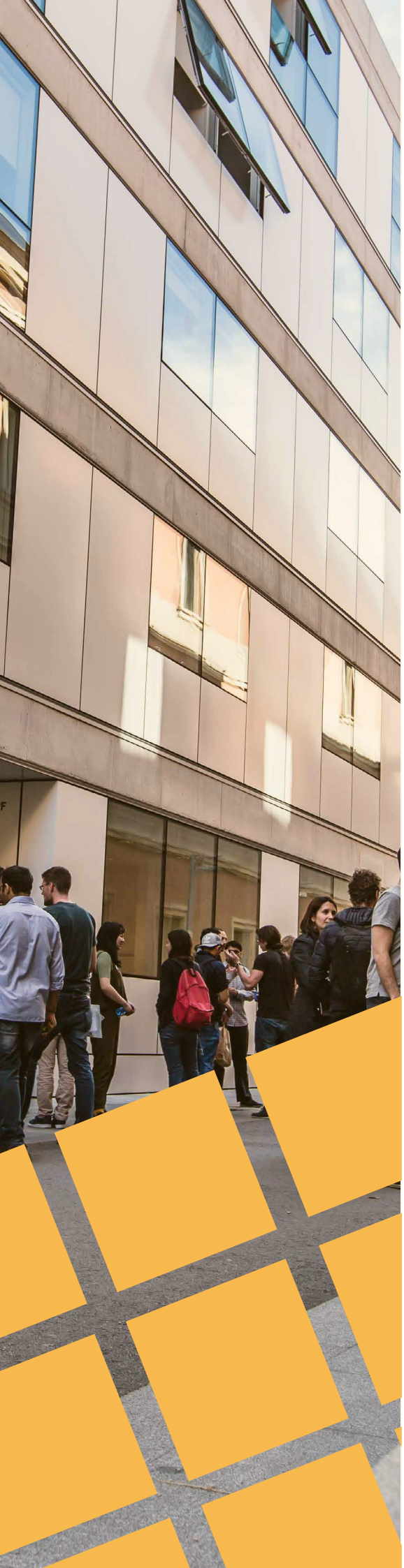

STUDENT PAPER SERIES 11

# Bridging the Gap between Commitment and Compliance:
## State Capacity and Human Rights in Guatemala

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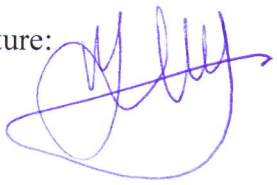
Signature: 

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**Abstract**

The aim of this dissertation is to study the process that states undergo from the moment they commit to international human rights law through the ratification of international treaties till the moment their behaviour and domestic practices can be considered compliant, that its, conforming with international norms. This move from commitment to compliance has traditionally been understood in terms of a state's willingness to comply. Therefore, situations of noncompliance were considered as deliberate and intentional. However, this research aims at pointing out that in some cases, noncompliance does not derive from a premeditated unwillingness to comply, but from a lack of the necessary state capacities to comply. I hypothesize that noncompliance is involuntary when a state lacks the administrative, coercive, or judicial capacities to enforce human rights commitments in its territory. A qualitative single case study is the research strategy chosen to test this hypothesis. The case of Guatemala is considered suitable for the purposes of analysing the links between state capacity and human rights compliance. Findings show that the deterioration of human rights records in Guatemala goes hand in hand with a weakening trend of its state capacity. In particular, the lack of territorial and social penetration of the state is pointed out as the main source of human rights violations in the country.

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**Abbreviations**

| | |
|---|---|
| ACHR | American Convention on Human Rights |
| AI | Amnesty International |
| BTI | Bertelsmann Transformation Index |
| CALDH | Centro de Acción Legal en Derechos Humanos |
| CICIG | Comisión Internacional Contra la Impunidad en Guatemala |
| CRC | Convention on the Rights of the Child |
| ICCPR | International Covenant on Civil and Political Rights |
| ICG | International Crisis Group |
| OHCHR | Office of the High Commissioner for Human Rights |
| PDH | Procuradoría de Derechos Humanos |
| PEN | Programa Estado de la Nación |
| PNC | Policía Nacional Civil |
| PNUD | Programa de las Naciones Unidas para el Desarrollo |
| UN | United Nations |
| UNDH | Universal Declaration on Human Rights |
| UNODC | United Nations Office on Drugs and Crime |

## I. Introduction: problem statement and justification

### 1. Problem statement

In my dissertation, I want to study the process that states undergo from the moment they commit to international human rights law (usually, through the ratification of international treaties) till the moment their behaviour and domestic practices can be considered compliant, that its, conforming with international norms. This is a story of that move from commitment to compliance.

I am particularly interested in the following phenomenon: there are some countries that are democratic, have committed to international human rights law and appear willing to comply with it, but they present very low human rights records. Usually, democratic countries that have ratified most international human rights treaties are assumed to be willing to comply by definition (Hafner-Burton and Tsutsui, 2005, p. 1387; Risse and Sikkink, 1999, p. 9; Young, 2009, p. 283), and quantitative research has shown that these countries are much more likely to comply with human rights norms than authoritarian ones (Cole, 2012, p. 1; Hathaway, 2007, p. 593; Jetschke and Liese, 2013, p. 33; Poe et al., 1999, p. 293; Simmons, 2009; Young, 2009, p. 284). That is, democratic countries are assumed to move smoothly from commitment to compliance.

However, it is possible to observe that some countries with democratic regimes are not doing that transition from commitment to compliance in the same smooth, free-of-problems way. As Hafner-Burton and Ron express it, many democratic states today are "talking the talk" of human rights but they are not "walking the walk" (Hafner-Burton and Ron, 2009, p. 368). Considering that respect for human rights constitutes an institutionalised logic of appropriateness in democratic systems (Poe et al., 1999, p. 293; Risse and Ropp, 2013, p. 17), how come that some countries deviate from the behaviour that this logic implies? What is obstructing that transition from commitment to compliance? Why do some countries get 'stuck' somewhere in the process? (Risse and Ropp, 2013, p. 11).


*Figure 1. The move from commitment to compliance.*

**2. Justification: a gap in the literature**

This is a particularly interesting 'puzzle' considering that the literature in human rights compliance does not offer an explanation for this. Most of this literature considers that the main issue that blocks a country's transition from commitment to compliance is the own country's unwillingness to comply (Cole, 2012, p. 3; Hafner-Burton and Tsutsui, 2005, p. 1378; Poe et al., 1999, p. 293; Risse and Ropp, 2013, p. 35). Since democratic countries are considered willing to comply by definition, this assumption has led to the subsequent hypothesis that authoritarian states show a greater tendency to violate human rights than democratic states (Risse and Sikkink, 1999: 9; Cole, 2012, p. 1; Hathaway, 2007, p. 593; Jetschke and Liese, 2013, p. 33; Poe et al., 1999, p. 293; Young, 2009, p. 284). Consequently, research in the area of human rights compliance has been mainly confined to case studies of authoritarian regimes and transitional countries (Hafner-Burton and Tsutsui, 2005; Hathaway, 2002; Risse and Sikkink, 1999; Simmons, 2009).

However, it could also be possible that non-compliant behaviour does not derive from the *unwillingness* to comply but from the *inability* to comply, that is, that the compliance gap represents a lack of capacity instead of a lack of will. What if the state is not complying because it can't? Because it lacks the administrative, coercive, or judicial capacities to enforce human rights commitments in its territory? Literature on human rights compliance has traditionally believed that, noncompliance being deliberate and premeditated, states could be influenced to abide through coercion, incentives or persuasion. It has not been envisaged that when a state had ratified human rights treaties and was willing to comply, it could still not be able to do it due to a lack of capacity, because, for example, it doesn't have the means to enforce the law in its territory. In such a situation, noncompliance could be tackled through capacity-building programs, that would help states to build and develop the abilities needed to

enforce human rights commitments.

This gap in the literature has been recently acknowledged by Risse, Ropp and Sikkink in their 2013 re-edition of their well-known book *The Power of Human Rights* (Risse and Ropp, 2013: 17). In compliance research, the issue of state capacity had been theorized before, some authors highlighting the fact that noncompliance could result from weak institutional structures (Raustiala and Slaughter, 2002: 549). Nonetheless, it had not been applied to the field of compliance with international human rights norms (Risse and Börzel, 2013: 15). Therefore, my dissertation aims at bridging this gap in the literature by including "state capacity" as an independent variable, based on the premise that "state capacity directs attention toward an alternative explanation for human rights violations which has not yet been theorized sufficiently" (*Ibid*., p.10).

**3. Structure of the dissertation**

In short, this research project aims to find out if capacity plays any role in states' compliance with international human rights law. The paper is structured in five sections, besides this introduction. The following section starts by introducing the research question and the theoretical concepts that it encompasses. This part therefore identifies the dependent variable, human rights compliance. The third section contains the literature review and the conceptual framework that will guide this research project. In this part I design the conceptualisation and measurement strategy for the independent variable, state capacity. The fourth section provides an in-depth case study analysis of Guatemala in order to test the relationship between the dependent and independent variables. In the final section, I summarise my findings and offer several conclusions.

## II. Research question

### 1. Research question

I have formulated my research question in the following terms: *under what conditions democratic regimes do not comply with international human rights law?* Or, in other wording, *why some democratic regimes do not move smoothly from commitment to compliance with international human rights law?*

There are three concepts expressed in this research question that need to be defined, in order to clarify the scope of this research project: commitment, compliance, and the compliance gap. By 'commitment', I mean that actors accept international human rights law as binding for themselves, and this usually involves the ratification of international human rights treaties (Dai, 2013, p. 86; Risse and Ropp, 2013, p. 9).

'Compliance' is understood in these lines as a "rule-consistent behaviour"(Risse et al., 2013), that is, compliance occurs when the state's domestic practices and behaviour conform to the international norm (Dai, 2013, p. 87; Raustiala and Slaughter, 2002, p. 539).

The 'compliance gap' refers to the situation when, in the move from commitment to compliance, "a state's behaviour falls short of the standards embodied in the ratified agreement" (Dai, 2013, p. 86). This gap is what some scholars have termed 'decoupling', referring to those cases in which states' membership of human rights treaties is "radically decoupled" from subsequent human rights practices (Clark, 2010, p. 65; Cole, 2012, p. 3; Hafner-Burton and Tsutsui, 2005, p. 1383; Hafner-Burton et al., 2008, p. 17).

### 2. Conceptualisation and operationalisation of the dependent variable

The dependent variable is thus *human rights compliance*. Compliance with international human rights law encompasses many different behaviours. Following Alison Brysk, it means "refraining from committing the abuse, regulating an abuse committed by others (...), removing or reforming the source of a chronic or structural abuse, creating any institutions to perform any of the above functions, as well as monitoring and educating private actors" (2013, p. 262).

Since 'human rights' as such is a very wide concept that includes many different rights, I am focusing exclusively on civil and political rights. Among these, I will focus on the right to life (art. 3 of the Universal Declaration of Human Rights, art.6 of the International Covenant on Civil and Political Rights). The state has the legal obligations under international human rights law to both "respect" and "ensure" the right to life. In light of my definition of compliance, a state is not complying with human rights law in two different situations: first, the right to life can be violated when agents of the state arbitrarily deprive individuals of their lives. Second, rule-consistent behaviour would also imply exercising due diligence in preventing violations of the right to life by private actors. That is, to meet its legal obligations, the State must effectively investigate, prosecute, and punish perpetrators (UN, 2007, p. 6).

According to this conceptualisation, I will measure human rights compliance using a combination of an 'outcome' and a 'performance approach'. The outcome or violation approach focuses on measuring the absence of negative outcomes (OHCHR, 2012, p. 23). It considers that civil and political rights can be enjoyed as soon as they are guaranteed by the State, because the normative content of these rights is clear, explicit, and claims and duties are well-defined (*Ibid.*). Therefore, any negative outcome, such as the incidence of extrajudicial killings, can be considered as a lack of enjoyment and thus an indicator of noncompliance. The performance approach focuses on the process of realizing such outcomes, that is, the measures taken by States to ensure the realization of these rights (OHCHR, 2012, p. 24). The combination of both approaches allow for a comprehensive overview of a state's degree of compliance with international human rights law.

## III. Literature review and analytical framework

### 1. General compliance theory

The process that goes from commitment to international human rights law to compliance has been studied by prominent scholars (Cole, 2012; Englehart, 2009; Goodman and Jinks, 2008, 2004; Hafner-Burton and Tsutsui, 2005; Hafner-Burton et al., 2008; Hathaway, 2002, 2007; Risse and Sikkink, 1999; Risse et al., 2013; Simmons, 2009; Young, 2009), and it draws from an extensive literature on compliance theory in international law (Guzman, 2002; Hathaway, 2002; Howse and Teitel, 2010; Raustiala and Slaughter, 2002; von Stein, 2012).

There are three main approaches within the general compliance theory: rational-instrumentalist, sociological-constructivist, and managerial (Goodman and Jinks, 2004, p. 625; Hathaway, 2002, p. 1942; Raustiala and Slaughter, 2002, pp. 543, 544; Risse and Ropp, 2013, p. 13). The first approach is based on a rational-instrumentalist logic, which considers actors to take decisions upon cost-benefit calculations (Hathaway, 2002, p. 1944; von Stein, 2012, p. 2). Therefore, it considers compliance as interest-driven. The second approach takes a constructivist or sociological stance and considers compliance to be related to norms and identity (Goodman and Jinks, 2004, p. 635; Raustiala and Slaughter, 2002, p. 544; Risse and Sikkink, 1999, p. 6). From this perspective, socialization into international norms can lead to a change in a country's identity and preferences, leading it to engage in a compliant behaviour. The third approach considers compliance as a a management problem, suggesting that noncompliance is rarely a willful and calculated act, but instead it can result from capacity limitations and significant changes over time (Chayes and Chayes, 1993, p. 193; Hathaway, 2002, p. 23; Raustiala and Slaughter, 2002, p. 542; von Stein, 2012, p. 14).

Literature on compliance with international human rights law has mostly developed the first two approaches, adopting thus an underlying premise of voluntary or deliberate noncompliance (Risse and Ropp, 2013, p. 15). The managerial theory has not been applied to human rights compliance, that is, it has not been considered that commitment might not lead to compliance when central state authorities lack the institutional and administrative capacity to enforce decisions including human rights standards (*ibid.*).

Therefore, the conceptual framework in this paper aims to apply the managerial approach to

the issue of compliance with international human rights law. This involves introducing "state capacity" as the independent variable to explain (non)compliance, in light of Risse and Börzel's recent recommendation of "treating the institutional capacity of states as a variable rather than a constant" (2013: 10).

## 2. State capacity as an independent variable

Treating state capacity as an independent variable requires two consecutive steps: first of all, establishing a working definition of state capacity (*conceptualisation*); and second, designing a measurement strategy that matches with the chosen conceptual framework (*operationalisation*).

### 2.1. Conceptualising state capacity

*The concept of state*

The study of state capacity is closely interrelated to our understanding of 'state', which is the starting point to define the abilities/dimensions included in any definition of state capacity. Most authors in the state capacity literature derive their definitions from a Weberian conceptualisation of the state (see Altman and Luna, 2012; Carbonetti, 2012; Fukuyama, 2013; Mann, 1984; Risse and Börzel, 2013; Risse and Lehmkuhl, 2006; Soifer and Hau, 2008; Soifer, 2008; vom Hau, 2012). According to this conceptualisation, the state is a central authority structure with a monopoly over the means of violence over a certain territory (Altman and Luna, 2012, p. 525; Risse and Börzel, 2013, p. 65; Risse and Lehmkuhl, 2006, p. 9). This definition of the state is mostly a structural/organisational one, focusing on the state as a structure/organisation backed with a centralised coercive guarantee. However, several authors have extended this classical concept adding a relational dimension: the state is also a set of social relations, of state-society interactions and links (Brinks, 2012, p. 564; Mann, 1984, p. 112; O'Donnell, 1993, p. 64; Soifer and Hau, 2008, p. 2; Soifer, 2008, p. 233; vom Hau, 2012, p. 5). According to this perspective, the state can be defined as the set of social and political relations that "radiate outwards from a center to cover a territorially demarcated area" (Mann, 1984, p. 112).

According to these conceptualisations of the state, it is possible to draft a consensual and

minimalistic definition of state capacity as *the state's ability to carry out official goals and implement policy choices* (Risse and Börzel, 2013, p. 66; Savoia and Sen, 2012, p. 4; Soifer, 2008, p. 2; vom Hau, 2012, p. 4; Young, 2009, p. 285).

*Resource-based definition of state capacity*

State capacity has been traditionally understood by scholars as encompassing three different dimensions: first, extractive or fiscal capacity refers to states' ability to raise revenues and taxes from society (Carbonetti, 2012, p. 7; Savoia and Sen, 2012, p. 4). Second, coercive capacity considers the military resources at the disposal of the state to coercively implement policy (Carbonetti, 2012, p. 7; Savoia and Sen, 2012, p. 4; Soifer, 2008, p. 7). And third, administrative capacity refers to the importance of a strong and effective bureaucratic apparatus for the state to pursue its goals (vom Hau, 2012, p. 6). The conceptualisation of state capacity in these terms is resource-based, since it takes into account only the material capabilities at the disposal of the state to implement policies. However, this definition only encompasses the structural/organisational nature of the state, but leaves unattended the relational dimension.

*Relational-based definition of state capacity*

There are two useful approaches for the purpose of this research that incorporate the relational dimension: on the one hand, the conceptualisation of state capacity in terms of infrastructural power, developed originally by Mann (1984) and introduced back in the literature recently by Soifer and vom Hau (2008). A similar approach to this one is the concept of 'limited statehood' developed by Risse and Börzel (2013). On the other hand, the definition of state capacity in terms of the rule of law, as developed by Brinks (2012) and O'Donnell (2004), also provides useful insights into the topic of this research project.

Mann's (1984) concept of infrastructural power considers state capacity to be the result of three elements: first, the coercive capacity (monopoly of force over a territory), second, the bureaucracy (the way in which that monopoly of force is administered over the territory), and third, the spatial and social reach of the state (Soifer, 2008, p. 4). By 'reach' of the state, Mann refers to the extent to which state institutions are able to 'penetrate society and carry out their projects throughout the territory they claim to govern' (vom Hau, 2012, p. 9). The concept of

infrastructural power as an essential attribute of state capacity highlights that the ability of states to implement its goals is territorially organised and shaped by state-society relations (Soifer and Hau, 2008, p. 4). It emphasises that besides the bureaucratic administration of the monopoly of force, a state also needs a presence throughout the territory, on one hand, and connections and relationships with nonstate actors, on the other hand.

In their conceptualisation of 'limited statehood', Risse and Börzel use a similar approach to state capacity, which they conceptualise in terms of 'domestic sovereignty', as "the ability of public authorities to exercise effective control within the borders of their own polity" (Risse and Börzel, 2013, p. 65). According to this, statehood is limited when central authorities lack the ability to implement its projects *and/or* to control the means of violence over parts of the territory or with regards to a specific social group (*ibid.*, p. 66).

Brinks (2012) and O'Donnell (2004) bring an interesting view to the state capacity debate. They consider that the legal system is "a constitutive part of the state" (O'Donnell, 2004, p. 41), and, as such, "sucessfully upholding the rule of law" is an integral part of state capacity (Brinks, 2012, p. 562). In this sense, it is understood that the goals of the state and the means and policies enacted to manage a certain population over a territory are specified in the state's legal system (*ibid.*). Consequently, the extent to which the state is able to impose its legal system is an essential dimension of state capacity (Brinks, 2012, p. 563). This ability, which I have termed 'legal capacity', highlights that weak state capacity would result if the state cannot enforce its legal system over a certain part of its territory or a particular social group.

*A multidimensional concept of state capacity*

In light of this, the analytical framework followed in these lines introduces a conceptualisation of state capacity encompassing five dimensions: coercive, institutional and legal capacities refer to the organisational nature of the state, while spatial and social reach are linked to the relational dimension (see Figure 2 below).

As we can see, state capacity is not an unidimensional concept, but a multifaceted one (Carbonetti, 2012, p. 8; vom Hau, 2012, p. 4). This implies that state capacity is not a dichotomous concept that opposes strong vs. weak states, in black-or-white terms (Giraudy, 2012). On the contrary, a state can enjoy a higher or a lower level of capacity depending on

the dimensions that is lacking. Such a perspective enriches research and practice, because it allows the researcher to analytically identify which dimension of capacity one state scores low in, and therefore enables the practitioner to tackle this lack with specific capacity building programs.

| **Organisational dimension** | | | **Relational Dimension** | |
|---|---|---|---|---|
| Coercive capacity | Institutional capacity | Legal capacity | Spatial reach | Social reach |

*Figure 2. Dimensions of state capacity.*

### 2.2. Operationalising state capacity

The organisational and relational dimensions of the concept of state capacity sketched above are not additive or independent, but interactive. This means that each organisational capacity (coercive, institutional, legal) has a spatial and a social reach. The interactive nature of these dimensions has implications for their operationalisation.

Measuring the different dimensions of state capacity as framed in the conceptual framework is possible through a combination of direct and indirect measures. Direct measures are available for the organisational capacities, which are resource-based. Therefore, it is possible to assess the stock of coercive, institutional and judicial resources that political authorities have at their disposal (Vargas Cullell, 2012, p. 704). Indirect measures are needed to grasp the spatial and social reach of the state, and they refer to the penetration of the coercive/institutional/legal capacities through the territory and the social relations.

Regarding coercive capacity, a state has low capacity if it lacks the monopoly of the use of force over a territory or over a specific social group. The direct indicator for this refers to the stocks of coercive institutions the state has at its disposal (military and police forces). The indirect indicator consists in the existence of territorial or social monopolies of force, that is, social groups with or without a territorial base that dispute this monopoly to the state (Risse and Börzel, 2013, p. 66; Risse and Ropp, 2013, p. 18).

The institutional capacity of the state can be measured through two direct indicators: first, the institutional presence, and second, the institutional design. The former refers to the the reach of state institutions across territory to control and regulate social relations (Soifer, 2008, p. 242) The aim would be to map the institutions of control that reach through the national territory *(ibid.,* p. 247). The latter refers to the institutional design, that is, the centralisation of rule implementation. As Risse and Ropp highlight, "involuntary noncompliance is the main problem in highly decentralised implementation systems" (2013, p. 19, also Brysk, 2013, p. 259). This is because in these situations, "rule addressees (those who commit to human rights) are not exclusively the rule targets who have to comply" (*ibid.*).

Finally, legal capacity refers to the ability to enforce the law over the territorial boundaries and all social groups. There are two types of indicators for this capacity: the first one is a direct measure that concerns the quality and strength of the judicial system, because strong judiciaries are needed for norms to find domestic traction and enforceability (Simmons, 2013, p. 45). The second one measures indirectly the legal capacity through to the existence of what O'Donnell terms "brown areas". This areas are subnational informal legal systems where the rule of law is absent, and an informal legality enacted by private actors rules those places (O'Donnell, 2004, p. 41).

| ***Capacities*** | ***Indicators*** | |
|---|---|---|
| | **Direct** | **Indirect (spatial/social reach)** |
| **Coercive** | Stocks of military and police forces | Existence of territorial or social monopolies of power |
| **Institutional** | Institutional design (centralised vs. decentralised) | Institutional presence |
| **Legal** | Strength of the judiciary | Existence of 'brown areas' |

*Figure 3. Indicators of state capacity.*

## 3. Hypothesis

In light of this, I hypothesize that the relationship between my dependent and my independent variable could be the following:

> *In analysing democratic states, those with lower coercive, institutional or legal capacities to regulate social relations within its territory would be more likely to show non-compliant behaviour with international human rights law than those which have higher capacities.*

In this situations, I hypothesize that human rights noncompliance results from a lack of capacity instead of the unwillingness to comply.

| | **High state capacity** | **Low state capacity** |
|---|---|---|
| **Democratic states** | Willing but able to comply | *Willing but unable to comply* |
| **Authoritarian states** | Unwilling to comply | Unwilling and unable to comply |

*Figure 4.Interactions between state capacity and regime type. Adapted from Risse and Börzel, 2013, p. 69.*

## IV. The case of Guatemala

### 1. Case selection and data collection

In order to examine the relationship between human rights compliance and state capacity, a case study strategy will be used. A qualitative focus on a single case can provide rich insights into the interaction between state capacity and human rights behaviour for two main reasons. First, it allows to introduce time in the scope of the research: in order to best assess the relationship between state capacity and human rights compliance it is necessary to see if the improvement/worsening of the human rights records in the selected country is tied to the strengthening/weakening of state capacity. Such a link can only be observed over time: there is certain *décalage* between changes in state capacity and its impact in social life. Therefore, a linear evolutional trend approach will be followed. Second, it allows for disaggregating the state in detail, and identifying the precise problems of capacity that it presents. In turn, this allows for much more precise measurements where the real human rights issues of the country lie.

The selection of Guatemala as the focus of this research is suitable for the following reason: Guatemala represents the embodiment of the puzzle described in the introduction of this dissertation. It is a democratic state that has ratified most international human rights instruments and has repeatedly demonstrated its commitment to human rights in international fora. However, its human rights records have deteriorated significantly in the last decade. Could this deteriorating trend be in part the result of the weakening of state capacity in Guatemala? In order to answer this question, this section will analyse the evolution of human rights records in Guatemala and its links with state capacity in the period 2000-2009. The selection of the time frame is due to data availability.

*Data collection*

Data on human rights compliance in Guatemala has been collected from two different sources: first, at the international level, fact-based information has been collected from reports of the United Nations, in particular, of the Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions, and the United Nations Office on Drugs and Crime; and from country

reports of international nongovernmental organisations (Amnesty International, AI). Second, at the national level, the incidence of human rights violation has been collected from state institutions, in particular, the Ombudsman (*Procuradoría de Derechos Humanos*, PDH) and the national civil police (*Policía Nacional Civil,* PNC); and from specific reports of civil society organisations (*Centro de Acción Legal en Derechos Humanos,* CALDH).

The analysis of state capacity draws from two different data collection methods. First, data regarding the material elements of coercive, institutional and legal capacity has been collected from three main sources: national institutions (PDH, PNC); the regional database *Programa Estado de la Nación* (PEN) which provides comprehensive empirical data for a wide range of aspects for all Central American countries; and country reports from international nongovernmental organisations (International Crisis Group, ICG; Bertelsmann Transformation Index, BTI). Second, data regarding indirect indicators draws mainly from empirical data provided in the secondary literature, in particular, in the specialised academic literature dealing with the case of Guatemala.

## 2. The commitment and the situation of human rights in the country

Guatemala acceded to the ICCPR on 5 May 1992, therefore undertaking legally binding obligations concerning civil and political rights. In particular, Guatemala committed itself to both respect and ensure the right to life contained in the article 3 of the covenant. Guatemala has also subscribed to other international instruments that guarantee the right to life, in particular, the American Convention on Human Rights (art. 4) and the Convention on the Rights of the Child (art. 6). The scope of these legal obligations includes abstaining from state-sponsored abuse (arbitrary or extrajudicial killings by state agents) and preventing abuses committed by others (that is, violent murders by private nonstate actors) (UN, 2007, p. 6). This last obligation to prevent encompasses as well investigating, prosecuting and punishing perpetrators (*ibid.*).

Despite the state's commitment under international human rights law, Guatemala presents worsening records of violations of the right to life in the last years (PDH, 2013a). These violations take three different forms: murders (*muertes violentas*) by private actors, extrajudicial or arbitrary killings (which include the so-called 'social cleansing practices') and lynchings.

Murders are the main source of violations of the right to life in the country, and they have skyrocketed in the last decade, reaching astounding levels. Concerning the time period of analysis of this research, in the year 2000, 2904 people were murdered, which translates into a homicide rate of 25.85 per 100,000 people (Samayoa, 2011, p. 9). In 2009, the number of yearly murders had increased to 6498 people, producing a homicide rate of 46.33 per 100,000 persons (*ibid.*). In the period going from 2000 till 2009, nearly 52,000 people were murdered throughout the country (ICG, 2012, p. 2). In comparative perspective, Guatemala presents the third highest homicide rate in Central America, preceded by El Salvador and Honduras (Samayoa, 2011, p. 9). Furthermore, around 82% of all murders are committed using firearms (PDH, 2013a, p. 51).

The geography of murder indicates territorial unevenness in human rights violations: most murders are concentrated in Guatemala City, the northern department of Petén (which shares 600km of border with Mexico) and a "corridor of violence" that comprises the eastern bordering departments (Izabal, Zacapa and Chiquimula sharing border with Honduras, Jutiapa with El Salvador) and the southern departments in the Pacific Coast (Santa Rosa, Escuintla) (PDH, 2009, p. 39). Those eight departments concentrate around 70% of the total homicides, and Guatemala City in particular condenses 40% of total murders *(ibid.*).

The concept of extrajudicial killings refers to the arbitrary deprivation of life executed by state agents without the sanction of any legal proceeding, or committed by clandestine groups in which former or current members of the police are believed to be involved (AI, 2009). Data collection on this issue is not easy, considering that official instances reporting data on killings (PNC and PDH) do not offer a separate number for extrajudicial killings. However, the national human rights organisation Centre for Legal Action on Human Rights (CALDH), based on data obtained from the Public Prosecutor's Office, reported that between 2005-2012, 6805 cases of extrajudicial killings were denounced, of which 5731 correspond to the years of the armed conflict and 1434 for deaths occurred between 2005 and 2012 (CALDH, 2013, p. 171). These numbers suggest that extrajudicial killings are a main source of human rights violation in the country, and that they have increased in the last years. There is a specific kind of extrajudicial killing taking place in Guatemala that refers to 'social cleansing practices' (Godoy, 2002, p. 645). According to the United Nations Special Rapporteur on Extrajudicial Killings, around 8-10% of killings in Guatemala are carried out with the aim of 'weeding out'

gang members and real or suspected criminals (UN, 2009, p. 7). The Special Rapporteur, along with the Guatemalan PDH, have found evidence of involvement in some of these cases by PNC police officers (*ibid.*).

'Lynchings' are a variation of social cleansing practices which refer to the punishment of suspected criminals by private individuals (Godoy, 2002, p. 644). Most of these incidents remain only at the level of bodily injuries, but it is also frequent to find cases of killings. Data from the PNC shows an increase in the number of these incidents that end up in homicides: from 31 killings in 2000 up to 49 in 2009 (PNC, 2011).

| **Type of violation** | **2000** | **2009** |
|---|---|---|
| Murders - *muertes violentas* (homicide rate per 100,000 persons) | 2,904<br>(25.85) | 6,498<br>(46.33) |
| Extrajudicial killings | 39* | 2261 |
| Lynchings | 31 | 49 |

*Figure 5. Violations of the right to life in Guatemala. Own elaboration, data collected from CALDH, 2013; PDH, 2013a, 2009; PNC, 2011.*

As we can see, human rights records in Guatemala have deteriorated in the last decade. The sign of the Peace Accords in 1996, after thirty-six years of internal armed conflict, and the fall of repressive military regimes led to a halt in political violence and a considerable improvement in the human rights situation of the country, specially regarding the right to life. However, in the last decade, the rise in crime levels and crime related violence has resulted in an strikingly high number of violations of the right to life, and the still-young democratic institutions are struggling to deal with this situation (Krause, 2010, p. 2). It is clear that the Guatemalan state is not complying with its obligations under international human rights law to respect and ensure the right to life. Therefore, Guatemala presents a 'compliance gap': the state is not moving smoothly from commitment to rule-consistent behaviour. In the following section, I attempt to test if this situation of noncompliance derives from a lack of capacity of the Guatemalan state.

## 3. The move from commitment to compliance: testing the conceptual framework

The strength of the Guatemalan state in the period of analysis presents a deteriorating trend: from an already weak state capacity in 2000, Guatemala has evolved to an even weaker and more fragmented capacity in 2009. In 2000, four years after the signing of the Peace Accords that put an end to the thirty-six years long internal armed conflict, the Guatemalan state was eager to implement the reforms envisaged in the agreements, which were grounded on a civilian control over public security and the political realms, respect for human rights and enforcement the rule of law (Gavigan, 2009, p. 65; Isaacs, 2009, p. 110). However, nine years later these reforms had stagnated: despite developments in material capabilities (increase in number of police officers, judges, courts), the territorial and social penetration of these institutions remained seriously low. In the following lines, a detailed analysis of the data collected is provided, assessing thoroughly all the dimensions of state capacity and linking it to the human rights situation in the country.

### 3. 1. Coercive capacity

#### A. Military and police forces

The stocks of military and civil police forces presents an evolution between 2000 and 2009. After the signing of the Peace Accords, the main aim was to reduce the excessive prominence of the military in security issues and expand the civil police forces (Isaacs, 2009, p. 111). Therefore, the number of military officers decreased from 47,000 in 2000 to about 17,000 in 2009 (ICG, 2012, p. 4). At the same time, the stock of civil police forces increased from about 12,000 in 2000 to 22,000 in 2009 (*ibid.*).

Therefore, there has been an increase in civil police effectives in the years observed, which, at first sight, would suggest that Guatemala is on the right way towards increasing its coercive capacity. However, numbers do not tell the whole story: it is necessary to pay attention to several other factors in order to assess if this increase in numbers has also translated in stronger capacity.

First of all, the PNC was initially expanded by incorporating old officers of the military police officers, with little additional training or background checks (Gavigan, 2009, p. 66; ICG,

2012, p. 4). This process of 'recycling' the old police officers and without providing the adequate training and capacity building has left old attitudes and behaviours unchanged, reinforcing preexisting patterns of police abuse (Gavigan, 2009, p. 66; ICG, 2012, p. 16; Isaacs, 2009, p. 111). Secondly, the new PNC was from the beginning poorly equipped. Insufficient resources and infrastructure assigned to the institution have resulted in low quality of the police academy training and low salaries of the officers, making them more vulnerable to corruption and cooptation by criminal groups (ICG, 2012, p. 5; Isaacs, 2009, p. 11; UN, 2007, p. 18).

In comparative perspective, Guatemala is the Central American country that spends less in public security: while the average regional spending as percentage of gross domestic product increased from 2.28 per cent in 2000 to 2.66 per cent in 2010, in Guatemala it dropped from 2.31 per cent to 2.1 per cent in those years (ICG, 2012, p. 7 ; PNUD, 2011, p. 4). Guatemala also lags behind other Central American countries in terms of police relative to population: in 2009, there were 164 police officers per 100,000 inhabitants, while Nicaragua had a number of 171, Costa Rica 279 and El Salvador 316 (PEN, 2013, p. 60).

In short, the ambitious police reform set up in the peace agreements has been only partially implemented. The number of police officers has indeed increased, but it is necessary to go beyond a mere quantitative assessment: the recycling of former military police forces, often involved in human rights abuses, along with an insufficient allocation of resources has produced an institution with serious problems to perform its functions. This situation has had two consequences from a human rights perspective. First, human rights violations by police officers themselves have continued to take place. In 2009, the Office of Professional Responsibility within the PNC reported receiving 776 complaints against civil police members, including seventeen involving killings, three forced disappearances, eleven kidnappings, six illegal detentions, 80 thefts, three rapes, 81 threats and 323 abuse of authority (ICG, 2010, p. 12). Second, the weakness of the institution has also resulted in poor policing of private actors, opening up a space for the development of criminal networks (*ibid.*).

**B. Existence of territorial and social monopolies of force**

State capacity can also be measured indirectly through the existence of territorial or social

monopolies of force, that is, social groups with or without a territorial base that dispute this monopoly to the state (Risse and Börzel, 2013, p. 66; Risse and Ropp, 2013, p. 18). In Guatemala, there are both territorial and social monopolies of force: on the one hand, large parts of the territory are under the control of criminal groups (mostly, drug traffickers). On the other hand, even in areas where the state reaches territorially, such as the capital, youth street gangs (*maras* and *pandillas*), the so-called 'hidden powers' and private security companies dispute the monopoly of force to the state (Brands, 2010, p. 2).

*Territorial monopolies of force*

Former vice-president of Guatemala Eduardo Stein acknowledged in an interview back in 2007 that criminal groups control at least six of the twenty-two departments of Guatemala and had a strong presence in at least three others (Gavigan, 2009, p. 70). According to some analysts, "as much as 40 per cent of Guatemalan territory is either subject to dispute or effectively beyond the control of the police and the central government "(Brands, 2010, p. 16; see also Briscoe, 2009, p. 19). Carlos Castresana, former head of the Guatemalan International Commission against Impunity (*Comisión Internacional Contra la Impunidad en Guatemala* - CICIG) even raises this number up to the 60 per cent of the territory, according to diplomatic cables released by Wikileaks (El País, 2011). The International Crisis Group considers that seven departments are not under government control, including San Marcos, Huehuetenango and Petén, which share border with Mexico, Chiquimula, Izabal and Zacapa in the border with Honduras, and Jutiapa, bordering with El Salvador (ICG, 2010, p. 17). These departments coincide mostly with the geography of murder analysed above, suggesting that the uneven reach of the state structure has an impact in human rights violations.

Considering Guatemala's strategic position in the Central American drug traffic corridor, the criminal organisations that operate within border regions are primarily Mexican drug cartels, mostly the *Zetas* but there are also elements of the *Sinaloa Federation* (BTI, 2012; ICG, 2010, p. 15). These organisations have settled in these border departments and remote rural areas where the state apparatus has not penetrated, where the drug trade has become a major source of local power and "is fast becoming a rich and heavily armed substitute for the state" (Briscoe, 2009, p. 14). These groups that dominate a territorial region enjoy some kind of 'enforcement capacity', that is, some kind of 'army' that veil for maintaining the group's dominance (UNODC, 2012, p. 22).

If the uneven reach of the state has opened up a space for these criminal networks to control border regions, the establishment of these territorial 'monopolies of force' is further weakening the state capacity. Massive drug profits invariably result in a rise in official corruption (Brands, 2010, p. 22). Therefore, in these regions it is possible to find quite often patterns of local power 'co-optation'. That is, the cartels pay public officers to set up traffic routes and clandestine airstrips, and they also bribe judges, police, military, border personnel to avoid government surveillance or prosecution (*ibid.*).

*Social monopolies of force*

Even without a specific territorial base, there are also organised groups that are disputing the state's monopoly of coercion, what I have termed 'social monopolies of force'. These groups comprise three different actors: the street gangs, the so-called hidden powers, and the private security companies.

There are two kind of street gangs operating in Guatemala: *pandillas*, which are smaller groups with a dozen members that usually operate within a single neighbourhood, and *maras*, larger groups that comprise thousands of members and have a transnational character (Brands, 2010, p. 26). The two main *maras* operating in Guatemala are Mara Salvatrucha (MS-13), with around 5,000 members, and Barrio 18 (M-18), that counts with 14,000-17'000 *mareros* only in Guatemala (UNODC, 2012, p. 28). Gangs are involved in several criminal activities, which often involve murders, that is, violations of the right to life (Brands, 2010, p. 26). They are mostly present in Guatemala City and other urban areas, however, they also spread to smaller towns (UNODC, 2012). They present another problem for the state's monopoly on the use of force, because mostly in some areas on the outskirts of Guatemala City these gangs dispute state control (BTI, 2012).

'Clandestine' or 'hidden powers' are "networks of powerful individuals" (businessmen, politicians, civil servants, current and former military officers, police officials) who use "their positions and contacts in the public and private sectors both to enrich themselves from illegal activities and to protect themselves from prosecution for crimes they commit" (Brands, 2010, p. 19; see also Briscoe, 2009, p. 8; ICG, 2011, p. 9; Peacock and Beltrán, 2003, p. 5). These 'networks of personal connections' are a kind of organised corruption which is supposed to be

infiltrated in state institutions and is often associated with organised crime (UN, 2007, p. 19).

The number of private security guards working in Guatemala is much higher than the 25,000 PNC police officers. In 2011, the government reported that there were 149 registered security companies with around 41,000 agents, plus the additional 80,000 guards that are estimated to work illegally (ICG, 2012, p. 7). The growth of this industry has also reinforced the fact that the state has lost its monopoly on the use of force (Brands, 2010, p. 36; Isaacs, 2009, p. 113).

### 3.2. Institutional capacity

#### A. Institutional design

The institutional/administrative design in Guatemala is characterised by pronounced decentralisation of decision-making. The broad competencies allocated to the independent governors of Guatemala's twenty-two departments results in much less control by central authorities of local police forces and low-level bureaucrats, which enjoy a great deal of autonomy (Desmond Arias, 2011, p. 130). Such a design makes it easier for these low-level officers to become part of local-level informal machines, that is, widespread corruption is the norm at the lowest tier of the bureaucratic apparatus (Brands, 2010, p. 29). Bribes are provided in exchange for impunity: officers are paid to 'look the other away' when they see human rights violations (Desmond Arias, 2011, p. 131).

#### B. Institutional presence

A first indicator of the institutional presence of a state is the number of institutions that it has. In this sense, Guatemala has one of the lowest numbers of institutions of the Central American region: only 121 entities, much lower than Costa Rica (276 institutions) or El Salvador (162) (PEN, 2010a, p. 371).

A second indicator would be the reach of state institutions across its territory, which measures the ability to control and regulate social relations. There are three institutions that aim to protect human rights in Guatemala: the Ombudsman (PDH), the courts, and the Public Prosecutor's Office.

The Guatemalan Ombudsman (PDH) oversees the activity of all public institutions in order to assess their behaviour concerning human rights. Their geographical presence is very limited: most of the auxiliary offices, along with the headquarters, are located in Guatemala City (PDH, 2013b). Of the thirty-six regional offices, only three are located in the department of Petén and only seven in the bordering departments of the so-called "corridor of violence" (*Ibid.*).

Regarding the spatial reach of the courts, since 2000 the department that presents the highest concentration of judges is Guatemala City, while the northern and eastern regions have the lowest concentration (Fernández, 2010, p. 23). In 2009, 47 per cent of the total number of judges was distributed in only three departments (Guatemala City, Quetzaltenango and Huehuetenango), while the other 53 per cent corresponded to the remaining nineteen departments (*Ibid.*). From 2000 till 2009 there has been an increase in the total number of judges (from 696 judges in 2000 to 879 judges in 2009), which *a priori* would suggest a positive move towards strengthening state capacity. However, the geographical distribution of those 183 judges extra further reinforced the spatial unevenness of institutions: 88 judges were allocated only to Guatemala City, while the remaining 95 were distributed among the other 21 departments (Fernández, 2010, p. 24).

Concerning the Public Prosecutor's Office, its territorial presence is also quite limited, since it only counts with offices in 56 out of the 334 municipalities of the country, that is, it only reaches 16 per cent of the total municipalities (PDH, 2013a, p. 43).

### 3.3. Legal capacity

#### A. The judiciary

After the end of the armed conflict, the restructuring and strengthening of the judiciary was a pressing policy issue envisaged in the peace agreements. Between 1997 and 2000, the government undertook an extensive reform, which resulted in an increase in the number of judges and courts (Gavigan, 2009, p. 66). However, this reform focused mainly on the growth of the infrastructure, leaving unattended reforms aimed at improving the quality of the institution, such as higher pay, merit-based recruitment, or effective protection for prosecutors, judges and witnesses (*Ibid.*).

As a result, the judicial system in Guatemala has a number of structural problems that have further deteriorated in the period of study. First, there is a lack of economic independence, since the budget allocated to the judicial system only covers operational costs, such as salaries, but it doesn't cover investment costs, therefore hindering an increase in quality (Fernández, 2010, p. 42). At the same time, the weak protection system of judges results in the lack of external independence: from 2000 till 2010, threatens, attacks, or even murders of judges have not stopped increasing, preventing judges from working without external pressures or influences (*Ibid.*, p. 73). There is also a shortage of offices and personnel: Guatemala has the worst court-population ratio of all Central America, around 20,000 people per court (PEN, 2010b, p. 384). The judge-population ratio is also the worst of the whole region: there is one judge per 16,000 inhabitants, as opposed to Costa Rica (5,000 people per judge) or El Salvador (11,000) (*Ibid.*). These shortages have resulted in a high number of delays in trials: each year, Guatemala resolves less than 50 per cent of the cases presented that year, below the regional average, 77 per cent (PEN, 2010a, p. 385).

**B. Existence of brown areas**

The UN Special Rapporteur on Extrajudicial Killings stated in his last country report that "Guatemala is a good place to commit a murder, because you will almost certainly get away with it" (UN, 2007, p. 17). The reason for this is the abnormal impunity rate existing in Guatemala: according to official figures, less than 2 per cent of the murder cases ever result in convictions (Brands, 2010, p. 32).

Impunity is thus the biggest 'brown area' existing in Guatemala, because it reaches all social groups and radiates towards the whole territory. This abnormally high impunity rate has had two major effects on human rights violations. First, impunity opens up spaces for organised criminal groups and clandestine powers to consolidate their territorial/social monopolies of force: outside of formal law, these groups enforce their agreements through force, and the rule of law has been replaced by some sort of transactional relationships built on the exchange of services between these groups and corrupt state officers, such as the right to passage for drugs in exchange of cash, or no prosecution for rights violations in exchange of economic benefits, (ICG, 2011, p. 14). Second, impunity has led to the widespread perception of a lack of government capacity to ensure the right to life, causing some communities to turn to extra-

institutional vigilantism, facilitating the appearance of social cleansing and lynching practices (ICG, 2010, p. 5).

## V. Summary of findings and conclusion

### 1. Insights

The Guatemalan case shows the explanatory potential of state capacity to understand and interpret noncompliant behaviours with international human rights law. The analysis of the data collected shows that the deterioration of human rights standards in the country in the period of analysis has gone hand in hand with the weakening of the state's coercive, institutional and legal capacities.

The main factors underlying Guatemala's weakening state capacity concern the quality of institutions and their territorial and social reach. In all the dimensions of state capacity analysed, there was a quantitative increase in material capabilities in the period 2000-2009: police officers nearly doubled, the number of Ombudsman offices, judges and courts also increased considerably. This trend could be interpreted as a positive evolution of state capacity. However, numbers do not tell the whole story: despite quantitative increases, Guatemalan state institutions have not improved in terms of quality and penetration.

Regarding coercive capacity, the recycling of former military police forces, often involved in human rights abuses, along with an insufficient allocation of resources has produced an institution with serious problems to perform its functions. This is related to human rights violations in two ways: first, violations by police officers themselves continue to take place. Second, the weakness of the institution has also resulted in poor policing of private actors, opening up a space for further violations. Institutional capacity continues to be characterised by little control of central authorities over low-level officers, hampering monitoring on human rights compliance. As a result of this, corruption is rampant at the local level, and police officers, civil servants and judges are commonly bribed to secure that crimes won't be investigated or prosecuted. This situation has massive implications for human rights compliance: preventing rights violations becomes extremely hard when the state lacks control over its decentralised officers. Regarding legal capacity, the lack of economic and external independence of the judiciary, along with shortages of personnel and a lack of professionalism has resulted in a weak institution characterised by delays in trials, a huge load of pending cases and an abnormal high rate of impunity.

In addition, the greatest problem that Guatemala faces regarding human rights compliance concerns the lack of reach of state institutions. Guatemalan state institutions are characterised by a high level of territorial unevenness. This lack of spatial penetration has allowed for criminal organisations to settle themselves in broad areas of the territory where they have established monopolies of force. The state cannot ensure human rights in these areas, because they are directly not under its control. The same occurs with the lack of penetration of the state in society, reflected in the existence of social monopolies of force instituted by street gangs, clandestine/hidden powers and private security companies.

In short, this analysis shows that the serious weaknesses that Guatemala presents in its state capacity, particularly in the institutional penetration of the territory and state-society relations, is hampering its ability to enforce its commitments under international human rights law. The inability of the state to sufficiently equip and control its enforcement authorities, and the lack of control over certain parts of the territory has indoubtedly affected the situation of human rights in the country.

**2. Implications of this research**

Studying state capacity and its interactions with compliance with international human rights law has some useful theoretical and policy implications. First of all, analysing state capacity as a potential source of human rights noncompliance is still an under-theorised area of research. In this sense, this dissertation has aimed to direct attention towards state capacity as a potential explanation for decoupling between human rights commitments and practices.

Secondly, this dissertation also offers insights regarding the policy-oriented question of how to induce compliance. The traditional framing of compliance as a willingness issue had mostly prescribed incentivisation and persuasion mechanisms to induce compliance. However, these tools might prove ineffective if the root of the nonconsistent behaviour is the lack of the coercive, institutional or judicial capacities to enforce human rights commitments. In this last case, capacity-building programs and assistance that would focus on strengthening the weaker dimensions of state capacity should be the primary mechanism to bridge the compliance gap.

Thirdly, weak state capacity is a much more widespread problem than is usually considered,

and it constitutes a common phenomenon in many democratic countries in the world. Therefore, research on human rights should take this approach further into consideration when studying compliance. For a more complete assessment of the actual effect of weak state capacity on human rights compliance, further research involving comparative case studies could shed light on the actual patterns of interaction.

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