200,000 civilian deaths. According to the official truth commission, the 1999 UN-sponsored Commission for Historical Clarification (CEH), the state was responsible for 93% of the violence, including genocide and crimes against humanity.

For years, the most tangible outcome of transitional justice processes was two truth commission reports: the official CEH report and the unofficial, church-led Recovery of Historical Memory (REMHI) report (1998). However, several recent and ongoing trials indicate a shift towards greater accountability. Currently, Guatemala is a world leader in prosecuting war crimes.

The shift towards greater accountability is partly facilitated by the International Commission against Impunity in Guatemala (CICIG), a unique UN body established to carry out independent investigations and support the national prosecutor and police in their work against organized crime.

Unfortunately, there is a real risk of a backlash

## Selected Court Cases in Guatemala

- In a groundbreaking verdict in 2016, two former military officers were found guilty of crimes against humanity for **sexual slavery** in the SEPUR ZARCO military base during the war.
- In 2017, the case against former general and dictator Efraín Ríos Montt resumed, but closed as Ríos Montt died in April 2018. He was convicted of **genocide** and **crimes against humanity** in 2013, but the verdict was immediately overturned by the Constitutional Court. In September 2018, a national court found that the Guatemalan army had committed genocide when Ríos Montt was in power, but acquitted a former general, originally Ríos Montt's co-defendant, of criminal responsibility.
- The ongoing CREOMPAZ case, potentially one of the largest court cases of **forced disappearance** in Latin America, started in 2016 but has since been stalled.
- Another ongoing case of crimes against humanity relates to the DOS ERRES **massacre**, where in 1982, an entire village was wiped out by government forces. This case was postponed from 2018 to 2021.

against these improvements, as evident in recent moves to impede the work of CICIG. These moves include a refusal to renew CICIG's mandate, as well as repeated, and ultimately successful, efforts to expel CICIG leader Iván Velásquez Gómez from the country.<sup>1</sup>

## Support for Transitional Justice in Guatemala

Of those who have an opinion, about three out of four Guatemalans support efforts to prosecute perpetrators of war-time human rights violations (Figure 1).<sup>2</sup> Similarly, about 70% support the trial against the now deceased general Ríos Montt, while 72% support the ongoing CREOMPAZ case. The data also reveals some uncertainty about the question: about 9% do not know or do not want to answer.

Additional questions indicate strong support for accountability in Guatemala. Notably, 93% believe that impunity is a severe problem. Our survey also included questions about trust in 13 different organizations and political

institutions. Of these, CICIG enjoyed the highest level of trust: while 68% have a great deal or quite a lot of trust in CICIG, 50% trust the government, 49% the judiciary, and 32% the Congress.

The Guatemalan demand for accountability is fairly consistent across different social groups. We find no real difference in support related to socio-demographic characteristics like gender, age, income, or education. However, there is a weak tendency that the demand for justice is stronger among men and the middle-aged. The support does not seem to vary with urban/rural residence or department, despite the fact that the rural, indigenous poor were particularly targeted during the civil war.

As expected, we also find that victims of government-initiated human rights abuses are more in favor of punishment for government forces, including the Ríos Montt trial. Other types of war experiences do not seem to matter, but again, the overall level of support is very high.

## Towards Backlash or Greater Accountability?

The two truth commission reports in 1998–99 revealed grave human rights violations carried out during the civil war in Guatemala, in particular by state forces (see Fact Box). Until recently, however, accountability measures to address these crimes have been few. Figure 2 shows the spatial distribution of exhumations carried out related to the civil war.<sup>3</sup> The locations are closely correlated with the location of war-time massacres, but not all sites have been properly examined. Despite the number of forensic examinations, there are relatively few major court rulings related to these crimes. This slowly started to change with the 2009 Inter-American Court of Human Rights (IACHR) ruling that the 1996 amnesty law did not apply to crimes against humanity. Yet, while we have registered massacres in 16% of all municipalities,<sup>4</sup> and genocide in 8 municipalities,<sup>5</sup> there have been IACHR court rulings in only a handful of cases.<sup>6</sup> In addition, there have been several domestic cases, and more are under way.

Even though the court case against former general and dictator Ríos Montt failed to reach a final verdict due to his death, when the process started in 2013, it was the first time a former head of state was ever charged for genocide in a national court. The SEPUR ZARCO verdict is

also a landmark, as it represents the first time a national court has ever prosecuted a case of domestic and sexual slavery.

However, with the incumbent president Jimmy Morales' refusal to renew CICIG's mandate, these and similar improvements may be under threat. Notably, the major political parties, including the opposition, have common interests in removing CICIG, as they are currently under investigation for illegal financing of the 2016 electoral campaign. The 2015 indictment of former President Otto Pérez Molina and a historical court ruling against his former vice-president, Roxana Baldetti, for fraud, clearly shows that traditional elites may have reason to feel threatened by the presence of CICIG and a strengthened judiciary.

### Current Conflicts and the Legacy of Violence in Guatemala

A central – and popular – aspect of the 1996 peace agreement was the implementation of a land reform; however, agrarian conflict is still widespread, particularly in the central and northern parts of the country (Figure 3).<sup>7</sup> Conflicts related to the exploitation of natural

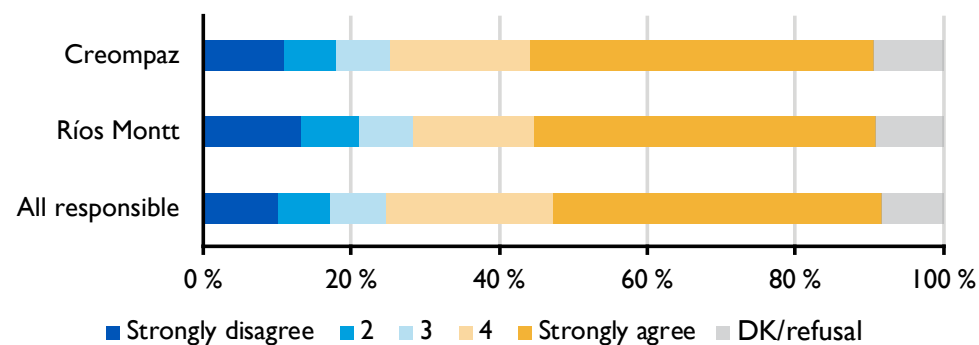


Figure 1: Support for prosecution of perpetrators of war-time crimes

resources like hydroelectric power plants and mining are also common. Protests related to such projects are registered in 11% of the municipalities, with fatalities registered in 25 municipalities (7.6%), and criminalization of protest activity in 33 (10%).<sup>8</sup>

Overall, municipalities with a large number of active cases of agrarian conflict in 2016, or ongoing conflicts related to natural resources, were severely hit during the civil war too, with a higher likelihood of state-sponsored massacres. An example of this was the genocide in Rabinal in 1978, where the local Achí population was protesting against the construction of the

Chixoy dam, to be the largest in the country.<sup>9</sup> A court case related to the war crimes in Rabinal was recently postponed.

The conflict over land and natural resources should also be seen in relation to one of Latin America's highest rates of extreme poverty and chronic malnutrition;<sup>10</sup> municipalities in Guatemala with ongoing conflict also have higher rates of poverty and illiteracy.

Taken together, this illustrates that some of the structural causes of the civil war remain unresolved. If transitional justice is also about addressing root causes of a conflict, including

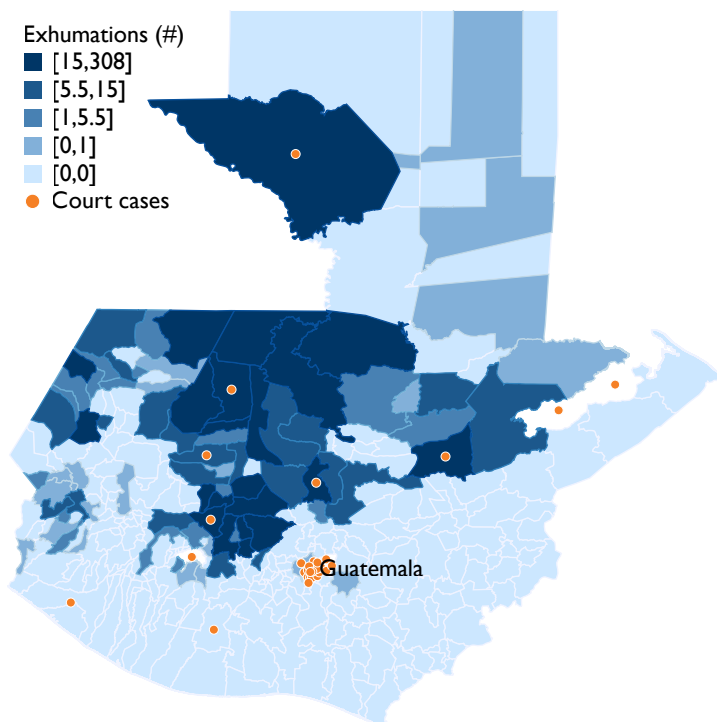


Figure 2: Spatial distribution of exhumations and cases of localized war crimes with an IACHR ruling, Guatemala, 1996–2016

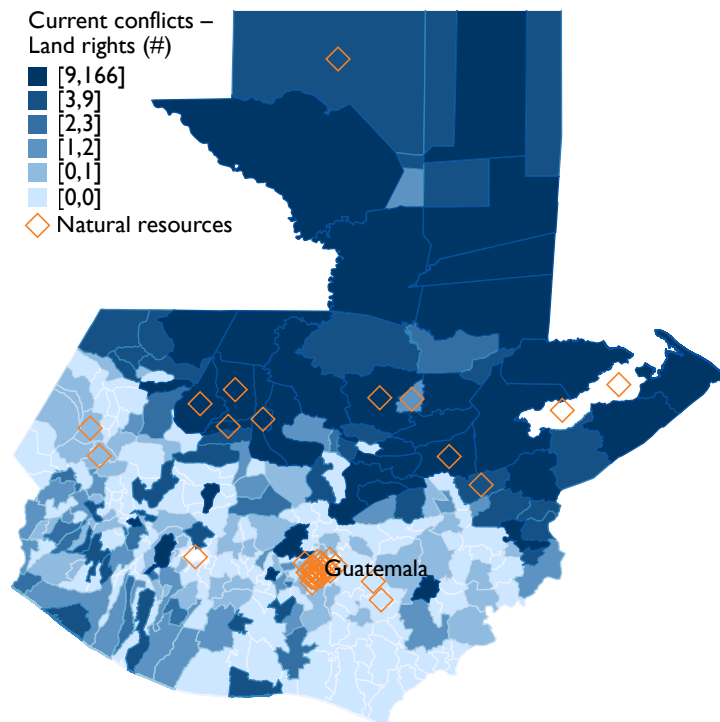


Figure 3: Spatial distribution of cases of agrarian conflict and conflicts over the use of natural resources, 2016

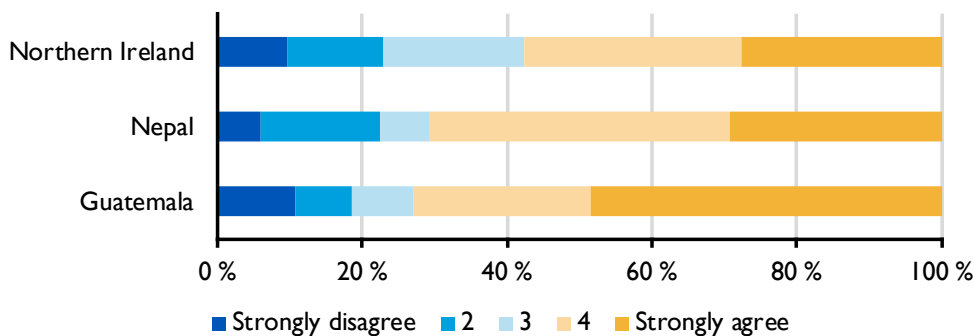


Figure 4: Share of respondents supporting prosecution in Guatemala, Nepal and Northern Ireland

patterns of inequality, exclusion, and marginalization, the process in Guatemala still has a way to go. Unfortunately, the tradition of impunity seems to allow for continued harassment and unlawful killing of peaceful protesters.

public's knowledge about the role of the government in the armed conflicts, and, consequently, people's demand for accountability.

### Implications

Guatemala exemplifies the often lengthy transitions from war to democracy, and shows that countries continue to be 'post-conflict', in the sense that they are heavily affected by their past, even many years after a conflict formally ends. Many of the problems Guatemala faces – widespread corruption and impunity, a weak state, organized and violent crime – are common also in other post-conflict countries. Similarly, the support for punishment for perpetrators of war-time crimes is high also in Nepal and Northern Ireland.

The many ongoing – and delayed – court cases in Guatemala also highlight the fragility of transitional justice processes. Despite strong international support and a decade of progress, there is no guarantee that the implementation of punitive transitional justice in Guatemala will continue.

At the regional level, the possible shutdown of CICIG sends a worrying signal to neighboring countries that organized crime and corruption in the aftermath of war may still be exempt from accountability. ■

### Beyond Guatemala: Transitional Justice in Nepal and Northern Ireland

Guatemala is not an isolated case; there is widespread support for punishment for perpetrators also in Nepal and Northern Ireland, and the support is fairly consistent across different socio-demographic groups. However, there is also evidence that support for punishment follows the main fault lines from the conflict: people's attitudes towards punishment depend on which side they are asked about, which side committed the violence they may have experienced themselves, and if they participated on one side or the other.

In Nepal and Northern Ireland, there is less support for reactions against the government, and stronger support for punishment of former rebels. These differences probably reflect the different conflict dynamics, but could also indicate that support for transitional justice may change as war crimes are gradually being exposed. The absence of an authoritative truth commission report or high-profile trials in Nepal and Northern Ireland may limit the

### Notes

1. International Justice Monitor (IJM), [www.ijmonitor.org](http://www.ijmonitor.org); International Crisis Group, [www.crisisgroup.org](http://www.crisisgroup.org).
2. 73% express that they 'strongly' or 'somewhat' agree to a statement that 'all those who participated, regardless of side, should be held responsible and prosecuted for their crimes'.
3. Exhumations carried out by the Guatemalan Foundation for Forensic Anthropology and Center for Forensic Analysis and Applied Sciences: [www.cafca.gt/investigaciones-realizadas.html](http://www.cafca.gt/investigaciones-realizadas.html) and [www.fafg.org/bd/l\\_caso.php](http://www.fafg.org/bd/l_caso.php).
4. Office of Human Rights of the Archbishop of Guatemala (1998) Interdiocesan Report on the Recovery of Historical Memory Interdiocesan Project (REMHI) and database, [www.remhi.org.gt/bd/index.php](http://www.remhi.org.gt/bd/index.php).
5. Commission for Historical Clarification (CEH) (1999) *Guatemala: Memory of Silence: Report of the Commission for Historical Clarification*. Guatemala City: United Nations. [www.gt.undp.org/content/guatemala/es/home/library.html](http://www.gt.undp.org/content/guatemala/es/home/library.html)
6. Loyola Law School Inter-American Court of Human Rights (IACHR) Project Database (2017): [iachr.ils.edu/database](http://iachr.ils.edu/database)
7. The President's Secretary for Agrarian Issues (2016) 'Monitoring Report on Agrarian Disputes in Guatemala. Corresponding to January 2016', [issuu.com/secretariadeasuntosagrarios/docs/informe\\_monitoreo\\_conflictividad\\_y\\_](http://issuu.com/secretariadeasuntosagrarios/docs/informe_monitoreo_conflictividad_y_).
8. Observatory for Mining Conflicts in Latin America, [mapa.conflictosmineros.net/ocmal\\_db-v2/conflicto/lista/02023600](http://mapa.conflictosmineros.net/ocmal_db-v2/conflicto/lista/02023600), and Temper, Leah, Daniela Del Bene, and Joan Martinez-Alier (2015) 'Mapping the frontiers and front lines of global environmental justice: the EAtlas'. *Journal of Political Ecology* 22(1): 255–278; [ejatlas.org/country/guatemala](http://ejatlas.org/country/guatemala).
9. IJM (2018) *Will Guatemala Still Prosecute Suspected War Criminals Under New Attorney General?*
10. Interamerican Development Bank, 'Social indicators at a glance', [www.iadb.org/en/research-and-data/sociometro-bid%2C6981.html](http://www.iadb.org/en/research-and-data/sociometro-bid%2C6981.html).

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### THE PROJECT

*Attitudes for Peace: Post-Conflict Public Opinion* (2015–18; grant no. 240446, Research Council Norway) maps and explores individuals' war experiences, perceptions of previous conflict, trust in political institutions, support for peacebuilding strategies, and support for the use of violence. The project is a collaboration between NTNU, PRIO, and SINTEF.

### PRIO

The Peace Research Institute Oslo (PRIO) is a non-profit peace research institute (established in 1959) whose overarching purpose is to conduct research on the conditions for peaceful relations between states, groups and people. The institute is independent, international and interdisciplinary, and explores issues related to all facets of peace and conflict.