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Guatemala
Legitimacy on the line: Human
Rights and the 2003
Guatemalan elections



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Summary

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Guatemala is scheduled to go to the polls on 9 November 2003, to elect its new President, Vice-President and Congress in an atmosphere which Amnesty International (AI) fears could threaten the legitimacy of the country's political, electoral and judicial institutions.

Election years always signal an increase in human rights violations in Guatemala, and fraud, both in the lead-up to the elections and during the actual polling, is unfortunately, the normal pattern. However, for the 2003 contest, Amnesty International (AI) is particularly concerned at a number of factors which suggest that political violence may be exceptionally high and that there are special reasons to fear that acts of fraud of fundamental importance may be perpetrated.

This document gives general information on the elections: the context in which they are taking place, the candidates, their political parties, the institutions which are to organise and supervise the electoral contest and the issues facing the voters.

It then describes and attempts to assess the implications of the election-related fraud and violence which has already taken place. The document also considers a number of other issues which AI believes must be considered in evaluating the likelihood that the forthcoming polls will be free, fair and transparent, and conducted in an atmosphere free from intimidation and consistent with the rule of law. These include the legality or otherwise of the controversial candidacy of General Efraín Ríos Montt.

Reactions of the international community to recent developments in Guatemala as they relate to the upcoming poll are then described, followed by the steps that AI's membership will be taking to press for a fair and free poll, free of violence and human rights violations, and carried out in a context of respect for the rule of law. The document concludes with the recommendations that the organisation is making to the Guatemalan candidates and the international community regarding the elections.

This report summarizes a 27-page document (11,488 words), : Guatemala, Legitimacy on the line: Human Rights and the 2003 Guatemalan elections (AI Index: AMR: 34/051/2003) issued by Amnesty International on 19 September 2003. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

<http://web.amnesty.org/ai.nsf/news>

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Guatemala

Legitimacy on the line: Human Rights and the 2003 Guatemalan elections

INTRODUCTION

Guatemala is scheduled to go to the polls on 9 November 2003, to elect its new President, Vice-President and Congress in an atmosphere which Amnesty International (AI) fears could threaten the legitimacy of the country's political, electoral and judicial institutions.

Election years always signal an increase in human rights violations in Guatemala, and fraud, both in the lead-up to the elections and during the actual polling, is unfortunately, the normal pattern. However, for the 2003 contest, Amnesty International (AI) is particularly concerned at a number of factors which suggest that political violence may be exceptionally high and that there are special reasons to fear that acts of fraud of fundamental importance may be perpetrated.

This time, though, electoral analysts in Guatemala and abroad warn that alongside use of the more customary falsification or alteration of electoral rolls and election results, the electoral process is likely to be – indeed already has been – manipulated via pressure, threats, violence, terror, intimidation, and improper use of State and municipal resources.

This document gives general information on the elections: the context in which they are taking place, the candidates, their political parties, the institutions which are to organise and supervise the electoral contest and the issues facing the voters.

It then describes and attempts to assess the implications of the election-related fraud and violence which has already taken place. The document also considers a number of other issues which AI believes must be considered in evaluating the likelihood that the forthcoming polls will be free, fair and transparent, and conducted in an atmosphere free from intimidation and consistent with the rule of law. These include the legality or otherwise of the controversial candidacy of General Efraín Ríos Montt.

Reactions of the international community to recent developments in Guatemala as they relate to the upcoming poll are then described, followed by the steps that AI's membership will be taking to press for a fair and free poll, free of violence and human rights violations, and carried out in a context of respect for the rule of law. The document concludes with the recommendations that the organisation is making to the Guatemalan candidates and the international community regarding the elections.

CONTEXT TO THE ELECTIONS: The Human Rights Record of the Outgoing Administration

Guatemala's outgoing President, Alfonso Portillo, came to office in January 2000, as the victorious candidate for the *Frente Republicano Guatemalteco* (FRG), Guatemalan Republican Front. The new president promised progress in implementing the 1996 Peace

Accords which brought an end to Guatemala's long term civil conflict; implementation of the recommendations of the United Nations (UN)-sponsored *Comisión de Clarificación Histórica* (CEH), Historical Clarification Commission; a return to respect for the rule of law; abolition of the notorious military intelligence agency, the *Estado Mayor Presidencial* (EMP), Presidential Security Guard (also often translated as the Presidential Chiefs of Staff); and progress in some of the high-profile unresolved human rights violations which local and international public opinion consider must be clarified if any confidence is to be retained in the will and ability of the Guatemalan state to combat impunity and return to respect for the rule of law.

The Portillo administration has spectacularly failed to deliver on these early promises. Little progress has been made in implementing the human rights-related elements of the Peace Accords; the few convictions gained on emblematic human rights cases after courageous and dangerous long-term battles by relatives or local human rights groups have been repeatedly challenged and/or reversed; the EMP remains in operation despite a succession of specific dates by which the President had promised it would be abolished;¹ while over the last three years or so, the country has experienced a renewed wave of human rights abuses. Human rights defenders and judicial personnel involved in efforts to confront or report on the impunity enjoyed by those who perpetrated the widespread massacres and other atrocities of the conflict years have been particularly targeted. Journalists reporting on these and other human rights issues have also suffered repeated violations. As the elections approach, violence against all three sectors has escalated even further, as detailed below.

A CENTRAL ELECTION ISSUE: THE RÍOS MONTT CANDIDACY

It is commonly believed that a major explanatory factor for the renewed political violence and repression that has characterised the Portillo administration has been the control exercised behind the scenes by General Ríos Montt. The General, a founder member of the ruling political party, the FRG, was military strongman and head of state during what is generally held to be the most repressive period of the Guatemalan army's counter-insurgency campaign in the Guatemalan countryside (1982-1983). For his part in the army-led massacres which the CEH judged to have constituted genocide in four specific areas of the country, the General faces law suits both at home and abroad for genocide and other crimes against humanity.

AI shares the belief that the General's role in ordering and presiding over massive atrocities during the conflict years are reason enough to exclude him from holding public high office. Yet, during the Portillo administration, the General has served as head of Congress, a position which he has used to pack the courts with his own supporters; to orchestrate a campaign of

¹ The most recent date given by President Portillo for the EMP's abolition was 1 November 2003, but AI fears that legislation to govern its replacement civilian agency, the *Secretaría de Asuntos Administrativos y Seguridad de la Presidencia* (SAAS), the Secretariat of Presidential Administrative and Security Affairs, could in fact simply consolidate and recycle the personnel, working methods and ethos of the EMP. On the failure of the Portillo administration to thus far abolish the EMP and replace it with agencies accountable to appropriate civilian authorities with adequate oversight and monitoring authority and capability, see *Guatemala: Accountable Intelligence or Recycled Repression: Abolition of the EMP and Effective Intelligence Reform*, AMR34/031/2003.

terror via Guatemala's clandestine security apparatus and its so-called "parallel power structure,"² and to ensure the approval of payments to the army's former civilian adjuncts, the *Patrullas de Autodefensa Civil* (PAC) civil patrols, to "compensate" them for their service during the conflict. These payments have been widely interpreted as in effect buying former patrollers' continued support for the FRG. It is also feared that patrollers paid off by the FRG may also be used to threaten others in rural areas either not to go to the polls on November 9 or to vote for the FRG. Human rights groups in Guatemala and abroad, including Amnesty International, have also been disturbed that the PAC, which had been responsible for massive violations during the conflict were receiving such payments, while as yet, government compensation payments to the victims of the mass atrocities of the conflict years have been extremely limited and piece-meal.³

Alongside his appalling human rights record the General would also appear banned from running for the presidency under the Guatemalan Constitution of 1985 as modified in 1993, which under its article 186, forbids anyone who participated in a coup (and their relatives to specified grades of removal) from being presidential or vice-presidential candidates.⁴ Nonetheless, the General tried to stand at each of the last two presidential elections. On both occasions, the Constitutional Court (CC) *Corte de Constitucionalidad*, ruled the General's candidacy unconstitutional. Similarly, in 1991 when General Ríos Montt went to the Inter-American Commission on Human Rights (IACHR) arguing that application of Article 186 by the Guatemalan courts had violated his rights as protected under the American Convention the Commission said his complaint was inadmissible as Article 186 did not violate the Convention. In other words, the Commission considered that prohibition of his candidacy was in conformity with Guatemala's Constitution and did not contravene international standards.

However, in the run-up to this year's elections, the control that the General obtained of the CC by ensuring that it was packed with his supporters, resulted in a decision by the Court, after much wrangling between it and the Guatemalan Supreme Court, (CSJ), *Corte Suprema de Justicia*, that he could this time stand, and his slate is, at the time of writing in early

² For a discussion of Guatemala's "parallel power structure," see *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, AMR 34/001/2002.

³ See "*Guatemala: The Civil Defence Patrols Re-emerge*" (AMR 34/055/2002) regarding AI's concerns regarding the re-emergence of these patrols and the compensation payments made to them by the FRG government.

⁴ Article 186 of the Guatemalan Constitution says that the following categories of persons may not stand for the presidency or vice Presidency: a) *El caudillo ni los jefes de un golpe de Estado, revolución armada o movimiento similar, que haya alterado el orden constitucional, ni quienes como consecuencia de tales hechos asuman la Jefatura de Gobierno; c) Los parientes dentro del cuarto grado de consanguinidad y segundo de afinidad del Presidente o Vicepresidente de la República, cuando este Ultimo se encuentre ejerciendo la Presidencia, y los de las personas a que se refiere el inciso primero de este artículo.* a) The leader and principal commanders of a coup d'état, armed revolution or similar movement, which has disrupted constitutional order, as well as those who as a consequence of such actions have taken control of the State; c) Blood relatives to the fourth remove and relatives by marriage to the second remove of a serving President or Vice President, and of any of those described in the first clause of this article.

September, one of only two formally registered. The Court's decision was reportedly based on acceptance of the General's argument that Article 186 does not apply to his candidacy because the current Constitution came into force in 1985 while the coup in which he was involved occurred in 1982. The ruling is, however, still hotly contested by his political opponents, by many high level Guatemalan judicial or former judicial officials, and by Guatemalan human rights groups. The legality and implications of this decision are examined in more detail below. However, it is important to note at the outset that the Ríos Montt candidacy is one of the factors which many in Guatemala and abroad fear may serve to greatly enhance the risk of heightened violence and fraud in both the run-up to and during the actual poll in November.

This is because under Guatemalan law, as president of Congress, the General has enjoyed judicial immunity from prosecution, including as regards the crimes against humanity of which he has been accused. Should he not gain the presidency, his immunity will not be restored and the legal proceedings instituted both in Guatemala and abroad against him (and other Guatemalan military) for these alleged crimes could pose a more serious threat. The conditions would therefore certainly appear to be in place for the FRG to use all manner of illegal actions, including fraud, intimidation and violence, to try and ensure the General's victory.

Of course, other parties can also be expected – and indeed have – engaged in fraud and violence⁵ in their desire to force the FRG from office and so secure access to the lucrative political spoils which traditionally have been siphoned off from public monies and via corrupt business practices by those who hold power in Guatemala.

THE OTHER CONTENDERS

As of the beginning of September 2003, eight political parties had put forward presidential and vice-presidential candidates, although upwards of twenty parties, many of them hasty alliances formed simply for the upcoming elections, may eventually present candidates for Congressional deputies or even for the top offices of president and vice-president. The numbers of parties contesting the elections and even the names of the candidates carrying their banner named can be expected to fluctuate as the elections approach, but for the moment, the important contenders are as follows, given in the order of popular support ostensibly enjoyed as of August 2003:⁶

Presidential candidate Oscar Berger of the Great National Alliance, (GANA) *Gran Alianza Nacional*, was in the lead according to press reports. The Alliance is made up of the *Partido Patriota* (PP) the Patriotic Party; the *Movimiento Reformador* (MR), Reform Movement, and *Solidaridad Nacional* (PSN), National Solidarity.

⁵ Some recent incidents involving other political parties are described below.

⁶ The rankings were reported by the Guatemalan press, based on, they said, the results of recent popular polls. However, in evaluating the reported order of preferences of the voters, it is important to keep in mind that most of the Guatemalan press is owned or controlled by prominent members of the Guatemalan business community which is strongly opposed to the FRG and the candidacy of General Ríos Montt.

After GANA, the polls reportedly showed Alvaro Colom, of the *Unidad Nacional de la Esperanza* (UNE), National Party of Hope, in second position; he is said to be followed by Leonel López Rodas of the *Partido de Avanzada Nacional* (PAN), National Advancement party, the party of former president, Alvaro Arzú who is now the party's candidate for mayor of Guatemala City; and Fritz García Gallont, of the *Partido Unionista* (PU) Unionist Party; with General Ríos Montt and the FRG garnering only fifth position in the public's purported electoral preferences.

Their platforms

Various of the parties have made electoral promises in a number of areas, ranging from votes for Guatemalans resident abroad, rural development, job creation, poverty reduction, enhanced rights and resources for women, combating corruption and restoring the faith of the citizenry in the country's institutions. The FRG has promised advances in health and education and has apparently made efforts to appeal to indigenous voters, telling indigenous peasants for example that the other political parties represent only "whites" and "the rich."

However, a prominent issue upon which all parties apparently feel compelled to take a stand has been citizen security, including via promises to combat the recent wave of killings of girls and young women and the ever-increasing phenomenon of kidnappings and common crime attributed to Guatemala's *maras* or street gangs. Whilst AI completely supports undertakings to investigate and bring to an end the wave of violence against women and agrees that citizen security is a legitimate concern and common crime must be confronted, it would caution that an attack on the street gangs will not in itself address the deep-seated social, political and economic problems which contribute to Guatemala's high crime rate. Neither will such a program address the country's grave human rights problems.

On these and other issues on which candidates have promised action, performances of successive Guatemalan administrations have, as is so often the case throughout the world, singularly failed to deliver on their campaign promises. It is also important to remember that Guatemalan political parties are often highly personalistic, in the old *caudillo* or strongman tradition, and as such are often not ideology-driven.

These factors help explain many of the strange alliances that are customarily formed in Guatemala in the lead-up to presidential elections, and this year has been no exception. Thus, for the upcoming ballot, the very same parties who have criticised General Ríos Montt's candidacy including on grounds of his past involvement in human rights violations and the widespread corruption which has characterized the FRG's years in office⁷ are themselves

⁷ Well-substantiated charges of corruption involving FRG officials and supporters are legion. Amongst the most notorious lingering scandals are charges that front-men opened up 13 secret personal bank accounts in Panama on behalf of President Portillo, Vice President Francisco Reyes López and other leading members of the FRG, using US\$1.5 million of state monies. The government is also accused of directing millions of *quetzales* of government funds into banks in which friends of the president, themselves repeatedly linked to organised crime, had major interests. Both funds and friends then went missing abroad. Government officials also allegedly arranged for funds to be transferred from "friendly" banks to the Army Bank, which was on the point of collapse after military personnel had

fielding candidates for the top posts as well as for Congress who themselves have dubious records in both areas. Other, smaller political parties have charged for example that the *Unionistas* are running people for deputy who were involved in financial scandals involving the privatization of state monies; that the GANA national list is led by Otto Pérez Molina, Secretary General of the PP, who as a high-ranking military official during the conflict years, has been widely linked to massacres carried out during that period; and that the Vice-Presidential candidate of the UNE, which is seen and presents itself as broadly “human-rights friendly,” has named as its vice-presidential candidate Fernando Díaz Durán, an important advisor to the military during the massacres.

Meanwhile, alongside General Ríos Montt, the FRG is running Rosenda Pérez for a congressional seat. Pérez is a highly vocal leader of the ex-PAC, intimately involved in organising some of the PAC’s violent demonstrations demanding their “compensation” packages. Several other FRG candidates for Congress were allegedly involved in the notorious recent political violence which has come to be known as “Black Thursday” (*Jueves Negro*) and “Friday of Mourning,” (*Viernes de Luto*), as discussed in more detail below. Other smaller parties have also admitted that some of their candidates were former members of the PAC.

IRREGULARITIES IN THE LEAD-UP TO THE NOVEMBER POLLS

Many agencies and institutions will eventually observe the Guatemalan elections, as has been the case in the past. By their presence, through providing technical advice and via their observation of the procedures followed, they will attempt to ensure that the elections are free and fair, that there is no fraud or corruption and the polls are conducted in a manner consistent with the rule of law.

bled it dry, by withdrawing its funds for their own personal use. Also notorious was the so-called “Guate-gate” affair of 2000 when General Ríos Montt and other FRG members of Congress were charged with altering legislation on liquor taxation after the relevant bill had already been approved by Congress. These and other irregularities, including alleged embezzlement and fraud at the Ministries of the Interior, Communications and Housing as well as the Guatemalan Institute of Social Security were being investigated by a special prosecutor mandated to look into charges of official corruption. Her inquiries ceased however when she was forced to flee in April 2003. From her place of asylum she charged that the government had refused to offer her protection despite repeated death threats linked to her corruption inquiries, and that the Public Prosecutor had pressured her to drop investigations involving President Portillo and other senior government figures. In the course of 2003, the Guatemalan military, to whom the FRG is closely linked via General Ríos Montt, also faced allegations that it had illegally invested 300 million *quetzales* (US\$37,712,132 at 4 September 2003 exchange rates) in a pension fund abroad and that it had sold arms acquired abroad, apparently illegally, to the Ministry of the Interior at inflated prices. Journalists and owners of newspapers who have reported on these scandals have been the subject of constant threats and harassment. For its part, the United States announced in August that it had placed Guatemala on the list of six countries where it will be investigating the laundering of monies derived from corruption and official involvement in drug trafficking and other illegal organised crime.

However, whether all of these conditions are actually fulfilled on polling day – and past experience suggests they will not be – the lead-up to the elections has already seen occurrences which would appear to have already compromised, at least to some extent, the eventual conduct of the polls and their results. These irregularities have occurred in a number of areas, including as regards eligibility to vote, misuse of funds, delegation of important functions to agencies already involved in fraud of various sorts in the past, and perhaps most importantly, intimidatory tactics against candidates, potential voters and journalists reporting election-related news.

Eligibility to vote

As of August, the Guatemalan press reported that the *Tribunal Supremo Electoral* (TSE), Supreme Electoral Tribunal, responsible for overseeing elections, had found that 45% of the army was registered on the electoral roll. Under Article 248 of the Guatemalan Constitution, those on active military service are expressly prohibited from voting.

The TSE also reported in August that 238 municipalities had not yet provided it with the list of residents who had died since the last elections. The verification of the electoral roll was to have been completed by end August, which left the Tribunal with no time to initiate the legal actions it had earlier announced it would be taking against those municipalities that had not reported the required data. Instead, it now says it will send its own inspectors to verify personal details of registered voters and remove the dead from the rolls.

Responding to widespread allegations from local human rights groups and opposition politicians that the FRG can be expected to falsify electoral lists, organise multiple voting and “vote the dead,” some steps have been announced to ensure that only those eligible to vote, do vote and that they only vote once. For example, ages of voters are to be put on their election eligibility documents with indelible ink, and supervisors of polling areas are to be instructed to check identity cards, to ensure that would-be voters are actually from the areas where they are voting. Even before such measures can be implemented however, reports have already been received of people turning up to register in other municipalities than their place of residence.

Fears have also been expressed that even noting ages on voting documents and closely inspecting identify cards will not stop fraud. Analysts point out that the production of much official documentation is the responsibility of the *Tipografía Nacional*, the Government Printing Office, an agency only too recently involved in a major scandal.⁸

⁸ See AI Urgent Action AMR 34/027/2002 regarding the accusations made in 2002 by the then Director of this agency, that Vice President Reyes had abused his authority and misused public funds by illegally ordered the *Tipografía* to produce leaflets attacking the then head of the Guatemalan Chamber of Commerce, Jorge Briz. The intention of the leaflets had apparently been to cast doubts on Briz’ allegations that under the Vice President’s orders, the *Tipografía* had produced false identity papers for government supporters so they could vote more than once in future elections. Following her allegations, the then Director was forced to flee the country after a series of death threats. Employees who supported her accusations were also threatened and one killed, and her lawyer and an opposition member of Congress acting on her behalf were intimidated into temporary exile.

Meanwhile, a number of civil society groups, including Acción Ciudadana; the human rights group, *Centro para Acción en Derechos Humanos* (CALDH), Centre for Legal Action in Human Rights; FLACSO (*Facultad Latinoamericana de Ciencias Sociales*), Latin American Social Sciences Faculty (which has a role in monitoring the TSE); and the *Instituto Centroamericano de Estudios Políticos* (INCEP) the Central American Political Science Institute, have initiated their own data verification project, titled ‘*Mirador Electoral 2003*,’ Election Observation, 2003. Even the *Cámara de Industria* (Chamber of Industry) has indicated its availability to help assure that the elections are properly run, while still other proposed observation projects would call on the country’s youth to monitor registration and polling.

For its part, thus far the Mirador says it has not found any irregularities on the overall voter rolls, as the growth in registered voters since the last elections seems consistent with population growth. The coalition now intends to run sampling exercises in 20 municipalities where there have been persistent reports of irregularities.

Misuse of funds and transparency as regards donations

As we have seen, corruption of all sorts has been rampant under the FRG government, but a number of particular instances of misuse of funds, including the payments to the PAC⁹ and the mis-use of government funds and equipment at the Tipografía, appeared intended to affect the electoral process.

Such incidents have escalated as the elections draw nearer. In July 2003 for example, the FRG appeared clearly linked to widespread political violence in the capital. The mobs were ostensibly protesting the blockage at that point of the Ríos Montt candidacy, and attacked amongst other targets the Supreme and Constitutional Courts, the TSE, the homes of opposition politicians and the headquarters of media interests whom they perceived or had been told, were leading the opposition to the General’s candidacy. Journalists covering the disturbances or associated with election coverage were also attacked.

Convincing evidence has emerged suggesting that not only did the FRG arm the mobs and orchestrate and lead the violence, but that it also provided the funding to truck the rioters into the capital and feed, lodge and even entertain them during the disturbances. It has further been charged that amongst the vehicles provided by the FRG were some purchased via the *Fondo de Inversión Social* (FIS), Social Inversion Fund, which receives millions of dollars from international cooperation. Some of the vehicles were said to be clearly marked with Guatemalan government insignia. (Again, see below for further details on the July “Black Thursday” and “Friday of Mourning” disturbances.)

There have also been repeated allegations that the FRG government has secretly and illegally transferred funds budgeted by Congress for specific purposes to other uses. AI has reported elsewhere on the unconscionable transfer of funds from areas like nutrition and health at a

⁹ See “*Guatemala: The Civil Defence Patrols Re-emerge*,” *op cit* for more information on AI’s concerns as to the social, political and human rights implications of the re-emergence of these patrols and the compensation payments made to them by the FRG government.

time of famine and epidemics to the notorious intelligence agency, the *Estado Mayor Presidencial* (EMP), Presidential Chiefs of Staff.¹⁰ Now, however as the elections approach, money destined for public projects has reportedly been transferred to agencies controlled by the Presidency, apparently so that public works can be administered by presidential agencies, enabling the FRG to claim direct credit or be seen as responsible for any benefits to the population.¹¹ In August, Congressional Deputy Nineth Montenegro charged for example that monies budgeted to the Ministry of Communications for the construction of a bridge had been transferred to a dependency of the President's Office, which would then, without official authorization, or indeed, the necessary expertise, supervise construction.

Deputy Montenegro also suspected that 13 million *quetzales* (US\$1,633,165.88 at 27 August 2003 exchange rates) provided by the government Secretariat for Support to Indigenous Communities to unspecified communities on no discernible basis and without a specified use could well be used to buy tools and utensils, another thinly veiled exercise in vote-buying. Similarly she suspected that money transferred from the Ministry of Agriculture, Livestock and Nutrition, to the Ministry of Education, to pay the salaries of newly contracted personnel was actually a means of buying the votes of aspirant teachers seeking the notoriously few and hard to obtain new teaching posts available in Guatemala.

The independent news agency *CERIGUA* reported in August on another apparent government vote-buying exercise in Sololá Department, where women were suddenly giving aluminium roofs, fertilizers and access to new credit programs.

In perhaps the most flagrant example yet reported of vote buying, the ex-PAC leader and FRG Congressional candidate, Rosenda Pérez, threatened former patrollers at a political meeting in Petén Department in August that they would lose compensation payments and credits if they did not support the FRG.

The method of financing the elections

Related to the issue of the mis-use of funds is the manner in which Guatemalan electoral contests are financed, seen by many as an invitation to corruption and subornation. That is, each political party is entitled to a small payment from the government per vote gained in the last contest in which it presented candidates. Beyond that, campaigns are privately financed, but the sources of finance do not have to be declared, and can even be anonymous. This, it is charged means that narco-traffickers and others with personal interests can heavily support their favoured candidates, from whom they then expect "favours." Local election analysts say this is a key aspect of Guatemalan elections which must be reformed if the elections and indeed the entire political process are to be rendered more transparent and accountable to the Guatemalan public.

¹⁰ See *Guatemala: Accountable Intelligence or Recycled Repression*, *op cit*.

¹¹ In fact, under the Constitution, it would be illegal should the FRG publicly claim credit for any such projects, since the Constitution specifies that once elections have been called, the President, functionaries of the Executive, mayors and municipal functionaries are forbidden from publicizing works and initiatives they have carried out.

Electoral-related violence

Perhaps the most flagrant distortion of the electoral process however, is the use of violence and threats to intimidate and eliminate candidates and voters. Ostensibly committed to avoiding such a situation, political leaders signed a non-violence pact at the start of the campaign. Clearly however, it has singularly not been respected, as even the most cursory review of daily events in Guatemala will attest: Since the start of the year for example, 11 political leaders have been killed, with the *Alianza Nueva Nación* (ANN) New Nation Alliance, the group most heavily hit. Six of its party leaders have been killed in the eastern department of Chiquimula alone; one had his tongue cut out. The killings have been attributed to the FRG.

The UNE has also suffered losses; on 10 August, Fernando Reyes was shot to death in Santa Rosa Department by men in balaclavas, after attending a UNE meeting. Five days earlier, the former mayor of San Miguel Petapa in the department of Guatemala and UNE congressional candidate Ismael Mancur Donis, was shot and killed by three unknown men. And three days before that, on 2 August, the UNE candidate for mayor for San Miguel Pochuta in Chimaltenango Department was ambushed by armed men. He survived, but his wife was killed.

The Unionist Party had been targeted in June, when one of its leaders was shot and killed, reportedly by the FRG mayor of San Cristobál Verapaz in Alta Verapaz Department. The mayor apparently objected to the slogans the victim was painting on rocks in support of the Unionists.

In addition to those killed, many other politicians and their families have been threatened and some have withdrawn their candidacies in fear of their lives, a phenomenon which obviously also distorts the Guatemalan electoral process.

Disturbances have also occurred during efforts to hold campaigning meetings, apparently to intimidate voters. On 22 August for example, FRG supporters allegedly threw rocks at a helicopter in which PAN leaders were travelling to election rallies in the interior of the country.

The FRG has responded to allegations that rival parties' rallies have been violent attacked by claiming that the reports are fabricated or exaggerated by opposition parties to explain low turn-outs to their meetings. However, the FRG has itself also been attacked when carrying out election-related activities. General Ríos Montt and his supporters were stoned for example when they arrived in the Rabinal area, Baja Verapaz in June 2003 on the very day that villagers were reburying victims of the army's counter-insurgency campaign in their area, orchestrated and implemented under General Ríos Montt in the early 1980s. The victims had previously been exhumed from mass clandestine graves. General Ríos Montt and his entourage had to be air-lifted to safety.

In the aftermath of this incident, threats and intimidation have escalated against the forensic anthropologists who had carried out the exhumations and assisted in the identification of villagers' relatives. Their efforts are intended to provide evidence for the legal case local villagers are trying to build against those allegedly responsible for carrying out the massacres.

Local human rights activists, Mayan priests who have officiated over Mayan re-burial services, relatives of the victims, journalists reporting on the exhumations and law suits and on the Rabinal and other election-related violence, have also been threatened and intimidated. In late August, Thelma Peláez Pinelo de Lam, Guatemala's Special Prosecutor on Human Rights Defenders, reported that her office had been raided, apparently by a member of the EMP. The incident occurred on the day after she announced that the EMP car which had been following forensic experts and those working with them in the Rabinal exhumations had been identified.

The threats and intimidation in the Rabinal area are apparently in reprisal for the villagers' understandably angry reaction to the FRG's presence on the day of the re-burial, but are undoubtedly also reflect military and FRG efforts to impede local attempts to prove responsibility for human rights violations which took place while General Rios Montt was head of state.

Demands from local human rights groups and the United Nations (UN) mission in Guatemala, MINUGUA, that the threats be investigated, and a judicial order calling on the Ministry of Defence to give information on the EMP car, have thus far been ignored.

Black Thursday and Friday of Mourning

However, perhaps the most disturbing incidents of political violence in the context of the current political campaign came on 24 and 25 July, which as explained, have come to be known in Guatemala as "Black Thursday" and "Friday of Mourning."

In the early morning hours of 24 July, trucks carrying thousands of peasants, many of them reportedly former PAC members or government employees, began to converge on Guatemala City from the Guatemalan countryside. Once in the capital, the crowd was reportedly issued with guns, machetes, clubs, gasoline, and tires to burn. Witnesses said that those wearing t-shirts which identified them as government employees were issued with replacement, plain t-shirts.

Days earlier, General Rios Montt's efforts to run for the Presidency had once again been temporarily blocked by the Guatemalan courts. The General publicly denounced the decision as "illegal," and warned that "When the law is not followed, violence can occur," ("*... cuando no estamos en ley, puede venir la violencia.*") He announced that he and his party would be unable to control the anger of his followers, ("*Puede ocurrir que la dirección y los cuadros del partido no estén en condiciones de controlar a sus simpatizantes.*") "It could be that the leadership of the party won't be able to control the violence of their supporters,") words which many observers took to be a direct threat of the violence that then ensued.

The protestors, led by masked men, said to have been recognised as officials of the FRG, menaced and/or carried out attacks against various entities. Named FRG Congressional deputies and other high-ranking party officials were allegedly also seen giving orders to the armed gangs. Institutions targeted included the country's Supreme and Constitutional Courts; the TSE; the offices of the newspaper, *El Periódico*; and El Centro Empresarial, (business centre), a building housing the headquarters of a media group which the mob either believed or had been told, was leading the opposition, along with "the rich," to General Ríos Montt's candidacy. According to Red Cross figures, the rioters held four hundred people hostage at the Business Centre for several hours.

The homes of former Guatemalan president, Alvaro Arzú and of Rodolfo Rohrmoser, one of the magistrates of the CC who had voted against the candidacy of the General, were also targeted by armed groups. Rohrmoser had to be airlifted from the scene by helicopter to save his life. Earlier, several magistrates of the CC had received death threats.

Hooded men were also seen near the headquarters of several important human rights groups, and by mid-day Thursday, 24 July, all major human rights groups had closed down. Some human rights defenders, including two who had been told the day before that if they were found on the streets the next day they would be beaten, sought refuge at the Myrna Mack Foundation, a leading local human rights group. They hoped that the limited security provided there might offer them some safety: the Foundation had been granted security measures (*medidas cautelares*) by the inter-American human rights protection system following previous threats. The assembled human rights leaders asked the security agents guarding the Mack Foundation for reinforcements, but were told this could not be done without orders from superior officers, which had not yet been received and which the security agents present did not appear to be seeking.

Throughout the day, journalists also came under attack, again, because of their perceived role in opposing Ríos Montt's candidacy. Photo-journalist Juan Carlos Torres of the daily newspaper, *El Periódico*, was drenched in gasoline by armed protestors who destroyed his photographic equipment and apparently intended to set him alight. He managed to flee, but required hospitalization. Further attacks were reported against Edgar Valle of *Notisiete* and his cameraman.

Héctor Ramírez from *Radio Sonora* died after fleeing the mob. Initial reports suggested he had succumbed to a heart attack, but later, a former CC president stated on Guatemalan television that his skull showed serious bruising, and said that in her view, his death, whether from the head wounds or the heart attack that they apparently provoked, constituted homicide.

The events were so threatening that all schools sent their students home, and the judicial branch closed down all of its buildings after receiving several bomb threats. Foreign embassies also shut down, but many of their personnel were unable to reach their homes because the area of the city where many live had been blocked by the mob.

In fact, the situation appeared so unstable that some sources in Guatemala feared a coup. Even the suggestion of such a possibility is of course another destabilising element in any attempt at elections free from duress or any form of coercion.

Government response

As these events began to unfold early on the morning of the 24th, there were widespread demands from civil society, the international community and government officials, including Guatemala's Human Rights Procurator (PDH) that the government act to control the disorder and protect its citizens. However, it was not until 3:10 pm that President Portillo announced that he had given orders at 2:30 pm for the combined forces (military and police units acting together) to control the violence. By 6:30 pm, they had still not made an appearance, and it was only at that same hour, that the police, acting alone, removed the demonstrators holding the hostages at the Business Centre. However, the police made no arrests.

Given the President's announcement at 3:10, demonstrators had plenty of time to leave the capital before any police or army presence was visible. Some demonstrators headed north out of the city, firing at cars parked near the US Embassy as they passed. Some 300 demonstrators remained in front of the Supreme Court building, where they were guarded by armed men firing shots into the air. Eventually on the Friday, the remaining mobs dispersed and returned to their homes, after public statements by General Ríos Montt which could only be interpreted as his sanction to do so.

Despite demands from many sources, including the son of the journalist who died in the riots, that the role of the FRG in the violence be investigated and those responsible brought to justice, no such investigations have been initiated. Instead, the riots appeared to have secured the General exactly what he wanted. Five days later, on 30 July 2003, the CC ruled against an appeal that its earlier decision to allow the General to stand was unconstitutional. This in effect reversed the judgements it had made prior to Guatemala's two previous elections, and permitted the registration of General Ríos Montt as a presidential candidate. The Court further resolved that no further appeals to this decision would be entertained.

Critics, including some of Guatemala's most eminent constitutional jurists, themselves past presidents of the Guatemalan Bar Association and/or magistrates of the Supreme and Constitutional Courts, have argued that the CC's decision was itself unconstitutional. They further charged that the president of the Court, an FRG supporter, had ensured that the magistrates who ruled on any important decisions concerning the Ríos Montt candidacy always included a majority of FRG supporters. This was reportedly done by pressuring magistrates who did not support the FRG to withdraw from participating in such decisions, including via anonymous threats and intimidation, and choosing from amongst the available official substitutes those who could be counted on to follow the FRG line.

At the time of writing in early September 2003, the acrimonious and highly divisive controversy regarding the General's bid for the presidency continues, both at grass roots level and at the very highest levels of the Guatemalan judiciary: the CSJ has continued to examine appeals from other political parties contesting the General's candidacy despite the CC ruling that no further appeals were to be entertained, while for its part the CC is hearing an appeal from the FRG contesting the CSJ's decision to hear those appeals.

Guatemala is thus facing a severe test of the legitimacy and institutionality of its courts, and its judicial and electoral processes. Amnesty International is deeply concerned that the stage is thus set for further contention and political violence.

Intimidation in the wake of the CC decision

Further intimidation was not long in coming after the events of Black Thursday and Friday of Mourning. In their aftermath, a new group calling itself the *Frente Cívico* (Civic Front) was formed by a number of human rights groups, journalists, prominent members of the judiciary, national and local civil and political organizations including political parties, and common citizens who intended to contest the Ríos Montt candidacy and to try and avoid electoral fraud. On 11 August, days after the group announced its intention to take legal action against the CC magistrates who had voted in favour of Ríos Montt's candidacy, prominent members of the coalition, including presidential candidate, Alvaro Colom, received letters containing a series of vulgar death threats against them. The letters accused them of "having damaged Guatemala's image" and "undermined the rule of law," through their denunciations concerning the July disturbances and the CC's decision. The letters expressed support for the General; local analysts thought it significant that the messages used language which they considered characteristic of the Guatemalan military.

Those members of the Court who voted against the General's bid to run for the presidency also report continuing threats and intimidation.

Raid on the Human Rights Procurator's Office

One of the most disturbing events which came in the wake of the July disturbances was the 26 August raid on the offices of the Human Rights Procurator (PDH). Just days before the Office was set to release its report on the events of Black Thursday and Friday of Mourning, and in the wake of repeated renewed threats against personnel of the institution including the Procurator himself, the PDH office in Guatemala City was broken into, and computers, compact discs and other data and equipment stolen. The information taken reportedly related to electoral irregularities in the countryside, the Procurator's findings regarding the political violence of July and the recent escalation in abuses against women. The case is pending investigation.

When the PDH's report on the violent events of July was then published on 30 August, it charged that at least 14 public officials from both the capital and the countryside had been responsible for the two days of rioting in the capital. The President, Vice-President and the Minister of the Interior were also cited for having failed to fulfil their constitutionally

determined responsibilities to protect the citizenry and maintain the peace. There have as yet been no official findings as regards the raid on the PDH office, and the PDH's findings of FRG involvement in the July violence have been ignored or rejected by prominent government officials.

THE RIOS MONTT CANDIDACY: Amnesty International's analysis of the legal issues

AI has analysed the legal issues that have arisen as the controversy over the Rios Montt candidacy has developed. A central issue is of course the Constitutional ban on those that have participated in or come to office through coups from standing for the Presidency. Here, the general argues, and as noted, the CC's decision was reportedly in accord with his view, that he came to power in a coup which occurred before that Constitutional provision was in place. However, in AI's view, the issue is that the election in which he wishes to stand is occurring under the provisions of the current Constitution, which clearly bans his candidacy.

AI therefore considers that the decision of the CC to permit the Rios Montt candidacy lacks juridical justification and foundation and is unconstitutional.

Furthermore, another relevant clause of the Constitution is article 46, which establishes that international human rights treaties and covenants are to have pre-eminence over internal law. Whether this is interpreted to mean that such treaties prevail over internal law, or whether they are to be understood as incorporated into internal law as a higher element of that law, in either case, other laws and norms of lower status and certainly all jurisdictional rulings must be in accord with such treaties. Thus, there is no doubt that the decisions of the CC must be coherent with and not contradict these agreements.

In this regard, the 1991 decision of the IACHR, already referred to, is particularly relevant, in determining that the constitutional prohibition of General Ríos Montt's candidacy was in conformity with the Convention.

THE POLITICAL REALITIES AND INTERNATIONAL OBSERVATION MISSIONS

AI believes that the presence of the several international election observation missions that are planned or already in place will be crucial. As noted, their role will be to give technical advice on organisation of the elections but also to determine the "legitimacy" of the elections, not only with respect to issues like absence of intimidation and violence, eligibility of voters, absence or presence of fraud in both the polling process and the final results, but also concerning relevant judicial elements, including those discussed in this document.

In this regard, under Article 272 (a) and (d) of the constitution, it is the CC that in all cases is to make decisions on constitutionality and unconstitutionality, while in appeals filed against the CSJ, it is the CC that is to serve as an Extraordinary Tribunal of Appeal.¹² However,

¹² (a) *Conocer en única instancia de las impugnaciones interpuestas contra leyes o disposiciones de carácter general, objetadas parcial o totalmente de inconstitucionalidad;* (d) *Conocer en apelación de todas las impugnaciones en contra de las leyes objetadas de inconstitucionalidad en casos concretos, en cualquier juicio, en casación o en los casos contemplados por la ley de la materia;* (a) To be the

while it may well be that the CC's decision is judicially and politically irreversible, AI believes that international election observer missions should include the issue of the constitutional legitimacy of the CC's decision in their assessment of the degree of legitimacy and fairness of the elections, and the extent to which they comply with international standards.

However, if current press reports in Guatemala are borne out, that the FRG has lost a great deal of support because of the July political violence, it may not in the end be victorious, indeed may not even reach the expected late December second round run-off, and the question of the impact of General Rios Montt's candidacy on the legitimacy of the elections will be of less central importance.

INTERNATIONAL CONCERN

The political violence in Guatemala in the lead-up to the elections and the likely impact of violence and fraud on the conduct and legitimacy of the elections have obviously been widely condemned within Guatemala. The Guatemalan Catholic Church for example, subsequently called on its followers to reject any candidate who promotes violence or corruption.

The events also evoked numerous expressions of international concern. To cite just a few:

The Organization of American States (OAS) had already established an electoral observation mission in the country as of 10 July and announced that it will maintain a presence throughout the electoral process. On 19 August, Valentín Paniagua, head of the mission, expressed concern at the July violence and asked the leaders of the FRG and the authorities to identify and bring to justice those responsible. This would contribute he said, towards bringing to an end "the escalating violence and any other attempt to obstruct the will of the Guatemalan people who want peace and wish to contribute to a peaceful, transparent and fair process." (*la escalada de violencia y con cualquier intento de entorpecer la voluntad de la sociedad guatemalteca en pro de la paz y de contribuir a la celebración de un proceso pacífico, transparente y justo.*")

Similarly, a declaration by the European Union's Heads of mission in Guatemala expressed their concern following the July events that "competent authorities did nothing to re-establish public order." Also in response to the violence, the European Union moved forward the planned dates for inauguration of its election observation and sent a representative to the country at the end of August to discuss details for its installation. In the same month, the European Commission's head of mission, Phillipe Combescot, reacting to the 26 August raid on the offices of the Human Rights Procurator's office, publicly stated the Commission's belief that the parallel power structures operating in the country were linked to and sheltering behind the FRG. He made clear the Commission's view that the FRG had been linked to the events of "Black Thursday," and warned that Guatemala's relations with the 19 member states

sole body hearing judicial challenges against laws or general ordinances or decrees as being partially or wholly unconstitutional; (d) To hear appeals on all judicial challenges against laws as being unconstitutional in the context of concrete cases, judicial proceedings, Supreme Court hearings, or in other cases as established by the law.

of the Commission would be severely affected if the selection of the country's next government were not the result of proper legal processes.

As early as 2002, highly placed United States (US) officials had already made publicly clear that a Rios Montt victory would have an adverse affect on US trade and aid relations with Guatemala. Following the events of Black Thursday and Friday of Mourning, a United States (US) Congressional delegation visited Guatemala and reiterated previous warnings that the proposed regional Free Trade Agreement which would include Guatemala, would be prejudiced if the upcoming elections were won through fraud. Further, the Department of State has warned US citizens of possible violence in the context of the forthcoming elections, a step which may presage a formal "travel advisory." There can be no question that such a measure would have an enormous impact on Guatemala's tourism industry and earnings.

Meanwhile, MINUGUA, the UN Mission in Guatemala, has stated that the events of July indicate the crucial importance of re-vitalising the Peace Accords and the CEH recommendations, and has called upon candidates to make this a central element of their proposed political programs.

AI'S RECOMMENDATIONS AND PROGRAM OF ACTION IN THE LEAD-UP TO THE POLLS

For its part, AI's concern at the likely fraud, corruption and electorally-related violence which have already occurred, and its fears that these phenomena may escalate in the immediate lead-up to and the actual elections themselves, has led it to make the following recommendations to Guatemala's presidential and vice-presidential candidates; to second governments and the international community; and to international financial institutions and multinational corporations operating in Guatemala.

AI is sending an open letter to all candidates with its recommendations and further suggestions as to the steps it believes victorious candidates must take to return Guatemala to a return to respect for human rights and the rule of law. The open letter and AI's recommendations are reproduced as Appendices I and II to this document (also see AI Index: AMR 34/052/2003).

The organization is also initiating an international program of action via AI members throughout the world who will be approaching their own governments to relay to them the recommendations set out below, as to what AI believes second governments and the international community can do to try and ensure that the November elections are fair and transparent, and conducted in accordance with the rule of law.

AI's recommendations to Guatemala's presidential and vice-presidential candidates

AI believes that it is incumbent upon all Guatemalan candidates for the presidency and vice-presidency to make clear to the Guatemalan public and to the international community, the programs they would implement on a range of important human rights issues. These are set out in its open letter to candidates, reproduced in Appendix I to this document.

AI has also called on the Presidential candidates to commit to implementing recommendations in a number of areas if elected. These recommendations, reproduced in

Appendix II to this document, cover the following areas: reactivation of the 1996 Peace Accords and the recommendations of the Historical Clarification Commission (CEH); strengthening the justice system and ending impunity; reforms to the armed forces and the national security system as called for in the Peace Accords; supporting and assuring the security of human rights defenders; combating violence and discrimination against women; improving the conditions of the rural and indigenous sectors in Guatemala; ratifying and implementing relevant international instruments and the recommendations of the international community, as made for example by the series of UN special rapporteurs who have visited Guatemala in recent years; and complying with principles, decisions and rulings of the inter-American system of human rights protection.

AI's recommendations to second governments and the international community

In addition to its recommendations to Guatemala's presidential and vice-presidential candidates, AI suggests the following steps which it feels second governments and the international community should take as a means of contributing to efforts to ensure fair and transparent elections in Guatemala, conducted in accordance with the rule of law and international human rights standards, and that the eventual victorious candidates commit themselves to taking steps to improve the human rights situation in the country.

1. Election observation missions

AI warmly welcomes undertakings to send international delegations to observe the Guatemalan elections. It urges entities, governments and inter-governmental organisations planning to send such missions to consider sending them as quickly as possible, and to allocate funds to enable them to stay on in the immediate post-electoral period when it fears there would still be a high risk of further politically-related violence.

AI further urges that all such missions report fully, publicly and in-depth on any indications of pre-election fraud, mis-use of funds and electorally-related violence, as well as any fraud or violence during the actual polling. It urges that the mandates of observation missions include determination of the "legitimacy" of the elections, not only as regards issues like absence of intimidation and violence, eligibility of voters, absence or presence of fraud in both the polling process and the final results, but also with respect to relevant judicial elements, including as regards the legitimacy of the candidacy of General Rios Montt, as discussed earlier in this document.

2. Approaches to candidates

AI urges second governments, second government national political parties and intergovernmental institutions to urge all Guatemalan parties contesting the elections, particularly those fielding presidential and vice presidential slates, to make publicly clear their total opposition to any form of election-related fraud or violence, including human rights violations.

It further urges second governments and national political parties to urge the Guatemalan parties contesting the elections, again particularly those fielding presidential and vice presidential candidates, to make clear both to the Guatemalan electorate and to the

international community their candidates' intended programs on the series of recommendations set out in Appendix II to this document. In this regard, AI believes that it is particularly important that candidates make clear the steps they intend to take to:

Re-activate the Peace Accords particularly as regards human rights protection; confronting social and racial inequality; and demilitarization of society, including the replacement of the EMP by an agency that is monitored by and accountable to appropriate civilian agencies.

Implement the recommendations of the CEH, particularly as regards combating impunity, protecting human rights defenders, clarifying the fate of the "disappeared" including the children who "disappeared" during the conflict and compensating the victims of the government-backed violence of the conflict years.

Implement the recommendations of the various representatives of the international community that have visited Guatemala in recent years, including the UN Commission on Human Rights Special Rapporteur on the Situation of Human Rights and Basic Freedoms of Indigenous Peoples; the UN Secretary General's Special Representative on the Situation of Human Rights Defenders; and the UN Special Rapporteur on the Independence of Judges and Lawyers; and comply with the principles, decisions and rulings of the inter-American system of human rights protection..

3. Electorally-related violence and the Guatemalan electoral system

Second governments and intergovernmental agencies should press the authorities to take adequate steps to ensure the physical security of all those contesting the elections, those groups attempting to monitor them, and the voters. They should raise cases of electorally-related violence or abuses which are brought to their attention with the authorities, pressing them to investigate the incidents and bring those responsible to justice.

Whatever the outcome of the forthcoming elections, AI urges second governments to press for electoral reform in Guatemala to ensure that future contests are free from fraud, violence and human rights violations and that the governments they elect operate transparently and in accordance with the rule of law and international human rights standards.

4. The elections and political and financial support for Guatemalan institutions, the Peace Process and the international presence in Guatemala

AI also urges second government and inter-governmental institutions to make clear to all parties contesting the elections and particularly to their presidential and vice-presidential candidates that continued international support for the peace process in Guatemala must be premised upon transparent elections, free from violence and intimidation, and conducted in accordance with the rule of law and international human rights standards. They should also make clear that any cooperation funding from their country or institution which may be negotiated with the newly elected administration, particularly as regards military, security or police transfers must not be used in any way that would contribute to Guatemala's grave human rights and citizen security problems, and should indicate that they will insist on monitoring mechanisms to ensure that this is not the case.

With particular respect to American organs and governments who are member states of the OAS, the European Union or the Consultative Group, AI urges that member countries acting alone and in unison make clear that their international support for the peace process in Guatemala must be premised upon transparent elections, free from violence and intimidation, and conducted in accordance with the rule of law and international human rights standards.

Recommendations to international financial institutions and multinational corporations operating in Guatemala

1. AI calls upon multinational corporations with investments or presence in Guatemala and the Inter-American and World Banks to make publicly clear to both the current authorities and the political parties contesting the elections, the importance they attach to fair and transparent elections, conducted in accordance with the rule of law and international human rights standards and that they recognise that sustainable development which benefits all will not take place until the policies and practices which give rise to electoral fraud, election-related violence and human rights abuses have ended.
2. The banks and multinational companies should raise cases of electorally-related violence which are brought to their attention with the authorities, pressing them to investigate the incidents and bring those responsible to justice. The Banks and multinational corporations should also press the authorities to take adequate steps to ensure the physical security of all those contesting the elections, those groups attempting to monitor them, and the voters.

Appendix 1

Guatemala

Open Letter from Amnesty International to Guatemalan Presidential Candidates for the November 2003 Elections

19 September 2003

Amnesty International (AI), an international human rights organization with over one million members in over 100 countries around the world, has consistently expressed its concerns to consecutive Guatemalan governments about the grave human rights situation in this country. The November 2003 elections signify a key opportunity for the country to turn away from its dark past. In this electoral year, Amnesty International is writing to you, the candidates for the Presidency, in the hope that you will acknowledge the serious nature of this situation and commit yourselves to making respect for human rights a political priority.

Respect for human rights is a fundamental issue that traverses all aspects of public life. Respect for human rights is not a matter of rhetoric or appeasing the concerns of the international community. Human rights are a basic requirement for achieving human dignity. Ensuring respect for human rights means upholding the rule of law for all citizens, it means alleviating poverty and discrimination, it means equality and tolerance for the opinions of all sectors of society. The principles of human rights underpin democratic societies and form the bedrock of governments and state institutions dedicated to ensuring security and stability for all. While resources are an important factor in helping to improve human rights, in the experience of Amnesty International, the key factor for making respect for human rights a reality is political determination.

The internal armed conflict brutalised Guatemala, deeply dividing the country's population and militarising Guatemalan society; this left behind an intricate legacy of structural violence, militarisation and social fragmentation. This legacy has contributed to spiralling crime and homicide rates in post-conflict Guatemala. However, it has also allowed and encouraged the perpetuation of a culture of fear and impunity, gradually precipitating what has been termed a human rights 'meltdown'.

In this context, and as a result of their work, human rights defenders and members of the legal community campaigning for improvements in the human rights situation have been killed and are constantly subjected to harassment and death threats. Successful prosecutions for such crimes remain the exception.

AI acknowledges the complexity of the challenges facing a new Guatemalan government. However, it is the organisation's strongly held belief that concerted efforts must

be made to overcome the legacy of the past, if the country is to enjoy long-term stability and security.

As the presidential candidates, you have a solemn duty and responsibility to express your unequivocal commitment to upholding international human rights standards and principles and the rule of law.

In this context, support for the framework for socio-political, economic and cultural transformation achieved through and enshrined in the United Nations brokered Peace Accords and the recommendations of the Comisión de Esclarecimiento Histórico (CEH), should be an urgent national political priority.

AI believes that strict adherence to the commitments of the Peace Accords and the recommendations of the CEH should represent the cornerstone of a renewed national political agenda to address the causes and consequences of Guatemala's thirty-six year civil conflict and to provide some guarantees that the atrocities of the past are not repeated in the future. Moreover, the successful implementation of such an initiative is critical if international support for Guatemala's peace process is to continue, as underlined by the Consultative Group at its meeting in May 2003.

Central to Guatemala's success in overcoming its past is a coherent program to strengthen the judicial system and the administration of justice and to ensure the restitution of the rule of law. This initiative must ensure that the Ministerio Público and all Special Prosecutors Offices receive sufficient resources and enjoy the political support to allow them to carry out exhaustive, impartial and prompt judicial investigations. A comprehensive witness protection program must be an integral element of such a policy.

Moreover, the endemic ineffectiveness of the judicial system permits continued pernicious and widespread impunity for the perpetrators of the gross human rights violations carried out during the armed conflict, which, in turn, further weakens those institutions responsible for the administration of justice. Candidates therefore have a duty to commit to supporting domestic and international initiatives to bring to justice those responsible for past human rights violations, not only as a means of ensuring adherence to national legislation and international law, but in order to arrest any further deterioration of the judicial system.

In this regard, candidates must also make clear their explicit commitment to support investigations into and subsequent legal proceedings against those groups and individuals involved in illegal armed groups and structures who are implicated in ongoing attacks against human rights defenders, activities linked to corruption and past human rights violations. Unless such parallel structures are dismantled, the nexus between impunity, human rights violations and militarisation will not be broken and long-term stability in Guatemala will be increasingly unlikely.

AI would also like to take this opportunity to express its concern over the crucial importance of committing to measures aimed at consolidating civilian power over and oversight of the armed forces. As has been widely documented, the Guatemalan Armed Forces and members of the Civil Patrols (PACS), their civilian adjuncts, were responsible for systematic atrocities against the civilian population during the armed conflict. Notably, in its final report,

the UN-sponsored CEH accused the State of genocide against the Mayan population in four regions of the country during the 1980s.

While a degree of progress has been made in reining in the power of the military since the end of the civil conflict, significant commitments in the Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democracy remain yet to be implemented. The armed forces continue to take part in internal security operations, through joint military-police units named the *Fuerzas Combinadas* and the utilisation of troops in regular law enforcement activity. Furthermore, while the present government of President Alfonso Portillo has committed to dismantling the infamous *Estado Mayor Presidencial* (EMP) by the end of October 2003, AI is seriously concerned that the legislation governing its replacement civilian agency, the *Secretaría de Asuntos Administrativos y Seguridad de la Presidencia* (SAAS), actually consolidates military power over civilian affairs and 'recycles' the personnel of the EMP within the SAAS. Moreover, the budget of the Armed Forces has not yet been brought in line with the commitments enshrined in the Peace Accords. As a result, resources set-aside for other Ministries and social programs have consistently fallen short.

Poverty incidence continues to be shaped by an acute ethnic dimension in Guatemala. The indigenous population, having borne the brunt of the violence of the armed conflict, remain statistically the most socially and economically excluded population and, according to the United Nations Development Program (UNDP), demonstrate the lowest human development indicators. They, above all, also suffer the consequences of Guatemala's highly unequal system of land distribution. In recent years, however, both indigenous and non-indigenous people have experienced the severe crisis in rural Guatemala that has led to widespread malnutrition and chronic unemployment.

AI believes it to be imperative that you, the presidential candidates, commit to rural development and poverty alleviation programs that introduce measures that facilitate access to resources, including land, for the campesino population; such policies should also include measures to ensure the peaceful and harmonious resolution of land conflicts, as stipulated in the Peace Accords. Without the urgent implementation of such a program, there is likely to be an unprecedented societal crisis in rural Guatemala, the human rights implications of which, are extremely disturbing.

The challenges that lie ahead are considerable, they are not, however, insurmountable. The Peace Accords and the recommendations of the CEH provide a clear framework for social improvements in Guatemala. Furthermore, international observers, such as the UN Special Representative on Human Rights Defenders and the Special Rapporteurs on the Independence of the Judges and Lawyers and on the Rights of Indigenous Peoples, have submitted detailed reports and recommendations to the government of Guatemala, which could significantly contribute to the development of comprehensive political policies in these areas.

In closing, AI would like to make clear its serious concern over the political violence that has accompanied the electoral campaign to date. In recent months, Guatemala has experienced the killing of political party activists and candidates, attacks and intimidation against members of the judiciary, human rights defenders and journalists, and an extreme rise in

killings of and violence against women. This escalating wave of violence and intimidation not only demonstrates the severity of the present human rights crisis, but also threatens the degree to which free and transparent elections can take place.

AI urges you, the presidential candidates, to lead by example, by condemning all political violence and impressing upon society at large the importance of maintaining the rule of law during the potentially unstable months ahead.

Finally, Amnesty International believes it to be critical that you to take into account the concerns voiced in this letter and the recommendations that accompany it. We hope that all presidential candidates and the future government will be willing to accept our offer to engage in an open dialogue with AI and other human rights organisations to discuss further these issues of utmost importance and urgency.

Yours sincerely,

Irene Kahn
Secretary General

**Appendix II – AMNESTY INTERNATIONAL’S RECOMMENDATIONS TO
GUATEMALAN PRESIDENTIAL CANDIDATES, 19 September 2003**

Amnesty urges the candidates to commit to implementing the following recommendations in their electoral programme so that the forthcoming presidential term may culminate in the full restoration of the rule of law in Guatemala. Some of these measures will require administrative directives, others the introduction of new legislation and constitutional amendments. Many will require only the effective implementation of provisions already existing in Guatemalan legislation and the Peace Accords. All require, first and foremost, political will:

On the Peace Accords and the Conclusions and Recommendations of the *Comisión de Esclarecimiento Histórico* (CEH), Commission for Historical Clarification

- To establish a national agenda for the revitalization of the Peace Accords as an urgent State priority, drawing up a programme of goals, responsibilities and deadlines for implementation of the agenda, with particular focus on human rights-related aspects;
- To face up to the historic ethnic and racial discrimination, urgently and fully implementing the Accord on the Identity and Rights of the Indigenous Population;
- To evaluate implementation of the CEH recommendations to date and establish mechanisms for implementing those recommendations outstanding;
- To urgently implement the national system of reparation for victims of the armed conflict and to guarantee a budget for this. To desist from remunerating those accused of having violated the population’s human rights during the internal armed conflict.

On Strengthening of the Justice System and Combating Impunity

- To strengthen the *Procuraduría de los Derechos Humanos* (Office of the Human Rights Ombudsman) and the *Fiscalías Especiales* (Special Prosecutors Offices), increasing their human and budgetary resources and providing political support to their roles;
- To implement the witness protection programme immediately and with an adequate budget;
- To strengthen the justice system, bringing an end to impunity and an urgent resolution of past and current cases of human rights violations, such as the Mack, Gerardi and Dos Erres cases and the cases of genocide that are currently before the national authorities;
- To support the immediate establishment of the *Comisión para la Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad* (Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatus- CICIACS) and to undertake to provide follow-up to its report and final conclusions, including those relating to the prosecution of individuals indicated as being responsible for human rights violations; to ensure the collaboration of the State institutions, in particular the Armed Forces, in the work of CICIACS;

- To approve pending legislation in the area of information access (*La Ley de Acceso a la Información o Hábeas Data/Law on Access to Information or Hábeas Data* and the *La Ley de Clasificación y Desclasificación de la Información Estatal Reservada/Law on Availability of Secret Files*) as well as the *La Ley de Catastro* (Land Registry Law);
- To take measures for the total abolition of the death penalty, beginning with a moratorium on its application and the commutation of those sentences outstanding.

On the Armed Forces and National Security

- To immediately announce appropriate measures for the elimination of the *Estado Mayor Presidencial*

(Presidential General Staff, also translated as the Presidential Guard or Presidential High Command) and incontrovertibly implement concrete, effective and public measures to prevent the practices carried out by this body, which were a threat to human rights and the rule of law, from persisting;

- To adopt, without delay, the necessary measures such that legitimate intelligence activities can be allocated to a new body, of an essentially civilian nature, which will be under the supervision of and accountable to civilian authorities. In this respect, the body to be created must contribute to promoting a culture of peace and not one of militarization;
- To reform the armed forces, as established in the Peace Accords, including a reduction in the military budget and an end to the joint military-police units known as the *Fuerzas Combinadas* (Combined Forces);
- To apply the stipulations of the Peace Accords with regard to the subordination of military authorities to civilian authorities.

On Human Rights Defenders

- To formulate a plan aimed at the effective fulfilment of the principles of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms;
- To formulate and launch a public campaign to promote human rights work, and which dignifies those who undertake such work.

On Violence against Women

- As required by the Peace Accords, to develop a policy aimed at eliminating discrimination against women, both indigenous and non-indigenous, based on the provisions of the Convention on the Elimination of All forms of Discrimination against Women and the recommendations issued by the UN Committee supervising fulfilment of this treaty on the part of the Guatemalan government;

- To confront the growing wave of violence against women, carrying out prompt, exhaustive, effective and impartial investigations, encouraging the prosecution of those responsible, and providing the necessary resources for this purpose.

Commitments concerning the Indigenous and Local Producers Sectors

- As established in the Peace Accords, and in accordance with the local producer and indigenous sectors, to develop programmes to overcome the rural crisis in Guatemala promoting, among other things, actions to alleviate rural poverty and to achieve the urgent resolution of land ownership and tenure problems, providing access to land and ensuring the provision of sufficient resources for the rural population.

Commitments concerning International Human Rights Instruments and the International Community

- To implement the human rights recommendations made by the Consultative Group following its meeting in May 2003;
- To implement the human rights recommendations of the experts who visited Guatemala recently, including the UN Special Rapporteurs on the Rights of Indigenous Peoples and on the Independence of Judges and Lawyers and on Human Rights Defenders, along with the various experts from the Organization of American States (OAS) and the precautionary measures granted by the Inter-American Commission on Human Rights (IACHR);
- To support the establishment of a permanent presence on the part of the UN Office of the High Commissioner for Human Rights, endowed with sufficient powers and resources to fulfil tasks of monitoring of and support to the effective respect of fundamental rights in Guatemala;
- To ratify the Rome Statute of the International Criminal Court and to pass the internal regulations permitting its full and effective implementation with regard to Guatemala