

Guatemala

Land of injustice?

1. Introduction

In 1992 workers at Maria Lourdes Farm began to claim the proper minimum wage and labour entitlements. Despite court judgments in their favour, by 2003 they had still not received their outstanding wages. They occupied the farm to bring pressure to bear on the farm owner. Subsequently their lawyers were charged with “threats and coercion”; and community members were arrested for usurpation, intimidated and threatened by security guards employed by the farm owner, and had crops and property destroyed. They were forcefully evicted in March 2004 and their houses were destroyed. In July 2004 a security guard allegedly in the pay of the farm owner raped the 15-year-old daughter of one of the community leaders. In October 2004 the workers were finally given an area of land worth approximately half of what they were originally owed. The community consider this a success by Guatemalan standards.¹

The Maria Lourdes Farm case is typical of disputes in rural areas between *campesinos*² who work the land and large landowners. Since 1524, when Guatemala was directly ruled by Spain, to the present day, the structure of land tenure and labour relationships between *campesinos* and landowners have been a source of dispute, often violent. The vastly unequal distribution of land, placing the majority and highest quality land in the hands of a few wealthy owners, coupled with generalized poverty, continues to be typical in Guatemala. As a result, disputes involving land and rural labour relationships continue to be widespread.

This report looks at agrarian disputes in Guatemala. It describes a series of human rights violations including denial of access to justice; forced evictions and house demolition without effective consultation, assurance of adequate alternative accommodation or due process of law; excessive violence during evictions; and patterns of intimidation and threats against *campesinos*. It examines the failure of the judicial system to ensure due diligence and impartiality when dealing with agrarian disputes. It also examines the failure of the executive branch to adequately tackle agrarian related problems, despite the agreements reached in the 1996 Peace Accords, which brought an end to the 36-year internal armed conflict.

Agrarian disputes are complex because of cultural, historical and social factors that influence them and the complicated domestic legal framework. Agrarian disputes, in particular, are affected by cultural differences between indigenous communities (the vast majority of which are Mayan), and *ladinos*, those of non-indigenous descent.

¹ For further information, see Amnesty International Urgent Action (AI Index: AMR 34/010/2004), 13 July 2004. In March 2005 the Farm Administrator was charged with complicity in the rape; the case is currently pending in the courts. The Public Prosecutor’s Office, according to the community’s lawyers, made no effort to determine the material author of the rape, allegedly a security guard who left the region immediately after the incident.

² *Campesino* is a commonly used term in Spanish meaning someone who works the land and lives in a rural area, but does not own a large amount of land. *Campesino* can be translated as farmer, peasant or rural worker, although it has no true equivalent in English.

Indigenous people constitute 66 per cent of the population but are disproportionately represented in the poorest sector of Guatemalan society: 87 per cent of indigenous people are considered poor compared to 54 per cent of *ladinos*.³ There are 24 different languages spoken in Guatemala and many indigenous people either do not speak the official language of Spanish (used by all government officials) or do not speak it well.

The case studies in this report embody different types of agrarian disputes. The common factor is the abdication of responsibility by state authorities when it comes to the rights of the *campesinos* coupled with a forceful and direct support for wealthy landowners.

The legacy of violence in rural areas from the internal armed conflict, the implementation of the Peace Accords which set out a route towards the long-term resolution of agrarian disputes, and recent government policy are all examined. The context of agrarian disputes is also examined before detailing a series of case studies, representative of most agrarian disputes in Guatemala.

Amnesty International (AI) has been monitoring human rights in Guatemala for 40 years, during which it has consistently documented human rights violations in rural areas.⁴ In particular, AI has observed that since the arrival of a new government in January 2004, there has been a marked increase in the number of forced evictions in rural areas.

At the end of the report Amnesty International makes recommendations to prevent further human rights violations in the context of land disputes and offer redress to victims of violations in such disputes as well as ensuring the consistent application of national and international human rights law and standards where evictions are deemed necessary as a last resort.

Legacy of the internal armed conflict

Rural areas bore the brunt of the internal armed conflict, which lasted from 1960 to 1996. In many areas the army carried out a counter-insurgency campaign based on systematic and widespread violations of human rights. Through schemes such as civil defence patrols (coerced groups of villagers armed by the army and responsible for some of the worst human rights violations) and “model villages” (forced relocation programmes which extracted villagers from areas of suspected guerrilla influence), rural communities were victim to a conflict with no regard for international humanitarian law.

The UN-sponsored Comisión para el Esclarecimiento Histórico (CEH), Historical Clarification Commission, which investigated human rights violations during the internal armed conflict and reported in 1999, noted that:

³ Human Development Report 2004, UN Development Programme, pp. 92 and 67.

⁴ See pp. 49-53 of *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations* (AI Index: AMR 34/001/2002; pp. 6-9 of *Memorandum to the Government of Guatemala: Amnesty International's Concerns Regarding the Current Human Rights Situation* (AI Index: AMR 34/014/2005); and *Guatemala: Impunity – A question of political will* (AI Index: AMR/34/17/1993).

“[t]he Army’s perception of Mayan communities as natural allies of the guerrillas contributed to increasing and aggravating the human rights violations perpetrated against them, demonstrating an aggressive racist component of extreme cruelty that led to the extermination en masse, of defenceless Mayan communities purportedly linked to the guerrillas – including children, women and the elderly – through methods whose cruelty has outraged the moral conscience of the civilised world.”⁵

The CEH concluded that over 200,000 people had “disappeared” or were killed. Of the victims it could document and identify, 83 per cent were of Mayan origin.⁶ Some 93 per cent of human rights violations were attributed to government forces.⁷

Over a million Guatemalans were displaced, of whom approximately 200,000 fled to Mexico.⁸ The displaced communities’ loss of land during the conflict was compounded by their characterization as “subversives” and “allied to the guerrillas” by successive governments. The lack of guaranteed safeguards meant that many thousands would spend decades in refugee camps before returning or attempting to return to their villages or being relocated to entirely different areas. In a similar vain, *campesino* organizations, characterized as “subversive” and “illegal” by the government, suffered much repression during the conflict. Entire generations of leaders of *campesino* organizations “disappeared” at the hands of security forces. In short, Guatemala’s internal armed conflict left a legacy of violence, repression and increased landlessness for many rural communities.⁹

The Peace Accords¹⁰

The Peace Accords signed in December 1996 between the guerrilla group, Unidad Revolucionaria Nacional Guatemalteca (URNG), Guatemalan National Revolutionary Unity, and the government, in addition to ending the internal armed conflict, signalled a new way forward on land issues. It provided a political framework for resolving agrarian disputes and addressing the underlying causes of rural poverty, inequality in land distribution and exclusion of Mayan peoples from the political process.

⁵ Guatemala Memoria del Silencio. Tomo V, Conclusiones y Recomendaciones. Comision para el Esclarecimiento Histórico. UNOPS, 1999, p.43, para 85.

⁶ Ibid, p.21, paras 1 and 2.

⁷ Ibid, p.25, para 15.

⁸ *Guatemala: Displacement, Return and the Peace Process*, UN High Commissioner for Refugees, 1995. <http://www.unhcr.ch/cgi-bin/txis/vtx/publ/opendoc.htm?tbl=RSDCOI&id=3ae6a6b98&page=publ>

⁹ Jonas, Susan, *The Battle for Guatemala: Rebels, death squads and US power*, Westview Press, 1991, pp. 164 and 182.

¹⁰ The Peace Accords are 13 separate agreements negotiated and signed between 1994 and 1996. All agreements came into effect on 29 December 1996, with the signing of the final Agreement on a Firm and Lasting Peace by the government of Guatemala and *Unidad Revolucionaria Nacional Guatemalteca* (URNG).

In the Peace Accords the government agreed to policies aimed at solving long-term problems related to land. It committed itself to: enforcement of labour laws in rural areas; increasing land ownership for *campesinos*; establishing judicial and non-judicial mechanisms for the resolution of land disputes; providing free legal assistance to rural workers and their organizations in litigation cases relating to land disputes; improving access to justice for *campesinos* (including overcoming the language difficulties faced by indigenous *campesinos*); and promoting a legal framework that recognizes customary indigenous law.¹⁵

Box 1.		
Distribution of land in Guatemala		
	Percentage of proprietors	Percentage of land owned
1950 ¹¹	2.1	72
	88	15
1964 ¹²	2.9	62
	87	21
1979 ¹³	2.6	64.5
	88.2	16.5
2000 ¹⁴	1.5	62.5
	94.1	18.6

The Peace Accords provided a framework for addressing the fundamental causes of agrarian disputes. If implemented, they would have constituted a significant contribution to the resolution of agrarian disputes. However, in the subsequent years issues such as access to land continued to adversely affect many rural communities. In 2000, 94 per cent of landowners accounted for 18.6 per cent of land, whereas 1.5 per cent of the population claimed ownership of 62.5 per cent of the land – this despite the 180,000 hectares that had

been added to the national total of arable land since 1979.¹⁶ According to the Ministry of Agriculture, “500,000 rural families have a standard of living below subsistence, in large part due to their lack of land to live from”.¹⁷

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¹¹ La estructura agraria y el campesinado en El Salvador, Guatemala y Honduras, LC/MEX/L.492. UN Development Programme, 2001. Citing El mito de la reforma agraria:

40 años de experimentación en Guatemala. Pablo Schneider, Hugo Maul y Luis Mauricio Membreño. Centro de Investigaciones Económicas Nacionales (100), 1989; & Dirección General de Estadística.

¹² Procesos agrarios desde el siglo XVI a los Acuerdos de Paz. Palma, G; Taracena, A; Aylwin, J. FLACSO, MINUGUA, CONTIERRA, 2002. Page 85. Citing Leopoldo Sandoval. El problema agrario guatemalteco: evolución y opciones en Cambranes J.C. (ed.), 500 años de lucha por la tierra, vol 2. FLACSO, Guatemala, 1992.

¹³ Guatemala, Informe Desarrollo Humano, 2002. UN Development Programme, 2002, p. 107, citing Censo Agropecuario de 1979.

¹⁴ Ibid, citing *tabulaciones de la ENCOVI 2000*.




¹⁵ Sections referred to: Agreement on identity and rights of indigenous peoples, signed 31 March 1995; Agreement on Socio-economic Aspects and the Land Situation, signed 6 May 1996; Agreement on identity and rights of indigenous peoples, signed 31 March 1995; Agreement on resettlement of population groups uprooted by the conflict, signed 17 June 1994.

¹⁶ Ibid, p.106 (table VI.2), citing various sources.

¹⁷ Informe de Verificación: Situación de los compromisos relativos a la tierra en los Acuerdos de Paz. MINGUA, 2000. Paragraph 6.

Map 1¹⁸

Overlap between Indigenous communities and high social exclusion.

-  Indigenous linguistic communities
-  Non-indigenous linguistic communities
-  High social exclusion



Rural households in Guatemala constitute 77 per cent of all households considered poor and 93 per cent of those considered extremely poor.¹⁹ Indigenous people are disproportionately represented in those considered to suffer from high social exclusion.

In such conditions, the agrarian disputes are a regular phenomenon in rural Guatemala. The governmental agency for solving land conflicts, Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA), reported in December 2005 the existence of 1,052 cases of agrarian disputes²⁰ -- up from the 911 cases reported in October 2004.²¹

Recent government policy

The rise in the number of disputes in recent years is linked to the decline in coffee prices since 1999, which led to some 108,000 job losses as farm owners laid off workers.²² The departments of Alta Verapaz and Baja Verapaz in the north of country were worse affected and, according to CONTIERRA, represent a quarter of all cases. Many rural workers, who for years had been demanding *prestaciones laborales* (labour entitlements), also began to demand redundancy payments after losing their jobs.

¹⁸ UNDP Human Development Report 2004, page 37. (©UNDP, reproduced with permission)

¹⁹ Guatemala, Informe Desarrollo Humano, 2002. United Nations Development Programme, 2002, p. 105.

²⁰ *Mapa de Ubicación de Conflictos De Tierra, Según Tipología, Guatemala*. Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA) & Secretaria de Asuntos Agrarios.

²¹ *Opinión de CONTIERRA en relación a los conflictos de tierra*. Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA), October 2004.

²² Guatemala Country Report May 2004, Economist Intelligence Unit, p.21.

The “coffee crisis” was so severe that the government established an emergency social plan to ensure subsistence for rural communities, although it was much criticized for failing to implement fully a promising plan.²³ In July 2003 the Minister of Agriculture reportedly admitted to having released only US\$3.2 million of the US\$92 million budget of the plan.²⁴ Expecting to receive financial assistance, many rural families went into debt which added to their plight.

In January 2004 a new government, headed by former businessman and landowner President Oscar Berger, took office. With an already desperate situation for many in rural areas and after years when very few evictions were reported, a widespread unofficial policy of resolving disputes by executing pending eviction orders for land occupied by rural workers began. Between January and November 2004, 36 evictions took place, more than half of which were violent.²⁵ In its final report before leaving Guatemala, the UN mission for Guatemala, created to oversee the implementation of the Peace Accords, noted that:

*“[t]he change in Administrations also brought with it a troubling increase in forced, sometimes violent, evictions of squatters, a trend that gave the impression of undue deference by the Government to the demands of landowners. Peasant groups mounted nationwide demonstrations and road blockades in June 2004 to demand land and rural development policies and to protest the evictions, which created a serious humanitarian problem for peasant families thrown off properties. The Government’s promise to analyse the situation and review the legality of the evictions defused the crisis momentarily, but the underlying problems remain and the issue stands as a potential source of future tension”.*²⁶

Amnesty International concurs in finding the disproportionate increase of forced evictions in the first half of 2004 as potentially indicative of undue deference by the government in favour of landowners.

In June 2005 the Guatemalan Congress passed into law a new national Land Registry, nine years after it had been called for in the Peace Accords.²⁷ This is a positive step as Guatemala has never had an accurate and detailed legally binding formal description of the location and extent of properties. However, concerns remain over the independence of the Land Registry

²³ Acuerdo Gubernativo 475-2002: Plan de Atención Social a la Crisis Cafetalera y Conflictividad Agraria y Laboral.

²⁴ La Prensa Libre, 27 July 2003. Interview with Carlos Sett, Minister of Agriculture at the time. 25 million Quetzals of a 700 million Quetzal plan, calculated at Q7.6 = US\$1.

²⁵ Number of evictions compiled from Informe Sobre Desalojos (Enero a Junio) MINUGUA Asesoría Socio-económica, 25 June 2004 and press reports. MINUGUA puts violent evictions at 51 per cent, non-violent at 3 per cent and has no information regarding the remaining 46 per cent.

²⁶ Report of the Secretary-General, A/59/307. UN Verification Mission in Guatemala (MINUGUA), 30 August 2004, para 14.

²⁷ Agreement on Socio-economic Aspects and the Land Situation, part III Land Situation and Rural Development, section G Land Register.

as the board of directors will be presided over by a political appointee of the President, the Minister for Agriculture.²⁸

Amnesty International also has serious concerns regarding how the issue of land claimed by landowners but not supported by relevant documents will be managed. In such cases, the Land Registry law stipulates that landowners can claim up to 20 per cent of land, relative to the size of their own holding, in addition to the area which their property documents state they are entitled to.²⁹ Amnesty International considers this aspect of the law is weighted in favour of large landowners and could discriminate against *campesinos*. The already acute inequality in the distribution of land in Guatemala plays a fundamental role in creating agrarian disputes. A policy that discriminates in favour of landowners runs the risk of exacerbating already existing disputes and creating new ones.

²⁸ Decreto Numero 41-2005, Ley del Registro de Información Catastral, Article 10; also *Guatemala: Congress must prioritize human rights* (AI Index: AMR 34/029/2005), News Service No.148, 31 May 2005.

²⁹ Decreto Numero 41-2005, Ley del Registro de Información Catastral, Articles 38 and 67.

2. Context of agrarian disputes

Agrarian disputes are fuelled by a variety of factors including the poverty of *campesino* communities, language barriers and cultural differences. Behind these factors lie the effects of Spanish conquest and colonization, forced labour and expropriation of land of the Mayan population under republican governments after independence, and 36 years of internal armed conflict, which ended with the 1996 Peace Accords. The relationship between those who own the land and those who work it can in general be characterized as semi-feudal.

Agrarian disputes often are complex and have varied but interconnected causes, such as a labour dispute between *campesinos* and an employer in addition to a disagreement over who legally owns the land. A UN-sponsored study listed 20 types of land disputes, including access to water, environmentally protected areas and municipal boundaries.³⁰ Case studies of agrarian disputes between *campesinos* and landowners or farm owners that culminated in forced evictions, outlined in this report, concentrate mostly on two types of dispute:

- *Campesinos* demanding their labour rights, eventually resorting to occupation, often with subsequent forced eviction from the land which they occupied and from their homes;
- Ownership disputes between *campesinos* and large landowners in which boundaries are unclear or where *campesino* communities have lived for generations on the land to which they claim communal title, although they may not have the complete documentary evidence to prove their ownership. These communities frequently faced forced eviction.

These situations account for most agrarian disputes and present similar characteristics of those that are caused by different issues. For example, in the case of Nueva Linda farm (see below), *campesinos* occupied farm land to protest against the slow investigation into the suspected abduction and “disappearance” of one of their colleagues for which they believed the farm owner was responsible.

Agrarian disputes related to labour

According to national law, in addition to a wage Guatemalan workers are entitled to additional payments that include annual bonuses, paid holidays and redundancy money when their contract is terminated. These are collectively known as *prestaciones laborales*, labour entitlements. The lack or underpayment of these entitlements is common in rural areas. The importance of the issue was noted in the 1996 Peace Accords, which specifically called for the government to expand and strengthen labour inspection services.³¹ The former UN mission in Guatemala (MINUGUA) noted in 2000 that:

“[a]ccording to Ministry [of Labour] officials, they have detected a high rate of lack of compliance of various labour obligations, such as the annual bonus [... MINUGUA], through

³⁰ Carlos Camacho Nassar, *Guía para la investigación de los conflictos sobre la tierra y territorio en Guatemala*. FLACSO, MINUGUA, CONTIERRA, 2003, p. 38.

³¹ Agreement on Socio-economic Aspects and the Land Situation, part III Land Situation and Rural Development, section H Labour Protection, paragraph 39 (c); signed 6 May 1996.

its local offices, has collected information that would indicate that a high percentage of rural workers have stated that they receive income below the legal minimum".³²

The process of reclaiming labour entitlements is a long and uphill struggle. The Guatemalan labour code establishes that once a contract is terminated the worker has 30 days to claim his or her labour entitlements, after which they are forfeited.³³ A maximum of two years of labour entitlements can be claimed retroactively when the contract is terminated.³⁴

Campesino organizations regularly denounce a practice they have termed *despido indirecto*, indirect firing, which they say is frequently used by farm owners. The technique involves terminating the employment of *campesinos* and then informing them verbally that they will be re-hired soon, with the intent of reaching the 30-day limit without receiving a formal request for the labour entitlements. Workers receiving such false promises are in a vulnerable position as they face unemployment and therefore do not want to upset the farm owner. The forfeiting of rights is an alien concept to Mayan customs as is reliance on the spoken word. It is therefore easy to find cases of *campesinos* with decades of service in a particular farm who have not claimed or received labour entitlements and could potentially be owed a lot of money. In all the cases outlined below, *campesinos* are owed substantial amounts in unpaid labour entitlements.

If and when labour entitlements are unpaid, a worker would first turn to the local *Inspectoría Laboral*, Labour Inspectorate. This can offer advice and produce evidence for judicial proceedings, but cannot enforce compliance from an employer. The Labour Inspectorate has few resources to ensure that it covers all rural areas. It also has only a few labour inspectors, only a few of whom are bilingual. In Alta Verapaz, the Labour Inspectorate has eight inspectors (three of whom are bilingual) and a monthly transport budget of approximately US\$129 to cover 8,600 square kilometres with 776,000 inhabitants, of whom more than 90 per cent are Mayan.³⁵ Although committed to their work, personnel at the Labour Inspectorate told AI that rural areas were practically abandoned because of lack of resources.

Campesinos claiming non-payment of labour entitlements must take their case to a Labour Tribunal. With no access to free legal counsel available to rural communities, which are extremely poor, this route is not often taken or quickly abandoned if it is. When legal proceedings begin they are often subjected to delays with the aim of exhausting the *campesinos* financially. These tactics include the non-appearance of the farm owner, which brings proceedings to a halt, or initiating informal negotiations with the *campesinos* that make them believe the issue will be resolved out of court. Often, proceedings result in small, almost

³² Misión de las Naciones Unidas en Guatemala, *Informe de Verificación: Situación sobre los compromisos laborales de los Acuerdos de Paz*. MINUGUA, June 2000.

³³ Article 260, *Código de Trabajo de Guatemala*, Guatemalan Labour Code.

³⁴ Article 264, Guatemalan Labour Code. Even when employment is continuous a maximum of two years of labour entitlements can be claimed retroactively.

³⁵ Instituto Nacional de Estadística, Censo 2002; and AI interview with Inspectoría Laboral, in Cobán, Alta Verapaz, 19 August 2005. 1,000 Quetzales = approximately US\$129.

symbolic, fines for farm owners for non-payment of the labour entitlements, but not the actual payment of such entitlements. As a result, most communities resign themselves to the non-payment of labour entitlements while remaining in employment and do not bother claiming them once they are made redundant.

The groups of *campesinos* who do persevere in their claim frequently occupy the farm as the only way to exert pressure on the farm owner. Such occupation, often referred to as an “invasion” by farm owners and the authorities, usually means the *campesinos* moving from land assigned to them where they have lived and raised crops for self-consumption, normally on the fringes of the farm, towards other parts of the farm, including the central hub of the farm, thus stopping any productive activities that remain.

In contrast to the obstacles faced by *campesinos* when trying to reclaim their labour entitlements, farm owners seeking to secure an eviction order face a relatively straight forward legal process. The farm owner will normally submit a complaint for “usurpation” to the Public Prosecutor’s Office. The definition of the crime of usurpation (an attempt to “usurp” legal title to land) under Guatemalan law is broad enough to be used in agrarian disputes.

Article 256 of the Criminal Code, entitled Usurpation, states that:

“Whomsoever, in order to take possession or illicit advantage, shall despoil or attempt to despoil someone of the possession or the right over such real estate, or who, illicitly, with any aim, invades or occupies any real estate, shall commit the crime of usurpation. The permanence on such real estate constitutes flagrancy in this crime. The Police, the Public Ministry or the Judge are duty bound to prevent punishable actions from continuing to cause ulterior consequences, ordering or proceeding in such manner as may be necessary to the immediate eviction. The individual responsible for usurpation shall be imprisoned for one to three years.”

On receipt of the complaint for usurpation, the Public Prosecutor’s Office requests copies of the allegedly usurped property’s entry in the *Registro General de la Propiedad*, General Register of Property. After receiving this, the Public Prosecutor visually inspects the area to verify of the presence of the alleged usurpers. If verified, the Public Prosecutor requests an eviction order from a judge. Judges ascertain that the Public Prosecutor has a copy of the entry in the General Register of Property and has visually inspected the area, and then signs an eviction order. The order is valid for 30 days but can be renewed at the request of the Public Prosecutor.

When there are doubts about the ownership, Public Prosecutors can use the Criminal Procedural Code or the Constitution to determine if complaints by land or farm owners against *campesinos* for usurpation are legitimate. For example, Article 291 of the Criminal Procedural Code allows for pre-judicial issues to be declared when it is believed that a criminal prosecution depends exclusively on the resolution of a judicial issue independently

of the criminal prosecution.³⁶ Although Article 291 establishes that the proposition or notification to the judge of pre-judicial issues is the responsibility of the Public Prosecutor's Office, it is rarely the case that pre-judicial issues are proposed by them. In a similar vein, judges, in cases of disputed land ownership, can use the Criminal Procedural Code or the Constitution to evaluate beyond reasonable doubt eviction requests made by the Public Prosecutor's Office. However, they rarely do. Instead, they normally rely on a superficial inspection of documents presented by the supposed owners without thoroughly ascertaining the legitimacy and accuracy of such documents.

Such practices and attitudes by Public Prosecutors and judges underpin a judicial system stacked in favour of wealthy farm owners to the detriment of *campesinos*.

The number of disputes over labour entitlements has risen in recent years in large part due to declining coffee prices. The decline began in 1999 and led to some 108,000 job losses as many farm owners laid off their workers. In addition to having to accept the non-payment of labour entitlements or, in some cases, attempting to claim them, many *campesinos* found themselves vulnerable to homelessness and losing their livelihoods as a result of the "coffee crisis".

A typical farm in Guatemala is worked by *campesinos* known as *mozos colonos*, tenant labourers, a role rooted in the Spanish colonial period. *Mozos colonos* are workers, mostly Mayan *campesinos*, who receive their wage via a combination of cash and the allocation of a small plot of land for both housing and crops. *Mozos colonos* are vulnerable to the financial health of the farm, changes in the labour requirements of the farm (such as switching to crops that need less labour) and to changes in ownership. Their vulnerability is rooted in fact that most *mozos colonos* have nowhere to go when their contracts are terminated and the owners ask them to leave the farm, having lived on the farm for many years or all their lives.

Agrarian disputes related to land ownership

Disputes happen when the exclusive right to land is claimed by more than one person. In the cases highlighted in this report, both a rural community and, normally, a large landowner claim the land. Such cases account for approximately half of all land-related disputes in Guatemala.³⁷

³⁶ Article. 291. (prejudicial issue) If criminal prosecution depends exclusively on the judgement of a prejudicial issue, which, according to law, must be resolved in an independent process, this must be initiated and pursued by the Public Prosecutor's Office, summoning all interested parties, the law that regulates the issue permitting. When the Public Prosecutor's Office is not empowered to initiate the prejudicial issue, it will notify of its existence to the appropriate person and it will require this person to keep it informed of the process and its development.

³⁷ Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos de Tierra, *Opinion de CONTIERRA en relación a los conflictos de tierra*, Octubre 2004.

Ownership disputes tend to focus on boundaries that are imprecise or involve communities that have lived for generations on land and claim communal title to it even though they may not have the complete documentary evidence to prove this under Guatemalan law.

Boundaries and limits of properties have been a central problem in Guatemala because of the lack of national land registry. Until recently there was no land registry that was legally binding and provided an accurate description of the location and extent of land property holdings. In June 2005 the Guatemalan Congress passed a law which created a Land Registry. Although in force, this has yet to have any real impact in resolving land conflicts.

The lack of land registry also contributed to disputes over boundaries because the existing General Register of Property allows inscription of land without detailed plans or with very basic plans. It also permits duplicate inscription of the same land and of land of which the ownership was already being contested by other parties.

As above, after receiving a complaint of usurpation from a supposed landowner, a Public Prosecutor will request a copy of the relevant entry to the General Register of Property and carry out a visual inspection. In cases of ownership disputes, where the validity and legitimacy of the entry of the General Register of Property itself is in question, there is little evidence that Public Prosecutors and judges examine in depth the case to determine beyond reasonable doubt that usurpation exists. The opinions of technical specialists (government and independent) who are able to provide guidance on issues of geo-positioning, measurement, boundaries and extensions of land are rarely sought or taken into consideration.

Another factor that compounds the problems linked to the lack of a land registry is that Guatemalan legislation allows the acquisition of land through the *ley de titulación supletoria*, law of supplementary titles. Created in 1880, the law enables ownership of land via a series of administrative steps without having to prove continued occupation of the land. Using the law of supplementary titles, an individual interested in acquiring a certain area of land has to report the area as vacant to the appropriate authority. The claim goes through a series of steps which are supposed to check whether the land is really vacant. Indigenous communities who rely on customary law and have lived on land for generations without formal legal title are therefore particularly vulnerable, and have often not been aware of a claim on their land.

The law of supplementary titles has been heavily criticized for the lack of checks and for ignoring the rights of Mayan communities, and the Peace Accords called for the suspension of awarding of titles under the law of supplementary titles.³⁸ Between 2000 and 2003 there were 8,852 supplementary title claims.³⁹

Violent forced evictions

³⁸ Agreement on Identity and Rights of Indigenous Peoples, IV Civil, Political, Social and Economic Rights, section E 'Customary Law', paragraph 7 (a); signed 31 March 1995.

³⁹ Corte Suprema de Justicia, *Reformas a la Ley de Titulación Supletoria (Iniciativa de Ley 3128)*, 7 September 2004.

The case studies presented in this report have a common pattern of human rights violations. One feature is the use of violence during evictions. Although eviction orders signed by judges normally order police to use the minimum amount of force possible, this is not always obeyed. Police forces that carry out evictions normally number in the hundreds and comprise regular police units from the region and the capital with sizeable contingents of police special forces. In most cases, there are wounded, and sometimes dead, on both sides, although *campesino* communities, who frequently resist forced evictions, bear the brunt of the violence.

There is no specific training on evictions for Guatemalan police officers. The general attitude of the police was summarized by the National Deputy Director of the Police who told AI that “what stays behind after the eviction is the property of the farm. They are not really houses just shacks”.⁴⁰

The destruction, in particular burning, of homes and personal possessions is common. Often, the police role is to protect private individuals in the pay of the farm owner either hired for the day or *campesinos* still employed the farm owner. Private individuals carry out the destruction with the acquiescence of the police and sometimes with their active help.

When the police do not have the resources to mobilize officers within the 30 days that eviction orders remain valid, a farm owner will often offers to pay the costs of the eviction to ensure it happens. Police authorities at all levels confirmed to AI that it was common practice for farm owners to provide food and water to police officers during evictions. Farm owners and local police authorities confirmed to AI that paying for trucks and petrol was also common, although this was denied by national police authorities. Such practices again highlight the lack of impartiality of the police.

Failure of due diligence

Another pattern common to the case studies has been the lack of due diligence of Public Prosecutors and judges. Rarely is there an effort to exhaust all means available to clarify facts and establish both the respective rights of the parties and the violations of these before proceeding with an eviction. The failure to assign the same importance to the *campesinos*' possible legitimate grievance or competing claim in effect favours the side of the land or farm owner. In all cases, the differences between the community and land or farm owners in terms of their socio-economic position and political influence have been vast. The wealth, influence and access to legal counsel of the land or farm owners is in sharp contrast with the *campesino* communities' poverty, marginalization and lack of access or understanding of the legal processes associated with land ownership or enforcement of labour rights. In the absence of due diligence of public prosecutors and judges, *campesino* communities involved in land ownership disputes have suffered evictions where the possible legitimacy of their claims has been ignored and where reasonable doubt remained in regard to the claims of the landowner.

⁴⁰ AI interview with the National Director of Police and National Deputy Director of Police; Guatemala City 25, August 2005.

In a similar vein *campesino* communities involved in labour disputes, in the absence of due diligence from government authorities to enforce their labour rights and faced with an uphill struggle to fund long legal cases, have little other realistic recourse than to occupy farms.

Intimidation to force the community to desist from its claim, prior to the eviction, has also been widespread. Investigation by the authorities into alleged acts of intimidation and alleged human rights violations during forced evictions has been minimal or non-existent.

International standards on forced evictions

According to Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

The UN Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts charged with the responsibility of monitoring states’ compliance with their obligations under the ICESCR. In addition to reviewing the realization of economic, social and cultural rights through the consideration of periodic state reports, the CESCR also issues General Comments that emerge from its experience of the review process. General Comments are authoritative interpretations of the rights and obligations contained in the ICESCR and these have been used as the basis for decisions taken by regional and national courts, as well as international and regional monitoring bodies.

In its General Comment No.7 the CESCR describes forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”⁴¹ The CESCR has recognized that evictions, including by force, may be justified in some circumstances but they must be carried out in accordance with laws that respect human rights and specify in detail when evictions may be permitted.⁴²

The prohibition of forced evictions under international human rights law requires the state to refrain from forced evictions and also “ensure that the law is enforced against its agents or third parties who carry out forced evictions.”⁴³

Forced evictions are recognized as a grave violation of human rights, including, but not limited to, the right to adequate housing.⁴⁴ In 2002, while considering a case of forced eviction that involved private individuals destroying houses in view of the police in former Federal Republic of Yugoslavia, the UN Committee against Torture stated that:

⁴¹ General Comment No. 7: The right to adequate housing: forced evictions, Committee on Economic, Social and Cultural Rights [1997], para. 3 (emphasis added).

⁴² Ibid. para 14.

⁴³ The right to adequate housing (Art.11.1): forced evictions : . 20/05/97. CESCR General Comment No. 7. (General Comments), para 8.

⁴⁴ UN Commission on Human Rights Resolution 1993/77.

“... the Committee first considers that the burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment. The nature of these acts is further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation. Moreover, the Committee considers that the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying “acquiescence” in the sense of article 16 of the Convention”.⁴⁵

In carrying out evictions, police officers should apply the criteria established by the international community in the Basic Principles on the Use of Force and Firearms. The Basic Principles, while not binding, are an interpretation of instruments that are. The Basic Principles state:

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life.”⁴⁶

In addition to depriving people of their homes, forced evictions are often associated with violations of other human rights, including the rights to health, education, earning a living, adequate food, privacy and not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

While evictions may be justifiable in certain circumstances, they should be undertaken only as a last resort and in accordance with the following eight principles:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

⁴⁵ Committee Against Torture, Decision Complaint N° 161/2000 (Hajrizi Dzemajl *et al*), 2 December 2002 . CAT/C/29/D/161/2000, para 9.2. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Guatemala on 5 January 1990.

⁴⁶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990), paras 4 and 5.

- (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- (e) all persons carrying out the eviction to be properly identified;
- (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies; and
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.⁴⁷

In particular, the Committee has stated that:

“[e]victions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available”.⁴⁸

Amnesty International considers that these criteria were not met in the cases presented in this report, and that these actions therefore amounted to forced evictions, and as such were grave violations of human rights.⁴⁹ While legitimate evictions may involve a degree of force, Amnesty International is further concerned that these forced evictions were carried out using excessive force.

Amnesty International recognizes the right of the authorities in Guatemala to maintain law and order and protect property. The organization does not condone the actions of protesters that involve violence or damage to property. However, steps must be taken to ensure disputes are resolved peacefully and to guarantee that human rights are protected during evictions.

International standards on indigenous peoples’ land rights

Guatemala ratified the Convention concerning Indigenous and Tribal Peoples (ILO Convention No. 169) in 1996. The Convention contains broad protections of the land rights of indigenous peoples. These protections extend to land which indigenous peoples have traditionally occupied, as well as that which they occupy or otherwise use.⁵⁰

The Inter-American Court of Human Rights has taken significant steps to protect the land rights of indigenous peoples. Recognizing the special importance of land to the enjoyment of all human rights of indigenous peoples, the Court declared that failure to take adequate steps

⁴⁷ Ibid, para 16.

⁴⁸ Ibid, para 16.

⁴⁹ The UN Commission on Human Rights has affirmed that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing”, UN Commission on Human Rights Resolution 1993/77.

⁵⁰ Appendix 2 includes relevant excerpts from ILO Convention 169.

to protect the land rights of indigenous peoples (including through failure to recognize customary collective title to land, demarcate indigenous peoples' land or ensure access to effective judicial mechanisms to enforce these rights) is a violation of the right to property and of other rights protected in the American Convention on Human Rights and other international human rights instruments.⁵¹

*“[G]overnments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”*⁵² *“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.”*⁵³

The Convention states that “the peoples concerned shall not be removed from the lands which they occupy.” However, it adds:

“[w]here the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under

⁵¹ See inter alia, Inter American Court of Human Rights, Case of Yakye Axa Indigenous Community v. Paraguay, Judgement of June 17, 2005, Series C No. 125; Case of Mayagna (Sumo) Awas Tingni Community v Nicaragua, Judgement of August 31, 2001, Series C No. 79.

⁵² Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991. Article 13.

⁵³ Ibid, Article 14.

*appropriate guarantees. Persons thus relocated shall be fully compensated for any resulting loss or injury.*⁵⁴

In regard to protection of indigenous lands from outsiders, the Convention states:

*“Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.”*⁵⁵

In regard to labour the Convention states:

*“Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general... The measures taken shall include measures to ensure [t]hat workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them; ... Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.”*⁵⁶

International standards on labour entitlements

Article 20 of the ILO Indigenous and Tribal Peoples Convention protects the rights at work of indigenous peoples. It specifically outlines protection for those working in agricultural and, in particular, the establishment of adequate labour inspection services.⁵⁷

Articles 6-9 of the ICESCR also offer general protection of rights at work. Article 7 provides that all states parties recognize the right of everyone to enjoy just and favourable conditions of work that ensure, in particular:

“(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

⁵⁴ Ibid, Article 16.

⁵⁵ Ibid, Article 17.

⁵⁶ Ibid, Article 20, parts 1, 3 and 4.

⁵⁷ Appendix 2 includes relevant excerpts from ILO Convention 169.

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”.

3. Case studies of agrarian disputes

Trece Aguas Farm

The Trece Aguas Farm, also known as Oxlajujá in Q'eqchi, is located in the municipality of Senahú, in the south-east of Alta Verapaz department. The farm is approximately 4,500 hectares, making it one of the largest in Alta Verapaz. It was a major employer of *mozos colonos* for the production of coffee, and private security guards, and still maintains many employees despite redundancies in 2001. The current owners acquired the farm in the early 1970s. All the *mozos colonos* were born on the farm as, they claim, were their parents and grandparents. They had worked there, on average, for 15 years, some for as long as 40 years. There was already a history of evictions and human rights violations – the Trece Aguas Farm was mentioned twice in the UN-sponsored report on human rights violations during the internal armed conflict.⁵⁸

Mozos colonos living on the farm used to number approximately 500 families, all Mayan Q'eqchi group. In March 2001, the farm owner called all the workers to a meeting and, referring to low coffee prices, terminated their employment. In lieu of unpaid labour entitlements, the farm owner offered them land. The *campesino* community allege that initially the farm owner told them to find land within the farm but then offered two areas known as Se Mokoch and Se Chakchila. The farm owner's lawyers deny this and alleged that the only land ever offered them was the two areas.⁵⁹

Around 400 families accepted Se Mokoch and Se Chakchila, but a group of 90 families did not as they had established themselves in an area called Secux. This area, according to the families, has water, is of good quality and is close to where they had previously lived. The 90 families claim that Se Mokoch and Se Chakchila are of poor quality and allege that the other group only accepted after intimidation.

The 90 families denounced intimidation at regular intervals. In February 2002 in a letter to the President of Congress, they said that the farm owner threatened to make their community leaders “disappear”. In June 2002, according to a complaint submitted to the Public Prosecutor's Office by a member of the community, some of the farm owner's private

⁵⁸ “In 1982, in Rubeltzul, annexe to the Oxlajujá Farm or Trece Aguas, municipality of Senahú, department of Alta Verapaz, members of the Guatemalan army, on the request of the farm owner, arrived to evict *campesinos* that lived on the farm. During the eviction the army began to shoot causing the death of Dolores Cac. Afterwards the soldiers burnt the houses and belongings of the inhabitants of the farm” (Pages 33-34). “In 1982, in the Trece Aguas Farm, municipality of Cobán [sic], department of Alta Verapaz, members of the national police accompanied by a military commissioner captured Alejandro Tiul Caal, Tomás Quin and Sebastián Col who were *mozos* on the farm. They were taken to the prison in Senahú where they were tortured. After a week they were taken to the prison in Cobán. Afterwards they were set free. The victims had been accused of being guerrilla members for asking for more rights for the workers on the farm.” (Page 105). Guatemala Memoria del Silencio, Tomo VIII, Casos Presentados, Anexo II, Informe de la Comisión para el Esclarecimiento Histórico, 1999.

⁵⁹ AI interview with the legal representatives of the farm owner, Guatemala City, 24 August 2005.

security guards visited the house of a community leader at around midnight and kicked in the door to intimidate him.

According to the community, the farm owner wanted to use Secux to construct a hydroelectric installation. Construction began in mid-2003 and is undergoing certification as a Clean Development Mechanism under the UN Framework Convention for Climate Change.⁶⁰ The families allege that their presence near the construction site motivated their subsequent eviction, as the project might not have proceeded without resolution of the labour dispute.

The Human Rights Ombudsman's Office noted that a fundamental problem was the lack of recognition of the role land plays in the customs and beliefs of the Mayan tradition. It said: "the families have been there for more than a 100 years and are strongly attached to the area, but the significance of the land is not recognized".⁶¹ The different perspectives became clear during negotiations. The farm owner's lawyers recall a community that was badly led, divided and did not accept any of what they considered generous offers. The families recall offers of land of poor quality, intimidation, broken promises and no respect for their spiritual attachment to the land they had lived on for generations.

On 19 May 2004 the 90 families allege they were told that the farm owner was coming to meet them. Instead, between 500 and 700 police officers and around 50 private security guards arrived to evict them.

According to the *campesinos* the police began firing tear gas, and instead of aiming in the air they deliberately targeted the *campesinos*. The police allege that the *campesinos* began throwing sticks and stones at them. An official police report of the eviction states that two police officers were wounded (one of whom required minor medical attention) and four *campesinos* were flown in the farm owner's helicopter to the emergency room of a local hospital with cuts, bruises and fractures. The police report alleges that the *campesinos* had three "homemade" shotguns and one "homemade" pistol. No police injuries were caused by these weapons and there were no reports that they had been fired. The *campesinos* allege that seven of their number were wounded, including 85-year-old Marcos Choc Choc who later died from an injury to his head, allegedly sustained during the eviction.

The *campesinos* allege that the police and farm employees using chainsaws cut down their houses and then, as these fell, set fire to them. Their belongings, including reserves of maize, were burned. Their crops of chillies, pumpkin and cardamom were destroyed. The official police report of the eviction states:

⁶⁰ See <http://cdm.unfccc.int/> for more information.

⁶¹ Interview with representative of the Human Rights Ombudsman's Office, Cobán, Alta Verapaz, 17 August 2005.

“[At] 1300 hours the disarming of approximately 50 houses built of wood, planks and corrugated iron began, but because of the time and topography of the area it was not possible to destroy all the houses, around 25 houses remained standing. However, all the belongings were removed. The eviction of all the invaders ended at 0030 hours”.⁶²



Eric Cucul Caal was one of six Q'eqchi indigenous rural workers injured as they were violently evicted from their homes on the Trece Aguas farm in May 2004. The scars on his head and finger were allegedly the result of tear gas being fired at close range by the police. (© AI)

Representatives of the Human Rights Ombudsman's Office who were present confirmed that police had burned the houses. The farm owner denied that any employees participated in the destruction of houses.

Once the area had been cleared of the *campesinos*, the farm owner provided 45 trucks for the transport of the evictees. The police knew that the evicted *campesinos* had nowhere to go as the official police report states that “the *campesinos* did not have any housing alternative because the majority of the adults had lived and worked on the farm for up to 50 years”.⁶³ The trucks of the farm owner drove the *campesinos* to the area of El Estor in the department of Izabal. On arrival, the *campesinos* refused to disembark from the trucks because the area had no water or electricity and there was no information as to whom the land belonged. The *campesinos* then allege that the trucks divided up and delivered different groups to seven different points in the country, including Guatemala City. A police report notes that the farm owner repeatedly insisted the *campesinos* not be allowed to travel on roads near Trece Aguas Farm for fear that they would reoccupy.

In addition to supplying the trucks, the farm owner also provided food and gasoline for the police but could not specify quantities.

In subsequent days the mayors of Senahú and Panzós (5 and 20 kilometres from Trece Aguas Farm respectively) offered the evicted community the use of a disused market and municipal hall, where they remain to this day. Some of the community took shelter with relatives in surrounding communities. With no land, the community survive on food handouts from the local church, local municipal governments and surrounding *campesino* communities.

⁶² *Secretaría Comisaría Cincuenta y Uno, Cobán, Alta Verapaz, Oficio No. 031-2004, Ref AMGT/POP, 20 May 2004. (emphasis added).*

⁶³ *51 Comisaría, Cobán, Alta Verapaz, Secretaría, Oficio No. 032-2004, Ref AMGT/rb, 21 May 2004.*

On 16 September 2004 the *campesinos* community went to the Labour Inspectorate to continue their demand for unpaid labour entitlements. At that meeting, the legal representative of the farm owner informed the *campesinos* that they were no longer willing to negotiate and would respond only in legal proceedings. At the time of writing the *campesinos* had not received any of their unpaid labour entitlements and the abuses committed during the eviction were not being investigated by the Public Prosecutor's Office.

Soledad Sayaxut

Soledad Sayaxut is a small community located in the municipality of San Pedro Charchá, around 10km east of Cobán, the departmental capital of Alta Verapaz. Around 30 Mayan Q'eqchi families used to live there and work the land communally. They say they were born there as were their parents and grandparents.

In 1988 the 30 families requested the (now non-existent) *Instituto Nacional de Transformación Agraria* (INTA – National Institute of Land Transformation) to award them the deed for the land they inhabited, as they had no legal papers to prove their ownership. The basis for the request was that Soledad Sayaxut was vacant land which, under Guatemalan legislation, belongs to the state of Guatemala.⁶⁴ As such, they argued, the land should be given to them because they needed it and in recognition of the time they had already lived there. Initially, the INTA lost their request, forcing the community to resubmit their petition.

In 1994 INTA in a preliminary report concluded that the land in question was either vacant land or mistakenly claimed by an owner of a nearby area known as Secontí, which borders Soledad Sayaxut.⁶⁵ The preliminary report asked for further studies to clarify the situation.

By this stage the owner of Secontí had also presented a formal submission to INTA declaring himself to be the rightful owner. INTA asked him to submit detailed and professionally prepared measurement of his land due to the discrepancies between the documents he held and INTA's data. Amnesty International understands that these measurements were not presented.

From 1995 onwards the case was transferred between three INTA departments until 2001 when FONTIERRAS (the Land Fund – INTA's successor created by the 1996 Peace Accords) concluded that the area of Soledad Sayaxut claimed by the 30 families was vacant land.⁶⁶

According to the community of Soledad Sayaxut, the owners of Secontí accused some members of the community of usurpation and stealing timber from the area of Soledad Sayaxut. As a result, three members of the community of Soledad Sayaxut spent five days in jail and had to sign a police ledger every 15 days for two years as a condition of their release.

⁶⁴ Código Civil, Artículo 459, paragraph 10. "National Property of non-common use are [...] vacant lands and lands that are not private property".

⁶⁵ CONTIERRA Document, Prov.:Depf-CONTIERRA-04-01.

⁶⁶ Ibid.

The conclusion of FONTIERRAS cannot be definitive until a *Medida Legal* (Legal Measurement) is carried out and declared. A *Medida Legal* is a binding legal instrument available to FONTIERRAS to declare an area of land as vacant, which would then allow the state of Guatemala to claim ownership for eventual redistribution.⁶⁷ As a binding legal instrument, the declaration of a *Medida Legal* must follow a defined procedure. After examining related documentation a physical survey of the land in question must be carried out. Both the examination of the documentation and the physical survey are necessary parts of a *Medida Legal* as the latter provides proof on the ground of what is stated in the documents. Having completed both steps, FONTIERRAS then decides on whether the area in question is vacant land or not and issues a *Medida Legal* accordingly.

According to FONTIERRAS, the owners of the land in Secontí who claim to be owners of Soledad Sayaxut have never allowed any physical surveys to be carried out.⁶⁸ They have not permitted the entry of FONTIERRAS technicians to Secontí or Soledad Sayaxut. For the safety of its personnel FONTIERRAS will not carry out surveys on disputed land unless it has the agreement of both sides. On 13 January 2004 FONTIERRAS transferred the case to the *Procuraduría General de la Nación*, Solicitor General of the Nation, specifically requesting that it initiate legal proceedings to obtain a court order that would permit access to the land.

Despite the preliminary conclusions of INTA, the lack of cooperation of the landowners and the pending request of FONTIERRAS to the Solicitor General, a civil law judge issued a *lanzamiento* order against the community of Soledad Sayaxut. A *lanzamiento* order is in practice the same as an eviction order but has a different name because it is issued by a civil law judge.

The eviction was carried out on 27 April 2004 by 60 police officers. They arrived at 9am and notice of the pending eviction was given at that moment. The Public Prosecutor's Office was not present (as it was technically a civil law issue), nor was a representative of the Human Rights Ombudsman's Office (whose presence is normally requested in eviction orders signed by criminal law judges). A representative of the *Comisión Presidencial de Derechos Humanos* (COPREDEH), Presidential Commission on Human Rights, was present.

There was no dialogue or negotiation. The official police report states there was no resistance by the community, who left the area. However, according to the community, the police, an employee of the alleged owners and private individuals hired for the day, burned their houses with nearly all their belongings inside. The community says that police officers used chainsaws to destroy their houses and then private individuals (including an employee of the alleged owner) burned the piles that remained. The community lost its reserves of maize, clothes, kitchen utensils, fertilizer and fumigating equipment, but were able to save their

⁶⁷ "A *Medida Legal* is the process by which vacant land is located, measured and registered in the name of the state, according to Decree 1551, Law of Land Transformation; Decree 1786, Law of Regulation of Land Measurements; and Decree 24-99, Law of the Land Fund." Centro de Investigaciones Económicas Nacionales, *Tierra: del mito a la realidad*, Guatemala, 2003. Page 25

⁶⁸ AI correspondence with FONTIERRAS, October 2004 and November 2005.

chickens and pigs.⁶⁹ The crops of cardamom, beans, plantain, coffee and tomato were also destroyed by a tractor provided by the owners of Secontí.

A report issued by COPREDEH also alleged that private individuals hired by the landowners to help with the eviction burned down homes.⁷⁰ The report, echoing the testimony of the community, says the burning was carried out in the presence of the authorities. It also says that the community, which fled to a nearby area, continued to be threatened and intimidated by the alleged landowners, including by being shot at.

At the time of writing, 22 months after receiving the FONTIERRAS request, the Solicitor General of the Nation had yet to initiate legal proceedings to obtain a court order for the FONTIERRAS personnel to visit the disputed land.⁷¹ According to the local office of FONTIERRAS, the case will only proceed if the community keeps pressing the relevant authorities. The community themselves noted that “after 18 years we are tired”.⁷² The Public Prosecutor’s Office is not investigating any of the human rights violations that occurred during the eviction.

Chitocán

Chitocán is a farm in the municipality of Cobán, department of Alta Verapaz. The workers are all Mayan Q’eqchi *campesinos* of limited financial means. Most are illiterate. The workers say they were born on the farm and have lived and worked there all their lives, as have at least three generations of their families.

The relationship between the farm workers and the owner had been tense for many years, going back to accusations by the *campesinos* that their fathers and grandfathers were cheated out of their land and forced to become *mozos colonos*. The current dispute centres primarily on the lack of payment of labour entitlements, but has also involved disagreement over the right to use access paths which cut across the farm to the plots allocated to the workers for their own crops.

In 1990 the community went to their local Labour Inspectorate to reclaim some of the labour entitlements owed to them. The farm owner, according to the community, promised to pay them while negotiating in the Labour Inspectorate. However, he never signed or paid anything. The workers have no written record of the farm owner’s promises as they relied on what was said during meetings with him.

Over the next 10 years the community discontinued their claim because of the financial cost and the lack of legal help. The community continued to live and work on the farm.

⁶⁹ AI interview with community of Soledad Sayaxut, 19 August 2005.

⁷⁰ COPREDEH, Informe de Verificación y Seguimiento Situacional a los Casos de Desalojos de Fincas en Alta Verapaz, 7 June 2004.

⁷¹ AI correspondence with FONTIERRAS, November 2005.

⁷² AI interview with community of Soledad Sayaxut, 19 August 2005.

In September 1998 the employment of the community was terminated, although the farm owner continued to employ a few members on an ad hoc and temporary basis. The dispute between the community and the owner became worse, focusing mainly on an access path that cut across the farm. The community says that the farm owner denied them access to the path because he wanted them to sell their surplus crops to him, whereas the community preferred to transport the crops to the local market to receive a better price. In March 2000 Angel Uriel Peña (a lawyer acting for the community), Edgar Chub Tiul (a community leader) and Víctor Guillermo Ramírez Oxom (a local farm owner) were all murdered. The three were in the vicinity of Chitocán with the aim of mediating between the community and the farm owner in the dispute over the access path. Three individuals with family ties to the owner as well as the owner himself were found guilty and sentenced to between 25 and 50 years in prison.⁷³

In April 2002 the community moved from the plots allocated to them (on the fringes of the farm) and occupied part the hub of the Chitocán farm. This was to bring pressure to bear during the negotiations of their labour entitlements. The imprisonment of the farm owner also motivated the community to take this step. By this stage, other *campesinos* who said they were landless but who were not part of the original group owed labour entitlements, joined the occupation. The new farm owner (the imprisoned farm owner's daughter) offered the community 21 hectares of land in exchange for the amount owed to them for their labour entitlements. The community rejected the offer because the amount of land was too little and the farm owner could not demonstrate legal ownership of the land offered. After the failed negotiations, the community occupied another part of the hub of Chitocán farm. The farm owner says that the group was responsible for damage to buildings in the hub and theft of various items and cattle.

In mid-April 2002, a few days after the occupation of the hub, the farm owner submitted criminal complaints to the Public Prosecutor's Office in Cobán for usurpation and theft of cattle. The Public Prosecutor's Office subpoenaed the accused, personally verified the occupation and requested an eviction order from the local judge. Although informed about the communities' claim for unpaid labour entitlements, the Public Prosecutor did not deal with the issue because it was a civil law issue and not a criminal one.

For next two years there was no progress on either the payment of labour entitlements or ending the occupation of the farm. Although under Guatemalan law the Public Prosecutor's Office is supposed to be independent of political pressure or interference, an Assistant Public Prosecutor explained the delay⁷⁴:

⁷³ *La Prensa Libre*, 2 February 2002.

⁷⁴ "Article.3. *Autonomy. The Public Prosecutor's Office will act independently, on its own will and according to the functions assigned to it by law, without subordination to any body of the State or authority, other than what is established in this law. The Public Prosecutor's Office will have a yearly budget within the national budget and will manage autonomously its resources according to its own requirements.*" Ley Orgánica del Ministerio Público, Decreto Número 40-94 del Congreso de la República de Guatemala

“... under the previous government [January 2000-January 2004] we couldn't carry out any eviction orders, we used to receive instructions from the Ministry of the Interior to halt evictions, but with the new government things changed, so we reactivated all the eviction orders”.⁷⁵

Thus, on 17 March 2004 the Public Prosecutor's Office requested an updated Power of Attorney from the lawyers representing the farm owner, which was submitted on 13 April 2004. Twenty-four hours later a local judge signed the eviction order.

The eviction of 52 families was carried out on 5 May 2004 by 519 police officers. There was no prior notification of the eviction order to the communities (the Assistant Public Prosecutor notified the community on the day of the eviction). There is normally no room for meaningful negotiation at this stage, and on the day there was no attempt to negotiate. The police allege that they were attacked by the community who fired fireworks at them and threw stones. The community alleges that the police began firing in the air and used tear gas, and then advanced on the homes of the fleeing community. The police reported three wounded, claiming that members of the community throwing fireworks were to blame for one of the injuries. The community disputes this, saying the police officers fell on rocks.⁷⁶ Six *campesinos* were arrested including one who was taken to the hospital suffering from bruising to the chest, knee and abdomen, and an internal injury in the abdomen.

The community says that when they saw tear gas being fired, the women and children began to leave, while the men stayed behind. According to press reports, the Guatemalan Red Cross reported that at least 20 people, including children, suffered intoxication from tear gas.⁷⁷

The community says that their homes were all burned and that their possessions were either burned or stolen, including reserves of maize and other basic foodstuffs, clothes and livestock. The community alleges that police officers and civilians hired by the farm owner burned their homes. In press reports, the police officer in charge of the Cobán station declared: “If there were any burnings it was because the members of the community themselves set fire” to their own homes.⁷⁸ The official police report states:

⁷⁵ AI interview of Assistant District Attorney, Cobán, Alta Verapaz, 17 August 2005.

⁷⁶ The official police report details one officer bitten by a snake, one with a bruised foot and one with burns caused by fireworks. *Oficio No. 028/2,004. Ref AMGT/ical co. Policia Nacional Civil, Comisaria 51, Cobán AV*, 5 May 2004.

⁷⁷ *La Prensa Libre*, 6 May 2004.

⁷⁸ *El Periódico*, 8 June 2004.



A police officer and private individual destroy a home during the eviction in Chitocán (©MINUGUA, reproduced with permission)

*“[D]uring the incidents and the confrontation between the police and invaders, the real owners of the farms assigned various workers [not part of the community being evicted] to set fire to the majority of houses which were being emptied, in addition the invaders set fire to various houses”.*⁷⁹

A review of evictions in Alta Verapaz carried out by COPREDEH states that during the Chitocán eviction private individuals hired by the farm owner set fire to the homes of the community. The COPREDEH report also notes that properties in Las Pacayas and Imperio Maya, adjacent to the Chitocán farm but outside the area authorized in the eviction order, were

also burned down.⁸⁰ Press reports concur with the destruction described by COPREDEH, but specifically blame the police for the burning and the looting of a shop.⁸¹ The farm owner of Chitocán paid compensation to the home and shop owners in Las Pacayas and Imperio Maya for the damage caused.⁸²

After the eviction, negotiations resumed between the farm owner and the community. The farm owners offered to sell them 45 hectares on another property (Choctún farm) for US\$129,032. According to the community, lawyers representing the farm owner threatened them with another eviction if they did not accept the offer. The community agreed and moved to the Choctún farm on 22 May 2004.

⁷⁹ *Oficio No. 028/2,004. Ref AMGT/ical co. Policía Nacional Civil, Comisaría 51, Cobán AV, 5 May 2004.*

⁸⁰ COPREDEH, *Informe de Verificación y Seguimiento Situacional a los Casos de Desalojos de Fincas en Alta Verapaz*, 7 June 2004.

⁸¹ *La Prensa Libre*, 27 June 2004.

⁸² AI interview with farm owner and legal representative, 19 August 2005.

The negotiated agreement between the farm owner and the community, witnessed by various government officials, stipulated that the land purchase would be funded by government agencies. FONTIERRAS, the agency with primary responsibility for buying and distributing land, says it cannot be involved as its rules do not allow engagement in disputes where there has been occupation or where the community is considered occupiers by the seller. However, FONTIERRAS understands that the Ministry of Agriculture has become involved but that



Q'eqchi indigenous rural workers who were evicted in May 2004 from the Chitocán farm. They had occupied the farm in April 2002 in protest at the lack of labour payments. (©AI)

complications have arisen because of the over-valuation of the area of land to be purchased. The farm owner has begun to demand (and receive) rent payments from the community. The farm owner claims that this is in order to put pressure on the government to speed up the process of buying the land. The community paid the first two months but have since refused.

The Public Prosecutor's Office is not investigating any human right violations that took place during the eviction, despite the press and COPREDEH reports of criminal damage caused by the police and private

individuals, and despite the official police report detailing the burning of houses by private individuals. Amnesty International sought clarification from representatives of the Public Prosecutor's office present during the eviction as to whether they had witnessed the burning of houses. They said they had not witnessed police destruction of houses, but did not indicate whether they had witnessed private individuals setting fire to houses during the eviction.

Santa Inés

Some 15km south of Cobán, in the municipality of Santa Cruz, Santa Inés is a small community of approximately eight families, some 40 individuals. Originally 15 families (seven families have left since the dispute began) they say they established themselves in Santa Inés in mid-2001. They claim that the land of Santa Inés had been abandoned for 40 years and they took up residence there as they did not have land of their own.

The families allege that the land of Santa Inés is owned by the state of Guatemala as it is vacant but mistakenly claimed by someone who owns nearby land. The owner of the nearby

land owns seven different areas of land. The community allege that because these seven areas are all next to each other, the owner sees them as, in effect, one property. In doing so, the community allege, the owner mistakenly includes Santa Inés in the overall area.

In mid-2002 the alleged owner of the land presented a complaint for aggravated usurpation against four people, alleged leaders of the community, to the Public Prosecutor's Office. The Public Prosecutor's Office asked the judge to issue arrest warrants for them on the basis of four pieces of evidence: copies of the property's entry in the General Register of Property, two testimonies of employees of the alleged owner (which were virtually identical), and a declaration of a public notary that he had witnessed the "occupation" of the disputed area of Santa Inés. The judge, considering the ownership had been proven and that therefore usurpation was occurring, issued the arrest warrants. On 8 November 2002 the Public Prosecutor's Office requested an eviction order against the whole community, which was issued by the judge on the same day.

The eviction was carried out on 27 November. The official police report states that the area "was peacefully vacated and fifteen houses were destroyed".⁸³ The evicted families say that the police burned their houses. Those who had pending arrest warrants fled in order not to be arrested.

After the eviction, the families returned to Santa Inés. The alleged owner returned to the Public Prosecutor's Office, who in turn requested another eviction order from the judge. However, the new eviction order was not executed, according to the Public Prosecutor's Office because of "different circumstances". It was renewed seven times and was finally carried out in July 2005.⁸⁴

Between 2002 and the eviction of July 2005 there were negotiations between the alleged owner and the 15 families, as well as new legal requests and interventions of third parties.

In April 2003 CONTIERRA produced an analysis and investigation of documents relating to Santa Inés held by the General Register of Property. The CONTIERRA report, while noting that the alleged owner refused to provide it with any documentation, concluded that the alleged owner did own seven areas of land in the vicinity of Santa Inés and that the total area stipulated in documents for all seven areas was 244,613 square metres (24.46 hectares). The Technical Judicial Unit, now the National Land Register, produced a blueprint of the total area actually occupied by the alleged owner, which measured 287,147 square metres (28.71 hectares). The difference is 4.25 hectares.

An Assistant Public Prosecutor in Cobán dealing with the case told Amnesty International that there was an incorrect correlation between the total surface area claimed by the landowner and what is substantiated by the documents which detail the extension of the property, leaving approximately nine [sic] hectares of untitled land.⁸⁵

⁸³ 51 Comisaría, Cobán, Alta Verapaz, Secretaria, Oficio No. 046-2002, Ref FGCIIM/Srio. Juárez

⁸⁴ Letter to AI from Public Prosecutor's Office, Cobán, Alta Verapaz, 24 August 2005.

⁸⁵ AI interview with Assistant Public Prosecutor, Coban, Alta Verapaz, 22 August 2005.

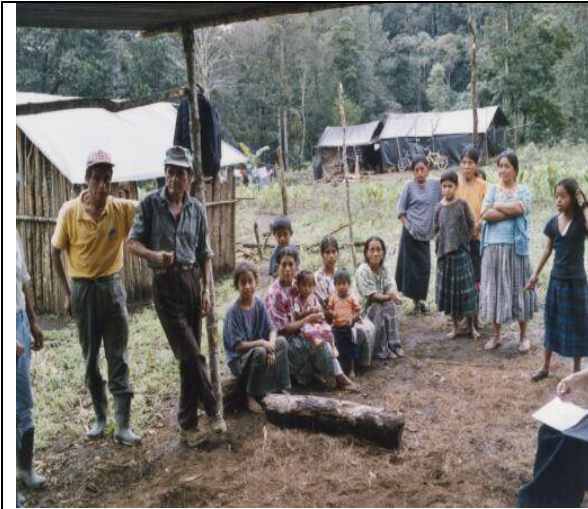
The families formally petitioned the Public Prosecutor's Office in Cobán in March 2004, asking for the arrest warrants and eviction order to be suspended. They argued that the land they resided on was vacant land, that it had not been proved that the alleged owner was in fact the legitimate owner, and that FONTIERRAS should be called upon to clarify the situation. There is no record that the Public Prosecutor's Office acted on this request. In October the families asked FONTIERRAS directly for their technical support for the measurement of the area in dispute.

In November 2004 a lawyer acting for the community petitioned the judge directly for a pre-judicial issue to be declared. The petition noted that the alleged owner refused to collaborate with CONTIERRA and argued that FONTIERRAS should be allowed to carry out physical surveys, produce a geo-positioning study and prepare a further report on the documents held by the General Register of Property. The petition specifically requested that "before continuing with the criminal process it should be established if it is the community that is usurping the property of [name] or if it is [name] who is usurping the lands of the Santa Inés community".⁸⁶

In December 2004, under the auspices of the local Human Rights Ombudsman's Office, the two parties came to an agreement to allow Mercy Corps and JADE, two non-governmental organizations to carry out technical studies to determine the extension and positioning of the disputed area, to respect their judgement and act accordingly (ie for the families to leave if the studies indicated that the land belonged to the alleged owner or for the alleged owner to withdraw the requests for an eviction and arrest warrants if the studies indicated that the land was vacant). In May 2005 the alleged owner, a JADE engineer, representative of the local Human Rights Ombudsman's Office and a representative of the Office for Land Issues of the local church arrived at Santa Inés to carry out a physical survey of the land. The families opposed the measurement because it was the intention of the technicians to measure the seven properties as one, not separately as the families understood had been agreed. The families' legal advisor and their *campesino* organization representative were not present.

On 7 July 2005 the pending eviction was carried out by 255 police officers. According to the police report, the eight remaining families dismantled their homes and, with the help of employees of the alleged owner, withdrew. The families say that their homes were burned. As after the first eviction, the community returned to the Santa Inés once the police had left.

⁸⁶ Petición de cuestión prejudicial, Causa No. 870-2002 Oficial, 8 November 2004.



'Santa Ines' Community in Alta Verapaz returned to their community after being evicted on 7 July 2005. (©AI)

A week after the eviction, a member of one of the families, who is also active in a *campesino* organization, presented a formal complaint about threats and intimidation against the alleged owner to the Public Prosecutor's Office in Guatemala City.

An Assistant Public Prosecutor in Cobán told Amnesty International in August 2005 that a new eviction order was being processed. Amnesty International wrote to the Attorney General in September 2005 highlighting the case and requesting that the issue of the ownership be definitively resolved before another eviction was requested. No response had been received at the time of writing.

Finca Nueva Linda

The Nueva Linda farm is near the port of Champerico in the department of Retalhuleu, South-West Guatemala. In October 2003 *campesinos* of the farm and others from neighbouring farms occupied Nueva Linda in protest at the lack of progress in the investigation of the alleged abduction and "disappearance" of one of their colleagues, Héctor Réne Reyes. The occupiers were subsequently evicted violently, leaving 12 dead and many wounded.

The case highlights the different approaches of the judicial authorities according to the interested parties. In the case of the "disappearance" of Hector Reyes, the response was slow, inefficient and still pending resolution. The request for the eviction, however, was dealt with swiftly and involved the highest levels of government in its execution. Although both issues fell within the remit of criminal law, in cases of usurpation, unlike abduction and "disappearance", prosecution and urgency in the investigation are not mandatory for the Public Prosecutor's Office.⁸⁷

The alleged abduction and 'disappearance'

⁸⁷ Criminal Procedural Code Articles 24 and 304.

Héctor Reyes worked as the administrator on the Nueva Linda farm. An active member of a trade union, he had also helped negotiate an end to an occupation at a neighbouring farm and was considered a community leader. On 5 September 2003 the farm owner's bodyguard asked Héctor Reyes to accompany him to a neighbouring farm to drop off some fertilizer. Héctor Reyes left his home that morning and has been missing since.

The farm owner's bodyguard subsequently declared to the Public Prosecutor's Office that on setting out they realised that the road to their destination was impassable and abandoned the errand. The bodyguard alleged that Héctor Reyes asked to be dropped off at the bus station saying that "he was going to the USA to be with his lover".⁸⁸

The subsequent police investigation found serious inconsistencies in the testimony of the farm owner and his bodyguard. For instance, the road to the neighbouring farm was not impassable and the fertilizer had been dropped off a day earlier by the farm owner himself.⁸⁹

The following weeks saw a number of requests from the police to the Assistant Public Prosecutor overseeing the case to formally request a search of the premises and vehicles belonging to the farm owner and his bodyguard. After an initial request in October 2003, the police officers wrote to the Assistant Public Prosecutor in mid-November informing him that they had received complaints of alleged death threats from *campesinos* of the Nueva Linda farm. The police investigated and concluded that the farm owner and his bodyguard were responsible for the threats and that the nature of the threats presumed their responsibility in the "disappearance" of Héctor Reyes. In early December the police officers wrote again to the Assistant Public Prosecutor asking for searches to be organized,⁹⁰ but nothing happened.⁹¹

In December 2003 the wife of Héctor Reyes presented a complaint to the Public Prosecutor's Office in Guatemala City. She stated that the farm owner – via the Assistant Public Prosecutor in Retalhuleu – had offered her "financial compensation" for the "disappearance" of her husband. She asked for the Assistant Public Prosecutor to be investigated.

⁸⁸ Testimony of the farm owner's bodyguard, *Ministerio Público ref: MP 157-2003-3297*, 6 November 2003.

⁸⁹ *Informe Final, Finca Nueva Linda Champerico Retalhuleu, Hechos Ocurridos el 31 de agosto de 2004, Informe de la Comisión de Derechos Humanos del Congreso de la República de Guatemala*. p 4

⁹⁰ *Ibid.*

⁹¹ According to the Criminal Procedural Code the Public Prosecutor's Office does retain the lead in criminal investigations, with the police in a subordinate role (Article 107). However, the police are obligated both to investigate crimes (Article 112) and to collaborate with the Public Prosecutor's Office (Article 157). In addition, in cases of criminal acts subject to mandatory prosecution (those for which a complaint is not necessary for the Public Prosecutor's Office to initiate investigations, and which includes kidnapping), the police are required by law to act with urgency to gather evidence (Article 304). Amnesty International believes that it would be reasonable for an Assistant Public Prosecutor's Office to organise searches of the premises of the main suspects in a case of kidnapping, on the advice of the police.

In an interview with officers of the Public Prosecutor's Office from Guatemala City, the police officer investigating the case stated: "It seems that [the local Assistant Public Prosecutor] does not want to act, it seems strange that in regard to the eviction he acted very quickly".⁹²

In February 2004 the Public Prosecutor's Office requested a luminol test (to detect traces of blood) on the truck that the farm owner's bodyguard and Héctor Reyes had used the morning he "disappeared". The test was carried out in March 2004, six months after the "disappearance".⁹³

In July 2004 the wife of Héctor Reyes signed a document in which she withdrew her charges. She stated that she did not consider the farm owner and his bodyguard responsible for the "disappearance" of her husband. The community of Nueva Linda farm, including her daughters, says that she cannot read or write and was manipulated into signing such a declaration by being promised money to travel to the USA to see her husband. The Human Rights Commission of the Guatemalan Congress, which investigated the Nueva Linda farm case, considered the declaration and those who facilitated should be subject to a criminal investigation.⁹⁴

According to reports, in June 2004 the Public Prosecutor's Office in Retalhuleu found the Assistant Public Prosecutor negligent, although it is not clear if there were any disciplinary consequences for him.⁹⁵ In August 2004 the Public Prosecutor's Office of Coatepeque (in the department neighbouring Retalhuleu, where the case was transferred) requested the arrest of the farm owner and his bodyguard. The judge denied the request on the basis that it was incorrectly formulated and that the wife of Héctor Reyes had withdrawn her charges.

At the time of writing the investigation into the "disappearance" of Héctor Reyes was continuing. Since September 2004 it has been led by a Special Prosecutor based in Guatemala City. In August 2005, Amnesty International wrote to the Attorney General (head of the Public Prosecutor's Office), asking if his Supervision Department had investigated the performance of previous prosecutors overseeing the case. At the time of writing, no reply had been received.

The occupation and eviction

⁹² Informe de Comisión de 1 al 5 de diciembre 2003, Unidad de Fiscalía Especializada Numero 2, *Ministerio Público*.

⁹³ It is advisable to carry out luminol tests as soon as possible in order to minimise the risk of contamination as some parts of motor vehicles can be easily cleaned with detergent. See Quickenden TI, Ennis CP & Creamer JI, *The forensic use of luminol chemiluminescence to detect traces of blood inside motor vehicles*, in *Luminescence*, 2004; 19: 271-277.

⁹⁴ *Informe Final, Finca Nueva Linda Champerico Retalhuleu, Hechos Ocurridos el 31 de agosto de 2004, Informe de la Comisión de Derechos Humanos del Congreso de la Republica de Guatemala*. p 17

⁹⁵ *Informe Final, Finca Nueva Linda Champerico Retalhuleu, Hechos Ocurridos el 31 de agosto de 2004, Informe de la Comisión de Derechos Humanos del Congreso de la Republica de Guatemala*. p 7

Five weeks after the “disappearance”, on 13 October 2003, approximately 200 *campesinos* of the Nueva Linda and neighbouring farms occupied it to protest against the lack of progress in the investigation of the “disappearance”. Fifteen days after the occupation, on 28 October, a judge issued an eviction order against the *campesinos* occupying the farm, after the local Assistant Public Prosecutor had requested it.⁹⁶

Fearing violence, the eviction order was appealed twice by the Human Rights Ombudsman’s Office. In May 2004, the Constitutional Court, Guatemala’s highest court, turned down the last appeal. From June political pressure was brought to bear to force the eviction. The Association of Cattle Ranchers of South-West Guatemala met the Vice-president, Minister of the Interior and Director of National Police to request the eviction be executed. On 8 June a national protest of major Mayan and *campesino* organizations culminated with a government agreement to halt all evictions for the following 90 days. However, on 25 August the Minister of the Interior attended an event organized by the Guatemalan-American Chamber of Commerce and reportedly declared “we’re going to get on with evictions, because the law must be respected”.⁹⁷

On 31 August 2004 around 1,000 police officers assembled near the Nueva Linda farm in the early morning with instructions to carry out the eviction. Various authorities were present including the Governor of Retalhuleu, local Justice of the Peace, District Public Prosecutor, local police chief, two officers of the Human Rights Ombudsman’s Office and the farm owner.⁹⁸ Talks between the authorities and *campesinos* occupying the farm lasted approximately one hour. Both sides were inflexible: the authorities stated they would proceed with the eviction and *campesinos* said they would resist no matter what. A report by the Human Rights Ombudsman’s Office stated that aggressive and inflammatory statements were made by both sides during the talks. The Governor said that “it does not matter if there are 200 dead *campesinos* or police officers”, and a leader of the *campesinos* responded by saying that “if *campesinos* are going to die, so are police officers”.⁹⁹ At approximately 8.40am the eviction started.¹⁰⁰

⁹⁶ *Informe Circunstanciado de Derechos Humanos Caso de Desalojo Finca Nueva Linda, Retalhuleu, COPREDEH*, p.5.

⁹⁷ *Prensa Libre*, 26 August 2004.

⁹⁸ *Informe Circunstanciado de Derechos Humanos Caso de Desalojo Finca Nueva Linda, Retalhuleu, COPREDEH*, p.6.

⁹⁹ Procuraduría de los Derechos Humanos, *Desalojo en Finca Nueva Linda, Champerico, Retalhuleu, Hechos Relevantes*. Page 18.

¹⁰⁰ *Informe Circunstanciado de Derechos Humanos Caso de Desalojo Finca Nueva Linda, Retalhuleu, COPREDEH*, p.6; and eyewitness testimony received by Amnesty International.

In the first five minutes a pattern of violence became evident. The first line of police was unarmed and as they advanced three policemen were killed by gunfire. Another policeman died days later of wounds sustained at that moment. The following hours witnessed the deaths of eight *campesino* workers, including three minors. There are different allegations from both sides as to who was responsible for the deaths. Police allege that the *campesinos* began the violence by shooting at the first line of police. *Campesinos* allege that private security guards hired by the farm owner who had moved into a flanking position to the police began the shooting.



17-year-old Jacobo Vicente Elias lies dead after the eviction of Nueva Linda farm. This photograph of the PDH highlights a bruise in the form of boot print. (© PDH Guatemala, reproduced with permission.)

A report by the Human Rights Ombudsman's Office stated that five of the eight *campesinos* killed were extrajudicially executed.¹⁰¹ One of the dead was 17-year-old Jacobo Vicente Elias. Photographs show bruising to his right eye, lip and abdomen. The report also stated that Jacobo Vicente was shot in the head and lower back while lying on the floor surrounded by police.¹⁰²

The professional and detailed forensic investigation required to clarify these contradictory allegations has been lacking from the official investigation. In a report prepared by

the forensic medical service, seen by Amnesty International, the detail describing the injuries and other relevant information is minimal and inconclusive.

One of the victims whose case was not included in the report was 77-year-old Anastasio López Cos. His body was exhumed from a communal grave in a public cemetery on 30 September 2004 -- he had been buried unidentified. Reportedly, the Assistant Public Prosecutor's preliminary conclusions were that Anastasio López was beaten to death and then buried.¹⁰³ Anastasio López had been moved, still alive, on the day of the eviction to hospital suffering from a cranial fracture. The official autopsy was inconclusive as to what caused his injury or death.

¹⁰¹ *Informe de la Procuraduría de Derechos Humanos*, EXP. EIO.REU.23-2004/DI; and Procuraduría de los Derechos Humanos, *Desalojo en Finca Nueva Linda, Champerico, Retalhuleu, Hechos Relevantes*, p. 96.

¹⁰² Procuraduría de los Derechos Humanos, *Desalojo en Finca Nueva Linda, Champerico, Retalhuleu, Hechos Relevantes*, p.76.

¹⁰³ CERIGUA, 19 October 2004.

Amnesty International wrote to the Attorney General in September 2005 outlining its concerns and asking about the progress of the investigation, the quality of the forensic studies and suggesting that the Public Prosecutor's Office seek international forensic and anthropological expertise. No reply has yet been received.

At least 43 people were injured in the eviction. There is ample film and photographic evidence, taken by journalists, showing police officers beating *campesinos* who were restrained. Several journalists were beaten by police, verbally abused and had their cameras stolen after allegedly filming killings and beatings by police. Weeks later the Minister of the



There is ample film and photographic evidence showing police officers beating *campesinos*. In this photo, police officers beat and drag *campesinos* (© private)

Interior offered to replace the equipment stolen but not to return the film. For this incident, three police officers were charged with theft and the outcome is currently pending.

Approximately 300 homes, including contents, were burned by the police. There were also allegations of illegal searches of houses outside but close to the Nueva Linda farm.¹⁰⁴

After the eviction had ended, at approximately 12.40pm, the Assistant Public Prosecutor did not seal the area as a crime scene but formally handed back

the farm to its owner. The following day the farm owner reportedly cleared up all the debris using heavy equipment, thereby destroying much of the forensic evidence.¹⁰⁵

Because of the violence and deaths, the eviction gained national prominence in Guatemala, generating reports from the Human Rights Ombudsman's Office, Presidential Commission for Human Rights and Human Rights Commission of the Guatemalan Congress. All these reports indicate that serious human rights violations were committed during the eviction. In September 2004, days after the eviction, two Special Prosecutors from the Public Prosecutor's Office were assigned to investigate separately the "disappearance" of Héctor Reyes and the events on the day of the eviction. These investigations are ongoing.

¹⁰⁴ *Informe de la Procuraduría de Derechos Humanos*, EXP. EIO.REU.23-2004/DI; and eyewitness testimony received by Amnesty International.

¹⁰⁵ *Informe Final, Finca Nueva Linda Champerico Retalhuleu, Hechos Ocurredos el 31 de agosto de 2004, Informe de la Comisión de Derechos Humanos del Congreso de la República de Guatemala.*

Violence at the Nueva Linda farm has continued. In November 2004 reportedly shots were fired into the air by security guards with the aim of the evicting *campesinos* who had returned after the eviction of 31 August 2004.¹⁰⁶ In addition, in January 2006 reports emerged of another alleged attack on *campesinos* protesting outside the farm by security guards, resulting in four *campesinos* wounded, two of which required medical attention.¹⁰⁷

To date, two arrest warrants have been issued in relation to the violence on the day of the eviction; both are for *campesinos*. With the exception of the pending outcome in regard to the theft of journalists' film, there have been no disciplinary measures taken against police for acts of violence committed during the eviction.

¹⁰⁶ See Amnesty International Urgent Action (AI Index: AMR 34/020/2004), 23 November 2004.

¹⁰⁷ La Prensa Libre, 24 January 2006, '*Otra vez Nueva Linda*'. Also, URNG Congressional bloc press release 20 January 2006 and Asociación de Comités de Desarrollo Campesino (CODECA) press release 20 January 2006.

4. Conclusion

Injustice in rural areas of Guatemala was identified as one of the major contributing factors to the 36-year internal armed conflict that resulted in approximately 200,000 deaths and “disappearances”. The prominence given to land issues in the 1996 Peace Accords, including the many promises to initiate viable policies to tackle the problems, reflect the significance of land in Guatemala.

During the course of its research into land disputes Amnesty International has identified a common pattern of injustice that appears to favour landowners, often very wealthy, to the detriment of poor, overwhelmingly indigenous, *campesinos*.

In general, *campesinos* face ineffective avenues for resolution of labour disputes, a slow justice system and inaccessible and ineffective systems for resolution of land disputes. The lack of access to legal redress is exacerbated by an absence of due diligence of the Public Prosecutor’s Office and judicial authorities to thoroughly investigate criminal complaints that have the intended result of a forced eviction, and instead authorize evictions often after superficial consideration of the facts and context. The major disparity between the access to legal counsel of landowners and the marginalized *campesino* communities is not addressed by the state, despite commitments in the Peace Accords.

The criminal justice system, in dealing with usurpation, fails to consider the impact of eviction orders on *campesinos*, in particular their relation to outstanding disputes, the criminalization of protest where official avenues of redress are lacking or denied, and the consequence of homelessness for many families. There is, in effect, a failure to ensure that no forced evictions take place. Eviction effectively becoming the *first* rather than *last* resort to remove a “problem”.

Fuelling a significant proportion of land disputes is the lack of labour protection of *campesinos*: avenues for dispute resolution are inadequate, inaccessible, and even then not respected by the criminal procedure for eviction favoured by the Public Prosecutor’s Office. An abdication of responsibility, when it comes to ensuring the labour rights of *campesinos*, is common among state authorities. The lack of labour protection becomes lack of security of tenure for many *campesinos*, whose homes are tied to their employment by wealthy landowners, inevitably leading to more land disputes.

These issues should have been addressed by a full and timely implementation of the Peace Accords. Successive government’s failure to do so has helped to start many land disputes and has exacerbated others.

Arguably the most influential factor behind disputes is the gross inequality in distribution of land -- a tiny percentage of the most wealthy own the vast majority of high-quality land. Landlessness or insufficient land to survive from fuels disputes, as *campesino* communities struggle vigorously to hold on to land they occupy. The failure to implement a meaningful

agrarian reform programme is at the heart of land disputes in Guatemala, and will continue to be so.

5. Amnesty International's recommendations

The following recommendations, addressed to all branches of the state of Guatemala, aim to prevent further human rights violations within the context of agrarian disputes and to seek redress for victims of recent violations. Some should be implemented immediately, others should be part of a comprehensive policy to address the pressures that lead to agrarian disputes and resolve with justice those disputes that do occur.

1. End the practice of forced eviction, investigate evictions that have taken place and set clear and strict guidelines for any future evictions that may occur:

- Introduce a moratorium on evictions in cases where there is dispute over labour rights or land ownership, until such a time when there is an effective non-violent conflict resolution mechanism in place and a fair and just legal framework has been adopted;
- Ensure that all evictions comply within national and international law, with special regard given to General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, in particular that all evictions adhere to the following principles:
 - a) *an opportunity for genuine consultation with those affected;*
 - b) *adequate and reasonable notice for all affected people before the scheduled date of eviction;*
 - c) *information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;*
 - d) *especially where groups of people are involved, government officials or their representatives should be present during an eviction;*
 - e) *anyone involved in carrying out the eviction should be properly identified;*
 - f) *evictions should not take place in particularly bad weather or at night unless the affected people consent;*
 - g) *legal remedies should be provided; and*
 - h) *legal aid should be provided, where possible, to people in need of it to seek redress from the courts.*

- Ensure that all relevant government officials, members of the Public Prosecutor's Office, judicial officials and police officers are provided with the text of relevant human rights standards, and with training in the scope of permitted evictions and the manner of conducting a legal eviction.
- Establish a commission of inquiry to investigate the way in which evictions have been carried out and make recommendations for effective remedies to victims of forced eviction and investigations into alleged criminal acts. The commission should comply with the following basic principles:
 - The terms of reference of the commission of inquiry should ensure the commission's impartiality and independence. The composition of the commission should be carried in consultation with civil society organizations;
 - The terms of reference should require the commission to investigate to what extent the evictions followed the requirements of national law and international human rights law and standards;
 - The commission should be asked to inquire into, among other things: the basis for the decisions to carry out evictions and whether alternatives to eviction were considered; the way in which the affected individuals and groups were informed of the decision; the consultation process prior to evictions; the registration of houses to be demolished; the composition of eviction teams, including and in particular, the role of private individuals who may be employed by the beneficiary of the eviction; the way in which evictions were carried out; measures taken to protect those most at risk (including the elderly and children); and provision of alternative adequate housing;
 - The commission should review the legality of evictions that have occurred. This should include an examination of the origin of the issues that led to the eviction, the process of the request and authorization of the eviction order, an evaluation of the due diligence of the Public Prosecutor's Office and judicial authorities, and the actions of law enforcement officials and political officials;
 - The commission should examine allegations of the political motivations behind the disproportionate rise in forced evictions during the first six months of 2004;

- The commission should be empowered to question authorities they consider relevant to the cases and to obtain copies of relevant official documents;
 - The commission should make recommendations about adequate reparation for victims of forced evictions. It should also be given the task of considering whether reparation already given to those evicted was adequate and, as appropriate, of recommending additional restitution or compensation for victims of forced eviction;
 - The commission should issue a public report with its findings;
 - The commission should be empowered to refer any evidence of criminal acts to the Public Prosecutor's Office;
 - Members of the public, particularly those affected by the evictions and non-governmental organizations, should be informed of how they can make submissions to the commission of inquiry;
 - The commission should be requested to make recommendations for action to avoid forced evictions in the future, including recommendations for changes to the law and administrative procedures.
- Improve the conduct of the National Civilian Police during evictions by:
- Ensuring training for all relevant police officers, including the highest level of command of the National Civilian Police, in the internationally acknowledged limits of the use of force when carrying out evictions.
 - Ensuring that the Internal Affairs Office of the National Civilian Police conducts thorough, prompt, independent and impartial investigations into alleged violations of police conduct committed by police officers during evictions. The results of such investigations should be made public and any evidence of criminal wrongdoing should be referred to the Public Prosecutor's Office.
 - Ensuring that during evictions the law is upheld and that no private citizen, whether in the employment of the beneficiary

of the eviction or not, destroys or steals personal property of the evictees.

- Expressly and explicitly prohibiting financial or material contributions from any party to the cost of the eviction.

2. Ensure just and fair resolution of land disputes:

- To the Congress of Guatemala:
 - Suspend the Law of Supplementary Titles in respect of property to which indigenous communities have claimed a right, as agreed in the Peace Accords.
 - Revise and promote legal dispositions that enable land abandoned because of the internal armed conflict to be considered not abandoned voluntarily.
 - Identify and detail land available for the benefit of uprooted communities.
- To the Public Prosecutor's Office:
 - Ensure that all eviction orders are requested only after thorough, prompt, independent and impartial investigation of the complaints of usurpation, aggravated usurpation or other allegations that may lead to such requests.
 - In cases where the dispute is centred over the ownership of land and where the legitimacy and accuracy of evidence of ownership is in question, special effort must be made by the investigating prosecutors and assistant prosecutors to prove the accuracy and legitimacy of the evidence both factually and in relation to the geographic position of the land in question.
 - Ensure that any relevant prejudicial issue is judged before requesting an eviction order, as specified in Article 291 of the Criminal Procedure Code.
 - Ensure complaints of threats and intimidation are investigated in a thorough, prompt, independent and

impartial manner, regardless of the originator of the complaint or alleged perpetrator of the threat.

- Ensure a thorough, prompt, independent and impartial investigation into all alleged human rights violations occurring during evictions.
- Such investigations should focus on the use excessive force against evictees, physical violence by evictees and destruction and theft of property during the eviction. The results of the investigation should be made public and people reasonably suspected of being responsible for abuses should be brought to justice, in conformity with international standards. The families of people killed or injured should be given reparation, including appropriate compensation, in respect of any unlawful conduct by law enforcement officials. Those who lost property in any unlawful conduct by law enforcement officials (including, particularly, failure to prevent private citizen from committing acts of destruction or theft) should be compensated.
- Ensure interpretation services are provided in every instance when those involved in proceedings of the Public Prosecutor's Office do not speak Spanish sufficiently well to articulate their opinions.
- Ensure a General Instruction is drafted, approved and distributed to all prosecutors and assistant prosecutors, and contains the above recommendations. Ensure the observance of the General Instruction is monitored.
- The General Instruction should contain relevant parts of international law and other standards such as the International Covenant on Economic, Social and Cultural Rights; General Comment No.7 of the Committee on Economic, Social and Cultural Rights; and the UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials.
- Ensure the investigation of the deaths that occurred during the eviction of 31 August 2004 in Nueva Linda farm follows rigorously the guidelines established by the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

- Ensure appropriate technical expertise is sought and provided for all forensic analysis of the incidents during the Nueva Linda eviction.
- To the Judicial Authorities:
- Ensure that the duty of due diligence has been fulfilled by the Public Prosecutor's Office when requesting eviction orders.
 - Ensure that the Public Prosecutor's Office has, as obliged by law, initiated and pursued all relevant prejudicial issues in the appropriate manner.
 - Only authorize eviction orders after a thorough and impartial consideration of the complaints of usurpation, aggravated usurpation or other allegations that may lead to such eviction requests. Such eviction requests should be authorized only if there is no reasonable doubt that usurpation, aggravated usurpation or other allegations that may lead to such eviction requests are in fact occurring.
 - In cases where the dispute is centred on the ownership of land and where the legitimacy and accuracy of the documents which may or may not prove ownership are in question, judges should demand and obtain proof of their accuracy and legitimacy both factually and geospatially, before authorizing eviction orders.
 - Where appropriate, judges should request and use the expertise of technicians of government agencies such as CONTIERRA and FONTIERRA, to clarify and resolve technical aspects, such as measurement and geo-positioning of disputes areas.
 - Ensure that in those eviction orders that are authorized, specific instructions to only use the necessary force in accordance with the UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials are included.
 - Promote the training of bilingual judges and legal interpreters for Mayan languages.
 - Promote free legal assistance and interpretation services to persons of low income.
 - Adopt and promote measures to ensure security of tenure of communal lands of Mayan communities, provide land for

Mayan communities, and promote a legal framework that recognizes customary Mayan law.¹⁰⁸

3. Respect and protection of labour rights:

- To the Congress of Guatemala: Review and amend the following parts of the Labour Code:
 - Increase the deadline for claiming labour entitlements once a work contract has been terminated, currently set by Article 260 at 30 days, to a longer period of time to be determined in consultation with civil society.
 - Amend Article 264 to extend the limitation of the period in which the worker has a right to his or her labour entitlements to a longer period of time to be determined in consultation with civil society.

- To the executive branch of government:
 - Immediately ensure that the Labour Inspectorate of the Ministry of Labour is adequately resourced so that it can effectively fulfil its statutory duties.
 - The Labour Inspectorate should coordinate a public awareness campaign on labour rights in rural areas, which should consider all appropriate media and methods, including indigenous community radios.
 - The Labour Inspectorate should seek to expand and improve its technical expertise in matters relating to rural workers. This effort should include linguistic and cultural training for Labour Inspectors in addition to procedural and legal training related to the Labour Code. The Labour Inspectorate's efforts should be aided and supported by relevant government agencies.
 - The executive branch should fulfil its obligations as established in the 1996 Peace Accords. It should promote legal and regulatory changes to ensure enforcement of labour

¹⁰⁸ Agreement on identity and rights of indigenous peoples, signed 31 March 1995. Sections referred to: III – A – 2 – V; IV – E – 5; IV – F – 5; IV – F – 7; IV – F – 8; IV – F – 9 – A.

laws and punish violations of such laws, with particular regard to the minimum wage and non-payment of wages and labour entitlements. It should promote access of rural workers to land ownership and reform the legal framework which simplifies the procedures for registering and obtaining a title for land. It should protect communal land, establish judicial and non-judicial mechanisms for the resolution of agrarian disputes, and provide free legal assistance to rural workers and their organizations in cases of litigation in regard to agrarian disputes. It should also give urgent attention to the abusive practices suffered by *mozos colonos*, *mozos habilitados* and rural migrant workers.¹⁰⁹

4. Decriminalize legitimate protest:

- The Congress of Guatemala should review and amend Article 256 on usurpation and 257 on aggravated usurpation of the Criminal Code to make them consistent with the principle of legality as outlined by international human rights bodies such as the Inter American Court of Human Rights, emphasizing the need of a clear definition of the criminalized conduct.¹¹⁰

¹⁰⁹ Agreement on Socio-economic Aspects and the Land Situation, signed 6 May 1996. Sections referred to: II – E – 26 – C; II – E – 26 – D; III – B – 34; III – E – 37 – A & D; III – E – F; III – E – H – iii; III – G – 38; III – G – 39 B.

¹¹⁰ “The Court considers that crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of *nullum crimen nulla poena sine lege praevia* in criminal law. This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behaviour with penalties that exact their toll on the things that are most precious, such as life and liberty. Laws of the kind applied in the instant case, that fail to narrowly define the criminal behaviours, violate the principle of *nullum crimen nulla poena sine lege praevia* recognized in Article 9 of the American Convention”. Inter American Court of Human Rights, case of Castillo Petruzzi et al, Sentence of 30 May 1999; paragraph 121.

6. Appendixes.

Appendix 1

*The right to adequate housing (Art.11.1): forced evictions : . 20/05/97.
CESCR General comment 7. (General Comments)*

**Convention Abbreviation: CESCR
GENERAL COMMENT 7**

The right to adequate housing (art. 11.1 of the Covenant):
forced evictions

(Sixteenth session,

1997)<http://www.unhchr.ch/tbs/doc.nsf/099b725fe87555ec8025670c004fc803/482a0aced8049067c12563ed005acf9e?OpenDocument> - *%20Contained*

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made". ^{1/} In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" was recognized. ^{2/} Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land". ^{3/} In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided". ^{4/} The Commission on Human

Rights has also indicated that "forced evictions are a gross violation of human rights".⁵¹ However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects. The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including

home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants

on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account". ^{6/}

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of

forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction". ⁷¹

20. Information is also sought as to "measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites". ⁸¹ However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

Notes

* Contained in document E/1998/22, annex IV.

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ Ibid.

Appendix 2

Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991.

(Articles 13 – 20)

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.