

GUATEMALA

The right to truth and justice

Introduction

During a visit to Guatemala in August 1996, Amnesty International presented the government, by way of the Peace Commission, two memoranda regarding the right to truth and justice for the tens of thousands of victims of human rights violations in Guatemala. Amnesty International has not yet received a reply from the government.

In the “Memorandum to the government on the possibility of an amnesty law” the organization rejects the possible promulgation of an amnesty law that might obscure the truth being known about human rights violations and impede that those responsible are brought before the courts. Amnesty International states that it is the government’s duty to investigate human rights violations and to bring those responsible to justice, and that the victims and their relatives have the right to receive adequate compensation.

Amnesty International offers a set of principles, based on international standards, that ought to be respected in the eventuality of a debate on the promulgation of an amnesty law for those who committed human rights violations. Among them are: judicial independence; full investigations of human rights violations and abuses; universal jurisdiction and non-prescriptiveness of extrajudicial executions and “disappearances”; chain of command responsibility and that due obedience should not be used as justification for human rights violations; and the right of victims of human rights violations to receive adequate compensation.

In addition, Amnesty International requests that previous government promulgations of amnesty decrees granting impunity to those responsible for grave human rights violations such as extrajudicial executions, torture and “disappearance”, are annulled.

Article 3.3 of the Global Human Rights Accord signed on 29 March 1994 between the Guatemalan government and the Guatemalan National Revolutionary Unity (URNG) stipulates that “the Government will not adopt legislative measures or any other sort of measures which may hinder the bringing to justice and sentencing of those responsible for human rights violations.” Article 8 of the same accord confirms that “the parties recognise the humanitarian duty to compensate and/or assist the victims of human rights violations”.

In the same vein, in June 1996 more than 20 Guatemalan academic, legal and human rights defender organizations joined together in the Alliance against Impunity for Human Rights Violations, published an “open letter to the president, Congress deputies, members of the Peace Commission and the URNG General Command”, in which they manifested their opposition “to the new decree for a general amnesty, and any other legal device that may foster impunity... Our position is based on the effects that previous general amnesty

decrees have had in fostering impunity, and in the loss of the citizens' trust in the application of justice". In addition the Alliance indicated that "the amnesty is questionable in the eyes of international human rights law" and ended demanding "the Guatemalan state fulfill its obligation to morally and economically compensate the relatives and the victims who have suffered human rights violations".

The Association of Relatives of the Detained-Disappeared of Guatemala, FAMDEGUA, in collaboration with the Centre for Legal Action on Human Rights, CALDH, on 7 August 1996 submitted to the Interamerican Commission on Human Rights a request "against the Republic of Guatemala for violations of the American Convention on Human Rights and other international instruments because of the incompatibility of Amnesty Decree 8-86 with the American Convention on Human Rights".

On 19 August 1996, the United Nation's Sub-commission for the Prevention of Discrimination and Protection of Minorities asked the Guatemalan government not to promulgate amnesties or other measures of pardon that may grant impunity to the violators of human rights.

The second memorandum presented to the Guatemalan government refers to the Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which have Caused Suffering to the Guatemalan People (*La comisión para el esclarecimiento histórico de las violaciones a los derechos humanos y los hechos de violencia que han causado sufrimientos a la población guatemalteca*), signed between the government and the Guatemalan National Revolutionary Unity (URNG) on 23 June 1994. This Commission will be formed and will begin work after completion of the peace accords.

Amnesty International has found that the ambiguity of the Commission's mandate could limit its investigation and procedures to be followed. The organization is also concerned about the fact that the Commission's conclusions will not have judicial aims or effect. In its memorandum to the government Amnesty International presents a series of recommendations regarding the investigation of human rights violations and the appearance in court of perpetrators, as well as recommendations concerning the Commission's composition, power and methodology.

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MEMORANDUM TO THE GOVERNMENT ON THE POSSIBILITY OF AN AMNESTY LAW

AMNESTY INTERNATIONAL'S RECOMMENDATIONS AS REGARDS A POSSIBLE AMNESTY LAW GRANTING IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

Introduction

In the last 30 years Amnesty International has recorded thousands of human rights violations in Guatemala. The victims include indigenous peoples, peasants, trade unionists, human rights defenders, politicians, journalists, students, members of religious orders, returning refugees, internally displaced persons, street children, members of the judiciary and people who were investigating past human rights violations.

The human rights violations documented by Amnesty International include extrajudicial executions, "disappearances" and torture, perpetrated by army and police officers, members of the *Comités Voluntarios de Defensa Civil*, the Voluntary Civil Defence Committees, and military commissioners.

In the last 30 years very few of those responsible for human rights violations have had to answer for their actions in court and impunity has been the general rule. Only in a few cases, which have caught international attention and thus caused a stir in public opinion, have the perpetrators come before a court to stand trial.

It is the view of Amnesty International that a spiral of violence, claiming the lives of tens of thousands of people, has been generated by the belief prevalent among the security forces that torture, "disappearance" and extrajudicial execution have had the support of the chain-of-command or that, at the very least, such violations were tolerated, and not subjected to serious scrutiny. This belief has been reinforced by the fact that state officials who have committed human rights violations have gone unpunished.

Amnesty International is equally firm in its condemnation of human rights abuses by armed opposition groups. The organization condemns torture, hostage-taking, the killing of prisoners and other deliberate and arbitrary killings carried out by armed opposition groups in Guatemala over the last 30 years.

The Government's duty to investigate the perpetrators and bring them to justice. The right of victims and relatives to receive adequate redress

Years of human rights violations in Guatemala have shown that to guarantee impunity, through an amnesty law, to the perpetrators of serious violations against, and abuses of, the defenceless civilian population does not lead to national reconciliation; nor does it guarantee respect for human rights.

Decree Law 08-86 of 10 January 1986, promulgated four days before the coming to power of Vinicio Cerezo, the first civilian president in 20 years, attempted to strengthen "peace and harmony between the inhabitants of the country" with an amnesty for "political crimes and related common crimes during the period from 23 March 1982 to 14 January 1986." The provisions of his decree sought to prevent criminal proceedings being brought against the perpetrators of these crimes and their accomplices. It resembled previous amnesties, promulgated after the military coup d'état of 1982 - for example, decree laws 89-83 and 18-85 of 11 August 1983 and 11 March 1985 respectively - which were clearly intended to prevent the bringing to justice of military and police personnel for human rights violations.

The "Process for the establishment of a firm and lasting peace in Central America (Esquipulas 11)," signed in August 1987 by the presidents of the countries of Central America, included provisions for an amnesty that were used to reinforce the previous amnesty of January 1986. Decree Law 32-88 of 23 June 1988 likewise guaranteed an amnesty to "all persons who had committed an offence against the internal political order and public peace". According to the report of the UN Working Group on Enforced and Involuntary Disappearances of 1989, this decree was being applied to civilian and military personnel involved in the killing of people whose bodies were found in the clandestine cemeteries of Chijtinamit, near Chichicastenango and Pacoj, near Zacualpa in the department of El Quiché.

In the ten years since the promulgation of Decree Law 08-86 human rights violations have continued under the rule of civilian governments, in large part owing to the impunity that still reigns in the country. Each year since 1986 Amnesty International has documented hundreds of cases of extrajudicial executions, "disappearances" and cases of torture committed by the security forces, the Voluntary Civil Defence Committees or the military commissioners. The victims belong to the same sectors of society referred to in the first paragraph of this memorandum.

Amnesty International's position on impunity is that the perpetrators of human rights violations must be brought before the courts and account for their actions, whether they be ex-officials of former governments or officials of current ones, and independently of whether they are agents of the security forces or of semi-official paramilitary groups. The

accused must be brought to trial and trials must conclude with a clear verdict of guilt or innocence.

Amnesty International believes it is unacceptable to issue an amnesty law which may prevent the truth being discovered and justice being done. To permit the perpetration of human rights violations and abuses, despite their strict prohibition by law, and to allow the perpetrators to escape justice, only contributes to the perpetuation of these crimes. To guarantee that the perpetrators will be brought to justice is to send society an unequivocal message that the continued violation of human rights will not be allowed.

Amnesty International neither supports nor opposes the granting of amnesties or pardons where the truth has been brought to light, the perpetrators have been tried and sentenced and adequate compensation has been paid to the victims.

Amnesty International believes that any legal measure related to human rights abuses and violations should respect the following principles:

1. The principle of the independence of the judiciary, which allows individuals prosecuted or investigated for crimes such as extrajudicial executions, “disappearances” and torture to be brought to trial and, where declared guilty, to be imprisoned.

It is essential that any such legal measure conforms with the **Basic Principles on the Independence of the Judiciary**, endorsed by the UN General Assembly in Resolutions 40/32 and 40/146 of 1985.

Principle 4 of this instrument states: “There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.”

2. The principle according to which a complete investigation, whether in the form of judicial proceedings or of a truth commission, is carried out into human rights violations and abuses, and that persons whose guilt has been established are brought to justice and, where declared guilty, sentenced. Amnesty International requests that amnesty decree laws issued by earlier governments to protect the perpetrators of human rights be annulled where these regard promotion of impunity for crimes such as extrajudicial executions, torture and “disappearances.”

3. The principle of universal jurisdiction and imprescriptibility of extrajudicial executions and “disappearances”, established in the **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**

(henceforth referred to as the Principles), endorsed by the UN General Assembly on 15 December 1989 in Resolution 44/162, and the **Declaration on the Protection of all Persons from Enforced Disappearance** (henceforth referred to as the Declaration), endorsed by the UN General Assembly in December 1992 in Resolution 47/133.

Article 18 of the Principles states: “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction.” Article 19 states: “In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.”

Article 17 (1) of the Declaration states: “Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.” Article 17 (3) establishes that: “Statutes of limitation, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.”

Article 18 (1) of the Declaration states: “Persons who have, or are alleged to have, committed offences referred to in article 4, paragraph 1, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.” Subsequently Article 18 (2) establishes that: “In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.”

4. The principle of the responsibility of superiors and the invalidity of justification on grounds of obeying orders from superior officers or authorities. Any person who planned, ordered and assisted in organizing human rights violations should be held to be as criminally responsible as those who carried them out. This principle is also applicable to the public officials who tolerated and consented to them, since, being in positions of authority, they knew or should have known that human rights violations such as “disappearances” and extrajudicial executions were being carried out, and yet, though able to do so, did not attempt to prevent them.

The responsibility of superiors is recognised in the above-mentioned Principles. Principle 19 states: “Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts.”

Similarly, Article 6 of the above-mentioned Declaration establishes that: “No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance.”

5. The principle that the victims of human rights violations committed by state officials, or by individuals acting with the consent of the state, shall receive adequate redress. Amnesty International believes that redress should include financial compensation and the means of rehabilitation, including care and medical assistance to help the victims and their relatives overcome the consequences of physical and psychological injury. It should also include the legal means necessary for restoring the victim’s dignity and reputation.

The right to receive redress, along with the right to sue for damages, is part of the right to an effective remedy for the human violations suffered.

Article 19 of the Declaration states: “The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.”

Principle 20 of the Principles establishes that: “The families and dependants of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.”

The right to compensation for human rights violations is also recognized by the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, endorsed by the UN General Assembly in Resolution 44/173 of December 1988 and the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**, endorsed by the General Assembly of the United Nations in Resolution 40/34 of November 1985.

GUATEMALA

MEMORANDUM TO THE GOVERNMENT ON THE CLARIFICATION COMMISSION

THE ACCORD ON THE SETTING UP OF THE COMMISSION FOR THE HISTORICAL CLARIFICATION OF HUMAN RIGHTS VIOLATIONS AND ACTS OF VIOLENCE WHICH HAVE CAUSED SUFFERING TO THE GUATEMALAN PEOPLE

Description of the Commission

The agreement to set up the Commission was reached on 23 June 1994 in Oslo, Norway, between the Government of Guatemala and the Guatemalan National Revolutionary Unity (URNG).

The accord sets forth the aims of the Commission as follows:

- “1.To clarify, with complete objectivity, fairness and impartiality, the human rights violations and acts of violence related to the armed conflict which have caused suffering to the people of Guatemala.
- 11.To prepare a report containing the results of the investigations carried out and setting out the facts relating to the events that occurred during this period, taking all factors into consideration, both internal and external.
- 111.To make specific recommendations in favour of peace and national harmony in Guatemala. The Commission shall, in particular, recommend measures to preserve the memory of the victims, to promote a culture of mutual respect and observance of human rights and to strengthen the democratic process.”

The period to be covered by the Commission includes the “beginning of the armed conflict until the signing of the firm and lasting peace accord.”

With regard to its functions, “the Commission shall receive background and other information provided by persons or institutions which consider themselves to have been

victimized, as well as from the parties,” and that the Commission shall have the task of “clarifying fully and in detail” the human rights violations committed.

The report, the recommendations and other aspects of the work of the Commission “will not individualize responsibilities, nor shall they have judicial purposes or effects.” The Commission’s proceedings will be confidential “in order to ensure that information sources shall not be revealed, and to protect witnesses and informants.”

The Commission is to consist of three members: “the current moderator of the peace negotiations,” Jean Arnault, of the United Nations; a “citizen of irreproachable moral character, designated by the moderator, with the mutual consent of the parties”, and a “member of the academic community [...] from a list of three candidates proposed by the university rectors,” also designated by the moderator with the mutual consent of the parties. The Commission will be supplied with support staff.

The Commission will be set up and begin its work as of the day on which the definitive peace agreement is signed, and will continue to function for a period of six months, extendable by another six.

Amnesty International's Observations and Recommendations with regard to the Clarification Commission

In March 1992 the United Nations Commission on Human Rights endorsed by consensus Resolution 1992/54, which reaffirmed the importance of developing effective national institutions for the protection and promotion of human rights. This resolution included a series of **Principles Relating to the Status of National Institutions** (henceforth, referred to as the Principles).

This instrument contains detailed standards on the responsibilities, composition and operational methods of national institutions for the promotion of human rights and improvement of the human rights situation. Amnesty International believes that the Principles should serve as minimum guidelines for the constitution of the Commission approved by the government of Guatemala and the Guatemalan National Revolutionary Unity (URNG) in June 1994.

Amnesty International has observed that, where referring to the Commission's terms of reference, the accords of June 1994 do not specify the scope of its remit. Amnesty International is concerned that the ambiguity of its terms of reference could place a restriction on its investigations and on the procedures to be followed.

In light of this concern, Amnesty International has made some comments and recommendations on the criteria it believes to be essential for the work of any body which has been assigned the task of clarifying past human rights abuses and violations.

Investigation and truth

1. Amnesty International believes that, in order to foster a climate favourable to the respect of human rights in Guatemala, the process set in motion by the Commission should be based on a thorough knowledge of the **whole** truth on human rights abuses and violations committed during the period under investigation. All the victims and their families have the right to officially register their cases and to see that the full light of truth is thrown upon the facts. Amnesty International, therefore, welcomes the Commission's statement under point 2, relating to its working methods, that "It is the Commission's role to clarify these situations fully and in detail" [human rights violations and abuses]. Amnesty International hopes that all properly documented violations and abuses of human rights placed before the Commission are investigated and clarified.

The search for truth should include:

1.1. The investigation by the Commission of all cases of extrajudicial executions, torture and “disappearances” perpetrated or tolerated by the security forces, including the *Comités Voluntarios de Defensa Civil*, the Voluntary Civil Defence Committees, and military commissioners or ex-commissioners, or those committed by the so-called “death squads” which have operated and continue to operate in conjunction with the security forces or with their acquiescence. The investigation should also include an inquiry into the practice of intimidation and threats, and in many cases the direct violation of human rights, to which the people and institutions who were investigating such violations have been subjected.

The Commission should be empowered to investigate the fate and whereabouts of persons who were “disappeared” after their capture by State officials or by individuals linked to them. Such an investigation should include the location of secret burial grounds.

1.2. The investigation of deliberate and arbitrary killings attributed to the URNG or earlier armed opposition groups whose victims were military personnel or persons connected with the armed forces, government officials and other detained persons. Amnesty International believes that the deliberate and arbitrary killing and torture of persons deprived of their liberty by armed opposition groups must fall within the remit of the Commission.

1.3. An objective and impartial analysis of state policies designed to repress opposition to Guatemala’s governments, including counter-insurgency tactics. In this regard we trust that when the Accord states that “in particular [the Commission] shall analyse the factors and circumstances involved in said cases, doing so with complete impartiality”, it is making a specific reference to this point.

1.4. The investigation into collaboration of public officials of other governments with Guatemalan officials in order to encourage, further and conceal human rights violations committed by the security forces, or abuses perpetrated by armed opposition groups during the period in question. Such an investigation should cover the transfer from one country to the other of material, technology or military, police or security training, the principle aim of which, in practice, has been the violation of human rights.

The investigation and bringing to justice of those responsible

2. Amnesty International is deeply concerned by the apparent lack of interest shown by the government and armed opposition groups during negotiations about the functioning of the Commission, as regards the bringing to justice of the individuals responsible for thousands of human rights violations. The organization is particularly concerned by the statement that the work and report of the Commission “shall not individualize responsibilities, nor shall they have judicial purposes or effects.”

Amnesty International is likewise concerned that the third aim of the Commission (“make specific recommendations in favour of peace and national harmony”) could be translated into legal measures that favour alleged perpetrators of human rights abuses and violations, by obstructing judicial investigation of the cases and, consequently, allowing the perpetrators to continue to enjoy impunity.

Amnesty International subscribes to the words of the UN Working Group on Enforced or Involuntary Disappearances, according to which “impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before a court of law.”¹

It is the view of Amnesty International that the “measures to preserve the memory of the victims, to promote a culture of mutual respect and observance of human rights and to strengthen the democratic process”, as indicated in the aims of the Commission, require the bringing to justice of those responsible for human rights violations.

In its task of seeking justice for the victims of human rights abuses and violations, the Commission should, therefore:

2.1 Identify those immediately responsible for carrying out human rights violations, as well as establish chain-of-command responsibility and examine the institutional structures that allowed such acts to take place.

2.2 Be authorized and able to recommend legal, political or administrative measures aimed at preventing a repetition of such events. We believe that the Commission report should include a critical analysis of the factors which contributed to the persistence of human right abuses and violations, such as the ineffectiveness of some legal institutions or mechanisms.

¹Report of 1990, paragraph 344

- 2.3 Encourage the results of the Commission's investigations being taken up by the relevant courts. All persons about whom the Commission either has suspicions or clear evidence regarding their perpetration of human rights abuses and violations, or regarding their role in instigating, inciting or allowing such abuses and violations, should appear before an appropriate, independent and impartial court of law.
- 2.4 Ensure that superior officials are considered responsible for acts committed by officials under their authority where sufficient reasons exist for supposing that they could have prevented or punished such acts. Receiving an order from a superior authority can never be invoked as justification.
- 2.5 Ensure that all victims of these human rights abuses and violations, as well as their families, receive compensation and redress as provided for international standards. The Commission should include recommendations on compensation in its final report. Such compensation should include financial compensation, rehabilitation - including medical assistance and care for victims in overcoming the consequences of physical and psychological injuries - and also the means necessary to allow victims to recover their dignity and reputation. Equally, measures must be taken, as far as is possible, to re-establish the situation as it was before the human rights violations or abuses took place.

Investigation, composition, powers and methodology of the Commission

Composition

The Commission should be composed of men and women known for their integrity and impartial judgement, who will decide each case on the merit of the facts and in accordance with the law, without restrictions, pressure, threats or interference of any kind. The members to be elected should be independent of the government and possess proven experience and competence in the field of protection and promotion of human rights. They should be chosen from a wide spectrum of sectors, including professional groups and non-governmental organizations.

Amnesty International welcomes the affirmation of the Commission that an academic and a citizen of "irreproachable moral character" shall, with the moderator of the peace negotiations, be members of the Commission, but it also notes that the document makes no reference to the independence from the government or URNG of the members to be appointed, nor of their experience in the field of protection and promotion of human rights.

The method of selection of the Commission members to be appointed should be fair and transparent and guarantee that the individuals who are finally appointed are independent from the government and armed opposition groups. The members of the Commission should work in their private capacity during the period of its mandate. The terms of their selection and possible removal from office should be clearly set out in advance.

These selection criteria should apply both to the two members of the Commission to be elected and to the support staff.

Powers and methodology

The Commission should have at its disposal the appropriate human and material resources to guarantee an effective examination of the mass of evidence and allegations. There must also be the possibility of extending the very limited time scale (six months, extendable by another six) in order to complete its task satisfactorily.

The Commission should have its own investigation team and access to the help of experts where necessary to verify allegations of violations and abuses of human rights. The Commission should be granted unrestricted access to statements, documented evidence or other information which may be related to military intelligence or the security forces, if this is relevant to the case or situation under investigation. Existing medico-legal archives and court records should also be made available to them. Civilian and military officials, whether serving or retired, shall be obliged to cooperate with the Commission's investigations.

The Commission should have at its disposal the special expertise of pathologists, forensic anthropologists and ballistics experts, in order to carry out the search, recovery and identification of human remains and determine the causes and circumstances of death. The methodology followed in exhumations, autopsies and analyses of skeletal remains should conform to the model protocols proposed by the UN based on the **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**, endorsed by the UN General Assembly on 15 December 1989 in Resolution 44/162. The United Nations **Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions** includes a **Model Autopsy Protocol**. In resolution 1993/33 of 1993 the UN Commission on Human Rights decided to invite states "to take up measures to introduce into their rules and practices" the international standards set forth in the Model Autopsy Protocol.

The Commission should insist on the cooperation of the widest possible range of sectors of society which can provide it with information, especially national human rights

organizations and the relatives of victims of human rights violations who have been systematically investigating and recording cases. The Commission should be accessible to all Guatemalans. The relatives must be kept informed of any judicial hearings and all information related to the case, have access to them and the opportunity to present evidence. The Commission should also be empowered to travel outside the country in order to obtain statements from relatives, witnesses and organizations.

Persons collaborating with the Commission as witnesses or complainants should have full guarantees for their safety, and it is in this sense that we interpret the text of the Accord where it affirms that “the proceedings of the Commission shall be confidential, in order to ensure that information sources shall not be revealed, and to protect witnesses and informants.” We understand that the Commission’s proceedings must be confidential, but it is of paramount importance that both the methodology applied and the results of the Commission’s investigation be made public.