

GUATEMALA
"Disappearances": Briefing to the UN Committee against Torture

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GUATEMALA

"Disappearances" Briefing to the UN Committee against Torture

Introduction

Amnesty International submits this briefing to the Committee against Torture in advance of the Committee's examination, in November 2000, of Guatemala's third periodic report¹ on measures taken to implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²

This briefing is dedicated to a single issue - the ongoing suffering of families of tens of thousands of "disappeared" persons, exacerbated by the failure of the Guatemalan government to adequately investigate the fate of their loved ones, compensate them for their loss and suffering, and bring those suspected of being responsible for the "disappearances" to justice. Amnesty International believes that such failure involves violations of Guatemala's obligations under the Convention against Torture, including articles 11, 12, 13 and 14.

Granted that "disappearances" constitute violations of the Convention against Torture as far as the rights of the "disappeared" persons are

¹ UN. Doc. CAT/C/49/Add.2.

² Adopted by UN General Assembly resolution 39/46 of 10 December 1984. Hereafter: the Convention against Torture.

concern, Amnesty International would like to point out that UN and regional bodies and mechanisms such as the Human Rights Committee³, the European Court of Human Rights and the Inter-American Court of Human Rights⁴ have in the past determined that “disappearances” constitute torture or other cruel, inhuman or degrading treatment of the families of the “disappeared” as well. Thus Sir Nigel Rodley recently concluded that “there is a trend towards recognizing that to make someone ‘disappear’ is a form of prohibited torture or ill-treatment, clearly as regards the relatives of the ‘disappeared’ person, and arguably in respect of the ‘disappeared’ person him or herself.”⁵ [emphasis added]

It is therefore Amnesty International’s view that States Parties where “disappearances” have been carried out in the past have the same obligations, under the Convention against Torture, towards families of the “disappeared” as they have towards any other victims of torture. Paramount among those is the duty to ensuring prompt and impartial investigations, under articles 12 and 13 of the Convention against Torture and submitting the cases to their prosecuting authorities. In the case of families of “disappeared” persons, this duty of State Parties carries particular significance, as its fulfilment, or failure to fulfil it, would have (and has had) a direct and profound mental effect on the victims. It thus ties in with States Parties’ obligations under article 14, to ensure redress, fair and adequate compensation and rehabilitation for victims of torture.

³ *Maria del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf v. Uruguay*, Communication No. 107/1981 (17 September 1981), UN Doc. Supp. No. 40 (A/38/40) at 216 (1983), para. 14.

⁴ *Godonez Cruz Case, Compensatory Damages* (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Inter-Am.Ct.H.R. (Ser. C) No. 8 (1990), paras. 48-9.

⁵ Nigel Rodley, *The Treatment of Prisoners in International Law*, second edition, Oxford, Oxford University Press 1999, p. 261.

Concluding its consideration of Guatemala's second periodic report,⁶ the Committee expressed concern, *inter alia*, about "[T]he persistence of impunity for crimes, particularly grave human rights violations,"⁷ and recommended, among other actions that the Guatemalan government should take, the "[I]ntensification of efforts to elucidate past grave violations and to ensure that such situations do not recur. Articles 11 and 12 of the Convention require the State to proceed *ex officio* to a prompt and impartial investigation of any report of torture."⁸ On the eve of this review Amnesty International remains concerned that Guatemala has failed to implement fully both its treaty obligations and the Committee's recommendations regarding this serious issue.

Background

⁶ CAT/C/29/Add.3.

⁷ UN. Doc. A/53/44, 27 May 1998, para. 164(a).

⁸ *ibid.*, para. 165(a).

It is almost four years since Guatemala's long-term civil conflict, which surged and ebbed over a period of more than 30 years, was formally ended with the signing of the Peace Accords (Accords) in December 1996. A major objective of the Accords was to build a state based on the rule of law, where human rights were protected, all had equal access to justice and citizens could count on the right to *be fairly and impartially judged*. After extremely slow progress in implementing the Accords in the first three years after their signature, a new Guatemalan President, Alfonso Portillo came to office in January 2000 promising that the Accords would be considered as state policy; that the parallel structures interfering with the administration of justice would be dismantled; that the recommendations of two major human rights reports, the Recuperation of the Historical Memory Project, REMHI, prepared by the Guatemalan church, and those of the Historical Clarification Commission (CEH) prepared under the auspices of the United Nations, would be implemented⁹; and that the murder of Bishop Juan José Gerardi in 1998, two days after he presided over presentation of the REMHI report, would be solved within the first six months of his administration.

Recommendations of the REMHI and CEH reports

A number of the recommendations of the two reports related to clarification of past human rights abuses: the CEH for example called for creation of a commission to establish the fate of all those who 'disappeared' during the conflict, including numerous children, some of which may have been illegally adopted. The CEH also urged establishment

⁹ *"Guatemala Memory of Silence,"* the report produced by the Guatemalan church's Recuperation of the Historical Memory project (REMHI) was completed in 1998. It synthesized testimonies collected over three years on the tens of thousands of extrajudicial executions and "disappearances" suffered by non-combatant civilians, the vast majority of them indigenous, during the more than three decades of Guatemala's civil conflict. REMHI found the state responsible for some 90.5% of the violations investigated, but also laid a number of past abuses against civilians at the door of the former armed opposition, the URNG, the Guatemalan National Revolutionary Unity.

The Historical Clarification Commission (CEH), set up under the Peace Accords and mandated to "clarify .. human rights violations and acts of violence linked to the armed conflict, which had caused suffering to the Guatemalan people .." and "make recommendations to ... promote a culture of mutual respect and human rights protection ..." made its own report, *"Guatemala, Never Again,"* public in 1999. It had also investigated thousands of abuses and found that government forces had been responsible for 93% of them.

of a government exhumations program to assist in excavating hundreds of mass grave-sites in which tens of thousands of people who "disappeared" during the military's counter-insurgency campaign still lie unacknowledged. Other important human rights-related recommendations called for reparations to victims of human rights abuses and their families; changes in the role and conduct of the military to reflect its proper functions in a democratic society; and for establishment of a special commission to assess the conduct of military officials involved in the armed conflict against the standards set by relevant international instruments and humanitarian law and take appropriate measures.

However, little has been done to respond to the human rights-related recommendations of the two reports or to fulfill the aspirations of the Peace Accords. Neither of the two recommended commissions to determine the fate of the "disappeared" has been established. No has the government established a program to carry out or assist in exhumations. Similarly, no reparations program has been established, a military figure remains at the head of the Armed Forces, the *Estado Mayor Presidencial*, the Presidential Chief of Staff, named in the past as responsible for numerous human rights violations has not been disbanded, and the Army continues to play a role in internal security. Few human rights cases have been brought to court, and those that have been initiated have faced innumerable delays and obstacles. Key cases are habitually assigned to judges who appear partial to the accused. Evidence is inexplicably lost and there are endless delays in appointing personnel and courts to hear cases. Repeatedly, translation facilities for indigenous witnesses have been lacking or insufficient, and those involved in trying to bring such cases to trial often face threats and harassment or direct attacks. With respect to the case of Bishop Gerardi, a number of people involved in the case have been forced to flee the country in fear of their lives and those currently detained as directly

involved in his murder have still not been tried. Guatemalan analysts fear that the intellectual authors will escape justice entirely.

In such circumstances, it is perhaps not surprising that all but a handful of the vast majority of the tens of thousands of "disappearances" which occurred in Guatemala during the years of the civil conflict remain unresolved. In the few cases where the fate of "disappeared" persons have been clarified, this has been as a result of the efforts of their families or communities to have mass graves exhumed and the remains of those buried there identified.

The relatives of those whose whereabouts are unknown and whose fate has never been clarified have therefore suffered long-term mental anguish. It is the view of Amnesty International that this long-term uncertainty as to the fate of the "disappeared" and the inability of surviving family members to properly bury and mourn their dead and thus obtain closure and move on in their lives, constitutes one of the cruelest form of psychological torture, and should be the concern of the UN Committee against Torture. Such a conclusion has been increasingly accepted by the international community.

International recognition of psychological suffering as torture or ill-treatment

Common Article 3 of the Geneva Conventions (1949) and Article 4 of the Second Protocol (1977) to the Conventions establish for example, the principle that those who do not participate in hostilities should be treated humanely in all circumstances. Specialists in international law agree that

to refuse information available concerning "disappeared" or dead persons constitutes a form of mental torture, and is not compatible with this obligation.¹⁰

¹⁰ See for example Rodolfo Mattarollo, "Impunidad, democracia y derechos humanos" in "Por la vida y Paz de los Pueblos Centroamericanos," in the *Cuadernos centro americanos de derechos humanos* series, No. 2, ed. Codehuca, San José, Costa Rica, 1991, p.7 and Eric David, *Principes de droit des conflits armés*, ed. Bruylant, Brussels, 1994, p. 502 as quoted in *Memorial en Derecho Amicus Curiae*, presented by the International Commission of Jurists to the Inter-American Court in the case of Efraín Bámaca Velásquez, Guatemala, 2000.

In 1978 the UN General Assembly expressed its concern about "disappearances" stating that it was "deeply moved" by "the anguish and sorrow which such circumstances ["disappearances"] cause to the relatives of "disappeared" persons, especially to spouses, children and parents."¹¹ This concern was stressed in later resolutions.¹²

The UN's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹³ specifies that "torture" shall be understood to mean: "any act by which severe pain or suffering, whether physical or mental, [emphasis added] is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The UN's Declaration on the Protection of all Persons from Enforced Disappearance¹⁴ specifically states in its Article 1, that enforced "disappearance" constitutes torture: "Any act of enforced

¹¹ U.N.G.A. Res. 33/173 of 20 December 1978.

¹² U.N.G.A. Res 43/159 (1988), 44/160 (1990), 46/125 (1991) and 47/132 (1992).

¹³ Adopted and opened for signature, ratification and accession by U.N.G.A. Res. 39/46 (10 December 1984).

¹⁴ U.N.G.A. Res. 47/133 of 18 December 1992.

“disappearance” places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.”

In 1998 the Human Rights Committee said:

“The Committee understands the anguish and stress caused to the mother by the “disappearance” of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular of article 7 [prohibiting torture].”¹⁵

The Inter-American Human Rights Commission has said with respect to the children of the Argentinian “disappeared” that:

“ ... the lack of clarification of this problem of ‘disappeared’ persons has affected many families in the Argentine community. The uncertainty and lack of all contact with the victims have upset the families greatly and especially the children who, in some cases, witnessed the kidnapping of their parents and mistreatment to

¹⁵ Human Rights Committee, Decision 21, 1983, Communication 107/1981, *Case of María del Carmen Almeida de Quineteros* (Uruguay) paragraph 14.

which they were subject during the raid. Many of these children will never see their parents again and will thus inherit a number of psychological problems from their memory of the circumstances of the 'disappearance' ... many men and women between 18 and 25 years of age are affected by the anxiety and length of time that has passed without any knowledge of their parents or brothers and sisters. .. Spouses, both men and women, who have been violently separated, live in an environment of severe mental disturbances, accentuated by the many economic and legal problems that this separation poses for them. Many men and women do not know whether they are widowed or still married. Many of them will never regain personal peace, harmony or security because of the exhaustion produced by their attempts to carry on in a home where the physical and moral absence of the father or the mother is felt every day."¹⁶

Similarly, The European Court of Human Rights has clearly stated that "disappearance" constitutes a violation of the rights of family members not to be subjected to torture or cruel, inhuman and degrading treatment, finding Turkey in breach of Article 3 ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment") of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁷ In arriving at this conclusion, the

¹⁶ *Report on the Situation on Human Rights in Argentina, Organization of American States, OAS/Ser. L/V/II.49, doc. 19, corr. 1, 11 April 1980. Chapter III. G. Magnitude and consequences of the problem of the Disappeared.*

¹⁷ *Reports of Judgments and Decisions, European Court of Human Rights. 1998-III. N° 74. Kurt v. Turkey, para. 134.*

Court required no other proof of the psychological suffering endured by the woman concerned, other than her family connection to the "disappeared" person, her son.

The "re-appeared 'disappeared'" children and their families

In addition to the psychological torture suffered by the "disappeared" and their families, Amnesty International believes that there is another category of people who also suffer grave mental anguish because of the phenomenon of "disappearance". They are the children who were believed to have "disappeared" but in fact survived, and were either informally or formally adopted in Guatemala and abroad, and their birth families. The anguish for both the children and their families occurs at the time of the original "disappearance", and over the period the child was presumed to have "disappeared", but can also painfully surface again in the few cases where such children have been located, and efforts to re-connect them with their natural parents or communities results in inability to bridge the cultural gap that by now has been created.

A number of such cases, where children have only recently been re-located after surviving massacres or being torn from their families, communities, culture and language during the civil conflict, have been identified in a recent study by the Human Rights Office of the Archbishopric of Guatemala (ODHAG) on Guatemala's "disappeared"

children¹⁸ and are discussed below. In these cases too, Amnesty International believes that the after-effects of presumed "disappearances" can constitute a form of torture for both those presumed "disappeared" and their relatives, and should be the concern of the Committee against Torture.

The long-term phenomenon of "disappearance" in Guatemala

Forcible abduction of suspected opponents of the government of the day, by government forces or at government order, but carried out in such a way -- by men in plain clothes, often acting at night -- so as to enable the authorities to deny any responsibility is a phenomenon which had been used in other countries before it surfaced in Guatemala in the 1960s, but it was there that it came to be known by the Spanish term of "desaparecido" ("disappeared"). The phenomenon and the terminology have since spread to a great many other countries, but Guatemala remains amongst the most serious in terms of the number and percentage of the population who suffered this abuse, either as "disappeared", or as relatives of those whose fate has never been established. It is also unique there because it occurred so regularly for such a long period of time. New "disappearances" are now rare in the country -- only a handful have been reported since the Accords were signed -- but the relatives of those who "disappeared" during the conflict continue

¹⁸ *Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala*, Oficina de Derechos Humanos del Arzobispado de Guatemala, Guatemala, 2000.

to suffer the mental anguish of not knowing what happened to their loved ones and not being able to lay them properly to rest.

1966: Guatemala's first large-scale "disappearance"

The first large-scale "disappearance" in Guatemala occurred in 1966 in the context of government efforts to combat a nascent revolutionary movement. Twenty-eight members of the outlawed Guatemalan Communist Party (*Partido Guatemalteco de Trabajo - PGT*) were abducted by various military patrols. The government denied all knowledge of the detentions or victims' whereabouts.

In the following years, as dissent escalated in Guatemala, "disappearances" became a major government tool of repression. Amnesty International for example recorded several thousand victims of "disappearance" between 1970 and 1974. The worst period, however, for "disappearances" and other human rights violations was in the late 1970s and early 1980s when the insurgency was at its height, and the army enforced a scorched earth policy in areas in conflict. In total, during the conflict, which surged and subsided at various points over a period of more than thirty years, the CEH recorded data suggesting that the total number of victims of "disappearance" or extrajudicial execution during that period was more than 200,000 people.

Factors pointing to government responsibility

Throughout the entire period, there was strong circumstantial evidence to support the case that the "disappearances" were being carried out with

the involvement of state security forces: the victims selected, the munitions and other equipment used by the perpetrators, the manner and location in which the victims were seized, and the complete impunity with which those responsible acted -- all suggested official complicity. And in some cases more concrete details -- registration of the vehicles used in the abductions to specific army units for example, or the subsequent sighting of "disappeared" people's cars in National Police headquarters -- linked official forces to the violations. Most telling of all, the testimonies of the handful of "disappearance" survivors confirmed security force involvement and orchestration of the policy at the highest levels.

A deliberate and systematic government strategy

Over the years, further information has gradually emerged to refute the contentions of successive governments that the abuses were carried out by murky groups on the left and the right -- the so-called "death squads" -- and to show that the policy of "disappearing" political opponents, real or perceived, was a deliberate and systematic government strategy.

Indeed, some of this information surfaced as early as the first mass Guatemalan "disappearance" in 1966, when a young official who had defected from the military police gave an eye-witness account of how these PGT members had been assassinated in the Matamoros military barracks, and their bodies dropped into the Pacific Ocean.¹⁹

¹⁹ *La Violencia en Guatemala*, Fondo de la Cultura Popular, Mexico, DF, 1969 as

More recently, confidential United States (US) government documents, released following requests from a number of US-based non-governmental organizations under the US Freedom of Information Act have made it clear that the "disappearances" strategy was planned and implemented at the highest levels of Guatemalan government, and that this was known by foreign embassy staff in Guatemala and ministries of foreign affairs abroad.²⁰

For example, with respect to the first mass "disappearance" of the PGT members in 1966, a secret cable from the US Central Intelligence Agency (CIA) station in Guatemala reported the secret execution of several "communists and terrorists" by the Guatemalan authorities on the night of 6 March 1966. The victims were several of the more than 30 PGT members and associates abducted, tortured, and killed by Guatemalan security forces that month. Another cable from the CIA station the same month reported the capture and interrogation of five more suspected leaders of the armed opposition. The cable reports without comment that "After the completion of the interrogation, the prisoners were secretly executed."

quoted in *Guatemala: Unnatural Disaster*, Roger Plant, Latin America Bureau, London, 1978.

²⁰ These materials are available at the web-site of the National Security Archive Project at George Washington University at: www.gwu.edu/~nsarchiv/. US analysts of these materials consider that they illustrate that the United States were not simply observing this phenomenon, but had been instrumental in developing it. See for example Document 1, United States Agency for International Development, secret cable, 4 January 1966 in National Security Archive Electronic Briefing Book No. 11.

By 1967, the US Department of State's Director of Intelligence and Research was reporting to the US Secretary of State that Guatemalan counter-insurgency operations had been successful, using "particularly on the covert side ... kidnapping, torture, and summary executions." This had led, according to the secret memorandum, to the murder of some 500-600 people over the past year, while "with the addition of 'missing' persons," the memorandum estimates that "the figure might double to 1,000-1,200." The writer suggested that this had come about because the president of the day, Julio César Méndez Montenegro, "evidently gave the security forces a *carte blanche* in the field of internal security in exchange for military support for his administration."

By 1982, when the civil conflict was at its height, and government strategy had moved from "disappearing" prominent individuals to elimination of entire indigenous villages in areas in conflict, the CIA was reporting to the US government that the Guatemalan government's plans to begin [army] sweeps through the Ixil Triangle in the indigenous highlands of Guatemala could "lead not only to major clashes, but to serious abuses by the armed forces ..." and that the Army Chief of Staff then leading the country had acknowledged that "because most Indians in the area support the guerrillas it will probably be necessary to destroy a number of villages." Subsequently of course, the CEH determined in 1999 that army action during the years of conflict in four specific areas of the country, including the Ixil Triangle had resulted in the genocide of Guatemala's indigenous peoples. Many of those massacred in these army sweeps were buried in clandestine graves and their fate never clarified. They were thus classified amongst the ranks of the tens of thousands of men, women and children who "disappeared" during the conflict.

It was only this year however, that Guatemala's current president Alfonso Portillo, acknowledged these events and apologised for them on behalf of the Guatemalan government. However, there has still been no government undertaking to assist in locating the "disappeared," nor to compensate adequately or assuage the suffering of their relatives or others victimized by the widespread policy of "disappearance".

Psychological Torture: The effect of "disappearance" on surviving family members in Guatemala

The growing acceptance at international level that the traumatic and painful psychological effect on the relatives of "disappearance" is tantamount to torture is certainly born out by experience, research and analysis from Guatemala, and is well-reflected in the many thousands of testimonies collected over the years by Amnesty International from relatives of people subjected to "disappearance".²¹

The suffering of the wives of the "disappeared"

"To live without knowing the whereabouts of our 'disappeared' relatives is a very painful nightmare for all of us in this situation..." said one woman whose trade union husband "disappeared" in 1980. In the words of another relative: "Although the "disappearance" of our family members

²¹ Except where otherwise indicated, the quotations used in this section are from first person testimonies collected by Amnesty International over the years from Guatemala.

took place in September 1981, the pain, the anguish and the desperation are still part of our lives. Actually it's worse, because the pain increases as the years pass because as more time passes hope diminishes that we will one day know what happened to them."

The psychological pressure on the wives of the "disappeared" is also increased by the economic implications of having to support themselves and their families on their own, facing additional difficulties to get work as the relative of a "disappeared" and therefore "suspect" person. In the words of another woman whose trade unionist husband "disappeared" in 1980: "... for those of us who have a 'disappeared' relative, the despair caused by not knowing what has happened is extremely traumatic .. the 'disappearance' of a relative has meant greater poverty because, almost always, the person who 'disappears' is the person who supports the family economically."

The effect on elderly parents

The emotional suffering of elderly parents is also exacerbated by the economic implications of losing their financial support: "I, the mother of [one of the 'disappeared'] am sick with sadness at not seeing my son ... he was the only breadwinner at home and left two very small children and a younger brother. I ask God ... to make my son reappear ... I hope God is with him because his children are crying out for him. From this mother who is desperate for her 'disappeared' son."

Children of the "disappeared"

And of course, young children will suffer throughout their lives from the loss of parents to "disappearance". A young indigenous man whose family was torn apart by "disappearances" when he was three years old says today that: "With extreme violence they took my mother, my 68-year-old grandmother, an uncle and his wife, leaving us, innocent children, unjustly crushed with grief and uncertainty. There were only seven children left, who could not understand why the people we loved had been taken away from us. [They] not only snatched away the family, but with it, a village, a school, a friend... an entire life. Now I am 20 and I know what happened. I can see the importance of ... punish[ing] the military ... who cut short the life of thousands and thousands of people and have never been tried for their crimes. As young people, we see the importance of breaking the silence."²²

"Disappearances" in the context of indigenous beliefs

²² Testimony, as cited in *Nunca Más*, Asociación Familiares de Detenidos-Desaparecidos de Guatemala, January, 2000, and as recorded by Amnesty International during a conversation with the declarant, Guatemala, April 2000.

This young man now lives in Guatemala City and has received an education which has made it possible for him to understand what happened to his family and to articulate his feelings. But efforts to access the psychological impact on relatives of "disappearance" victims in Guatemala becomes more complex when dealing with victims in the countryside where the vast majority of those who lost a relative to "disappearance" were indigenous people. They maintain specific beliefs and practices as regards the dead, which made the loss of their relatives to "disappearance" stressful and painful for them in other ways.²³ They believe for example that the souls of those unburied or improperly buried will be excluded from the after-world and condemned to a living death, hovering somewhere between physical death and the concluding burial ritual. Condemned to wander the earth as a lonely, malicious, vengeful ghosts, such restless, unhappy spirits haunt their living kin, affecting their everyday lives, because according to indigenous practice, the relatives and community should have been responsible for their safe passage to the after-life by carrying out the correct burial ceremonies.

Furthermore, murder and other violence is considered a heinous sin and neither murderers nor their victims are accepted by God or the ancestors. As this belief intersects with the idea that any act of violence not only involves both actors but unites them, Guatemalan indigenous relatives of the "disappeared" are left with enormous feelings of fear, anxiety and guilt that they were somehow "responsible" for the terrible

²³ Re: Guatemalan indigenous belief systems as regards death, see: *Violent Memories, Mayan War Widows in Guatemala* by anthropologist Judith N. Zur, Westview Press, 1998. Much of the material on which the book was based, and a great deal of other first hand testimony collected by the author was made available to Amnesty International. A number of these testimonies are cited in the following paragraphs.

things that happened to their relatives and their communities. This fear never leaves them, can never be assuaged if the "disappeared" person is never located and laid to rest.

The burden of guilt and pressure, particularly for indigenous women left on their own following "disappearance", is further increased, because when their kin have had no opportunity to resolve their affairs before death or "disappearance", it is the widow who is most likely to inherit her husband's moral debts. She will find these doubly difficult to discharge, because not only has she been left on her own to try and support herself and any remaining family members, but it is the sons of the family that are likely to inherit a father's lands and property.

Tristeza: The untreated psychological suffering of indigenous women

Indigenous wives of the "disappeared" have sometimes admitted their desperation to outside researchers and counsellors, sometimes confessing that they wished to die, even though such desires are considered sinful. However, the indigenous cultures of Guatemala have no tradition of conceptualising, dealing with, treating or even acknowledging psychological stress. The unbearable grief, pain, guilt and anger of those who have lost family members to "disappearance" is therefore often not articulated, but becomes apparent in the deterioration of survivors' health and the expression of their mental trauma in physical symptoms: headaches, black-outs, a general "sadness" (*tristeza*), symptoms which many say "started during the violence" without making the direct connection to the personal losses they suffered then. Such symptoms have continued in a great many cases until the present. Similarly, being

bothered in their dreams by restless and unhappy spirits or otherwise "receiving messages from the dead" can be seen as projections of the feelings, experiences and uncertainties of the bereaved, for whom the certainty of death has not been established.

In a typical testimony, one woman told anthropologist Judith Zur, the author of *Violent Memories, Mayan War Widows in Guatemala*: "We do not know what happened with my father. This is why we began a sadness too -- unlike the women who know where their cadavers are and that their bone are now buried, we do not. We have not idea where they took my father. .. Even if we found a little bit of bone, at least we would know where he was but we don't know and this is what is most difficult; this is why we have suffered so much sadness."

And another: "My mother feels this way too. She got an excruciating pain in her head and a pain in her heart which was because of sadness ... She still suffers from it today." One woman described to Zur how her sister who had lost relatives to "disappearance", one day simply could no longer walk, "from fear, from *tristeza*." Another woman related how she had totally lost her memory and all sense of physical sensation following the "disappearance" of her husband. Others referred to going "mad."

Beginning to relieving the suffering: Speaking of loss and exhuming the bodies

The depression many felt was often exacerbated because in the political climate of the day they could not speak of it or their losses without fear of drawing further repression on themselves from the State or exclusion

from their communities. Even to at last be able to tell the story of their loss to Zur offered them, they said, some psychological relief: "I was waiting, I knew that one day, someone could come so I could tell them about this, I needed to tell someone about what I suffered, I felt such pain not to speak of it, now I feel better."

For others, it was only when exhumations took place in their communities, and the remains of their loved ones identified and re-buried according to the proper rites, that they felt their physical symptoms, the physical manifestations of their anxiety and other psychological problems, begin to abate.

Effects of "disappearance" on the family and community

The psycho-social impact of the repression, the widespread "disappearances" and the resultant trauma and uncertainty is also experienced at a family and community level, both entities unable to rebuild themselves because so many members suffered experiences which were so far beyond their previous experience and expectations that they cannot be individually or communally absorbed, processed or understood. In some cases, wives of the "disappeared" were actually "expelled" from communities: they were mistrusted, somehow held responsible for their husbands' "disappearances" or cast out simply because their communities had no experience and no capacity to absorb so many widowed women: there was simply no traditional role for them, no custom and practice as to how they could be sustained, emotionally or economically.

Guatemala's "disappeared" children

Another variant of the painful and psychologically damaging separation and loss caused by "disappearance" was that experienced by parents whose children "disappeared."

Children would of course would have been the most vulnerable of targets, unable to defend themselves or to flee when their homes were raided by the security forces or their villages decimated. The figures are telling: of the 6,159 "disappearances" recorded by the CEH, 11% were children, while 33% of the remains exhumed by the Archbishop's Human Rights Office, (ODHAG) between 1997 and 2000 were those of children.

Many surviving family members became separated from their children during raids on their homes or villages and hoping against hope that they had survived, considered them "disappeared." Sometimes, families forced to flee long distances through the mountains to escape the army lost children *en route* or had to leave them behind in the interests of the larger group's survival, leaving the parents with enormous burdens of guilt, remorse, fear, anger, impotence and uncertainty as to their children's fate. In other cases, the parents were not present when their children were seized, leading themselves to endlessly agonize over the decisions that had placed the children on their own. Time after time when interviewing parents of "disappeared" children for its recent study on the subject, ODHAG was told, "If I hadn't left them alone ...":²⁴

²⁴ *Hasta encontrarte, supra p. 55.*

The Portillo case

An example of the prolonged pain and suffering caused by the "disappearance" of young children is that of Adriana Portillo. Her father, step-mother, 18-month-old baby sister, sister-in-law, and two daughters Rosaura and Glenda, 10 and 9 years of age, were kidnapped and "disappeared" by security forces of the Guatemalan government in 1981.²⁵

The children had travelled to the capital with Adriana's father to celebrate the first birthday party of a nephew at his home. When she arrived the next day, she found heavily armed members of the security forces surrounding the house. Her father had been seized earlier in the day at work; he was never seen again. The authorities claimed that they found subversive materials at his house, but said no one was home when they raided. Adriana however, saw security force agents washing blood from the floors of the house. Neighbours told her that they had clearly heard the voices of women and children crying and pledging for help; a local shop-keeper had seen two adults and three young girls taken out of the house.

In her testimony presented to Amnesty International and others, including the CEH, Adriana Portillo has tried to convey the mental anguish she experienced when her relatives "disappeared":

²⁵ Case history summarized from the various written and oral testimonies given to Amnesty International by Adriana Portillo and other surviving family members, and conversations with her, both by telephone to her residence in the United States and in Guatemala, in April 2000.

"I remember very little of my feelings and the things I did that day, I think I was in shock. I could not believe, I could not accept what the army was saying. Very deep within myself I wanted to believe that my family had fled although part of me could not believe that. I knew my own government. I knew how the army operated in those years, I know what they did. I don't remember crying. ... I was running around and pulling out my hair, but I could say nothing, I could not cry because I was in shock. I don't think that I accepted what had happened for the next three years, which were the years that we remained in Guatemala. Whenever friends asked where my daughters were, I would say that they were in Mexico, that my father had got a job and that they were in Mexico. ... When my other two daughters would go to school and my husband would go to work I would just board a bus and go anywhere looking for them. I would ride the buses all over Guatemala City staring through the windows, just looking for them, I went to the orphanages and I would just stand there and look at all the children who came out to play, but they weren't there, to the women's prisons asking if anyone had seen the. But I never found them."

As to the psychological effect upon herself, Adriana is clear:

"These 16 [now 19] years have been the greatest torture there could ever be. .. Years of agony, desperation, anguish, pain ... I have not heard anything about them since, I don't know what happened, I don't know whether or not they are alive ... or dead ... I think the worst thing which could happen to me is never finding

out what happened, this is the perfection of torture. I have thought what will I do if I find them alive? I think of course I will be happy. I think I would also be consumed by pain because if they are alive I don't know the circumstances of their lives and it would be very painful to know that we were separated for ... years and the injustice of that, but I would be very happy if they were happy. If they were alive and didn't want to see me I guess it would be very hard, but I could at least be at peace knowing they are alive. If they are dead I guess I would try to kill myself or maybe not ... It would be like dying but at least I would know that they are dead, but I won't believe they are dead until I see their bodies. If I don't see their bodies I won't believe that they are dead and this torture of not knowing where they are would continue. But again I think the worst thing would be never finding out. I think I could probably deal with either situation, but I don't think I could go on any more feeling like I do right now."

Violent Memories, Mayan War Widows in Guatemala, the many thousands of testimonies collected by the CEH and REMHI and Amnesty International's own files of testimonies from the years of conflict contain many similar expressions of the devastating impact upon parents of the loss of their children to "disappearance". One stated for example: "When this happened, I didn't know if it was night or day. I couldn't think of anything, even what time it was; I couldn't even prepare meals for me or my husband. I was pregnant at the time. When the child was born, I just wanted to die. I wanted the soldiers to come and kill me."²⁶

²⁶ Case Q-40, *Hasta Encontrarte*, p.56

Case histories of "re-appeared 'disappeared'" children

Recently, as explained above, another form of psychological trauma and suffering has surfaced: that suffered by children thought to have "disappeared", but who were in fact adopted. Where their parents also survived, they too have suffered both from the original loss as well as efforts to re-introduce families torn apart by "disappearance" .

Denese Becker case

Denese Becker, formerly Dominga Sic,²⁷ now lives in the United States, where she was taken by her adoptive parents. But in fact, she is a survivor of the Río Negro massacres of the early 1980s. She had suppressed memories of the army's attack on her village when she was only 9 years old, and of how she herself fled into the mountains for her life, with her one month old baby sister on her back. When the baby died, Denese buried her at the base of a tree. Eventually, she was found by other survivors, who smuggled her into the departmental capital. She was eventually sent to an orphanage in Guatemala City, where her adoptive parents found her and took her home to the United States.

She no longer spoke her native Achí or any Spanish, but knew that she was from Río Negro and had a sense that something terrible had happened there. When she heard that another survivor was touring the United States, she made contact, and returned this year to Guatemala to seek her roots and her surviving relatives. According to Denese, her life had not

²⁷ Case history summarized from written and oral testimonies given to Amnesty International by Denese Becker. It also draws on video material and interviews with her recorded by Amnesty International during her return to Guatemala in June 2000.

been easy, despite her loving adoptive parents. "You don't know what it's like," she said, "when no one, absolutely no one, ever looks like you and you're not sure who you are or where you come from." Some of the early childhood memories that she did retain were so grotesque that she wondered if they'd been simply the imaginings of a young child, and had never really happened. *Returning to Guatemala and finding something out about her roots and confirming her memories has helped solve some of her anguish:* "I came to seek peace in my heart and I'm looking for my heritage for the sake of my children. I haven't got all of my feelings out of the way, but this gives me some closure."

A number of other children believed to have "disappeared" but who were actually adopted or otherwise survived have recently been located by the ODHAG in the course of its research on Guatemala's "disappeared" children. It found that thousands were literally torn from their parents arms and taken to military bases in helicopters, in actions which gave rise to Guatemala's illegal but highly lucrative baby trade, which is only recently coming to light²⁸.

The few such children whom ODHAG has been able to re-locate have spoken of the trauma of their original loss of their families, homes, culture and language, often in violent circumstances. Such experiences have left them in many cases with severe depression and feelings of abandonment, the latter sometimes encouraged by those who took them in, whether adoptive families abroad, orphanages or in some cases, the very people from the security forces or civil patrols who had massacred or "disappeared" their parents.

²⁸ See for example: UN Commission on Human Rights. *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, Ms. Ofelia Calceta-Santos. E/CN.4/2000/73/Add.2

According to ODHAG, the trauma and insecurity suffered by such children will always shadow their lives and those of their families and will affect the children's emotional state and personal development for the rest of their lives. Furthermore, in almost all cases, the dislocation caused by the children having been separated from their families, homes and cultures to be raised elsewhere and often in another language, has created a distance between themselves and their surviving natural parents or other relatives so great that it cannot be bridged, and the natural parents or relatives have been rejected by the surviving "disappeared" child. This has caused further psychological torment for both the relatives and the children.

The international community and "disappearances": A continuing responsibility

In sum, the psychological suffering caused by not only the unresolved problem of the massive "disappearances", alongside the widespread government sponsored program of individual extrajudicial executions and large-scale massacres, which many survivors witnessed and certainly all heard of and feared, have created what many Guatemalan analysts have described as a "national trauma" which has affected every family in the land. Little has been done to try and come to terms with suffering caused by the abuses and their aftermath. It is for this reason that Amnesty International believes it is important to continue publicising and

denouncing the abuses suffered in Guatemala during the conflict, and to campaign actively at all levels, including via the international community for the scale and after-effects of the abuses, including the psychological torture caused by the massive "disappearances", to be recognised.

An important step in this direction would be for the Committee against Torture to follow the model set by other international bodies, and recognise that "disappearance" in Guatemala constituted a form of torture. This is true not only for family members and colleagues of the victims of "disappearance", but also for those who were considered "disappeared", but survived, although at a high psychological cost.

Further, the Committee against Torture should urge the Guatemalan government to fulfill its obligations under articles 7, 12 and 13 of the Convention against Torture, and in particular, to establish the special commission to investigate the fate of Guatemala's "disappeared", including the "disappeared" children, as recommended by the CEH, and to recompense and rehabilitate the victims and survivors. The United Nations should facilitate and assist such programs.

Finally, the Committee against Torture should urge member governments of the UN to acknowledge the long-term continuing problem of the aftermath of the massive "disappearances" in Guatemala on the survivors affected by it, and devote resources to overcoming these effects.

TAKE ACTION

Please send telegrams/telexes/express/airmail letters in Spanish or your own language:

- urging the Guatemalan Government to set up a special commission in collaboration with civil society to establish the fate of the "disappeared", including "disappeared" children;
- call on the Guatemalan Government to establish a program of exhumations, which investigates each and every denunciation concerning clandestine cemeteries in Guatemala;
- call on the Guatemala Government to investigate all reported instances of "disappearances", mass extrajudicial executions and torture suffered by Guatemalan citizens;
- urge the Government to bring the alleged intellectual and material authors of these crimes to court, and to punish them if found guilty;
- urge the Guatemalan Government to create and put into effect a National Reparation Programme for the victims of human rights violations and acts of violence connected with the armed confrontation and their relatives;
- call for the implementation of measures for psycho-social rehabilitation and reparation, which should include medical attention and community mental health care, as well as the provision of legal and social services.

APPEALS TO:

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