

Lynching in Guatemala

Legacy of War and Impunity

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I. INTRODUCTION

For 36 years, from 1960 until 1996 and the signing of the peace agreements, Guatemala was the setting of an armed conflict. Extremely cruel and inhuman acts were perpetrated during those years, and extreme violence became the norm, rather than the exception. The State, the guerrillas, and society all played leading roles in this story of pain and death. The State abused its power and committed tortures and massacres. We were all victims, although the Indians suffered the most, because they were persecuted and murdered for being guerrillas, even if there was only the possibility that they might join the guerrillas. The Indians were also forcibly conscripted to nourish the ranks of the army or forced to enlist in the Civil Self-Defense Patrols, which constituted a complementary paramilitary force.

The price for not joining the Civil Self-Defense Patrols was death. Everybody had to join: youths, adults, and the elderly. According to one testimony, “...*if anyone refused to patrol, within two days they were no longer there; had it been voluntary, no one would have joined. For two years we were unable to till our plots.*”¹ In a country where the majority of the population is Indian, this propelled the society to become yet another force in this war. The army, the Civil Self-Defense Patrols and the guerrillas became schools for dehumanization. With 200,000 dead and vanished, the ghosts that haunt us are numerous: life cannot be the same.

It is in 1996, after the peace was signed, that the number of cases of lynching began to explode in Guatemala. Since then, approximately 500 lynchings or intents to lynch have occurred. There are no exact figures because many have taken place within distant communities, without few people being aware of them. These lynchings present

¹ Report of the Commission for Historic Enlightenment. Guatemala: Memorial of Silence. Vol. II, p. 197

themselves as an illegal action whereby a mob, without due legal process, executes one or various people accused of having committed a crime or a deed that has aggrieved the group. The deed that motivated the lynching might have been committed against only one member of the community, but it suffices to create a mob joined by a high degree of solidarity that unites to inflict punishment on a victim who is defenseless before the multitude. The crowd is often tired of waiting for justice to be done, so it takes it upon itself to impart the sanction. The victim is generally castigated using a combination of physical punishments that culminate in death: he is thrashed with sticks, stones, machetes, fists, feet; he is deprived of food, hanged, exposed to the sun, or set on fire. If the victim does not die, this is termed an “attempt to lynch.” These horrific deeds preoccupy jurists, human rights’ defenders and intellectuals, but lamentably, they find approval amongst the majority of Guatemalans.

In section II of this paper I pursue the subject of violence endured by the Guatemalans during the internal war, because it is the seed that has given fruit to these lynchings. Many of the patterns experienced in that era, such as kidnapping, torture, summary processes, public violence and death, recur today. Furthermore, lynchings occur with greater frequency where the armed conflict was heaviest and, according to a study effected by the United Nations Peace Agreements Examining Mission, generally in those regions presenting the most unfavorable indices of human development. The war brought forth a long and intense schooling in abuses and violations of human rights. The Dantesque chronicles experienced during the conflict had to have consequences, but this seed of violence did not germinate alone — it has been well fertilized with greater violence, poverty, insecurity, corruption and impunity.

In principle, Mayan common law seeks redress of grievances, seldom punishment. Yet some newspaper articles have erroneously stated that lynching is part of Indian common law. Likewise, some authors, such as the Argentinean political writer Carlos Vilas, relate that in certain cases in Mexico the discharge of a community right or of custom and usage

have been explicitly invoked to carry out lynchings.² But in Guatemala, there is no such justification. This paper tackles the matter in section III and cites field studies carried out by anthropologists that show that lynching is not part of Indian common law.

This paper also examines the impact caused by a major shift in community authority. Before the armed combat, communities relied on traditional formulas handed down from generation to generation to solve conflicts. But during the hostilities, the military became the axis around which the communities turned, and nothing could happen without their knowledge and authorization. They were the ones in charge of the local administration, and who resolved controversies that arose among individuals. Many of the community leaders were murdered and everyone's concern became mere survival, not leading a life guided by values, usage and traditions. After the war it was not possible to re-build the traditional justice system, as the fabric of society had been irreparably torn. Nor has the official system of justice been able to fill this vacuum — it frequently fails to respond to the interests and needs of this sector of the population. The majority of Guatemalans has no access to the official system of justice. Furthermore, when access to the system is reached, it often produces social and cultural shocks that only create tension and frustration.

Experiencing, executing or witnessing acts of extreme violence demonstrates knowledge of it, but what exactly moves us to participate in acts of collective violence? In section IV, I allude briefly to different theories that explain collective violence, which throughout the ages has gone from being branded as an act of recklessness verging on illness, to being defined as a totally conscious conduct with the end of social control.

The question therefore arises, why do these acts of violence happen in times of peace? What motivates people to participate in such acts of collective violence? The lynch mob points to the lack of justice and claims to be fed up that the authorities do not punish

² Carlos M. Vilas, "(In)justicia por mano propia: linchamientos en el México contemporáneo" in *Linchamientos: ¿Barbarie o "Justicia Popular"?* p. 68

criminals. The consequent prevailing impunity has become their justification, but exactly what levels of impunity *do* we have, and is this truly the motive?

Since the lynch mob claims to render justice by taking it into its own hands, arguing lack of justice, inaction, and want of trust in the authorities in general, in sections V and VI I analyze the work carried out by the organs involved in the administration of justice in order to determine its operation and efficiency. The existing degrees of impunity and corruption in Guatemala are focused on, as well as the legitimacy of the institutions and their effects upon society.

In attempting to reflect the situation of the institutions I came upon various difficulties, including a lack of information. In other circumstance, the information does exist, but it cannot be released to the public because it has been labelled “confidential.” In addition when access to information was gained, it was frequently unreliable and did not reflect reality. That is why some data in this paper have been extracted from newspaper reports, which can constitute some of the most truthful sources available.

The State should fulfil its function as guarantor of law and order to its citizens, but the institutions have been weakened and do not enjoy legitimacy — in great measure because of having been the authors of and accomplices to human rights violations, as well as their high rates of corruption and incompetence. Those who participate in lynchings because they are tired of living in this state of insecurity become part of this vicious circle of criminality. The population has a thirst for justice it has become a thirst for vengeance. They wish for those who wrong them to be submitted to punishment—and with lynching they are assured of immediate retribution.

But the system hasn't demonstrated that those who participate in lynchings are committing a crime: when no victim dies, no legal action is taken against those who participated in the lynching, and when death does occur, there is generally no conviction in those cases where legal action has been taken. But in the majority of cases, those who

execute and participate in lynchings are committing a crime more perverse than that committed by the supposed delinquent. Therefore, in places where lynchings occur, instead of dealing with one criminal, hundreds are born.

The peace accords have been signed, but peace has not come to Guatemala. We continue living and daily witnessing violence in all its different expressions. We see it in common crime, in unending discrimination, in poverty, in the kidnappings, in the existence of juvenile gangs, in the lynchings. This paper re-examines the historic, cultural, psychological, political and social causes that induce lynching and seeks ways to prevent it.

II. THE SEED AND ITS FRUITS

THE SEED

*2nd May 1981, Xenaxicul village, Aguacatán Huehuetenango. Approximately 200 soldiers dressed in olive green arrived camouflaged in olive green with their faces painted black ... they gathered only the men ... the men were forced to walk as far as the village school of Las Majadas, 4 kilometers away; inside the school they were ordered to form up and they let go an elderly man from the group ... they shot and killed all 22 men ... later the soldiers split the skulls and ate their brains ... near the school lies a ravine where the soldiers threw the bodies of the victims ... when the soldier had left, the people went to look in the school and on the table they found plates with cerebral matter.*³

This episode is merely a drop in the sea of terror and death within which Guatemala was submerged for 36 years during the internal armed conflict between the army and the guerrilla. The country was the stage of a cold war from the year 1960 until 1996, when the government and the Guatemalan National Revolutionary Union (Unidad Revolucionaria Nacional Guatemalteca, URNG), signed the peace agreements. During the war, military regimes controlled the State and sought to maintain social control through acts of violence. The indigenous population was the direct object of the repression and

³ Report of the Commission for Historic Enlightenment, Vol. II, p.38. The Commission was established in the Oslo Accord (1994) to find out with objectivity, equity and impartiality the human rights violations related with the internal war.

political violence, for they were accused of being in the ranks the guerrilla or were thought to be inclined towards it.

It was in the western highlands of Guatemala where violence was most dire, because the population in this area is predominantly indigenous. During the 80's entire communities were exterminated or their inhabitants chose to flee and hide in the mountains or take refuge in Mexico — many did not make it. Members of these communities were forced by the army to participate in acts of extreme cruelty which took on different forms. They were compelled to witness atrocious acts or made to execute them. The words of an inhabitant of San Mateo Ixtatán in the province of Huehuetenango illustrate what took place:

That day the soldier arrived bringing a guerrilla bound and hooded. He had a sort of cap over his face ... they gathered the women in one place and the men in another. These were arranged in five rows and then the guerrilla crossed five times among the men saying, "...this one, yes, this one, no..." This guerrilla walked like a madman. He couldn't walk well and could hardly hold himself up. We saw part of his face which was swollen and bruised — maybe he had been tortured. I think he had already lost control and only imagined who amongst us guerrillas ... were After having pointed out 37 or 38 men, the Army forced us to sharpen sticks the same way we sharpen sticks to plant maize. The lieutenant asked us, "Do you know how to kill people?"... He taught us how to kill; it was like planting corn, only that it was on the necks of the people instead of on the earth. The lieutenant said, "You know how to wield machetes," and he forced us to machete our own brothers. Some had their heads taken off, some their arms. Some held out a long time and suffered much pain. In the end some remained merely as trunks, some did not die. "Why didn't this one die?" asked the lieutenant. "Do you know how to use this weapon?" And

*then he shot those who hadn't died yet. The truth is that we did not know how to use weapons. Then they forced the men to dig a big hole to throw the bodies in. The corpses are still there.*⁴

The State compelled the civilian population to become yet another combatant in this fray through enforced conscription into the military and the civil self-defense patrols. The Civil Self-Defense Patrols, CSDP, (Patrullas de Autodefensa Civil, PAC), began to be formed in 1981 and were made up of groups of male civilians organized by the army as a complementary paramilitary force, as a militia of vigilantes. Men often joined to save their lives and that of their families. Every male from 12 to 80 was forced to join to counteract guerrilla movements and to gain control of the population. Approximately one million people formed part of the CSDPs in 1982. They were terrible transgressors of human rights, acting under the absolute knowledge of the army or following its orders. CSDP adherents gradually lost their values and their respect for the law as can be inferred by the following testimony: “When on patrol one came upon sown land, cultivated corn, banana plantations, and we would blow them up ... children ran out screaming when the grenades exploded near ... I was aware that what we were doing was not something good ... we destroyed the cooking pots with machetes and bullets, we laid fire to the dwellings.”⁵

In 1982 General Efraín Ríos Montt, who proclaimed himself president after a coup d'état, employed a earth-razed strategy, destroying hundreds of villages and massacring thousands of peasants. Special de jure tribunals (with faceless judges in which individuals were prosecuted without even the minimum guarantees) were created under his regime, and justice was militarized. During his administration the Indians were fiercely attacked, as is evidenced by the following statement made by Francisco Bianchi, Ríos Mont's mouthpiece in 1982: “The guerrillas have conquered many Indian collaborators; then, Indians are subversives, aren't they? And how does one combat

⁴ *Ibid.*, Vol. III, p. 253.

⁵ *Ibid.*, Vol. II, p. 27.

insurgency? Clearly, one would have to kill the Indians because they were collaborating with the subversion.”⁶ Peasants were often burned alive because this was the fastest and most economic way to dispose of the greatest number of people in the shortest possible time without leaving a trace behind. All along the armed conflict, the State, but principally, the army, acted with total impunity: it kidnapped, tortured, murdered and massacred.

One of the consequences of the armed conflict was the creation of a system of mistrust among the population as a State strategy. A simple rumour or commentary could end a person’s life. To say that someone belonged to the guerrilla would most certainly mean a person’s torture, disappearance and death. According to the *Report of the Commission for Historic Enlightenment*, the Army used civilians to carry out some military tasks and intelligence probes against the guerrillas and for all operations directed towards the control of the population and of inner order, such as accusation, persecution and capture of opponents accompanied by methods of repression and terror (torture, disappearances and extrajudicial executions).⁷

On its side, the guerrilla provoked great tensions in all sectors of the country and in every population strata. In the interior, it operated in the mountains, but eventually they reached the communities in search of food or money. The people lived in great fear, for if they helped them, the army would come to avenge themselves for being friendly to the internal hostiles. If on the other hand, they denied help to the guerrillas, they also suffered the consequences. The economically privileged sector was also a well-defined guerrilla target, since they had to pay a “war tax”. Kidnapping was also a means of funding, and they generally freed those who had been kidnapped after the requested ransom had been paid.

⁶ *Ibid.*, *New York Times*, (20 July 1982), Vol. I, p. 199.

⁷ *Ibid.*, Vol. I, p. 142.

In addition, the guerrillas carried out political kidnappings to denounce acts of repression performed by the government and to exchange their victims for disappeared insurgents. Three high government officials were abducted by the Rebel Armed Forces, (Fuerzas Armadas Rebeldes, *FAR*), on the 4 May 1966: the president of the Supreme Court of Justice, Romeo Augusto de León; the presidential press secretary, Baltasar Morales de la Cruz, and the vice-president of Congress, Héctor Menéndez de la Riva, were kidnapped with the purpose of effecting an exchange. On 31 August of that same year, the guerrillas obtained the liberation of José María Ortiz Vides, chief of *FAR*'s urban resistance commandos in exchange for two of the kidnapped, as one of them had escaped.

Likewise, the guerrillas committed murders and massacres, although to a lesser degree than those perpetrated by the Army. According to the Commission for Historic Elucidation, 93% of the violations to Human Rights that occurred are the responsibility of the State, 3% the guerrillas, while the remaining 4% cannot be determined or corresponds to other groups.⁸

We all knew that something terrible was happening within the country, although our imaginations couldn't picture the depths of perversity into which the forces of public and popular authority had plunged. There was knowledge that houses located within the capital city were centers for torture, but nobody said anything. Society kept hushed. The press felt menaced by the constant attacks against it and by government pressure, as confirmed in later years by journalist Oscar Clemente Marroquín:

In the same vein, I keep on feeling an enormous responsibility for the silence which, together with other journalists, we maintained when the leaders of CUC [a guerrilla group] came to our editorial rooms to decry the army's harassment of the peasant population of El Quiche. This silence of ours forced them to take steps which culminated in the occupation of the Embassy of Spain and the

⁸ *Ibid.*, Vol. II, p. 324.

*subsequent immolation of those peasants and other valuable Guatemalan and Spanish citizens. Only those who have undergone this life-guarding drama of silence can understand what is felt when one realizes that one's silence brought about a holocaust, and that lack of valour has become a lesson never to be expunged.*⁹

The wave of violence was so great that it spattered us all, one way or another. On the 8 October 1983, my grandfather, Pedro Julio García, director of the newspaper *Prensa Libre*, which at that time was the most widely endorsed in the country, was kidnapped by the *PGT*. In order to liberate him, the guerrillas demanded publication of various communiqués in the national newspapers as well as in the *Miami Herald* and the *Washington Post*. Ironically, the most difficult condition to fulfil was the publication of the communiqués in the Guatemala's newspapers because of the extreme government pressures. After discharging what had been offered, he was liberated on the 22 October that same year. He was held captive for fifteen days, and although he was freed alive, something inside him died; he never was himself again.

Fear became everyone's companion. The army was feared and the guerrillas were feared; one feared the civil patrols as well as one's neighbours; each and every one represented a threat to life. Many Guatemalans, especially in the interior, were brutally assaulted, tortured, burned and murdered without further ado and no exclusions. Men, women, children and the elderly suffered the same fate. Their names were unimportant. These atrocities cannot happen without leaving profound wounds in a population. To have inhaled so much violence produced a society that is infirm: "The patrols changed the people's mentality — they brought us many problems and much pain — it wasn't true that they were there to save life, but rather to kill our own brothers ... a lot of violence remains inside us and sometimes it comes out ... we are all sick because of what they made us do."¹⁰

⁹ Oscar Clemente Marroquín, "Veinte años después y con las mismas luchas" *Diario La Hora*, Guatemala April 8, 1998.

¹⁰ Report of the Commission, *loc. cit.*, Vol. II, p.188.

After living and witnessing so much pain and death, life does not possess the same meaning: human beings debased and filled with hate. They were both victims and victimizers and the degree of violence borne within is reflected in the lynchings, for the cruelties breathed in during the armed conflict are recurring.

THE FRUIT

Innumerable summary executions were carried out as a public spectacle during the internal war. That the populace should behold tortures and executions was part of the army's strategy, since one of its objectives was to instil fear in the people, so that they would refrain from collaborating with or joining the guerrilla. Hence, it is in 1996, the year the peace agreements were signed, that a series of lynchings begin to break out which reflected the violence that had been undergone.

We can define lynching as a lawless deed, effected without due legal process, by which a community executes one or several victims accused of perpetrating an act that aggravates the killers. The deed that motivated the lynching might have been committed by one only member of the community, but this action or accusation triggers a mob that gets together to advance punishment. Lynching victims are taken by the mob and are physically punished in public. Victims are persecuted in the act, or are extracted from their domiciles or dwellings and sentenced by a group of people in a summary process. The nature of the punishment generally consists of blows from sticks, machetes, fists or feet; hanging, denial of food, exposure to the sun, and setting on fire. The violence does not always end with death. When the outcome of violent acts of this nature do not result in death, we speak of "intent to lynch". On occasion, the victims' lifeless corpses have been thrashed, burned or dragged tied through the town.

Premeditation and pre-organization have been recorded in various well-documented cases. There are communities that have already organized themselves “... to deal justice by their own hand...” alleging they are tired of denouncing violence before the authorities who remain quiescent. In certain districts, signals such as the ringing of the town bell or the blowing of a whistle have been established so that the inhabitants can gather at a given moment, and they are even provided of fuel to burn the accused. The organization of a lynching is temporary. When it is formed, anybody can join the mob which disperses once punishment has been administered to the victim. Nevertheless, it is a temporary grouping and up to a certain point “open”. There is a high degree of solidarity among its members. The fact that anyone can join the crowd differentiates it from vigilantism, for in the latter, the group which conforms it has been established prior to the action.

On the 30 July 2003, the inhabitants of five villages in the province of Izabal and bordering that of Alta Verapaz, captured four supposed assailants whom they sentenced to die by lynching after a summary proceeding. The detained were accused of assaulting people on the highway, raping women and murder. The victims were tied and thrashed in the park. Two of them were rescued by the police, thanks to the rain which at one point dispersed the inhabitants, but Marcos Chen Salam, the supposed chief of the gang, was lynched and Mateo Jum Tiul on the next day. The lynching consisted of burning them alive in the town park of Sepur with a bonfire made up of gasoline, tires and diesel. According to newspaper reports, “... before dying, Chen Salam gave the names of his accomplices and they are now being sought so that they ‘may be brought to justice’ ...”.¹¹

Generally, there are instigators, perpetrators and crowds at a lynching. Those who execute a lynching do not represent any formal institutional authority; rather, their actions constitute a crime. Nevertheless, many lynchings have been caused by State authorities or

¹¹ Sonia Perez “Linchan a presuntos asaltantes” in *Prensa Libre* (Guatemala), Saturday, August 2, 2003, p. 10.

by people who one way or another were related to human rights violations in the past, (e.g. town mayors, ex-military commissioners, ex-civil self-defense patrollers). This isn't cause for wonder, because in some regions almost every single man since the age of twelve, formed part of the *CSDPs*. Furthermore, as the *CSDPs* began to be formed in 1981 and the peace agreements were signed in 1996, almost the entire male population belonged to the association in some regions throughout that period.

In the majority of cases, both the executors of the lynchings as well as the victims are male. Women also actively participate in the lynching, encouraging the perpetrators. The socioeconomic level of those who lynch and those being lynched is generally the same - it is done by the poor against the poor. In some few cases, the victims have been foreigners or authorities. What nevertheless remains a constant is the lack of education among the lynchers. This is one of the greatest differences between the lynchings in Guatemala and those which occurred in the South of the United States between 1880 and 1930. Those who organized themselves to carry out the lynchings in the United States belonged to extremely disparate social classes. From the poorest white man to state governors, all participated in the same savagery: the lynching of blacks. There was racial solidarity before a common objective, the terrorizing of blacks. Our case is different.

The United Nations Mission of Inspection to Guatemala, (Mision de las Naciones Unidas para Guatemala, *MINUGUA*), is one of the institutions that has paid the greatest attention to the lynchings. It has carried out detailed studies of lynchings and intents to lynch that have occurred in Guatemala since 1996. *MINUGUA* has defined the lynchings as incidents of physical violence perpetrated by great numbers of private citizens against one or various individuals accused of committing a "criminal" offence that may, or may not, result in the death of the victim. *MINUGUA* has documented 421 cases of lynching with 817 victims, from 1996 to 2001, out of which 215 died. However, they point out that these figures, are certainly far fewer than occurred, because there are a great number of cases for which there is no registered notice and this, combined with the absence of exact records kept by the Civil National Police, and by the organs of justice, prevents arriving

figures that reflect the precise dimensions of the problem.¹² No one knows exactly how many lynchings have taken place or what the rate of occurrence has been.

MINUGUA also carried out a comparative analysis which concluded that with some exceptions, the regions yielding the highest incidences of the lynching phenomena bore the most unfavourable index of human development (IHD). Practically all of the municipalities registering the greatest number of lynchings possess an IHD inferior to the national average and are among the municipalities with the lowest levels of human development in comparison to others in the same province. More than half the municipalities record poverty rates of over 82%, which means that eight out of ten inhabitants are in circumstances of poverty or extreme poverty.

Human development is measured by taking into consideration three factors: Life expectancy, education, and per capita income. The following table, included in *MINUGUA*'s Inspection Report, illustrates the foregoing situation.¹³

¹² United Nations Mission of Inspection to Guatemala, "Lynching, a Persistent Scourge", in *MINUGUA Inspection Report*, p.7.

¹³ *Ibid.*, p. 7-8.

TABLE # 1: Comparative analysis of regions where lynching have occurred

	<u>Deaths by Lynching</u> **	<u>Index of Human Development</u> *	<u>Poverty %s</u> *	<u>Literacy Rates</u> *
GUATEMALA REPUBLIC	215	0.61	54.3	69.8
Quiché	51	0.53	81.1	46.5
Zacualpa	6	0.52	85.9	45.0
Santo Tomás Chichicastenango	11	0.53	85.8	48.4
Joyabaj	9	0.50	84.4	40.3
Ixcán	9	0.54	82.7	51.1
Alta Verapaz	36	0.55	76.4	48.7
Cobán	8	0.61	61.0	59.8
San Pedro C.	10	0.55	78.0	47.3
Chisec	7	0.53	84.5	44.3
Fray Bartolomé de las Casas	6	0.54	84.1	48.4
Huhuetenango	21	0.56	77.8	58.4
San Sebastián C.	4	0.52	76.4	45.0
Santa Cruz B.	4	0.55	75.5	56.4
San Marcos	18	0.54	86.7	66.5
Comitancillo	5	0.46	98.8	56.4
Ixchiguán	6	0.49	97.2	62.9
Petén	27	0.61	59.3	68.4
La Libertad	5	0.59	68.1	66.8
San Luis	9	0.55	71.4	53.6
Sayaxché	10	0.57	69.7	58.5
Totonicapán	12	0.49	85.6	56.7
Momostenango	4	0.46	95.2	54.4
Santa Lucía La Reforma	5	0.41	96.6	38.0
Baja Verapaz	8	0.59	71.6	58.1
Purulhá	5	0.50	77.9	32.9

* Source: Human Development Report ~ 2001. Guatemala: Financing Human Development

** Source: MINUGUA Data Base

Lynching happens with greater frequency in rural areas and usually where the armed confrontation was fiercest. In like manner, they are more commonly executed far from the provincial capitals, given the lack of any state presence or infrastructure. Lynching no longer surprises anyone.

On the 2 July 2003, four people in the country became victims of lynchings. One lynching took place in the City of Guatemala near the El Guarda market and the other was perpetrated in Huehuetenango. The reasons why a person is chased are not always clear to the pursuing crowd. One person runs and behind him another follows shouting for help from other neighbors. Within minutes, a mob is chasing the supposed perpetrator, without knowing exactly why. He is caught, battered, and, many times, killed. The newspaper *Prensa Libre* reported that the motive for the lynching in the city was that Héctor Vinicio López Cruz had purportedly committed an assault in Avenue Aguilar Batres and had tried to take refuge in the market. The vendors chased him and when they blocked his way, López Cruz shot and killed one of them. Policemen arrived at the scene and apprehended the alleged perpetrator. The crowd snatched him away, stripped him, dragged him three blocks and kicked and beat him to death. The mob screamed, “We’ve done justice! We’ve done justice!” They tried to burn the body but couldn’t find fuel.

The newspaper *El Periodico* reported the incident this way: Two people tried to steal a cellular phone from a vendor who was shot in the chest, and died, when he tried to resist. Twenty people caught one of the alleged delinquents and kicked him and dragged him for several blocks until he died. It is recorded that policemen witnessed the event without doing anything to stop the lynching, or to disperse the 200 spectators.

Another morning daily, *Nuestro Diario*, reported that various delinquents, who were robbing people along Fifth Avenue and Third Street of Zone Twelve, were pursued by residents. Among those chased was Héctor Vinicio López, who after killing a vendor, was trapped by the crowd and put to death. The mob screamed, “Kill him, kill him, pour

gasoline on him. Burn him so won't kill again; there's no justice here." These incidents were seen on television. On our home screens we watched how the people carted López and kicked him even when he was supposed to be dead. Photographs of those who carried López Cruz by the hands and feet were similarly published in the newspapers ~ some of them had bloodied their pants. Photographs show the people who committed the deed standing next to the police, without anyone being taken to jail.

The media evidently interviewed different people who participated in these deeds, and there are different versions regarding the incident that instigated the chase and the lynching. In the majority of cases, those who participate in this conduct aren't clear as to the exact nature of the act committed by the lynched that should deserve such punishment. What does appear to be a constant among those who execute the lynching, is the same reason that moves them to punish by their own hand: the absence of justice; the impunity.

The lynchings which took place that same day in Huehuetenango left a toll of three people battered and burned. More than a hundred people lynched and burned three individuals whose ages ranged from 25 to 30 years of age who had supposedly set themselves up as highwaymen along a nearby road.

When scrutinising lynching, one cannot even consider the eye-for-an-eye tooth-for-a-tooth principle because there is an absolute disproportion between the deed committed, or allegedly committed, and the sanction imposed. The majority of lynchings occur as a consequence of property rights' offences. Because of the poverty that reigns in the country, any theft, no matter how small, has an enormous impact on the victim. Likewise, the prevailing impunity seems to have created a psychological justification to assemble and "defend oneself".

Criminal acts are not the only ones to trigger a lynching. Accusations of sorcery and witchcraft have also been the cause, as well as people's dissatisfaction with public

servants. For example, “after thrashing the couple with sticks and stones, a mob burned alive a husband and wife in the community of Ixtiapoc, Soloma, on 22 October. They were accused of having brought about the death of a child by drowning in the river through the use of malefic practices”.¹⁴

The population per se does not disapprove of these violations to human rights; in fact, they justify them, calling them “popular justice”. Lynching constitutes a violation of human rights masquerading as “popular justice”; or, as expressed by the writer Carlos M. Vilas, they constitute an “(In)justice performed by one’s own hand”¹⁵ A recent poll showed that 75% of the population manifested certain support for acts of “justice by one’s own hand”¹⁶. Justice cannot be anything other than that imparted by the duly legitimized state organs to the effect, and within a legal framework. Nevertheless, in Guatemala it has still not arrived.

The sum of the total individual strengths pitted against one or a few people liberates those who participate in a lynching from the brunt of personal accountability. Responsibility becomes diluted. A criminal act committed en masse cannot compare with the individual responsibility borne by the one person who is solely responsible for the death of another human being. The lynching victim is defenceless against the crowd; the mere accusation of having perpetrated a deed reproached by the collective whole, automatically makes him guilty.

¹⁴ Marta Estela Gutiérrez, “Los mecanismos del poder en la violencia colectiva: Los linchamientos en Huehuetenango,” in *Linchamientos: ¿barbarie o “justicia popular”?*, p.190

¹⁵ Carlos M. Vilas, “(In)justicia por mano propia: Linchamientos en el México contemporáneo” in *Linchamientos: ¿barbarie o “justicia popular”?* (In/Justice by Own Hand: Lynching in Contemporary Mexico. Lynching: Barbarism, or “Popular Justice?”), p.31

¹⁶ Angelina Snodgrass Godoy, “Los linchamientos y la democratización del terror en la Guatemala de la posguerra: implicaciones en el campo de los derechos humanos,” in *Linchamientos: ¿barbarie o “justicia popular”?*, (“Lynching and the democratization of terror in post-war Guatemala: implications in the field of human rights,” in Lynching: Barbarism, or “Popular Justice?”), p. 136-137.

There are cases where the instigators have taken advantage of the multitude and the ensuing disorder for their own ends, to gain political or economic advantage, or to use it as a tool for vengeance. Similarly, incidents have been documented where people have been lynched because of collective fears; or by mistake, as happened in the case of the U.S. citizen, Mrs. Jung Diane Werntock and the Japanese Tetsuo Yamahiro, who, confronted by a collective panic of child snatching, were lynched for coming close to neighbourhood children.

Contrary to what the Guatemalan sociologist Edelberto Torres-Rivas has written¹⁷ there is evidence of various cases where common citizens, policemen, assistant town mayors, religious leaders, justices of the peace, members of human rights institutions and others have tried to prevent such crimes. Nevertheless, in many cases they failed, because the mob threatened to deal with them in a similar manner. When lynchings are carried out there is generally a small group in opposition, although it doesn't always dare to act. Those who do act can rarely persuade the others to halt the execution. There are also people who participate, encouraging others to execute the accused, while some others witness the lynching as a hilarious spectacle.

As Marta Estela Gutierrez and Paul Hans Kobrak explain, consummated lynchings clearly indicate that military and paramilitary techniques transferred to communities during the war continue to be in force among the population. This type of collective violence exhibits logistics: formation of the mob, capture, torture, murder, and aggression against the corpses of the victims.¹⁸ It is clear that the violence experienced during the internal conflict produced many frustrations and traumas in the population to which no attention has been paid. No program has been launched to heal these psychological wounds which have caused the seed of violence, planted and fertilized for over three

¹⁷ Edelberto Torres Rivas. "Linchar en democracia" in *Linchamientos ¿Barbarie o "Justicia popular"?* p.23

¹⁸ Marta Estela Gutiérrez and Paul Hans Kobrak, Los Linchamientos Pos conflicto y Violencia Colectiva en Huehuetenango, (*Post-Conflict Lynching and Collective Violence in Huehuetenango*), p. 65.

decades under a climate of poverty, insecurity and impunity, to yield the fruit of lynching.

III. THE MAYAN LEGAL SYSTEM AND THE OFFICIAL SYSTEM OF JUSTICE

Lynching has been associated with indigenous common law by some writers and journalists such as Carlos Vilas. We will therefore review this system of resolving conflicts to demonstrate that this is not the case.

Common law Mayan rights are recognized within Guatemalan legislation. On 5 March 1996, the Congress of the Republic issued Decree 9-96 that acknowledges Agreement #169 of the International Labor Organization in its Articles 8, 9 and 10, in which the importance of, and the respect for, indigenous customary rights is established. The peace agreements — specifically, the Agreement on Identity and Rights of Indigenous Peoples, as well as the Agreement on the Strengthening of Civil Powers and the Role of the Army in a Democratic Society, respectively subscribed on 31 March 1995 and 19 September 1996— acknowledge the existence of a Mayan legal system as an essential element for the regulation of communal social life and as a means to preserve its cohesion.

Customs, norms and legal institutions are transferred from generation to generation among the Indians through oral tradition, and local authorities are the ones who generally resolve any conflict that arises in a community. The type of authority and the role it plays within each community depends in greater or lesser degree upon the community in question, because in Guatemala there are 21 ethno linguistic Maya groups, as well as the Xinca and Garífuna peoples. In broad terms, we can say that the authorities in Mayan communities are the elders of the locality, the principals, the brotherhood, the Maya priests, the evangelical pastors and the auxiliary mayor. The one who possesses the greatest influence in the judgment of conflicts, however, is the auxiliary mayor, for in the majority of cases, he has been elected by consensus among the men in the community and therefore enjoys legitimacy.

The resolution of conflicts is swift and flexible; its objective is to seek compensation as well as forgiveness, based upon values and moral and religious principles. It emphasizes compensation not repression. Not all controversies can be determined by traditional local codes:

*Those conflicts which are generally resolved within the communities themselves by the local authorities are petty theft, damages to property, problems with domestic animals, boundary disputes and abutting properties, word offences, and marriage problems. The conflicts which are not determined within the community are homicides, serious physical injuries, serious damages to property and agrarian conflicts.*¹⁹

The precept of indigenous common law centers around the search for compensatory measures. It does not promote violence, although in some cases corporal punishment has been administered. While Carlos Mendoza²⁰ has argued that it is difficult to find any case whatsoever where Indians have used the method of public corporal punishment, there are various regions in Guatemala where this type of chastisement has indeed been applied. According to a study carried out by Rafael Landívar University, it may consist of flogging a recreant child, and this sanction is generally carried out upon the request of the parents. Cases have also been known where a whipping is administered to thieves and, occasionally, to unfaithful couples.²¹

Contrary to lynchings, however, as far as we can ascertain, while corporal punishments have been administered in public, the result is never death, or serious injury. Furthermore, flogging is administered by one person only, who might be a person in authority, or perhaps the father of the unfaithful spouse, not a multitude. According to

¹⁹ Juan de Dios González, "Estudios Previos Sobre el Sistema Jurídico Maya". in *El sistema jurídico maya. Una aproximación. (Previous Studies on the Mayan Legal System. The Mayan Juridical System. An approximation)*, p. 39.

²⁰ Carlos Mendoza. "Violencia colectiva en Guatemala: una aproximación teórica al problema de los linchamientos." In *Linchamientos: ¿Barbarie o "justicia popular"?* p117

²¹ Universidad Rafael Landívar, "El sistema jurídico maya" in *El Sistema Jurídico Maya, una aproximación*, por el Instituto de Investigaciones Económicas y Sociales, (*The Mayan Juridical System*, by the *Institute of Economic and Social Investigations*), p. 70.

field studies carried out by Gutiérrez and Kobrak in villages around Huehuetenango, there is a tradition of corporal punishment administered by the family or by community authorities.

During their field investigations they also came to hear about cases where the principals of the town had ordained “flogging” for men who did not accept responsibility for a child they had fathered, for women who had had sexual intercourse outside of marriage and to youths who mocked their elders. These communal sanctions were normally administered in full view of the public in order to teach the entire population the consequences of breaking the rules, and to emphasize that it was a punishment imposed by the collective whole, with the presupposed endorsement of the entire community.

At a gathering of seniors in Todos Santos, an elder narrated how punishments were dealt in days of yore, relating that when a son was rebellious and did not accept or obey his father’s orders, the latter would resort to the authorities so that the youth might be corrected. Depending on the degree of disobedience, the auxiliary mayor was the one who decided how much punishment was to be administered to the accused. According to the gravity of the rebelliousness, chastisement was computed by arroba — which meant twenty-five lash strokes or whippings. This was carried out in front of the municipality so that the other children might obey their parents. According to the informant of these investigators, in those days, “... one did not hear of thieves, neither of what one hears about today — that the townspeople must be gotten together because there are some thieves, who must be killed.”²²

The sanctions applied in the Mayan juridical system are of a compensatory and not a repressive nature. They include restitution, payment of fines in favor of the affected party, preventive custody of short duration, (e.g., drunk individuals whose conduct is

²² Marta Estela Gutiérrez and Paul Hans Kobrak, *Los Linchamientos Pos conflicto y Violencia Colectiva en Huehuetenango*, (Post Conflict Lynchings and Collective Violence in Huehuetenango), p. 21.

disorderly), time spent in community work and shaming before the assemblage. In extreme cases, when very serious matters are involved, the most drastic measure applied is expulsion from the community. MINUGUA concluded that “indigenous law respects life and ... it employs consensual mechanisms of a compensatory, reparative, restorative, and conciliatory nature, which are the antithesis of any act of lynching.”²³

According to Juan de Dios González, “... in order to resolve conflicts, the Q’eqchi prefer restorative measures, (cash indemnity or in kind), the re-establishment of good relations among the inhabitants, or reconciliation, summons to attention, recognition of the error and forgiveness. Conflicts are cleared up in a few sessions and a lengthy discussion is considered in itself as a moral sanction against the malefactor. There are no punitive sanctions: jail is not considered an adequate form of interdiction because it does not restore the injury caused to the offended; furthermore, it doesn’t only punish the offender, it also punishes his family.”²⁴

However, during the war, traditional authority was replaced by military control through Military Commissioners and the Civil Self-Defense Patrols. The system based on values, on morals and religion to solve conflicts, was brutally substituted by military force. In many communities of the interior, traditional authority was substituted by military structure and control.

*People took revenge through gossip. At that time [1981], because of the total absence of civil authorities, when faced with any problem, one went to the military post, and many people went because of quarrels over cows, pigs ... the commander at the detachment would say, ‘If you have problems, come here.’; we would determine, and many times those who had committed a fault were given a sound beating.*²⁵

After the conflict, traditional authorities were unable to take up their functions again in many communities for the system had

²³ United Nations Mission of Inspection to Guatemala, “Lynching, a Persistent Scourge”, in *MINUGUA* Inspection Report, p. 19.

²⁴ Juan de Dios González, *loc. cit.*, p. 38.

²⁵ Report of the Commission for Historic Enlightenment. Guatemala: Memory of Silence, Vol. II, p. 97.

broken down: “The violence changed us; many had to turn evangelists because that is what the army said. We had to forget the organization we had had in our communities before the violence, of our experience in the co-operative. Many elders also died, now we are only the young living here and those who survived the repression, who were then young. We lost the conversations of the elders when they would gather the people to address them in the schools, in the chapels. The customs were lost; we know that they advised, that they explained, but we can no longer remember what they said because we can only remember what we have suffered during these last years, as though this has erased the previous.”²⁶

The following testimony illustrates what happened: “At that time we had already suffered bombings, they had already burned our harvests and we endure great hunger, for the Army constantly comes and we cannot go out and search for food ... Many die, especially the children and the elders ... the children are the hope of our future ... we give all the children the same name so that one of them might remain ... we mightily respect our elders, they are authority, they bear the experiences of our peoples. But in those times we couldn’t listen to them because we can only think of how to keep alive. And that is how much of the knowledge of the elders was lost, because many of them died for they could no longer stand the hunger, and they grew sick because of the cold, and the rain, and we didn’t have any medicines to cure them.”²⁷

Many of the community leaders were also murdered during the conflict. Many of the elders died because they were unable to flee, or because they couldn’t survive the severity of the weather in the mountains. It was thus that the chain of traditions which had served to unite the community was broken. The passing of indigenous norms and customs into the hands of the coming generations was interrupted. The fact that the young men were forcibly recruited into the Army also provoked an insurmountable cultural shock when they tried to reinsert themselves into the population. Their values had been totally upset; they no longer belonged to the community. Hence, the entire

²⁶ Ibid., Vol. IV, p. 179.

²⁷ Ibid., Vol. III.

system failed and, no other effective framework of justice has been implemented to substitute for the previous one. So there is a vacuum of power: the resolution of conflicts in the rural area was left in the hands of the inhabitants, but lacked a definite method or established scheme: The social fabric had been shred.

The North American sociologist, Angelina Snodgrass Godoy, explains that:

Initially, the army tried to destroy the highlands communities insofar as they ranked as social units. During its first incursions in the area, the army systematically eliminated an entire generation of community leaders, members of organizations such as unions, groups for Catholic Action, student committee activists as well as other entities that possessed a real, or imagined, relationship to social justice; all of them were murdered. On occasion, however, the army's failure to trace a line of demarcation between the Maya population and the guerrillas, brought about as consequence that a series of military governments should look upon any community leader — not only those who were openly involved in political activities — as personifying the internal enemy. This led to an extensive elimination of Mayan priests, mayors, elders with social ascendancy, traditional authorities, etc.²⁸

Life couldn't carry on the same without the presence of its leaders. Its method of social organization, its means to resolve conflicts, its manner of transfer of traditions and culture, everything depended on the leaders and authorities who are no longer there. Without traditional structures that could function after the conflict, there yet remained an unknown official system — fragile, but nevertheless existent, although distant. But many times, the customary law with which problems were determined can't be substituted by juridical institutions since they do not respond to the same principles. Institutional and state justice is not at arm's length for everybody. Many of the villages, cantons or hamlets are located at many hours distance from the courts (in some cases, such as the appeals courts, as much as 100 kilometres away). For the inhabitants in a rural area to air

²⁸ Angelina Snodgrass Godoy, "Los Linchamientos y la Democratización del terror en la Guatemala de la posguerra: implicaciones en el campo de los derechos humanos," en *Linchamientos: ¿barbarie o "justicia popular"?*, ("Lynching and the democratization of terror in post-war Guatemala: implications in the field of human rights," in *Lynching: Barbarism, or "Popular Justice"?*), p. 139.

a matter before a tribunal represents the overcoming of many obstacles such as time, money, transport, language, illiteracy, discrimination and, depending on the case, the need for legal assistance. The processes are generally and long drawn out. And access to a justice which many times depends upon a written process, is rendered difficult by the fact that 67.3%²⁹ of the population is illiterate. Not only do we have a frightening illiteracy rate, but on top of it, Guatemala is the country which presents the most legal complex processes in all the Americas.³⁰

Guatemala is a multilingual country that possesses 21 Mayan-root languages, as well as the Garífuna and Xinca. It's a reality that the official legal system has refused to face, because very few judges and agents of justice know these languages and the courts do not have sufficient translators to produce trust in the system. According to facts provided by the Judiciary Organism, the court system has 767 judges, out of which only 98 are bilingual. Five community courts integrated by indigenous individuals who are acquainted with the language and traditions of their communities have been created, but this number of courts does not at all respond to the needs of the population.

For Juan de Dios González,

the perception the Q'eqchi have of the official system of justice is that the authorities do not do a good job of investigating the cases that are brought to them, that judges deceive or steal, that employees 'swindle money', that problems tend to become more complicated instead of finding a solution, that discrimination and racism exist: Furthermore, illiteracy, unfamiliarity with the Spanish language, and the distances between a community and the courts are factors which hamper appeals to this system.³¹

Another relevant problem is the clash between what the population expects and what the law proclaims. One example is related to minor offences. In Guatemala, where the majority of the population subsists on less than US\$2.00 per diem, the theft of one hundred quetzales, (approximately \$12.50), is perceived as a very serious crime indeed,

²⁹ United Nations Development Program, Guatemala, Human Development Report ~ 2000,

³⁰ Djankov et al., Lex Mundi Project 2001, in "Subjective Indicators", by Pedro Galindo,

³¹ Juan de Dios González, loc. cit., p. 39.

that could result in a family's not having anything to eat for several days. However, the law only contemplates the deed as a misdemeanour, not a crime, according to Article 485, paragraph 1) of the Penal Code. Similarly, there is a cultural clash when the law on occasion punishes conduct which in rural communities is acceptable. A case in point is when an adult male "steals" a young woman to live together with her with her total consent. Article 182 of the Penal Code establishes that: "Anyone who abducts or retains a woman older than twelve and less than sixteen years old with the purpose of sex, of marriage or of common law marriage, with her consent, will be punished with a sanction of from six months to a year in prison." These conflicts generate confusion, disenchantment and frustration in the communities.

Juan de Dios González indicates that,

in the field of penal law, the article by Padilla projects the conflicts which surge because of the discrepant view held by the official juridical system versus that of common law towards certain actions, such as the manufacture of clandestine liquor, the smuggling and abduction of brides, which are not castigated in the normative indigenous code, but are so in the official system. The author points to the lack of [linguistic] interpreters in the judicial system, in itself a de facto discrimination, even when an existing legal precept ordains the incorporation of translators into the tribunals.³²

It must be very difficult for approximately 50% of the population in the country, made up of groups of indians, to reconstruct a legal system where many of the links are missing, and have to place their faith in an official system made up by people from another culture who speak a different language. The obstacles that must be overcome in order to have access to said "justice" are immense. In many regions, traditional authorities disappeared and the remaining state authorities do not enjoy the necessary legitimacy to direct the communities. The structures which these groups were familiar with in order to carry out their lives in common could not be implemented; too many pieces are missing.

³² Juan de Dios González *loc. cit.*, When commenting upon an article written by Luis Alberto Padilla, La investigación sobre el derecho consuetudinario indígena en Guatemala, (*Investigation on Indigenous Common Law in Guatemala*), p. 29.

This frustration and feeling that there is no justice, be it because there is no access to it, or because it is incapable of responding to their needs and expectations, combined with the violence and traumas experienced in the past, has become fertile ground for certain communities to organize and seek means to protect themselves and to regulate their lives in common, bringing forth lynching.

IV. WHY COLLECTIVE VIOLENCE?

Lynchings have occurred in every continent, throughout history. But the motives that have moved the different peoples to execute them differ; for the beliefs, traditions, ideas, sentiments, ways of thinking and feeling, the institutions, history, traumas and circumstances of each, make the soul of each populace unique. As Gustave Le Bon said, a populace is an organism forged by its past.³³

Collective violence has been a highly polemical issue for centuries. The explanations brought forward to fathom this phenomenon are extremely diverse, ranging from considering it an involuntary, almost “sick”, drive, to labelling it a completely conscious behaviour whose outcome is social control.

During the nineteenth century in Europe, Gustave Le Bon developed a theory of collective psychology according to which the crowd transforms the individual because it eliminates the person’s ability to control his behaviour rationally, creating an unconscious personality. People become robots, acting only out of instinct. The members of a crowd descend several rungs on the ladder of civilization, they become savage’s. Being part of a mob incites an individual to feel, think and act in a manner far different from how he would do so when alone. They share a sort of collective mentality which puts their social status, employment, lifestyle, and intelligence aside. The group endows the person with a feeling of strength and power, because of its sheer numbers, allowing him to revert to his instincts. The feeling of responsibility that generally controls an individual disappears, and he becomes anonymous. In his primitive state, he is spontaneous and violent, easily impressed by words or images. In crowds, the foolish, ignorant or envious feel an immense strength and is freed from the sense of his insignificance and powerlessness and

³³ Gustave Le Bon. *The Crowd*. P.5

is possessed instead by the notion of a brutal and temporary but immense strength. Within the mass, the intellectual level of each of its members descends.³⁴

In the first half of the twentieth century, Herbert George Blumer, another observer of crowd behavior, developed the concept of circular reaction, which “results in people behaving alike and is ‘the natural mechanism’ underlying all elementary collective behavior. When the restlessness of individuals is stirred by circular reaction, the result is social unrest. This is more likely among people who have undergone together the experience of a disruptive living routine or have otherwise been sensitized to one another.”³⁵ According to Clair McPhail, a professor of sociology, “Blumer argued that people in a condition of social unrest are seeking something but do not know what it is. They are aimless, engage in random and erratic behavior, are apprehensive about the future, are vaguely excited, and are particularly vulnerable to rumor...as a result of their disrupted routine and ‘blocked impulses’, people are irritable, have unstable attention spans, and are highly suggestible. Thus, social unrest both represents a disruption of routine behavior and provides the context in which new forms of collective behavior may develop...”³⁶

For Blumer, collective behavior by and acting crowd is said to develop in five steps. First, an exciting event (presumably related to the social unrest) catches the attention of a number of people... The mechanisms underlying the development of the next three stages — milling, common object, and common impulse — are circular reaction and its two advanced forms, collective excitement and social contagion. Second, milling involves people standing or walking around, even talking about the exciting event. For Blumer, the primary effect of milling is to make the individuals more sensitive and responsive to one another, so that they become increasingly preoccupied with one another and decreasingly responsible to ordinary objects of stimulation. He compared this preoccupation with

³⁴ Gustave Le Bon. *The Crowd*. p. 5, 6, 9, 10, 12, 34, 36

³⁵ Clark McPhail *The Mith of the Madding Crowd* p. 10

³⁶ Clark McPhail *The Mith of the Madding Crowd* p. 11, 12

hypnosis, and suggests that participants are “inclined to respond to one another quickly, directly, and unwittingly”.

The third stage is the emergence of a common object or of attention, presumably one established during the milling of people regarding the exciting event. The individual is said to be increasingly aroused, unstable, irresponsible and likely to ‘embark on lines of conduct which (he or she) previously would not likely have thought of, much less dared to undertake’... individuals operating in a context of social unrest share thwarted or unsatisfied impulses and dispositions to behave.

Thus, the fourth stage is the stimulation and fostering of impulses that correspond to the crowd objective. When the members of a crowd have a common impulse oriented toward a fixed image and supported by an intense collective feeling, they are ready to act in an aggressive fashion typical of the acting crowd. The last stage is the elementary collective behavior. For Blumer, as a crowd member, an individual loses ordinary critical understanding and self-control as he enters into rapport with other crowd members and becomes infused by the collective excitement that dominates them. He responds immediately and directly to the remarks and actions of others instead of interpreting these gestures, as he would do in ordinary conduct”.³⁷

Floyd H. Allport maintained a very different theory, indicating that “...nothing new or different is added by the crowd situation except an intensification of the feeling already present and the possibility of concerted action. The individual in the crowd behaves just as he would behave alone, only more so”. McPhail comments that “Allport’s crowd did not drive individuals mad; it was driven by people sharing some ‘madness’ in common”.³⁸

³⁷ Clark McPhail *The Myth of the Madding Crowd* p. 10-13

³⁸ Clark McPhail *The Myth of the Madding Crowd* p. 29

These theories, which looked at individuals as irrational or assumed that the individuals had in common some “predisposition”, were refuted by others.

At the end of the twentieth century, William T. Powers argues that human beings are very complex, self-governing, control systems. They consist of thousands of hierarchically arranged control systems in the brain, down the spinal column, and out to the 600 - 800 voluntary muscles whose contractions move the parts of the body that produce every behavior in which human beings engage. Human beings are not controlled; human beings control. They are not mechanical automations, because they design, build, and use electromechanical control systems to further their own purposes.³⁹

In the 1990s, Ervin Staub wrote that “one frequent starting point for group violence is represented by difficult conditions in life in a society, such as severe economic problems, intense political conflict, or rapid and substantial social change. These conditions tend to powerfully activate basic needs in people, such as the need for physical, material security: the need to defend one’s self-concept, values, and customary ways of life; the need for a new comprehension of reality, as social disorganization and change make people’s world and their place in it; and a need for connection and support by other people, as connection is disrupted by people focusing on their own needs. When a group has experienced great suffering, especially due to persecution and violence at the hand of others, without experiences that help them heal, it is more likely to respond to renewed threat with violence. Their feeling of insecurity in the world will make members of the group experience threat as more intense than it is, and will make it difficult for them to consider the needs of others in case of conflict”.⁴⁰

Recently, Roberta Senechal de la Roche has made many studies about collective violence taking into account the sociological factors and excluding the psychological ones. Applying Donald Black’s theory of partisanship she proposes that the collectivization of

³⁹ Clark McPhail. *The Mith of the Madding Crowd* p.198

⁴⁰ Ervin Staub “Predicting Collective Violence” in *Collective Violence: Harmful Behavior in Groups and Governments*. p. 195, 196, 205

violence is a direct function of strong partisanship. This arises when third parties support one side against the other and have solidarity among themselves. Third parties have solidarity when they are intimate, culturally homogeneous, and interdependent. Related to lynching, it is a joint function of strong partisanship toward the alleged victim and weak partisanship toward the alleged offender.⁴¹ Senechal cites Black to establish that collective violence is social control: a process by which people define or respond to deviant behaviour. In her view, collective violence is now commonly regarded as a form of protest, a quest for justice, and the purposive expression of “real grievances over underlying social, economic and political issues”.⁴²

Black explains that collective violence sometimes arises when law is lacking, weak, or openly partisan, a pattern consistent with theories that suggest that where law is weak or absent, other means of social control tend to arise.⁴³

Social phenomena as complex as lynching cannot be evaluated superficially, and it seems to me that theories that maintain that the mob makes people incapable of rationalizing his actions does not go far enough. To understand lynching in the Guatemala conflict, we must look to theories that define these conducts as voluntary and rational acts. That these studies should have been carried out conveys not only psychological and social relevance, but a legal one, too; because upon evaluation of the punishability of the actions, a deed executed rationally and voluntarily will merit a totally different appraisal from one effected unconsciously.

These types of conduct were not present in Guatemala before the war. Post-war society is more violent, full of frustration, fears and traumas. But, why collective violence? It is clear that the greatest number of lynchings have been executed in areas where the population is preponderantly indigenous; conversely, it is the Indians who rank lowest in statistics reflecting individual violence.

⁴¹ Roberta Senechal de la Roche “Why is collective violence Collective?” p.126

⁴² Roberta Senechal de la Roche “Collective Violence as Social Control” p.97, 98

⁴³ Roberta Senechal de la Roche. “Collective Violence as Social Control” p.105

The violence undergone and assimilated during the war is clearly evident here, and when listening to reasons invoked by those involved in lynching, we also perceive frustrations arising from unfulfilled needs. A thirst for justice that has become a thirst for vengeance. When we look back, we see that Indians have always been a sector neglected by government; they've always occupied last place, they are below any other priority. Lack of official justice did not arrive with the war —it has always existed for this portion of the population.

Nevertheless, before the war they relied on their traditional system to solve conflicts and to alleviate pressure. But nothing was left of this after the war. Pain, sadness, poverty; yes. Faced with such desolation and impotence these people have reacted fiercely and violently when confronted with problems. For the lynchings in Guatemala, Senechal de la Roche's conclusion that the objective of collective violence is to achieve some degree of social control, and of Black, in that it constitutes a form of protest in face of an inoperative official system, seem most accurate and useful.

The government has not met the people's requirements. During the war, instead of being this population's protector, it became its executioner; and after the war, it has taken no interest in it. Nor has the government attempted to heal its wounds. This has created a disdain for the system reflected in damages caused to public offices such as police stations, tribunals and municipalities. But the reasons do not justify acts. That it should have been the victim of abuse does not legitimize the populace to continue committing abuse. What has been happening has not taken anyone by surprise. One could see it coming, which is why the peace agreements contain resolutions to provide psychological aid to the victims, as well as to strengthen the system of justice. However, none of these programs has been implemented.

Without pretending to put forth a theory of collective behaviour, it is nonetheless clear that when individuals form part of a collective whole, they handle themselves differently

from when they are alone. To act en masse diminishes fear, as in those old battles in which armies faced each other bodily. That feeling of courage is imparted by the mob and it is even more readily bequeathed during a lynching, where the numbers of the assaulted are significantly less than the number of aggressors, and where the ability of the injured to defend himself is considerably diminished or practically nonexistent. Likewise, the group allows the individual to shield himself behind a mantle of anonymity. The individual generally only controls or represses himself. Each one of us can evaluate this by analysing our own conduct. For example let's consider the following case:

As we walk along the road we come across a corrupt public official, one of those who has unashamedly plundered the country. When we see him we feel our blood boil and our mind fills with negative thoughts, but we don't say anything. We would generally vent our feelings by giving that person a look full of contempt and reproach. But why is it that we don't voice our thoughts to someone who has caused us such harm and whose duty was precisely to protect the interests of the people? Is it because of "politeness", or for fear of what people might say, for shame of making a spectacle of ourselves, or because of the position we occupy in society? Now let us imagine that we are in a public place, suddenly among a hundred people whom in unison start to shout "thief, thief!..." to this known public servant. In this case, wouldn't the probabilities of us joining the crowd and verbally venting our feelings increase? At the end of the day we might be left with the satisfaction of having let harboured resentments surface, giving words to wrath against a system that doesn't work and permits some to fill their pockets at the expense of hospitals, schools, highways. In short, it prevents us from a dignified existence, from having a life.

It is not that the group degenerates the individual. It is not that the crowd takes away his ability to rationalize his acts: it simply makes it easier for him not to repress them. Thoughts and feelings erupt and passions join in. There is always someone who takes the initiative in a crowd and acts as group leader, but if everyone else weren't in agreement to carry out the course of action promoted or executed by him, or them, they simply

wouldn't do it, either alone or en masse. Education, culture, religion and morals fix the limits of our actions.

Theories developed by psychologists, anthropologists, sociologists, and even philosophers, do serve us as guide; nevertheless, studies in Guatemala are needed so we can learn the best way to end the lynchings. We have different focuses and various opinions, and we need to mend from this illness. In the same way as various patients could present the same or similar symptoms but suffer from different illnesses, others might have the same illness but yet require different treatments because of individual particularities. Efforts to eradicate lynching are being made in Guatemala. Seminars, courses, and workshops have been organized; posters have been printed, and there is radio propaganda. In sort, measures to "cure" the illness are being attempted, but they lack an integral and professional diagnosis.

I think we must take time out and wait for a team of anthropologists, sociologists, psychologists and psychiatrists to carry out a joint study in order to get to the root of the problem and thus obtain a prompt and efficient remedy. This is the easy part. The though part is if Guatemala is ready and willing to implement the changes that are needed.

V. IMPUNITY, CORRUPTION, AND THE DELEGALIZING OF INSTITUTIONS

An examination of impunity in Guatemala yields alarming results. The U.S. Agency for International Development, USAID, carried out a study to evaluate the rule of law in Guatemala using information from the year 1999, mainly centered around district attorneys' offices. After examining the Public Ministry and the 35 public prosecutors' offices in the city, they established that 450 cases come before the ministry every day, or approximately 90,000 cases per year. From this total, 35,000 were rejected because, according to the clerk, they did not merit government attorney's attention, although there are no established criteria for rejections. In almost half of the remaining cases, the victim could not identify the aggressor; therefore, they were not followed up.

The remaining 30,000 cases were transferred to the government attorney's office in session, which means that there are approximately 2,800 cases to investigate. During the three and a half months the study lasted, only 328 came before the tribunals, a figure that represents 2.6 processes per month per fiscal agency. In many of the processes, the offended parties or the witnesses withdraw from the case for fear of retaliation or because they were tired of going back and forth to the Public Ministry, because the proceedings become very lengthy, which is interpreted as abandon of action. The study concluded that out of the 90,000 criminal denunciations filed each year, the success of the proceedings in statistical terms was close to zero in Guatemala. According to USAID, without a dramatic change, the accumulated workload for 2002 would exceed 500,000 cases.⁴⁴

These predictions weren't far from reality. According to a study that the Institute for Comparative Studies of Penal Sciences (Instituto de Estudios Comparados en Ciencias

⁴⁴ Steven Hendrix, "Lessons from Guatemala - Renewing US Foreign Policy on The Rule of Law". *Harvard International Review*. Winter 2002. p. 14-18

Penales) is about to conclude, out of 220,000 accusations filed since the 17 May 2002, the date when Attorney General Carlos de León Argueta took office, only 0.8 percent have reached sentence, while substitutive measures and other steps of another nature were taken in 5 percent.⁴⁵

These new processes and denunciations come to inflate the numbers carried over from previous years, creating a mountain of filed cases that drowns the system. The number of reports obviously does not reflect the index of crime in the country and it is very difficult to even imagine what the real figures might be, as many victims do not report the crimes against them. Indeed, why should they? They would only waste energy and resources without foreseeable results. The population has a high level of distrust in the authorities as they are corrupt and inefficient. In order for a case to enjoy even a minim probability of success, the victim must know the name and last name of the aggressor. According to Maria de la Cruz, chief of the Bureau for Permanent Aid of the Public Ministry (Oficina de Atención Permanente del Ministerio Público), in order to initiate an investigation, the victim must provide data on the assailant.⁴⁶ It only remains that he should also be obliged to provide ID numbers and address of abode. The maxim is clear: If you become the victim of crime in Guatemala, don't forget to ask your aggressor his name and where he might be found. Otherwise, your case will do well.

Nobody is unaware of the system's ineffectiveness; what is more, there are those who form part of it and openly accept it. According to declarations given to the press by officers in the criminal investigations service of the National Civil Police, what affects them the most is lack of collaboration in investigations by the Public Ministry, for they don't follow up on cases. They assert that due to this fact, 95% of all criminal cases that occurred in 2003 will not be solved and will go unpunished.⁴⁷

⁴⁵ Sonia Pérez "Hay causas para destituir al fiscal" in *Prensa Libre* (Guatemala), Electronic Edition, Thursday, 12 February 2004

⁴⁶ Pedro Pop "Miles de robos sin investigar" in *Ibid.* Saturday, 4 October 2003.

⁴⁷ Julio Lara "95% de crímenes sin sentencia" in *Ibid.* Monday, 9 February 2004

With a system so extremely deficient as this, one might suppose that prisons are empty, but this is not the case. In proportion to the size of the penitentiaries, there are many incarcerated, many are prosecuted, but few are condemned. Prisons are saturated in Guatemala, yet not with the condemned, but the accused, the innocent. Years might go by while a case is in process, and what is most probable is that it will never reach sentence. After several years in prison, the prisoners are let out on the streets as being innocent, (for every individual who has not been declared guilty in due legal process before a competent and pre-established tribunal is innocent). Without conviction? It seems ironical.

With such alarming impunity reigning in the country, it isn't difficult to believe that the desperate population joins together for protection, itself becoming part of this vicious circle of crime.

Impunity viewed within the framework of lynching has two facets. The first one is the impunity of the perpetrator — it being the cause invoked by the members of the mob. Many are in favor of lynching under the pretext that because the illegal actions committed by the perpetrators remain unpunished, it is up to them to apply “justice” and defend themselves against such deeds so that they cannot be repeated. Since the State does not punish criminals, individuals fulfil this function, punishing whoever has wronged them. The other facet is that even though it is those who lynch who take the law into their own hands and commit various crimes, it is not openly accepted within the community that the lynchers themselves become delinquents. When someone who is lynched does not die, it is extremely rare for an investigation to be opened to deduce liabilities from the lynchers. Lynching remains equally unpunished. In short, the State cannot defend the population from common crime and neither can it defend the supposed delinquents from lynching.

One of the causes of our deficient administration of justice is corruption, a cancer that corrodes all the country's institutions. For Edgardo Buscaglia and Maria Dakolias of the

World Bank, "Corruption is the product of weak institutions and human nature."⁴⁸ All our institutions are weakened, not without reason, and the ethics of those who govern us seems to be on the verge of extinction. Within the recently concluded period of government, the president, the vice-president, ministers, the paymaster general, the superintendent of Tax Administration, and others, are involved in corruption scandals.

To cite some examples, the former President, Alfonso Portillo, the ex-vice-president, Francisco Reyes López, his son, Juan Francisco Reyes Wyld, and the ex-secretary to the presidency, Julio Girón, were accused of laundering money in Panama. Some of these officials are also being investigated in Miami for laundering money coming from corruption. When the government changed at the beginning of 2004, the Paymaster General, Oscar Dubón Palma, was accused of diverting 3.6 million quetzales from the public treasury to finance the campaigns of political parties (PAN and UNE). He is also accused of having received money from embezzlement in the Guatemalan Institute for Social Welfare (Instituto Guatemalteco de Previsión Social); [this embezzlement ascended to 350 million quetzales].

The ex-superintendent of Tax Administration, Marco Tulio Abadío, is charged with having diverted more than 36 million quetzales into personal accounts during the last six months of his government, having also financed the political campaign of UNE, the party which came in second place after the 2003 and 2004 elections. In April 2004, it comes to public light that corruption swallowed approximately 3 billion eight hundred million quetzales belonging to Guatemalans,⁴⁹ a sum that is equivalent approximately to \$475 million U.S. dollars.

These are only examples of the epidemic ailment and helps explain why public officials have never been placed on trial or condemned in the past. They have known how to

⁴⁸ Edgardo Buscaglia and Maria Dakolias, "An Analysis of the Causes of Corruption in the Judiciary", p.1.

⁴⁹ Grupo de seguridad y negocios, "Legado corrupto del FRG llega a Q3,800 millones" *Prensa Libre*, Electronic Ed., Monday, April 12, 2004.

purchase their impunity. After digesting these facts, there can be no doubt remaining as to why the public mistrusts public institutions and officials.

The people do not trust in their institutions because they have been weakened and become delegatized. Contrary to its proper function, the State does not protect human rights because it doesn't have the material resources necessary to operate efficiently, nor does it have sufficient or suitable human resources. In most cases, the equipment used is obsolete or completely ruined through lack of maintenance, and the numbers hired are totally inadequate to fulfil obligations. Many public servants lack preparation, do not feel proud of themselves for forming part of the State, and possess absolutely no incentives. If one calls the police when a crime is committed, the most likely occurrence is that they will simply not arrive — and for truly unthinkable reasons. The most common is that there are no police available, or that there is no vehicle to transport them, or that they have no money to purchase fuel for the police car.

The most serious aspect is that the authorities are not viewed as protectors of citizens' rights, but rather as the fount of oppression — frequently, the reason they don't protect the populace is because they themselves are the protagonists or intellectual authors of those same violations. The trust which should exist in the authorities has been substituted for fear and lack of respect. A report elaborated by the Public Attorney for Human Rights, Sergio Morales, recorded that in the year 2003, there were 424 murders committed by agents of the State.⁵⁰ These acts perpetrated by the authorities happen every day. On 31 January 2004, eight police agents broke into a discothèque in the capital city and stole 14,000 quetzals from the owner.⁵¹ Three days later, agents Fredy Misael Muñoz Barrios, from the Criminal Investigations Service (Servicio de Investigación Criminal) and Fredy Arnulfo Barreno Cahuec, as well as inspector Francisco Guillermo Silva Rizo, presumably killed Gladys Victoria De Leon Velásquez and injured her husband, Jose Abraham Illescas. According to the survivor's narrative, these police

⁵⁰ Claudia Méndez Villaseñor "Año negro para DD.HH" in *Ibid.*, Wednesday January 28, 2004.

⁵¹ Julio Lara "tras policíes corruptos" Wednesday, February 4, 2004 and *Ibid.*, Julio Lara y Claudia Méndez Villaseñor "Lenta investigación contra ocho policías" in *Ibid.*, Thursday , 5 February 2004

agents held them up and conducted them, kidnapped, through various police headquarters. The husband threw himself from the moving vehicle and was shot. They left him for dead. They later killed his wife, abandoning her on the highway. Nevertheless, they hadn't counted on the fact that Mr. Illescas would survive to tell his story and accuse them.⁵²

One can see that violations to the law by the State did not end with the war. Many of the violations are concealed as acts of common crime, but others are greater. What is clear; is that all of them profoundly wound the country's institutions. Some magistrates have taken leading roles in the deterioration of the institutions by dictating resolutions that favour their personal interests, not caring about the damage they are infringing upon the institutions they are part of. They have scorned the huge price that others have paid to strengthen these institutions, such as Magistrate Epaminondas González Dubón, who defended the Constitution after the last attempted coup d'état, and was murdered for it in 1993. As the professors of political science, Lee Epstein and Jack Knight, point out, in the case of the United States, "a final goal that could be attributed to justices is maintaining institutional legitimacy. In the broadest sense, institutional legitimacy means that justices have an interest in making sure that the Court remains a credible force in American politics — both in the eyes of the public and public officials."⁵³ However, many Guatemalan magistrates do not respect their office or the institution of the law and justice.

In July of 2003, after a vigorous legal battle, the Constitutional Court authorized General Efraín Ríos Montt to declare himself a presidential candidate, even though a legal prohibition existed, and in spite of the fact that his participation had been denied on two previous occasions (1990 and 1995). The reason for this turnabout in criterion was obvious to all: it wasn't a matter of a change in the law; it was due to the addition to the Court of members kindred to the party in government — the Frente Republicano

⁵² Sonia Pérez "Capturan a policías" in *Ibid.*, Friday, 20 February, 2004.

⁵³ Epstein, Lee and Jack Knight. *The Choices Justices Make*. P.46

Guatemalteco (FRG). The then president of the Republic, Alfonso Portillo, and the then president of the Legislative, General Efraín Ríos Montt, made sure they placed people loyal to their interests in key posts, packing every government institution. Their actions were clumsy because, for example, Francisco Palomo Tejeda was named deputy magistrate to the Constitutional Court when he had publicly acted as counsel for Ríos Montt. In almost any other country this would be viewed as an unattainable dream: to have one's own counsel as judge in acknowledged proceedings. Likewise, attorney Manuel de Jesus Flores was also called to the court. He had recently excelled in inefficiency at the Real-Estate Record Office to such an extent that the system completely collapsed and the institution had to close its doors for several days while the information in the database was rescued.

When its office was coming to an end, the previous administration went to extremes to promote street commotion. On 24 July 2003 the executive and the legislative organized and then indulged the orchestration of a day of terror in the capital of Guatemala. The “demonstrators” ? in reality sympathizers of the party in power ? rioted in different parts of the capital including Supreme Court of Justice, the Constitutional Court, a company building, and an area of the city inhabited by the strongest economic sector, as well as by ambassadors of different countries. In the commercial building, the rabble rousers frightened the approximately one thousand occupants with cans full of gasoline. The order was that they were going to be set on fire. Official vehicles transferred tires to be burned; with sticks, machetes, and pistols they prevented the entrance and exit of people in different suburbs and apartment buildings. They damaged property and assaulted the press. Various journalists were insulted, beaten, and persecuted by the mob. A few police did not intervene and neither did the army. We, the inhabitants, were at the mercy of the delinquents, of some government authorities. Some few police were sent to different points of disturbance, but they did nothing more than observe what was happening. When questioned as to why they didn't take action, they said they had no orders to do so.

The State's participation in the disorder was obvious, and public. The Organization of American States, the European Union, the Dialogue Group, the United States, Canada and Spain protested and condemned of the disturbances enacted by the followers of FRG-man Ríos Montt, and of the passivity of the police.⁵⁴

We, the dwellers in the country, ask ourselves: "Exactly where are the powers of control? How can a legitimate state exist when both presidents of the State organs, with backing from the Constitutional Court and the Public Ministry seek to create chaos?"

A tremendous feeling of emptiness and impotence envelops one and suddenly bring to mind the words of John Locke: "Where there is no longer the administration of Justice, for the securing of Men's Rights, nor any remaining power within the Community to direct the Force, or provide for the Necessities of the public, there certainly is no Government left."⁵⁵

We confront a system in its death throes. The institutions are worthless for the citizens and for other institutions. In 2003 and 2004 we witnessed the creation of heretofore unheard precedents in exemptions pronounced as part of the legal battle to register General Efraín Ríos Montt, as well as in a pre-trial brought against Attorney General Carlos de León Argueta. The Supreme Court of Justice decided not to comply with two decisions determined by the Constitutional Court, which is the highest court in the country in constitutional matters, declaring them illegal.

But, who is to define legality? If the highest constitutional tribunal in the country emits "illegal" orders and the Supreme Court of Justice decides not to submit, we are suddenly standing on quicksand, not on firm ground. The administration of justice was sorely wounded. While it is true that civil society applauded the decision of the Supreme Court

⁵⁴ "Condena Internacional" in *Prensa Libre*. 26, July 2003. p. 10

⁵⁵ John Locke, *Two Treatises of Government*, p. 411.

of Justice, the system in general ended up very much debilitated. Here we see an open and public delegitimization brought about by institutions against institutions. Discredit becomes official, roles and hierarchies are thrown into disorder.

With such rampant delegitimization, government and democracy are at stake. As William C. Prillaman says, “at the most basic level, a strong judiciary is essential for checking potential executive and legislative breaches of the constitutional order, laying the foundations for sustainable economic development, and building popular support for the democratic regime.”⁵⁶ We are traversing a crisis whereby the administration of justice is being weakened and politicized. This has unleashed power struggles between the Supreme Court of Justice and the Court of Constitutionality which affect democracy and the legitimacy of the state. The controls which should exist among powers of government have not worked. Politicians have created alliances with certain magistrates to “legalize” their interests.

As a result, the population no longer trusts its institutions. A survey carried out by *Latinobarómetro* in 2002 shows that 74.7% of the population has minimal or non-existent trust in the judiciary power.⁵⁷

To all eyes it would seem that many institutions in Guatemala are worthless; nevertheless, they have a price, for they are bought and sold. The State does not fulfill its basic functions. It does not protect the life, the liberty, or the property of its citizens, but it is a fount of violence, corruption, and impunity. This has created explosive insecurity.

Since the State does not protect the life or the property rights of the inhabitants, they seek to defend and protect themselves by force, in either an individual or collective manner.

⁵⁶ William C. Prillaman. *The Judiciary and Democratic Decay in Latin America*. P. 1

⁵⁷ Pedro Galindo. Source, *Latinobarómetro* in “Indicadores Subjetivos”.

Ever increasing numbers of people arm themselves or contract private agencies to afford them security. The State does not possess the monopoly of force or the ability to coerce, a situation which it itself promoted during the war. Every day it tolerates violence coming from private sectors and does not have the capacity to safeguard its people. Therefore, citizens seek to defend themselves justifying their own private, violent resolution of conflicts ? thus disempowering the state. For Carlos Mendoza, “in the context of nonexistent state, of one that disregards its responsibility to provide justice and security, lynching is not an irrational and senseless act; rather, it possesses a rational base.”⁵⁸

In 2000, there were 68 security agencies in Guatemala that employed some 60,000 people.⁵⁹ This is without taking into account all the unregistered companies, or rather, those people and enterprises that have their own security teams. At the beginning of 2004, the national Civil Police only had only 20,000 members.⁶⁰ As Edelberto Torres writes, “The subject of insecurity is only one face of the coin. The other is the State’s inability to guarantee the safety of its citizens. The syllogism leads to error: There are threats in society, the State should safeguard me and since it does not do so, I protect myself...”⁶¹

We must be very careful. This same excuse was invoked for lynching even in the South of the United States, when “faced with what many whites perceived as increasing black-on-white crime, some thought that the formal system was too weak, slow, and uncertain to mete out fitting punishment. In the absence of an effective system, the community had to assume extralegal responsibility to punish offenders.”⁶² However the system of justice did operate “acceptably” in the southern U.S.A.. In fact, the system punished blacks with

⁵⁸Carlos Mendoza, “Violencia colectiva en Guatemala: una aproximación teórica al problema de los linchamientos” in *Linchamientos: barbarie o “justicia popular”*, p. 121.

⁵⁹ Julieta Sandoval “Regularán seguridad privada” in *Prensa Libre*, Electronic Ed., Wednesday, July 26, 2000.

⁶⁰ Julio Lara y Olga Lopez “Urgen cambios en la PNC” in *Ibid.*, January 18, 2004.

⁶¹ Edelberto Torres Rivas, “Linchar en democracia” in *Linchamientos: barbarie or “justicia popular”?*, p. 21.

⁶² Stewart E. Tolnay and E. M. Beck, *A Festival of Violence*, p. 18.

much greater severity than whites and the death sentence was frequently applied, but when death was not the sentence imposed, the whites appeared not to be satisfied.

It is partly due to the high index of poverty, the lack of education, of employment and opportunities in Guatemala, that violence has so vastly increased. Leaving the house supposes a big risk, for there is a great possibility of becoming the victim of a robbery. According to a police report, 5,688 vehicles were stolen between January and July of 2003 or approximately 1,000 vehicles each month. Crime is greatly increasing but we have no valid information on the real situation, for if a person is held-up in a public bus, why should he waste time and money going to a police station to file charges if they will never be followed up? According to a newspaper report, statistics at the Public Ministry reveal that 41,000 accusations for theft were received in the year 2002.⁶³ Staying at home does equally suppose another risk because delinquents commonly break into houses to steal home appliances or money, or they proceed to empty the entire house. According to statistics, 807 burglaries were reported to the police in the capital city from January to July of 2003, but the real number is much higher.

There are countless bag-snatchers, car radio pilferers; in short, petty muggers. The state has no infrastructure to catch, bring to trial, and punish them. Could the State detain thousands of minor delinquents, open procedures and send them to prison? No. We don't have enough police officers or tribunals that could follow up that many cases. Nor are there enough funds to keep them in prison.

The country's prison establishment is equally in grave crisis. According to Article 19 of the Constitution, the penitentiary system should tend towards social re-adaptation and re-education and should also comply with certain minimum regulations. There are 16 penitentiary centers in the country, and 16 jails in police headquarters of various province capitals. According to a report carried out by *Minugua* in 2002, "...the condition of the

⁶³ Pedro Pop "Miles de robos sin investigar" in *Prensa Libre*, Electronic Ed., Saturday, October 4, 2003.

centers of detainment located in other parts of the country is no better, and the official information regarding maximum capacity is frequently exceedingly inexact. As in the case of Chiquimula, for example; officially, there is a maximum capacity for twenty-five people, but a visit to the place verified that it had room for only four (twenty square meters); nonetheless it inhumanely lodged thirty people”.

The object of depriving someone of liberty is to prepare the individual for assimilation back into society, re-adapted. Criminals in our jails are not only not rehabilitated, but are dehumanized. They've in such vile manner that far from becoming better citizens when they come out of prison, we find that we have often created monsters. The State cannot fulfil this function either. In a riot that took place on 12 February 2003 at the Preventive Center of Zone 18, four prisoners were decapitated and their heads subsequently displayed in the penitentiary.⁶⁴ It came to light that the head of Obdulio Villanueva (tried for the murder of Monseigneur Gerardi) was used by the inmates to play football. There is no conviction for such murders.

The lamentable state of the penitentiary system engenders many other problems. The control of the jails is in the hands of the prisoners and there are power struggles among the inmates. Whenever the authorities carry out an inspection, they always find arms and drugs. It is not uncommon for prisoners to be killed, or for mortal remains to be found buried in the establishment. Twenty-two prisoners were murdered between January 2002 and July 2003. The perpetrators are unknown.

From 1997 to mid-2003, 166 prisoners escaped out of which only 68 have been recaptured. Situations so critical bring about grievous consequences on society as a whole. They cause psychological damage and threaten the lives of victims, and witnesses; of judges, and attorneys who might have taken part in their conviction. They represent yet another example of the impunity rampant in the country and greater loss of faith in the

⁶⁴Julio Lara, Olga López and Sonia Perez “Motín: Siete muertos en el preventivo de zona 18” in *Prensa Libre*, Electronic Ed., Thursday, February 13, 2003.

system of justice. Public employees are frequently involved in these escapes, which mean that the confidence that ought to be placed upon those whose duty it is to protect us, and to safeguard the citizenry, is substituted by mistrust and disrespect.

It is obvious that the system's failure has created feelings of impotence, frustration and aggressiveness among the population. Cases have been documented where alleged criminals in the custody of the police, were snatched by a mob. Similarly, there are cases recorded in which supposed perpetrators were taken from prisons and then lynched in front of the police station, as the participants said that were tired of criminals being set free without punishment, only a few days after being captured. As the chief justice of the Supreme Court of New Jersey, Arthur Vanderbilt, said when speaking of the citizens, "if they have respect for the work of the courts, their respect for law will survive the shortcoming of every other branch of government; but if they lose their respect for the courts, their respect for law and order will vanish with it to the greater detriment of society".⁶⁵

One of the most alarming cases, which rams into the mechanisms of justice is the lynching which that Justice of the Peace Álvaro Hugo Martínez Pérez, suffered on the 13 March 2001 in Senahú, Alta Verapaz. He was battered with machetes, stoned, and the court was subsequently burned. One of the versions for the lynching indicates that it was motivated by the fact that the judge had issued too light a sentence, and had accepted a financial agreement, in a matter involving a detainee who had dragged a little girl with his car, causing grievous bodily harm. The community did not approve of that agreement. They felt that a sanction should be imposed concordant to the harm inflicted. Others thought that the authors, or instigators of the lynching, were ex-members of the PACs, as well as other individuals whom had previously been condemned by the Judge, this being their revenge. The Attorney's Office for Human Rights admitted knowing that Judge Martínez had previously received threats and that he had made this known to the

⁶⁵ Arthur Vanderbilt, *The Challenge of the Law Reform*, pp. 4-5.

Supreme Court of Justice, without the latter having taken opportune measures. This lynching, the same as all the rest, remains unpunished.

VI. THE PEACE AGREEMENTS AND THE JUSTICE SECTOR

While the peace agreements were signed in 1996, the benefits are still not felt by the population: violence and impunity are still widespread in Guatemala. The yearned transformation hasn't come about at any level, principally due to lack of political will. The Advisory Group for Guatemala met in Washington in February of 2002 to urge the Guatemalan government and other state institutions to accelerate the implementation of the peace agreements. They stressed the need to guarantee coherent budget assignments to comply with them, to increase the tax load, combat impunity, improve security, guarantee human rights, as well as other particulars.

In May 2003, the Advisory Group again evaluated the progress but did not pronounce the results satisfactory; in fact, they indicated that "With regard to the implementation of the Peace Agreements, the results corresponding to the period from February 2002 to May of 2003, have been disappointing." They pointed out that no efficacious efforts had been made to improve public safety, and that threats and intimidation against justice operators, communicators and defenders of human rights persisted. Furthermore, they observed that access to justice is the most undetermined subject in the agenda. The state has not taken serious steps in the face of lynching; only isolated efforts that have proved incapable of reversing in the situation, for lynching remains undiminished. In February 2004, President Elect Oscar Berger promised to take up the peace agreements again without guaranteeing spectacular advances a priori because there are scant financial resources.

In broad outline, the justice sector in Guatemala is made up of the Judiciary Department, the Court of Constitutionality, the Public Ministry, the Public Attorney for Human Rights, the Institute for Penal Public Defense, and the Department of the Interior. Many of these institutions lack independence and are subservient to different power groups. The institutions which have demonstrated the greatest institutional freedom are first, the

Judiciary Department — because of how it is embodied and because judges enter the system through competitive examination for employment ? and secondly, the Public Attorney for Human Rights.

The Judiciary Department has 769 judges, which includes the 13 Supreme Court of Justice magistrates, as well as Appeals Courts magistrates and other collegiate bodies, judges of courts of first instance, and justices of the peace.

The first ones to become aware of controversies arising among the people are the justices of the peace and the judges of first instance. In 1997, the Judiciary Department began the process of modernisation and, in accord with the peace agreements framework, 118 municipal courts have been created, thus ensuring that each one of the 331 municipalities in the country counts with a tribunal. Furthermore, to date there are 98 bilingual judges, 323 bilingual justice auxiliaries, and 43 interpreters. This is a horribly low figure if one takes into account that according to the last census approximately 5 million people were registered as indigenous, that the majority live in rural areas, and that in addition to Spanish, there are 21 Mayan-root languages in the country, besides Garífuna and Xinca.

The difficulties in providing an efficient administration of justice begin with the Constitution of the Republic. For example Article 213 establishes that a figure not less than two percent of the State's Ordinary Budget of Incomes must be delivered to the Treasury of the Judiciary Department. The budget allotted depends upon the Congress of the Republic, which compromises the Judiciary Department's independence. On various occasions, faced with threats and political retaliation, the Supreme Court of Justice has been punished with a budget far beneath its request and needs. It seems paradoxical that the Constitution should decree that a greater percentage of the budget must go towards fostering and promoting sport, rather than to the operation of the Department of Justice. Article 91 commands that the allowance for sport cannot be less than three percent of the State's Ordinary General Budget of Incomes.

In 2003, the Congress approved a budget of a mere 2.79% for the Judiciary Department. According to tables calculated by said organization, the sum assigned was merely enough to cover the payroll, but not enough to cover administrative costs of public services installed at the tribunals, nor materials to be employed. The rest of the expenses are met with donations and foreign aid from the World Bank, the Inteamerican Development Bank, the United Nations Program to Guatemala, financing from Norway and Holland, and other sources. The financial precariousness and the inability to depend on its own needed funds to operate properly make it difficult to contemplate long-term projects for fear of being unable to sustain them. Obviously, the Judiciary Department cannot become strong without the necessary minimum resources; therefore, it is imperative to effect a constitutional reform in order that it be assigned a bigger minimum allowance. The performance and efficiency of one of the three state organs must not depend upon the political whim of a group of congressmen whose concerns frequently do not correspond with the interests of the nation as a whole, but rather, revolve around partisan cares.

In spite of economic limitations, the Supreme Court of Justice has given singular importance to the training of judges, not only in the academic field, but also on the subject of multiculturality. The Judiciary Career Law was implemented because it is indispensable to improve the human element in order to effect any changes in the administration of justice in Guatemala.

The Judiciary Department has advanced very slowly compared to the galloping needs of the population. The system of justice has failed to lend its people “quality justice” as defined by William C. Prillaman, which implies three variables: independence, efficiency and access.⁶⁶ It is necessary to strengthen the system and to make it accessible to all Guatemalans, especially the indigenous sector. The number of tribunals must be multiplied; justice facilitators must be given training and they must possess a solid multicultural formation; the courts must count with translators in order to generate trust among the people. For Nestor Humberto Martinez, “The lack of access to justice due to

⁶⁶ William C. Prillaman. *The Judiciary and Democratic Decay in Latin America* p.6

cultural, economic, geographic, and social barriers has created a new type of marginalization and social exclusion. When such barriers are reflected in legal outcomes, this undermines the social legitimacy of the judicial and the legal system.’⁶⁷ There are many barriers to overcome because the lack of any roads or infrastructure on top of a sometimes very difficult and mountainous terrain, makes it extremely hard to reach communities. Likewise, it is difficult to respond to the needs of a culturally diverse population. Nevertheless, justice must operate at all levels. Without a strong legal system, there is no state legitimacy and without it, democracy cannot be consolidated. Latinobarometro conducted a survey which shows that seven out of every ten questioned Guatemalans expressed distrust in the legal powers.⁶⁸

With regard to lynching, the justices of the peace have been directly involved in preventing them by holding seminars in the areas of conflict. According to statistics of the Judiciary Department, 21,000 community leaders, as well as civil society, have participated. Nevertheless, these were isolated efforts that haven’t contributed towards a significant improvement in the eradication of lynching, because there hasn’t been a state-impelled project to combat it. Lynching is such a complex problem that it cannot be banished with seminars. Furthermore, the Judiciary Department is but one of many pieces in the puzzle and the system of justice depends on many other institutions as well.

The Court of Constitutionality, the highest tribunal in matters constitutional, was a most respected institution before this last period of government began. During the these past happenings and faced with an ad hoc integration directed from the Executive and by Congress, it has proved itself to be an organ subjugated before those who commissioned the appointment of magistrates, without exhibiting the least sense of independence, impartiality or justice. Their conduct signified losing control of their powers to regulate the behavior of public officials. The irreconcilable differences among magistrates has become public knowledge and it has also come to light that some of the resolutions that

⁶⁷ Nestor Humberto Martinez. *Rule of Law and Economic Efficiency* p.7

⁶⁸ Pedro Galindo. “Indicadores Subjetivos” p.33

have caused the greatest polemics in the court and society — such as the one authorizing Rios Montt to become a presidential candidate — have been taken with a pistol lying on the table.

The Public Ministry is the institution in charge of executing penal action and steering penal investigation under the direction of a prosecutor general, whose appointment, lies in the hands of the president of the Republic. For example, ex-president Alfonso Portillo named Carlos de León Argueta as prosecutor general. He was well known to have close ties to the official party, and the media reported that he had celebrated millionaire contracts with the Government using family businesses and other personal contacts as figureheads.

But if the Public Ministry is the entity in charge of exerting legal action and of directing an investigation, is it at all possible that it may effect an objective investigation against its self? Can it carry out an objective investigation against its associates? Prosecutors have quit upon becoming the target of pressure not to investigate cases involving government officials. The most obvious case is the scandal caused by the millionaire accounts in Panama involving, amongst others, the ex-president of the Republic and his vice-president. Two prosecutors against corruption, Karen Fischer and Tatiana Morales, resigned from their offices in view of the fact that the prosecutor general was pressuring them to drop the case. Nobody was really surprised when Prosecutor General de León Argueta later claimed that there was no evidence whatsoever that the president had participated in any such deeds.

There have been many cases of scandalous corruption but it hasn't been possible to condemn the delinquents. In the majority of cases, this has been due to the Public Ministry's deficient investigation, or for lack of coordination with the National Civil Police. They are all links in the same chain. The records become paralyzed for want of investigation, or convictions are impossible by virtue of contamination or manipulation, or loss of the means of proof.

In cases where there is no political interest in the non-inquiry of a crime, the Public Ministry proceeds poorly usually because it lacks resources, learning, personnel, and presence in the interior ? which together firmly keep impunity as the system's sovereign. According to Public Ministry spokeswoman María Mercedes Carpio, only 10 percent of the country is covered by government attorney offices.⁶⁹

With regard to lynching, the Public Ministry's performance has been practically non-existent, as almost no proceedings are brought forward upon perpetration of these crimes. The message conveyed to the population is clear: they will remain unpunished.

With regard to the National Civil Police, it is dependent upon the Department of the Interior, whose minister is designated and named by the president of the Executive Organism. The National Civil Police does not have the necessary resources to guarantee minimal security to the population. Likewise, police elements lack the preparation and the equipment needed to fulfil their obligations. As an example of the terrible crisis they are undergoing, newspapers have exposed cases where police stations don't even have lights because they have failed to pay the electricity bill.

However it isn't always the lack of resources that is responsible for police inaction. Many times, policemen don't act because they are themselves involved to a greater or lesser degree in the crimes. It is common to hear that police agents are responsible for perpetrating criminal acts such as kidnappings, thefts, murders, highway robbery, extortion and drug trafficking. At the beginning of 2004, *MINUGUA* pointed out the existence of one thousand five hundred records for acts of corruption within the National Civil Police.⁷⁰

⁶⁹ Julio Lara. "95% de crímenes sin sentencia." *Prensa Libre*, 9 February 2004 Electronic Edition

⁷⁰ "Corrupción en la PNC se acrecienta" *Prensa Libre*. 6 February 2004

The national police has intervened and prevented some lynchings, but the institution must be purged of its bad elements and the others trained. The police must also be endowed with the resources necessary for it to become a key element in the attainment of peace.

The Public Penal Defense service has been heavily cut back. More than 200 ex officio attorneys have quit giving service because of lack of a budget. In order to guarantee the population the right to a proper defense, it is necessary that this institution be strengthened, endowing it with the necessary resources to ensure its normal operation. At the beginning of 2004, according to data provided by the Department of Human Resources, that bureau had 125 defense counsellors appointed by court for the entire country, and each ombudsman had approximately 125 cases in step. There is no study extant to measure its efficiency, but with the country's rampant poverty and crime, the numbers are clearly far below the population's needs.

The Attorney for Human Rights, Sergio Morales, has stood out for his strong commitment, but the shortage of economic resources binds his hands before the countless accusations of human rights violations all over the country. During the last eight years he has been assigned a budget of 40 million quetzales, even when estimates that in order to fulfil his office he requires an estimated 160 million. He is present in only 31 municipalities and in view of the funds assigned to him, it becomes impossible to open more bureaus inside the country.⁷¹

Although not formally part of the justice sector, the Congress has had an important role in its poor performance, for it hasn't complied with its obligation to promulgate laws that facilitate the attainment of peace. At present, one of the most important themes is the approval of a law giving birth to the International Commission for the Investigation of Illegal Entities and Clandestine Security Machines (ICIECSM). Furthermore, it has used budgets to retaliate against its "enemies" (as with the Judiciary Department), and has given little economic aid to the Human Rights Public Prosecutor.

⁷¹ Claudia Méndez Villaseñor "Sin recursos para el 2004" *Prensa Libre*. 14 October, 2003

Thus, we note that every institution related to the administration of justice has serious deficiencies which hamper the fulfilment of the office. This is reflected in the widespread impunity and continues to weaken democracy and the legitimacy of the state. Clandestine security machines and illegal entities operate without the state disassembling them. Moreover, webs of impunity shelter ex-army men, army men, judges, and Public Ministry employees, as well as police. Attempts to create the ICIECSMs are being attempted in the face of all this, but the efforts have not yet become reality.

Judges, district attorneys, witnesses, journalists, lawyers and activists of diverse organizations have been the victims of threats, intimidation, and in some cases, murder. The State has proved incapable of protecting them. Furthermore, in some cases, common crime has conveniently been blamed for felonies hatched within government organizations. Justice serves no one and we are witnessing a collapse of the institutions which embody the State which has led to a total loss of control over what is happening. People feel they must take measures when confronted by the State's inaction. As Prillaman says, "The danger, then, is not that Latin American governments will revert to military rule, but rather that they will face gradual deterioration, with civilian governments slipping into a nebulous 'semidemocratic' status, with mounting concerns about the depth and quality of governance: executives unchecked by counterbalancing institutions, societies unable to contain rising violence and crime, and a public increasingly willing to rely on mob justice rather than the courts — in short, a far less civil, civil society."⁷²

In order to implement all the necessary changes, financial resources as well as an efficient and equitable tax system are needed. Nevertheless, as with the justice sector, the administration is extremely weak. The entity responsible for tax collection, the Superintendency of Tax Administration, Superintendencia de Administración Tributaria, (*SAT*), has not been strengthened. Fiscal and budget policies have not proceeded along

⁷² William C. Prillaman. *The Judiciary and Democratic Decay in Latin America* p.9

the lines of the peace agreements, and tax evasion and embezzlement have not been energetically fought by the authorities. During the FRG government, the SAT took it upon itself to exert fiscal terrorism: meticulous audits were carried out upon those who criticized government procedures, such as the independent press. Judges were also placed under the magnifying glass when they passed sentences against the interests of politicians then in power.

The FRG government went to the extreme of discarding an agreement that had achieved consensus at a national level among businessmen, organizations in civil society as well as with political parties. The agreement had enjoyed ample popular support and placed the foundations for a long-term fiscal reform based on an integral vision of the country. Consequently, we have lived in a limbo respecting tax policies. The crisis has reached such proportions that at the change of government in the beginning of 2004, the new Minister for Finance, Maria Antonia de Bonilla, had to unveil a Q.14,000 million deficit before being able to meet the budget. Minister Bonilla stated in April 2004 that the government will be hard-pressed to pay civil service salaries in May, for there is a complete lack of short-term funds to do so.⁷³

Clearly, the subject of taxes is crucial to solve the country's liabilities. We are faced with an emergency. In order to create sensibility towards a tax culture, we must reassume the fiscal pact, which is a product of the peace agreements. It is no longer tenable that business and industrial sectors, as well as individuals, continue to refuse to pay taxes under the pretext of not paying while corruption exists. We are far from reaching the goal of 12% over the Gross Domestic Product foreseen in the peace agreements. We have conveniently forgotten that we are beholden to the agreement. We must not keep on expecting international cooperation to be the only one responsible for hauling us out of this pit. The taxpayers of the international community have no reason to finance our shortcomings. The viability of our country depends on Guatemalans investing in our own institutions and future.

⁷³ Eduardo Smith. "Crisis: Finanzas pende de un hilo" *Prensa Libre*, 17 April, 2004

The high incidence of common crime linked to the State's inability to seek out the guilty and their motives facilitate the reign of impunity. In order to stop the violence, the State must comply with the proviso of safety for the population. Authorities must be strengthened to recover forfeited trust and respect. Impunity and peace are not good bedfellows and in order to end lynching, justice must be meted out not only to the perpetrators of criminal deeds, but to those who participate in a lynching. All are equally delinquent. The security forces must be made professional, and the Public Ministry must also be strengthened, so that penal prosecution may collect all proofs necessary to obtain the condemnation of those responsible for breaking the law. We must not be content with doing merely that which is only strictly necessary, seeking to justify our helplessness under the title of "We have no resources". The invigoration of the system of justice is an absolute priority because from it stems the very existence of the legitimacy of the state, the consolidation of democracy, political and social stability, the possibility of enjoying some economic growth... the possibility of living in peace.

VII. FINAL CONSIDERATIONS

Stopping the wave of lynching implies serious commitments on behalf of the government and devising concrete and coordinated policies in order to exist within a legitimate and democratic State. Wounds must be healed, and the government must remedy them with mental health programs, education, and by pledging security and justice. Violence has to be braked in each one of its dimensions. The term *violence* doesn't refer exclusively to crime. As Gandhi says, "the deadliest form of violence is poverty."⁷⁴ and we have terrible rates of poverty. Guatemala is the country with the hugest gap between rich and poor.

If the wounds aren't healed, peace is beyond reach. People continue to lament the past; promises haven't been honoured. "Humans cannot accept change without mourning what has been lost. Mourning is an involuntary response that occurs at the time of the loss of a loved one or loved possession... Human nature gives us a painful but ultimately effective way to let go of our previous attachments, to adjust internally to the absence of lost people or things and to get on with our lives... Like individuals or families, large groups also mourn. Members of a group who share the same loss collectively go through a similar psychological mourning process.... A shared calamity can leave members of a group dazed, helpless, and too afraid, humiliated, and angry to complete or even initiate a mourning process"⁷⁵. The war has caused us much, much pain, complete impotence, the most awful abuses and extreme humiliation. We are confronted with a collective trauma, and the pain seems eternal. There are manifold reasons, among them, not knowing where the remains of many of the disappeared are to be found, and because justice was never rendered. According to Ervin Staub, when a group has been the object of violence, it responds to any aggression with violence. "The degree past victimization by a group and the extent healing from it are both important. Healing can be assessed in part through

⁷⁴James Gilligan, Reflections on a National Epidemic: Violence, p.191.

⁷⁵ Vamik Volkan, Blood Lines from Ethnic Pride to Ethnic Terrorism, pp. 36, 38.

evidence of certain experiences: others acknowledging the group's suffering, expressing caring and empathy, providing emotional and material support, the existence of memorials and of rituals of mourning and remembrance. It can also be assessed by interviews with members of the group that assess, among other things, the balance of focus on a painful past and a hopeful future.”⁷⁶ It is important to overcome this stage in order to have the strength to view life from another perspective, without hate, with hope.

A people hovering on quicksand whose mix is hunger, poverty, illiteracy, lack of opportunity, exclusion, corruption, and impunity is not fertile ground for peace. The people are drowning. Institutions must be within the reach of everybody and the authorities must make themselves felt in every corner of the country. Law and order and peace need to come about within the framework of legitimate state. Corruption should be designated a subject of public agenda. Impunity must be ended. Justice has to reach every single corner of the country and be applied to each and every one equally. As Robert Sherwood says, “a government subject to law, as well as a certain degree of legal security and an efficient justice system, are substantive requirements for consolidating democratic governance and for economic development”.⁷⁷ This can only be achieved by strengthening and reorganizing institutions. Public servants must be made professional and dignity bestowed upon their calling. Public posts must be occupied by honest persons, consecrated to change and given over to the construction of a better future. Public officials must respond solely to the interests of the nation, and not to the interests of those who gave them a job. Unalloyed commitment and work spirit are not the only requirements, however. Every institution must be apportioned with the financial resources it needs to meet its ends efficiently.

If the institutions are not bestowed with strength, legitimacy, and credibility, it will be impossible to meet the challenge. To ensure budgetary allotments and avoid negotiations

⁷⁶ Ervin Staub, “Predicting Collective Violence”, in *Collective Violence: Harmful Behavior in Groups and Governments*, p. 205

⁷⁷ Robert Sherwood, “Judicial Systems and National Economic Performance” in *Justice Delayed: Judicial Reform in Latin America* p.34.

(for it is seen that justice has been the object of negotiation), there must be an increase in the basic funds assigned by law. For example, it is unacceptable that the Judiciary should beg means from the Legislature which employs its legal faculty to obtain impunity or retaliation. The neutering of legal controls must be avoided so that those occupying seats of power, as well as political groups, do not profit from impunity.

Earnest efforts must be made to transform from a culture of violence to a culture of peace, and it must be approached from different angles. We must fight to prevent violence, and when it occurs, persecute, investigate and condemn it, working towards the abolishment of the death sentence. We have to create the legal mechanisms necessary to end discrimination. We are commissioned to grant life its entire dimension so that it may be perceived as the supreme fundamental value. Tolerance must be fostered, as well as mutual respect and a desire for dialogue, by furnishing solutions to social conflict. Every state apparatus must direct its efforts towards the protection of human rights. That the State should participate in violations to human rights must become a severely punished crime.

In order to end violence, one needs must count not only with the State's commitment. The population itself must be steered towards achieving its own aims through legitimate measures, pointing them in the direction of that which they are truly searching for: justice and peace. It is clear that we do not desire a passive society. The wish is for our population to participate and demand respect for its rights, and that it fight for the State to fulfil its obligations. Struggle is not synonymous with anarchy and disorder. The collective force and unity displayed in lynching, the organization and solidarity forged within various communities, are all capable of being directed towards the common good and not towards crime.

Grave errors in the selection of means to obtain legitimate ends ? order, justice, security ? stand out in lynchings. Unawares, the medicine chosen by the people increasingly sickens us each day. There is a popular saying that goes "Dead dogs don't bite" (Muerto

el chucho se acaba la rabia), but in the case of lynching, instead of it ending violence, it multiplies by the hundreds. If an individual accused of killing another person is damned to be lynched and is put to death by the mob, instead of having one, we are faced with hundreds of delinquents, of murderers. The thirst for justice cannot be sated by spilling yet more blood, for the malaise becomes endemic. As Martin Luther King Jr. so famously said, “If we succumb to the temptation of using violence in our struggle for justice, unborn generations will be the recipients of a long and desolate night of bitterness, and our chief legacy to the future will be an endless reign of meaningless chaos”.⁷⁸

We now, once more, must take up arms against every different facet of violence. We must learn to give battle without violence, so that our children and grandchildren may grow up in a better country wherein order, liberty, justice and peace reign. A place where the skies are not clouded by blood, fear and death.

⁷⁸ Martin Luther King Jr., “I have a dream”, in *Writings and Speeches that Changed the World*, p. 21.

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