

TRANSLATION of the JUDGMENTS
rendered on 14 December 2023
by the ASSIZE COURT OF BRABANT (LEUVEN, BELGIUM)
in the Guatemala Case

Introductory remarks from the translators:

1. This is the non-official translation of the judgments of the Assize Court of Brabant, sitting in Leuven (Belgium), against five high-level political and military leaders from Guatemala, henceforth abbreviated as the 'Guatemala Case'. On 14 December 2023, after 8 days of public hearings, the Court reached a final verdict in the historic trial on the murder and kidnapping of four Belgian missionaries in Guatemala in the 1980s. Scheutists Walter Voordeckers, Ward Capiou, Paul Schildermans and Serge Berten were victims of the fierce repression in Guatemala between May 1980 and January 1982. Walter and Ward were shot, Paul was kidnapped but eventually released, Serge was kidnapped, never to appear again. These crimes were part of a larger and systematic attack against civilians in Guatemala and hence constitute, as was accepted by the Assize Court, crimes against humanity. As the Guatemalan justice system has been unable or unwilling to investigate and try these crimes, proceedings were initiated in 2001 based on the principle of universal jurisdiction, as provided for by Belgian law.

2. In accordance with Belgian criminal procedure, the case was heard by an Assize Court, which is composed of a bench of 3 professional magistrates and 12 lay jury members. Very briefly put, the proceedings consist of the reading of the act of indictment, the hearing of witnesses and experts, the pleadings of the parties to the trial and, eventually, the verdict. The verdict is rendered in two phases: first, the Court decides on the questions of guilt or innocence; second, in case of a guilty verdict, the court session is reopened in order to allow the prosecutor to seek a penalty and offer to the accused the opportunity to respond to this. This is why, in these cases, there are often two judgments: one on the question of guilt and a separate one on the adequate penalties to be imposed.

3. In this specific case, five accused stood trial but chose not to appear and not to be represented. No reasons were given for their absence. According to Belgian criminal procedure, such an attitude should not prevent a trial at the Assize Court, which is then held 'in absentia' (without the accused being present in court).

4. The original judgments of the Assize Court of Brabant (Belgium) were rendered in the Dutch (equivalent to Flemish) language, and there is no official translation into English. In order to make the judgments accessible to a wider audience, a small legal team has decided to produce this non-official translation of both judgments, the first on the matter of guilt and the second on the matter of the penalties. The team has tried to strike a balance between a word-for-word translation, which at times makes the text very difficult if not impossible to understand, and a free translation, at the risk of losing important nuances and precision. As a result, some 'notes from the translators' have been added to the following texts, in particular when a word-for-word translation appeared necessary and required additional explanation.

5. In the text of the judgments, the names of the witnesses who travelled from Guatemala in order to testify before the Assize Court of Brabant (Belgium) have been redacted (their names were replaced by their initials).

I. ASSIZE COURT JUDGMENT on the guilt, rendered on 14.12.2023
(translation as of page 13, containing the reasons of the judgment¹)

(...)

"The main reasons that led to the jury's decision are:

1.

Indictments A and B, under which the accused were referred to the Assize Court by judgment of 10 November 2022, relate to the same acts but under a different form of criminal participation. Consequently, these indictments were joined for the offenses for which the accused were prosecuted under both charges.

The wording, '*murder, being intentional killing with intent to kill and premeditated killing*', in the original indictments A1, A2, A6, B1, B2 and B6 should, in accordance with Article 7, 1, a) of the Rome Statute of the International Criminal Court, to which Article 136ter Criminal Code² expressly refers, be read as manslaughter³, being killing with intent to kill. Indeed, the term '*moord*', as mentioned in the Dutch version of Article 136ter, 1°, Criminal Code, is based on an incorrect translation of the terms '*murder*' and '*meurtre*' mentioned in the official English and French versions of the aforementioned Article 7, 1, a) of the Statute of the International Criminal Court, and the French version of Article 136ter, 1°, of the Criminal Code, which is equivalent to the Dutch version, also mentions the term '*meurtre*', which means manslaughter, and is thus distinct from the term '*assassinat*', which is the equivalent of '*moord*'.

¹ Note from the translators: the first judgment counts 27 pages. Pages 1 through 12 contain the names of the accused and the counts of the indictments against them; as these indictments are repeated at the end of the judgment, we can refer to that part. Between pages 12 and 13, a copy of the lists of questions presented to the jury was inserted in the judgment, with the responses given by the jury ('yes' or 'no'). Hence, all relevant content and all reasons for the judgement are contained in the pages 13 through 27 of the first judgment, which are translated in the present document.

² Note from the translators: the suffix "ter" refers to a system of numbering articles in a statute law, that is typical for continental law. It is Latin for "the third" and typically is used by the legislator (in Belgium and elsewhere in Europe) to insert a new article without having to review the numbering order as a whole. In this case, the Belgian Criminal Code holds an article 136, followed by an article 136bis and then 136ter (and, further on, 136quater et cetera).

³ Note from the translators: this paragraph in the judgment deals with a legal point on the precise wording of the Belgian Statute. It would take us too far to go into the details of this legal point, as the outcome is quite simple: the term 'murder' that is used in the Belgian Criminal Code when dealing with crimes against humanity, is the same as the term 'murder' in the Statute of the International Criminal Court. An issue of interpretation arose from the translation of the English term 'murder' into Dutch and into French, but of course should not be an issue here, where a translation into English is at hand. We will henceforth only use the term 'murder', not 'manslaughter'.

The original indictments A3, A4, A5, A6, B3, B4, B5 and B6 contained a number of material errors that were corrected.

Indeed, the deprivation of liberty as well as the torture of Paul Schildermans, described in the original indictments A3, A4, B3 and B4, took place not only in La Nueva Concepción but also in Mazatenango and/or elsewhere in Guatemala. Moreover, the crimes took place not only on 4 January 1982 but lasted from 4 January 1982 to 7 January 1982, the date on which he was released at the residence of the Papal Nuncio.

Furthermore, the term '*enforced disappearance of persons*' within the meaning of Article 136ter, 9°, Criminal Code and Articles 7, 1, i, and 7, 2, i, of the Rome Statute of the International Criminal Court should be understood as '*the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time*'. Hence, the criminal act is not completed at the time of capture but continues for as long as there is a refusal to acknowledge the deprivation of liberty or to give information on the fate or whereabouts of the victim. Since at the time of the referral to the Assize Court this refusal had not yet come to an end, the crime for which the second, third, fourth and fifth accused were referred to the Assize Court took place during the period from 19 January 1982 up to 10 November 2022 and at an indeterminate place or places in Guatemala.

The questions that were submitted to the jury, with the consent of all parties present, correspond with the aforementioned redrafts and improvements. The facts described in the corrected and restated indictments are the same as those envisaged by the original indictments and the parties present were notified of the possible corrections and restatements and submitted their pleas in that regard.

2.

The elements of the criminal file and the information obtained at the hearing showed that the regime of Guatemalan President Fernando Romeo Lucas García (July 1978 to March 1982) was characterized, *inter alia*, by violent repression against opponents of the regime, alleged or otherwise, and, in particular, against those who had worked for greater social justice for the benefit of agricultural workers.

Relying on the so-called Doctrine of National Security, the 1978 Manual of Counter-Subversive Warfare (*Manual de Guerra Contrasubversiva*), among others, shows that the regime fought against an '*internal enemy*', defined as '*followers of international communism*' and '*all those persons, groups or organizations that are not communist but seek to break the established order*'.

In this regard, the jury refers in particular to the written report of 5 February 2020 and the oral explanations given at the hearing by Katharine Doyle, director of the Guatemala Documentation Project and analyst attached to the National Security Archive of the United States of America, who was appointed as an expert by the investigating judge, which show that not only members of the armed resistance (the guerrilla) but also '*students and professors, lawyers and judges, members of Congress, moderate politicians, and members of the clergy*' were the victims of targeted killings, torture, rape and disappearances, carried out within the framework of a '*counterinsurgency project*' of the ruling state regime, relying on '*a bureaucratic system made up of complicit senior officials*', a '*network of policemen, investigators, intelligence and detective services, secret police, informants and members of death squads*' as well as from the G-2 military intelligence directorate.

To reach this conclusion, which the jury endorses, the appointed expert relied on a very detailed and thorough study of documents released by the U.S. government from the CIA (Central Intelligence Agency or foreign intelligence agency), DIA (Defence Intelligence Agency or military intelligence agency), Department of State, U.S. Southern Command (unified military command responsible for Latin America) and the NSC (National Security Council).

The findings of the expert Katharine Doyle are supported by the statements made by Michael McClintock, who has conducted in-depth investigations into the situation in Guatemala on behalf of Amnesty International, among others. The latter's statements show that simultaneously with the start of President Romeo Lucas García's term in office, the violence exercised by the regime increased, with protesters being killed by security forces and a '*strategy of disappearances*' being used in rural areas. At the same time, a new paramilitary group called the ESA or '*Secret Anti-Communist Army*' carried out overt violence through machine-gun attacks. The group published so-called '*death lists*', naming trade unionists, student leaders, journalists, academics, and lawyers who had been '*condemned to death*⁴' by the ESA. That the ESA and the other death squads acted at the behest of the regime is irrefutably shown by the fact that they acted openly, were never stopped by the regular security forces and their members enjoyed absolute impunity. The highest authorities made public statements justifying the death squads' actions by portraying the victims as subversives.

The massive nature of the regime's attack against opponents, alleged or otherwise, among the Guatemalan civilian population is evident from the number of victims. The Commission for Historical Clarification, chaired by Prof. Christian Tomuschat, who gave testimony at this court's hearing, estimates the total number of victims of the conflict, which lasted from 1960 to 1996, at more than 200,000. The Association for the Study and Promotion of Security in Democracy, of which witness Mrs. I.H.B.⁵ was director, puts it at 250,000 victims, including 45,000 disappearances. The 45,000 disappearances include an estimated 5,000 children.

⁴ Note from the translators: this is a reference to the death lists that were commonly published by ESA.

⁵ Note from the translators: redacted name, see introductory remark #5. All the names of further witnesses are redacted.

Among the successive dictatorial governments that have ruled the country, the regime of President Romeo Lucas García and the subsequent regime of President Ríos Montt appear to be by far the most violent. It is also during this period that the '*scorched earth strategy*' was employed, in which the total destruction of villages suspected of supporting armed resistance was pursued in rural areas.

The findings of the aforementioned investigators and court expert Katharine Doyle are also corroborated by the testimonies about individual fates as recounted by the various witnesses heard at the hearing, such as Mrs. M.B.E., whose father was tortured and abducted in front of his children and whose pregnant sister-in-law, then 13-year-old sister and two brothers were victims of enforced disappearance and who herself was a victim of rape by a paramilitary unit. The six-month pregnant wife of witness Mr. J.P.A. was a victim of enforced disappearance and witnesses Mrs. C.C. and Mrs. R.E.T. also had to experience the disappearance or murder of their relatives.

Consequently, the jury accepts that during the regime of President Fernando Romeo Lucas García there was a widespread and systematic attack against civilian populations within the meaning of Article 7. 2 Rome Statute of the International Criminal Court and Article 136ter of the Criminal Code, i.e. a method of action that involved, *inter alia*, the multiple commission of murders, serious sexual violence, torture, deprivation of liberty and enforced disappearance of persons and that was directed against a civilian population in order to implement or continue the policy pursued by the Guatemalan State aimed at committing such an attack.

The execution of this methodical attack, as evidenced by the above-mentioned testimonies of Katharine Doyle, Michael McClintock, Christian Tomuschat and Mrs. I.H.B., as well as by the statements of the witness Mr. A.R., lawyer and human rights activist, and Mr. M.P.P. of the Organization for Missing and Abducted Persons was indeed carried out with the deployment of considerable public resources (military intelligence, elite military and police units and clandestine paramilitary organizations supplied with arms and men by the State), but also with the open support of plantation owners closely linked to those in power.

Finally, the jury ruled that the fact that the victims of the systematic attack by the State apparatus included not only civilians but, to a much lesser extent, also people affiliated with the armed or unarmed units of the guerrilla movements that Guatemala experienced during the incrimination period⁶, does not alter the finding that the attack was indeed directed against a civilian population within the meaning of Article 7.2 Rome Statute of the International Criminal Court and Article 136ter of the Criminal Code.

⁶ Note from the translators: 'incrimination period' refers to the period during which the crimes were committed in accordance with the indictment.

3.

It is well established that Walter Voordeckers and Ward Capiou were killed with intent to kill on 12 May 1980 and 22 October 1981 respectively. In each case, this is evident from the nature of the violence committed and the means employed, as well as from the manner in which the attacks were carried out.

Walter Voordeckers died as a result of seven gunshot wounds inflicted by several armed men who had been waiting for him for more than two hours until he made his way to the post office, as usual on a Monday morning. The perpetrators wore no uniforms and moved in all-terrain vehicles with covered license plates. They immediately took flight. While the local fire brigade was quickly at the scene and transported the seriously wounded Walter Voordeckers to the hospital - where he died of his injuries, according to the credible statements of witness Mrs. M.G.A. - two police officials who were in the immediate vicinity did not take any action at all.

The deadly ambush set up for Walter Voordeckers on 12 May 1980 must be seen in the context of the threats painted onto various walls in Santa Lucía Cotzumalguapa in the name of the ESA death squad during the weeks preceding his death, as well as in the unmistakable attempt to lure Walter Voordeckers away from the rectory the day before his death on the pretext that a sick lady had requested the administration of the last sacraments.

Based on the elements brought to light during the judicial investigation and during the hearing, it is established that Ward Capiou died on 22 October 1981 at San Lucas Sacatepéquez as a result of six gunshot wounds. On this date, he had planned a meeting with two militants of the armed resistance EGP, of which Ward Capiou was a member. He was killed by armed men seated in two different pick-up trucks. According to witness Mrs. E.G.M.'s written statements of 11 September 1991 and 1 November 1998, the two vehicles deliberately drove up behind Ward Capiou after which the occupants immediately opened fire on him as he walked across the road. There is no evidence to suggest that Ward Capiou himself in any way prompted the attack.

Both Walter Voordeckers and Ward Capiou were thus killed by gunfire, without the opportunity to defend themselves and although this form of violence was not required for any arrest. Consequently, both cases involve a deliberate summary execution. The manner in which the crimes were executed not only bears a resemblance to each other, but also corresponds in the essential points to the attacks described both by the witnesses at the hearing with regard to their own fate or that of their relatives, and those described in the reports of court expert Katharine Doyle, the Historical Clarification Commission, the Human Rights Office of the Archdiocese, Amnesty International and the Inter-American Commission on Human Rights. Such a mode of execution is invariably attributed to either the elite unit of the National Police, known as Commando 6, to the G2 military intelligence directorate, or to paramilitary units known as "death squads," that were created or at least supported by State services.

Consequently, causing the death of Ward Capiou and Walter Voordeckers corresponds to the definition of the crime envisaged by Article 7.1.a Statute of 17 July 1998 of the International Criminal Court and 136ter, 1°, Criminal Code.

Paul Schildermans was kidnapped together with Filipino priest Roberto Paredes from the parish house in La Nueva Concepción by a group of armed masked soldiers on 4 January 1982. The caretaker Ignacio Aguilar Villanueva was killed during this operation. After three days, Paul Schildermans and Roberto Paredes were released back to the residence of the Papal Nuncio. According to the absolutely credible account made by Paul Schildermans himself, he was beaten during the abduction and handcuffed during the illegal detention that followed. A substance was applied to the prisoners' eyes causing intense pain throughout their bodies. During their detention, they were interrogated about Serge Berten's activities, the stencil machine⁷, the activities of other priests, ...

Paul Schildermans' various statements indicate that at no time was he given a clear reason for his deprivation of liberty, nor was he charged with any specific offense. At no time did the investigation reveal any element that could justify the arrest, the deprivation of liberty, the killing of the caretaker and the causing of severe pain during detention.

The manner in which the abduction was executed, the detention of the prisoners in a military camp, the interrogation during their detention - clearly aimed at obtaining information related to alleged subversive activities of members of the Church - and their release following the intervention of the Papal Nuncio with the then-Minister of Defence, René Mendoza Palomo, show irrefutably that the unlawful abduction, detention and torture were the work of a service controlled by the highest authorities of the country. The pain suffered during Paul Schildermans' detention, as described by him, was so severe that the deliberate infliction by the abductors and/or the guards corresponds to the crime defined in Articles 7.1.f and 7.2.e Statute of 17 July 1998 of the International Criminal Court and 136ter, 6°, Criminal Code.

Finally, it is also established that Serge Berten was deprived of his liberty by an unidentified paramilitary organization and subsequently became the victim of an enforced disappearance.

In his written statement, eyewitness Enrique Corral Alonso, who has since died, explained that he, Serge Berten, and two other members of the EGP had planned a short meeting in the capital on 19 January 1982. As they made their way towards the bus stop after finishing their meeting, they were passed by two slow-moving vehicles with darkened windows, similar to the ones used by G2 military intelligence. Suddenly, the cars reversed and five armed men stepped out.

⁷ Note from the translators: a 'stencil machine' is a device that was used in the 1970s and 1980s to produce (through a system of ink printing) multiple copies of a single document. In the Guatemala court case, there was a stencil machine at the parish house. Serge Berten did make use of it to print pamphlets for the farm workers' organization, the Committee for Peasant Unity (Comité de Unidad Campesina or CUC), hence the question during the interrogations of Paul Schildermans and Roberto Paredes.

Without any form of identity check, Serge Berten and the two other members of the EGP were violently forced into the vehicles. Only Enrique Corral Alonso was able to get away because he made it across the street in time to escape the attention of the kidnappers. Not one of the three abductees was heard from afterwards.

Although the conduct showed all the characteristics of the actions of a State-controlled, at least tolerated, service or organization, no trace of an official and legal order for capture or detention was ever found. Despite several requests for legal assistance, no answer was ever obtained regarding the question of Serge Berten's possible final resting place, nor regarding what happened after he was abducted on 19 January 1982.

The capture of Serge Berten corresponds in all respects to an enforced disappearance of persons within the meaning of Articles 7.1.i and 7.2.i Statute of 17 July 1998 of the International Criminal Court and 136ter, 9°, Criminal Code, which is 'the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time'.

On the other hand, neither the judicial investigation nor the inquest at the hearing have shed light on Serge Berten's death. The fact that, since his disappearance on 19 January 1982, he has given no sign of life to his relatives suggests that he is no longer alive. While it is unlikely that Serge Berten would have died of natural causes or perished under circumstances unrelated to his capture and abduction⁸, this cannot be ruled out beyond all reasonable doubt.

4.

The aforementioned crimes committed against Paul Schildermans, Walter Voordeckers, Ward Capiou and Serge Berten were part of the widespread and systematic attack against civilians described above. This is all the more true since part of this attack specifically targeted members of the Church, in particular those who worked to raise the social consciousness of the poorest and to achieve greater social justice.

A chronological overview, as provided below, shows irrefutably that the killing of Walter Voordeckers and Ward Capiou, the kidnapping and torture of Paul Schildermans, and the forced disappearance of Serge Berten were the tactics implemented by the same criminal enterprise of the ruling Guatemalan powers to maintain political, economic and military control over the country at all costs, and to this end to fight by all means any opposition and even any legitimate desire for change and improvement.

⁸ Note from the translators: a word-for-word translation of this sentence would render it very difficult to understand, hence the proposed translation of "unrelated to his capture and abduction". It is, however, important to underline that the Assize Court refers to the criminal responsibility of the accused and not merely the conditions of capture, abduction and detention. What is meant here is that there is no certainty 'beyond all reasonable doubt' that the death of Serge Berten was caused by an action or an event for which the accused can be held responsible.

On 1 May 1980, Conrado de la Cruz and Herlindo Cifuentes Castillo were kidnapped. Twelve days later, Walter Voordeckers was killed when he was ambushed. During June and July 1980, two Spanish priests, José María Gran and Faustino Villanueva, were killed.

On 24 August 1980, a mass arrest took place at a Roman Catholic center in Escuintla. In July 1980, the Conference of Bishops of Guatemala published a statement expressing '*deep concern about the persecution of the Church*'.

In February 1981, Spanish priest Juan Alonso Fernández was killed, and in May 1981, Father Carlos Galvan Galindo was killed by machine-gun fire at the entrance to his church.

On 30 September 1981, Jesuit Luis Pellecer was featured on national television in order to have him say that most members of Catholic institutions such as Caritas and the Belgian School supported the subversion.

On 22 October 1981, Ward Capiou was shot at San Lucas Sacatepéquez, in the circumstances mentioned above.

Next, on 19 November 1981, there was the kidnapping of priest José Velásquez, followed, on 4 January 1982, by the kidnapping of Paul Schildermans and Roberto Paredes. During the following days, the army raided the monastery of Esquipulas, whose superior was kidnapped. In subsequent days, the presently accused Benedicto Lucas García made several statements in the media in which he lashed out at members of the Church.

On 19 January 1982, Serge Berten was kidnapped.

It is certain that both the direct perpetrators and the intellectual authors had knowledge of the previously mentioned attack on the civilian population, and in particular on members of the Roman Catholic Church. This is evidenced by the large number of operations of that nature, the arming, organisation, training (using the manual already described) and the impunity that was unquestionably guaranteed to the perpetrators.

The aforementioned proven crimes are therefore to be regarded as crimes against humanity under international law as laid down in the Statute of the International Criminal Court and customary international law as it already existed at the time the said crimes were committed.

5.

The jury's answers to the questions of guilt put to them and the following decision of the Court as regards the question 13, 18 and 24 establish that the five accused are guilty of one or more of the aforementioned crimes against humanity, as defined in international law.

Ángel Aníbal Guevara Rodríguez was Chief of Staff of the Guatemalan Army from 15 June 1979 to 15 January 1980 and Minister of Defence of Guatemala from 15 January 1980 to 9 August 1981.

The jury has established his guilt of the murder carried out against Walter Voordeckers on 12 May 1980, which constitutes an international law crime against humanity, on the basis of the following elements:

* The accused's guilt is inextricably linked to the finding, confirmed by all the witnesses heard on this matter and in particular by the witnesses Katharine Doyle, Michael McClintock, Christian Tomuschat, Mrs. I.H.B. and Mr. A.R., that during the period of incrimination, the Guatemalan State was politically and legally dominated by the army, which in turn was dominated by the G2 intelligence directorate, which through a parallel power structure had subordinated the other units.

* By virtue of his position, the accused was among the absolute top of the dictatorial regime. General Guevara Rodríguez was a military man of very high rank, was formally the highest-ranking military leader in his position of chief of staff, and both in this position and subsequently, as Minister of Defence, belonged to the High Command, consisting of the President, the Minister of Defence and the Chief of Staff. That he belonged to the absolute top of the regime is also made clear by the fact that he was put forward by President Lucas García's party as the next presidential candidate.

* With the aforementioned formal functions and from his actual position of power, he gave orders and abused his position by implementing the military policy, and in particular the counterinsurgency warfare put into practice through systematic and planned attacks against the civilian population, described above. To this end, he organized and maintained, among other things, training courses in which crimes against humanity were openly incited by demonizing entire population groups and creating the image of an internal enemy, described as communists and subversives.

* From his position of power, he was one of the instigators of the formation and deployment of clandestine paramilitary structures, known as the death squads, which operated under the orders of the army and the dictatorial regime and were provided with men and equipment by them, with the sole aim of sowing terror among the population by committing crimes that were not to be directly and openly attributed to the State itself.

* Although he had both the formal and actual power to stop the commission of crimes against humanity, including the murder of Walter Voordeckers, he deliberately failed to do so.

* On the contrary, Ángel Aníbal Guevara Rodríguez very consciously enlisted in a joint criminal enterprise of which he was one of the driving forces. This enterprise was formed, among others, by part of the military apparatus supplemented by part of the police apparatus and clandestine paramilitary organizations and, moreover, could count on the support and participation of certain political and economic power groups within Guatemalan society. Its aim, as stated above, was to perpetuate the dictatorial regime and the economic system based on social repression and profound inequality, through sowing fear and terror among the population by committing crimes against humanity in order to discourage any aspiration for social change.

Donaldo Álvarez Ruiz was Guatemala's Interior Minister during the entire period of incrimination. In this position, he controlled the National Police, whose job was - basically - to maintain order and ensure compliance with laws and rights.

However, he appears to have been one of the initiators of the police squadron established in 1977 called '*Commando 6*', an urban rapid-response unit whose task was to act against suspected guerrilla networks. Within the unofficial, parallel power structures of the Guatemalan State during the period of incrimination, the Commando 6 proved to play a dominant role and was used, among other tasks, to carry out the aforementioned joint criminal enterprise and structured attack against the civilian population. Donaldo Álvarez Ruiz was the individual who diverted part of the National Police from its duties and made it available to the army and the power apparatus.

Donaldo Álvarez Ruiz was also one of the driving forces behind the deployment of the so-called death squads which, according to the documents found in his office after the March 1982 coup, were directly controlled by him.

Although he undoubtedly had the power to do so, he deliberately failed to stop the widespread commission of crimes against humanity, including this crime of which he was found guilty by the jury.

It is undisputed that he participated in the joint criminal enterprise described above, to which he contributed in an indispensable manner.

Pedro García Arredondo was head of National Police Commando 6 from 1 July 1978 to 25 August 1980 and then director of the National Police Detective Corps from 26 August 1980 to 23 March 1982. Even after his appointment as head of the Detective Corps, however, he remained in full control of Commando 6, as evidenced by the statements of Mr. M.P.R., among others.

Pedro García Arredondo played a distinct role in carrying out the aforementioned large-scale joint criminal enterprise by placing police power at the disposal of the clandestine parallel state structures of the dictatorial regime, thus diverting the National Police - or at least one of its most powerful units - from its mission to protect citizens and maintain public order.

By way of example, he was the author of the order to members of the police directing them not to show the register with containing the names of detainees to the judicial authorities in the case of Habeas Corpus proceedings⁹.

⁹ Note from the translators: *Habeas Corpus* is a legal concept that stands as a key-instrument to safeguard people against arbitrary arrest and detention. It refers to the control by a court or judicial body, in order to ascertain that arrest and detention are in conformity with the law. In this case, Pedro Garcia Arredondo gave express instructions to the police to prevent this judicial control and guarantee, by hiding the register of the people actually detained by the police.

Within the dictatorial regime, according to several witnesses, he enjoyed great actual power, in his capacity as head of the direct perpetrators of the systematic attack on the civilian population envisaged by the joint criminal enterprise, which could not be realized without his help.

Manuel Benedicto Lucas García was Chief of Staff of the army from 15 August 1981 to 23 March 1982 and brother of the president. In both capacities, he was at the absolute apex of the dictatorial regime, so his *de facto* position of power was in no way inferior to that of Ángel Aníbal Guevara Rodríguez. The observations made regarding the latter apply equally to Manuel Benedict Lucas García.

Although he had the power to stop the crimes against humanity committed as part of the criminal plan, including those of which he was found guilty by the jury, he deliberately failed to do so.

Manuel Antonio Callejas Y Callejas was head of the Intelligence Directorate of the Army General Staff, at least from 18 June 1980 to 23 March 1982. Although he might have taken up this or an equivalent post earlier, the judicial inquiry and the investigation at the hearing did not produce sufficient elements from which this could be deduced beyond all reasonable doubt. Consequently, it is not established that Manuel Antonio Callejas Y Callejas was responsible for the death of Walter Voordeckers, on 12 May 1980.

It is also true of this accused individual that within the dictatorial state apparatus, he was considered one of the most powerful persons in the regime. As head of the G2, he dominated not only the military but also the National Police. According to the findings of the Historical Clarification Commission, the police often served as a facade for the direct actions of the G2.

Consequently, Manuel Antonio Callejas Y Callejas is equally responsible for the continued implementation of the battle plans and the centralisation of information necessary for this. Without this information and entrenched intelligence operations carried out through a network of snitches (the so-called *orejas*¹⁰), the commission of the crimes against humanity, including those he was found guilty of by the jury, would not have been possible.

Although he undoubtedly had the power to do so, he deliberately failed to stop the widespread commission of crimes against humanity, including those he was found guilty of by the jury.

It is certain that he, too, knowingly participated in the joint criminal enterprise described above, to which he made an indispensable contribution.

¹⁰ Note from the translators: the term 'orejas' -Spanish for 'ears'- was a common reference, in Guatemala, to people infiltrating the communities as informants for the military and the police.

6.

With regard to the facts described by the 13th, 18th and 24th questions, the court agrees with the jury's corresponding motives.

FOR THESE REASONS,

THE COURT, after deliberating with the sworn jury members as to the main grounds of their decision, pursuant to Article 334 Code of Criminal Procedure,

Ruling in absentia

Having regard to articles:

- 136ter, 136quinquies, 136septies Criminal Code
- 326 to 331, 334, 337 of the Code of Criminal Procedure
- 148, 149 and 150 of the coordinated Constitution
- 2-19-22-31-34-35-36-37-41-67 of the Law of 15 June 1935 on the use of languages in court cases

Finds the defendants GUEVARA RODRÍGUEZ Ángel Aníbal, ÁLVAREZ RUIZ Donaldo, GARCÍA ARREDONDO Pedro, LUCAS GARCÍA Manuel Benedicto and CALLEJAS Y CALLEJAS Manuel Antonio guilty of :

A. The first, Ángel Aníbal Guevara Rodríguez,

in Guatemala, on 12 May 1980, in Santa Lucia Cotzumalguapa,

the murder, being the intentional killing with intent to kill, on the person of Walter Voordeckers,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by either

- * having given the order to do so, even without consequence,
- * having made the proposal or offer to do so or having accepted such proposal or offer,
- * having instigated it, even without consequence,
- * having participated in this, within the meaning of articles 66 and 67 of the Criminal Code, even without having consequences,
- * having failed to make use of the opportunity to act, although he had knowledge of the orders given with a view to the execution of this crime or of facts constituting a beginning of its execution, and although he could prevent or stop the completion of this crime,

* participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

B. The second, Donaldo Álvarez Ruiz,

1. in Guatemala, on 12 May 1980, at Santa Lucia Cotzumalguapa, the murder of Walter Voordeckers,

2, in Guatemala, on 22 October 1981, at San Lucas Sacatepéquez, the murder of Ward Capiou,

3. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango and/or elsewhere in the country, the imprisonment or any other form of serious deprivation of physical liberty in violation of the fundamental provisions of international law of Paul Schildermans,

4. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango or elsewhere in the country, the torture of Paul Schildermans,

5. in Guatemala, during the period from 19 January 1982 to 10 November 2022, in Guatemala City and/or elsewhere in the country, the enforced disappearance of Serge Berten,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by either:

* having given the order to do so, even without consequence,

* having made the proposal or offer to do so or having accepted such proposal or offer,

* having instigated it, even without consequence,

* having participated in this, within the meaning of articles 66 and 67 of the Criminal Code, even without having consequences,

* having failed to make use of the opportunity to act, although he had knowledge of the orders given with a view to the execution of this crime or of facts constituting a beginning of its execution, and although he could prevent or stop the completion of this crime,

* participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

C. The third, Pedro García Arredondo,

1. in Guatemala, on 12 May 1980, at Santa Lucía Cotzumalguapa, the murder of Walter Voordeckers,

2. in Guatemala, on 22 October 1981, at San Lucas Sacatepéquez, the murder of Ward Capiou,

3. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango and/or elsewhere in the country, the imprisonment or any other form of serious deprivation of physical liberty in violation of the fundamental provisions of international law of Paul Schildermans,

4. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango or elsewhere in the country, the torture of Paul Schildermans,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

(and)

5. in Guatemala, during the period from 19 January 1982 to 10 November 2022, in Guatemala City and/or elsewhere in the country, the enforced disappearance of Serge Berten,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by either:

- * having given the order to do so, even without consequence,
- * having made the proposal or offer to do so or having accepted such proposal or offer,
- * having instigated it, even without consequence,
- * having participated in this, within the meaning of articles 66 and 67 of the Criminal Code, even without having consequences,
- * having failed to make use of the opportunity to act, although he had knowledge of the orders given with a view to the execution of this crime or of facts constituting a beginning of its execution, and although he could prevent or stop the completion of this crime,

* participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

D. The fourth, Manuel Benedicto Lucas García,

1. in Guatemala, on 22 October 1981, at San Lucas Sacatepéquez, the murder of Ward Capiou,

2. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango and/or elsewhere in the country, the imprisonment or any other form of serious deprivation of physical liberty in violation of the fundamental provisions of international law of Paul Schildermans,

3. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango or elsewhere in the country, the torture of Paul Schildermans,

4. in Guatemala, during the period from 19 January 1982 to 10 November 2022, in Guatemala City and/or elsewhere in the country, the enforced disappearance of Serge Berten,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by either:

* having given the order to do so, even without consequence,

* having made the proposal or offer to do so or having accepted such proposal or offer,

* having instigated it, even without consequence,

* having participated in this, within the meaning of articles 66 and 67 of the Criminal Code, even without having consequences,

* have failed to make use of the opportunity to act, although he had knowledge of the orders given with a view to the execution of this crime or of facts constituting a beginning of its execution, and although he could prevent or stop the completion of this crime,

* participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

E. The fifth Manuel Antonio Callejas y Callejas

2. In Guatemala, on 22 October 1981, at San Lucas Sacatepéquez, the murder of Ward Capiou,

3. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango and/or elsewhere in the country, the imprisonment or any other form of serious deprivation of physical liberty in violation of the fundamental provisions of international law of Paul Schildermans,

4. in Guatemala, during the period from 4 January 1982 to 7 January 1982, at La Nueva Concepción, Mazatenango or elsewhere in the country, the torture of Paul Schildermans,

5. in Guatemala, during the period from 19 January 1982 to 10 November 2022, in Guatemala City and/or elsewhere in the country, the enforced disappearance of Serge Berten,

with the circumstance that the crime was committed within the framework of a widespread or systematic attack directed against a civilian population, and with knowledge of said attack, and thus to be considered an international law crime against humanity,

by either:

- * having given the order to do so, even without consequence,
- * having made the proposal or offer to do so or having accepted such proposal or offer,
- * having instigated it, even without consequence,
- * having participated in this, within the meaning of articles 66 and 67 of the Criminal Code, even without having consequences,
- * having failed to make use of the opportunity to act, although he had knowledge of the orders given with a view to the execution of this crime or of facts constituting a beginning of its execution, and although he could prevent or stop the completion of this crime,
- * participating in a *joint criminal enterprise*, the purpose of which was the execution of a common plan to unlawfully obtain and/or maintain political control over Guatemala by, *inter alia*, causing units of the army, units of the national police and/or paramilitary organizations to commit crimes against humanity against persons considered opponents of the regime.

Pronounced at the public hearing of 14 December 2023 of the Assize Court of the province of Flemish Brabant, with its seat in Leuven, where were present and seated,

- Mr P. HARTOCH, president of a criminal chamber at the Court of Appeal Brussels, designated to preside the Court of Assizes by order of the first president of that Court of Appeal
- Mr P. SENAËVE, judge, substituting magistrate at the Court of Appeal Brussels
- Mr X. DE PAEPE, judge at the Court of First Instance Brussels (...)

In the presence of:

- Mrs A. FRANSEN, federal magistrate at the Federal Prosecutor's Office (...)

Assisted by:

- Mrs E. VAN DER VEKEN, registrar, appointed for that purpose by the chief registrar of the Court of First Instance in Leuven."

<p>II. ASSIZE COURT JUDGMENT on the penalties, rendered on 14.12.2023 <i>(translation of pages 12 through 14, containing the reasons of this judgment)</i></p>

(...)

"Heard:

* the prosecution in its claim to apply the law in respect to the defendants GUEVARA RODRIGUEZ Ángel Ánibal, ÁLVAREZ RUIZ Donaldo, GARCÍA ARREDONDO Pedro, LUCAS GARCÍA Manuel Benedicto and CALLEJAS Y CALLEJAS Manual Antonio,

The College composed of the Court and the members of the Jury deliberated by an absolute majority in accordance with Article 343 of the Code of Criminal Procedure on the penalty and then on the wording of the reasons that led to the determination of the penalty imposed, as set out hereinafter.

The College thus considered, among other things, the exceptional seriousness and gravity of the proven facts of which the accused were found guilty, as well as their personality as reflected by elements of the judicial investigation and the hearing.

The accused were both the designers and the implementers of a criminal plan that consisted in maintaining political, economic and military power over Guatemala through a dictatorial and extremely violent regime that involved horrendous violations of the most basic human rights on an appalling scale and was based on fear, terror and repression.

The lust for power of the five accused was apparently so prevalent that almost everything had to give way to this, in particular the basic right to life, the right to physical and psychological integrity and the right to freedom.

Walter Voordeckers, Ward Capiou, Paul Schildermans and Serge Berten, among many others, became victims of this lust for power. Thus, the accused not only caused untold suffering to those involved themselves and to their loved ones, but also deprived the local Guatemalan population of particularly valuable support figures, who dedicated their lives in order to improve the conditions of others by standing against social injustice.

Although they were regularly summoned, the accused did not appear at this trial. No mitigating circumstances can be discerned in the criminal record that would allow a lower sentence to be imposed than that prescribed by Article 136quinquies, paragraph 1, of the Criminal Code. None of the accused has shown any understanding of own guilt during the judicial investigation.

Under Article 62 Criminal Code, only one sentence is pronounced in the case of concurrent crimes.

The accused should be deprived of the rights defined in Article 31, paragraph 1, 1° to 6°, of the Criminal Code, for a lifelong period in accordance with Article 31 of the Criminal Code.

Pursuant to Article 18 of the Criminal Code, the present judgment must be printed in excerpt and posted in Leuven, where the judgment was rendered.

The accused will be stripped of their titles, degrees, public offices, functions and positions, in accordance with Article 19 of the Criminal Code.

The accused are each required to pay a contribution to finance the special fund for assisting victims of deliberate acts of violence and occasional rescuers, plus surcharges amounting to 200 Euro, and a contribution to the Secondary Legal Assistance Budget Fund of 24 Euro. Payment of a fixed fee of 58.24 Euro is also imposed on each of them.

The accused are jointly and severally ordered to pay the costs of the judicial investigation, estimated to date at 91,041.25 Euro.

FOR THESE REASONS

Sentences the accused GUEVARA RODRIGUEZ Angel Anibal to life imprisonment in respect of the proven offence of which he was found guilty by the jury.

Sentences the accused ALVAREZ RUIZ Donaldo to life imprisonment for the proven offence of which he was found guilty by the jury.

Sentences the accused GARCIA ARREDONDO Pedro to life imprisonment for the proven offences of which the jury found him guilty.

Sentences the accused LUCAS GARCIA Manuel Benedicto to life imprisonment for the proven offences of which the jury found him guilty.

Sentences the accused CALLEJAS Y CALLEJAS Manual Antonio to life imprisonment for the proven offences of which he was found guilty by the jury.

(...)

Pronounced in the public hearing of 14 December 2023 of the Assize Court of the province of Flemish Brabant, with its seat in Leuven, where were present and seated,

- Mr P. HARTOCH, president of a criminal chamber at the Court of Appeal Brussels, designated to preside the Court of Assises by order of the first president of that Court of Appeal
- Mr P. SENAËVE, judge, substituting magistrate at the Court of Appeal Brussels
- Mr X. DE PAEPE, judge at the Court of First Instance Brussels (...)

In the presence of:

- Mrs A. FRANSEN, federal magistrate at the Federal Prosecutor's Office (...)

Assisted by:

- Mrs E. VAN DER VEKEN, registrar, appointed for that purpose by the chief registrar of the Court of First Instance in Leuven."

(END OF THE TRANSLATION)

ENDNOTE FROM THE TRANSLATORS:

As it results from the judgment of 13 June 2023 of the same Assize Court of the province of Flemish Brabant in the pretrial procedure, the following civil parties (victims) participated as plaintiffs in this procedure:

1. Mrs. Christiane VOORDECKERS, cousin of Walter VOORDECKERS
1. Mr. Diederik VOORDECKERS, cousin of Walter VOORDECKERS
2. Mr. Carlos COLSON, nephew of Walter VOORDECKERS
3. Mr. Patrick BERTEN, brother of Serge BERTEN
4. Mr. Stefaan BERTEN, brother of Serge BERTEN
5. Mr. Johan CAPIAU, brother of Ward CAPIAU
6. The religious congregation VZW MISSIEHUIS VAN SCHEUT

All represented by their lawyers Mr. Michaël VERHAEGHE and Mr. Luc WALLEYN.

The case has been initiated by a criminal complaint filed by the aforementioned civil parties, together with the late Mr. Roger BERTEN and his wife, the late Mrs. Agnes PARRET, the parents of Serge and the late Mrs. Wilfrida VOORDECKERS, the sister of Walter.

The Assize Court will determine the damages in a separate decision, following a hearing that is scheduled on 19 February 2024.