

# GUATEMALA

## State of impunity

### INTRODUCTION

Guatemala is living through a period of hope and apprehension. After 35 years of armed conflict, *the Acuerdo de Paz Firme y Duradera*, Agreement for a Firm and Lasting Peace, signed in December 1996 by the Guatemalan Government and *the Unidad Revolucionaria Nacional Guatemalteca* (URNG), Guatemalan National Revolutionary Unity<sup>1</sup>, raises hopes for the beginning of a new era for the country, an era in which the human rights of Guatemalans will be accorded their true worth and will be protected both in law and in practice.

The end of the armed conflict has done away with the excuse that successive governments have used to attempt to justify the unjustifiable — the human rights violations that have ravaged the country for so many years. However, it takes much more than the signing of the peace agreements to end human rights violations. It requires a wholehearted commitment on the part of the government to ensure the protection of human rights and bring to justice anyone who violates them. It requires an end to impunity.

### Historical context

Amnesty International has followed the human rights situation in Guatemala for many years: from the intense repression of the period of military rule, to the frustrated hopes under the civilian governments that followed. In recent decades, the country has witnessed brutal human rights violations perpetrated by agents of the state under governments which for years implemented a counter-insurgency strategy which explicitly included widespread use of extrajudicial executions, “disappearances” and torture, and which peaked in intensity in the late 1970s and early 1980s. In a country of only 10 million inhabitants, tens of thousands of people, the majority indigenous, lost their lives or “disappeared”. More than a million fled their homes seeking refuge; hundreds of thousands had to cross the border to find it.

The coming to power of a civilian government on 14 January 1986 brought to an end more than 20 years of military rule and prompted hopes which were never fulfilled. The transition from a de facto government to a civilian one, in contrast to the experience of other Latin American countries, did not signify an end to systematic human rights violations in Guatemala. While not reaching the levels of previous decades, the security forces nonetheless continued to commit extremely serious abuses against broad sectors of the population. Though differing in intensity, human rights violations under military and civilian rule had two characteristics in common: the existence of repressive structures within the organs of the state and the impunity which the state conferred on the perpetrators. By not dismantling the former or ending the latter, civilian governments failed to demonstrate the political will necessary to ensure that the truth be known and justice done. Respect for human rights was not restored.

The peace process which culminated on 29 December last year with the signing of the Agreement for a Firm and Lasting Peace was long and arduous: it took more than 15 years, it even involved the international community and gave rise to a multitude of agreements<sup>2</sup>. It is not surprising, then, that 1997 should have begun with hopes for a better future.

### The period March 1994 to October 1996<sup>3</sup>

However, the value of an agreement does not lie in its signing but in its fulfilment. And the experience of unfulfilled agreements weighs heavily on the Guatemalan population. Although the majority of the agreements signed in the last two years did not come into effect until 29 December last year with the signing of the Agreement for a Firm and Lasting Peace, *the Acuerdo Global sobre Derechos Humanos*, Global Human Rights Accord, signed on 29 March 1994, came into effect that same day. This Accord promised “to act firmly against impunity”<sup>4</sup> and committed the government to ensuring full observance of human rights and to strengthening the institutions necessary to improve their protection. These three steps are essential if respect for human rights is to be restored.

Nevertheless, following the signing of the Accord human rights violations continued, targeting many sectors of the population including: judges, lawyers and witnesses, journalists, trade unionists, students and academics, criminal suspects and street children, returned exiles and the internally displaced, peasant farmers involved in land disputes or those refusing to serve as auxiliaries to the security forces, members of the church and human rights defenders.

Since March 1994, Amnesty International has documented hundreds of cases of extrajudicial execution, as well as numerous cases of torture and ill-treatment and several cases of “disappearance”.<sup>5</sup> Those responsible continue to be state agents: members of the security forces or their auxiliaries such as *comisionados militares*, military commissioners<sup>6</sup> and *the Comités Voluntarios de Defensa Civil (CVDC)*, Voluntary Civil Defence Committees<sup>7</sup>. Few are brought to trial, hardly any are detained. Intimidation and death threats continue to await those who seek justice through the courts or who simply wish to know the truth, such as the relatives of victims buried in the more than 500 clandestine cemeteries which are estimated to exist in the country. The state is unwilling to help clarify the truth and to find those responsible for the massacres committed by the army. In Guatemala impunity reigns.

Death threats, intimidation, surveillance and illegal searches have continued to form part of daily life for many sectors of Guatemalan society. Even the criminal violence which broke out in this period in the form of kidnapping for extortion and “social cleansing” of “undesirables”, common criminals and marginalized people (including street children) has been known to involve members of the security forces.

State institutions have shown themselves to be unwilling or totally unable to ensure that citizens enjoy the human rights which the law guarantees them. This is illustrated by the lack of results in the few investigations which have been carried out.

Around October 1996, the development of events led Amnesty International and other national and international human rights organizations to fear that, in the context of the peace process or immediately after it, amnesty laws or pardons would be introduced, similar to those promulgated in other countries in order to prevent the truth coming to light, those responsible being brought to justice and victims being offered reparation. In view of the risk that the pledge to “act firmly against impunity” would not be fulfilled and that tens of thousands of human rights violations committed by security force agents would remain uninvestigated and unpunished, Amnesty International wrote to the government.<sup>8</sup> In its memorandum, the organization also called for the repeal of the provisions of the amnesty decrees promulgated by previous governments to grant immunity from prosecution to those responsible for such serious crimes.

Amnesty International pointed out that the ambiguity of the mandate of the *Comisión de Esclarecimiento Histórico*, Historical Clarification Commission<sup>9</sup>, could limit the investigations and the procedures to be followed and was alarmed that the Commission’s conclusions would have no legal effect. In its second memorandum to the government, the organization made a series of recommendations concerning the investigation of human rights violations and the bringing to justice of those responsible, as well as the composition, powers and methodology of the Commission.

No reply was received.

## Looking to the future

The text of the *Ley de Reconciliación Nacional*, National Reconciliation Law<sup>10</sup>, approved by Congress on 18 December, recognized “[the duty of the State to assist] victims of human rights violations during the armed conflict”<sup>11</sup> and charged the Historical Clarification Commission with “devising means of making known and acknowledging the historical truth regarding the period of internal armed conflict in order to prevent the repetition of such events.”<sup>12</sup> The deliberate vagueness of the Law provoked renewed criticism by Amnesty International and other human rights organizations. In the end, a redraft of the text of Article 8 of the Law was secured, so that it now reads, “Exemption from criminal responsibility will not apply to crimes of genocide, torture and forced disappearance”,<sup>13</sup> although it still leaves cases of extrajudicial execution by the security forces and deliberate and arbitrary killings by the armed opposition open to the interpretation of the courts.

Amnesty International’s concern stems from its knowledge of unfulfilled agreements and from an endless list of documented cases, which demonstrates the persistence not only of human rights violations by state agents but also of the phenomenon of impunity: impunity both for those who violated human rights in the past and for those who continue violating them in the present. This, together with the lack of real protection offered to the citizen by the institutions of the state, despite relatively adequate legislation, especially when the perpetrators of human rights violations are security force agents, as well as the fear that further legislation may be passed preventing the bringing to justice of those responsible for serious abuses in the past, means that the human rights situation in Guatemala continues to be of extreme concern.

The organization does not deny that strict compliance with the agreements signed by the government and the URNG could bring about a substantial and positive change in the human rights situation in Guatemala. On the contrary, Amnesty International considers that the implementation of the agreements would lead to radical changes in the functioning of state structures and would secure important advances in the process of judicial reform and in the struggle against impunity. Thus, Amnesty International welcomed the signing of the Global Human Rights Accord which allowed for the presence of MINUGUA<sup>14</sup> to monitor the human rights situation in the country; the demobilization, in September 1995, of military commissioners, responsible for thousands of human rights violations; the beginning of the demobilization of the Voluntary Civil Defence Committees in August 1996; and, above all, the legislative changes of June 1996 by which members of the armed forces accused of human rights violations against civilians would be tried before civilian rather than military courts. If properly implemented and independently monitored, the agreements include many measures which could improve the human rights situation in Guatemala.

Amnesty International fears that the role of the international community in defending human rights may diminish following the signing of the peace agreement. The austerity measures in force at the United Nations could limit the capacity of MINUGUA to influence the human rights situation in Guatemala, while the overload of responsibilities which it has been assigned could reduce the effectiveness of the MINUGUA’s human rights work. Also of concern is the lack of formal mechanisms to tackle the parties’ non-compliance with the agreements and to oversee and ensure the implementation of MINUGUA’s recommendations, which could undermine the impact and success of the extensive work already carried out. Moreover, the lack of cooperation by some military and state officials is also hindering the MINUGUA’s human rights monitoring efforts and preventing it from carrying out its work independently and without interference.

By publishing this report at a time of historical change in the country, Amnesty International aims to contribute to the new era of respect for human rights which Guatemala must now enter. Through its reporting and, above all, through its specific recommendations<sup>15</sup>, the organization seeks to break the vicious circle of impunity which for decades has left victims defenceless and has allowed the Guatemalan security forces to continue violating the human rights of the population, perceiving their immunity from prosecution as explicit or implicit authorisation for their actions.

## **I. IMPUNITY AND HUMAN RIGHTS VIOLATIONS: 1994 to 1996**

The human rights violations documented in this period, in contrast to those which occurred from the late 1970s to the early 1990s, do not result from a counter-insurgency strategy planned at the highest levels of state and designed to eliminate thousands of real or suspected government opponents. Nevertheless, human rights violations committed by state agents, or individuals linked to them, continue to occur in Guatemala in a more selective manner and with the authorization and acquiescence of officials at certain levels of the state. The Guatemalan Government is responsible for all human rights violations committed by state agents, whether past or recent. The government has a duty to ensure, therefore, that the perpetrators are brought to justice.

The authorities' apparent lack of political will, which allows impunity to continue in the country, manifests itself primarily in the state's negligence when it comes to investigating human rights violations; in its inability to provide the resources required to ensure that adequate investigations are carried out; and in the complicity or acquiescence of state agents with their colleagues accused of violating human rights, which results in the deliberate obstruction of judicial proceedings, threats and further human rights violations.

### **The armed conflict, the excuse for human rights violations**

With regard to the armed conflict situation, important changes have resulted from the implementation of the Global Human Rights Accord and continued progress in the peace process, especially since Álvaro Arzú became President of the Republic in January 1996.

### **The army's auxiliaries: human rights violations and demobilization**

Before January 1996, the government of President Ramiro de León Carpio ordered the disbanding of military commissioners, army auxiliaries who had been responsible, for many years, for numerous human rights violations, including "disappearances", extrajudicial executions and torture, by means of the September 1995 *Acuerdo Gubernativo 434-95*, Governmental Agreement 434-95. The military commissioners are regulated by Article 92 of the *Ley Constitutiva del Ejército de Guatemala*, Constitutive Law of the Guatemalan Army, Decree 72-90.<sup>16</sup>

The disbanding of the Voluntary Civil Defence Committees<sup>17</sup> (CVDCs) began in August 1996, in Colotenango, department of Huehuetenango. More than 300,000 armed men under army control, operating throughout the country, were the perpetrators of innumerable human rights

violations since the CVDCs were set up at the beginning of the 1980s. The demobilization of the CVDCs was expected to be finalised by 31 December 1996.

On 12 October 1996, during the demobilization ceremony for members of the CVDC in Fray Bartolomé de las Casas, department of Alta Verapaz, the commander of Military Zone 21 stated that "the high command, in particular our commander-in-chief, Álvaro Arzú Irigoyen, would like to thank you for your participation in the struggle to defend national sovereignty and in this case the physical integrity of the population". In response to this speech, the CVDC commander stated that "if circumstances so require, we will always be ready to serve the army again".<sup>18</sup>

On 12 October 1996, the Human Rights Procurator, Jorge García Laguardia, stated that the demobilization "has turned into a string of tributes" and "represents a reward for violence"<sup>19</sup>.

However positive the disbanding of the military commissioners and the CVDCs is, to the extent that it eliminates from state structures the army auxiliary bodies responsible for serious human rights violations, it is nonetheless of concern that former military commissioners and CVDC members, under different names<sup>20</sup>, continue to commit serious human rights violations with the guaranteed protection of the army. Nor has demobilization resulted in investigations into human rights violations. The majority of human rights violations committed by the CVDCs and military commissioners in the past have gone unpunished.

It is also of concern that the Ministry of Defence is, in practice, responsible both for the demobilization itself and for monitoring the demobilization process, raising doubts as to the true extent of this demobilization.

An official document of restricted circulation issued by the Ministry of Defence in August 1996 sets out "The plan for the disarmament and demobilization of the Voluntary Civil Defence Committees of the Republic", in which three phases are specified: a first phase of "raising awareness from January 1996 onwards"; a second phase from August to December 1996 of "disarmament and demobilization"; and a third phase "of reintegration of members of the CVDCs into the daily life of their communities", from January 1997. This plan, drawn up and implemented by the Ministry of Defence, contains no reference to any monitoring of the demobilization process by any national or international civilian institution.

The Human Rights Procurator stated in June 1996 that, with respect to human rights violations in the first five months of 1996, numerous complaints implicated many members of the CVDCs and former military commissioners.

### ***The Mazariegos López case***

For example, on 28 February 1996, several armed individuals, among them members of the "Comités Pro-mejoramiento", "Committees for Improvement", which have replaced the CVDCs and which are particularly feared in Chiantla, fired at Bruno Mazariegos López, killing him on the road to Cantón Los Planes, Tajamuco, municipality of Chiantla, in Huehuetenango. One of the assailants was killed by a neighbour who came to the aid of the victim. Nine days before, in Cantón Los Chujes, Juan del Valle Alba, a resident of the community, had been shot dead by unidentified individuals, with high-calibre bullets.

MINUGUA stated, with reference to this case, that "the Public Ministry merely requested that the National Police investigate both killings but took no action claiming that it did not have sufficient forces to enter Tajamuco, where several years previously members of a patrol had fired at one of its agents". MINUGUA added that new weapons had been received by members of the CVDCs "through illegal channels". Those who received these weapons had been "individuals linked to other crimes such as the disappearance of the North American journalists Nicolás Blake and William Griffith in 1985".<sup>21</sup>

### ***The case of Félix López***

A significant case illustrating coordination between the military authorities and former military commissioners, even after the demobilization of the latter on 14 September 1995, occurred in the town of Huehuetenango. Rubén René Félix López was wounded in the arm with a bayonet on 15 October 1995 by a former military commissioner who told him as he carried out the attack that he “had instructions to make him disappear”. The former military commissioner continued to use his military commissioner identity document despite According to MINUGUA, “The [United Nations] Mission informed the Second in Command of Military Zone 23 in Huehuetenango of what had happened; the latter stated on 31 October 1995 that the army had no formal relations or links with the military commissioners. Contradicting this statement, on 20 December 1995 the authorities of Military Zone 10 summoned the victim of the attack “to clarify the written complaint he had made against a former military commissioner”. As Félix [López] did not heed the summons, on 27 December 1995 the captain in command of G-2 [intelligence unit] of Military Zone 19 went to his place of work and proceeded to interrogate him about the events”.<sup>22</sup>

Although participation in the CVDCs was formally voluntary, Amnesty International continued to receive reports of obligatory patrolling imposed on members of different communities in various departments.

### *The case of Pelicó Coxic*

In June 1995, Martín Pelicó Coxic, a member of the *Consejo de Comunidades Étnicas “Runujal Junam”* (CERJ), Council of Indigenous Communities “We are all equal”, was abducted, tortured and killed. Forensic reports indicated that the body showed wounds to the head and signs of having been asphyxiated. Martín Pelicó was from San Pedro Jocopilas and had stopped patrolling with the CVDC three years earlier. The CVDCs had reportedly taken part in several killings in the municipality, among them that of the political leader and journalist, Jorge Carpio Nicolle and three companions on 3 July 1993. Martín Pelicó was labelled a “subversive”. A military commissioner and two members of the CVDC were identified by witnesses as the perpetrators of the killing of Martín Pelicó, they were detained and charged with murder. However, despite the testimonies, the judge hearing the case released them in July 1996 and provisionally closed the case for apparent lack of evidence. The decision was appealed by CERJ and a judicial decision on the appeal is still pending.

### *The Yulmacap case*

On 7 January 1996, in another case documented by Amnesty International, members of the community of Yulmacap, municipality of Barillas, department of Huehuetenango, were threatened by the CVDC commander and by military commissioners to force them to continue patrolling, telling them that “those that do not patrol will be responsible in the event of renewed armed conflict and will be considered guerrillas”. It would appear that the CVDC commander “draws up lists of dissidents” to forward to the Military Detachment in Santa Cruz de Barillas.

## **Human rights violations by the army**

Amnesty International has for years documented cases of torture, “disappearances”, and extrajudicial executions of members of armed opposition groups following their capture by the army and, in some cases, following their transfer to secret detention centres<sup>23</sup>. In the period in question, up to the temporary cease-fire agreed between the two parties in March 1996, Amnesty International continued to document cases of torture and extrajudicial executions, in most cases including members of the civilian population.

Fear and complicity between military authorities and those conducting investigations have prevented those responsible being brought to justice.

### ***The case of Mazariego Hernández***

On 13 August 1995, Emiliana Patrocinia Mazariego Hernández, alias “Cristina”, a member of the URNG armed opposition group, was extrajudicially executed by the army following an armed confrontation on the El Bramadero ranch, in the municipality of Sayaxché, department of El Petén.

The body of Emiliana Patrocinia Mazariego Hernández showed several wounds and a close range coup de grace. From the start of investigations there were irregularities or attempts to conceal evidence. For example, no visual inspection of the place where the corpse was discovered was carried out. Neither were the weapons of the patrol involved in the armed confrontation impounded for inspection. Furthermore, instead of initiating a murder investigation, the justice of the peace initiated proceedings relating to “activity against the internal security of the Nation”, in an apparent attempt to divert the course of investigations away from the death of Emiliana Patrocinia Mazariego. Similarly, the Public Ministry has made no substantial progress in investigations into this case, owing to fear of the army and lack of cooperation of the military authorities.

Amnesty International has also documented cases of extrajudicial execution of members of the civilian population by the Guatemalan army in this period.

### ***The Las Majadas case***

On 19 April 1995, Luis Orozco Cahuex, Atilio Santos Citalán, Tereso García Cotón and Arcadio García Mazariegos, left Las Majadas, Santa María de Jesús, department of Quezaltenango to chop wood. The four peasant farmers “disappeared” that same day. The area was under the control of the army, which was searching for members of the URNG after the armed opposition group had held a political meeting in the area. Witnesses to their “disappearance” affirm having last seen the victims in the custody of the army on the back of a red pick-up truck. The next day, the bodies of Luis Orozco Cahuex and Atilio Santos Citalán were found strangled and with their hands tied behind their backs at kilometre 165 on the Inter-American highway, jurisdiction of Nahualá, department of Sololá. The bodies of Tereso García Cotón and his son Arcadio García Mazariegos were also found strangled and with their hands tied behind their backs in a ditch at kilometre 230 on the Pan-American highway in Quezaltenango.

MINUGUA confirmed “that the peasants had been arrested in an area controlled by the army. A pick-up truck similar in style and colour to that described by witnesses was seen several days later by MINUGUA at the army post”<sup>24</sup>.

MINUGUA’s investigations into the case have been hindered by a lack of army cooperation. MINUGUA did not receive authorization from the Ministry of Defence to interview individually and separately the members of the army patrol on duty the day of the events in the area of Las Majadas. A senior officer was present in every interview. The interviewed soldiers all gave the same version of events, stating that the killings were the result of common crime. Fearing reprisals, the witnesses have not wished to give statements to MINUGUA or the judicial authorities. It seems almost certain that the killings will go unpunished.

## **Abuses by the armed opposition**

*“Opposing deliberate and arbitrary killings, whether by governments or armed opposition groups, is based on the moral imperative that all parties to a conflict observe basic standards of humane behaviour. These standards are to be*

*found in fundamental provisions of human rights law, the laws of armed conflict (humanitarian law) and the dictates of public conscience”.*<sup>25</sup>

Though the activities of armed opposition groups in Guatemala have not been characterised by massive or frequent abuses in contravention of the principles of international humanitarian law<sup>26</sup>, as has been the case in other countries of the region, several cases of deliberate and arbitrary killings committed by the URNG have been documented in the past. One of these cases was that of Ernesto Rivera, a military commissioner from La Primavera, department of El Petén, who was executed allegedly after being captured by members of the URNG in March 1992.<sup>27</sup> In the period in question, Amnesty International documented a further case of alleged deliberate and arbitrary killing and one case of hostage-taking.

#### ***The Sanán Hernández case***

Army sub-lieutenant Amarildo Sanán Hernández was killed on 3 September 1994, allegedly at the hands of members of the URNG, near Patzaj, Comalapa, department of Chimaltenango, where a URNG meeting was being held. According to witnesses, Amarildo Sanán was travelling in a car with two other people, who, like himself, were dressed in civilian clothing. Believing the men who intercepted his vehicle to be common criminals, he took out his gun and started shooting.

The guerrillas fired back shooting him in the legs. Amarildo Sanán attempted to escape, but the guerrillas had already realised that he was a soldier and allegedly captured him, disarmed him and subsequently killed him.<sup>28</sup>

The killing of Amarildo Sanán is in breach of Common Article 3 of the Geneva Conventions of 1949, which prohibits “murder of all kinds” of “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.” His killing also violates clause 9.1 of the Global Human Rights Accord, that states: “Until the peace agreements are signed, both parties recognize the need [...] to respect the human rights of those wounded, captured and those *hors de combat*.”

#### ***The Alvarado de Novella case***

Olga Alvarado de Novella, an 86-year-old businesswoman, was kidnapped on 25 August 1996 in Guatemala City by members of the URNG, who forced her to get out of her car and took her away in another. The URNG released her on 27 October, in an exchange for her alleged captor, Rafael Augusto Valdizón Núñez, alias “Isaías”, a member of the *Organización del Pueblo en Armas* (ORPA), Organization of the People in Arms, who had apparently been detained by the security forces the day before.

The kidnapping, which was condemned by Amnesty International, MINUGUA and governmental authorities, led to the temporary suspension of peace negotiations. These were resumed after the URNG leadership affirmed that it had no knowledge of the kidnapping and that Rafael Valdizón had acted on his own account. The URNG reportedly condemned the kidnapping and announced the suspension of guerrilla activities in Guatemala.

### **Clandestine cemeteries: tracing the truth**

Burial rites represent a fundamental tradition for Guatemala’s indigenous communities. According to Mayan beliefs, the unburied spirit of a deceased person remains suspended between the world of the living and that of the dead, and it may even roam the Earth in anger, seeking vengeance against the community and the relatives responsible for failing to ensure its proper burial.



Following hundreds of massacres of civilians by the Guatemalan army during counter-insurgency operations in the late 1970s and early 1980s, thousands of corpses, the majority those of Mayan peasant farmers, were thrown unidentified into unmarked clandestine graves. According to current estimates, there are over 500 clandestine cemeteries in the country, few of which have been excavated.<sup>29</sup>

For many years it was practically impossible to carry out exhumations in Guatemala for fear of reprisals against relatives of the victims. The first exhumations, carried out in remote mountain areas in the late 1980s and early 1990s, were characterized by inadequate procedures, allegations that evidence was being removed from secret graves and by attempted abductions and threats against those calling for the exhumations to be carried out. Judges who attempted to carry out exhumations were also threatened and many were forced to abandon their investigations. One of the few forensic doctors in the country was forced to resign her post after receiving death threats following her presence at an exhumation in the department of El Quiché.<sup>30</sup>

Between 1988 and 1991, human rights organizations petitioned the courts for the exhumation of 17 mass graves, but in this period only eight exhumations were carried out. Military authorities simply dismissed the clandestine cemeteries as burial grounds of guerrillas killed in combat by the army or civil patrols. The civilian authorities, including the present government, have lacked the political will to undertake serious investigations into “disappearances” or extrajudicial executions.

Renewed efforts to exhume those killed continue to be thwarted by constant death threats against relatives and those involved in the excavations.

### ***The case of Las Dos Erres***

In 1994, *the Asociación de Familiares de los Detenidos-Desaparecidos de Guatemala* (FAMDEGUA), Association of Families of the Detained-Disappeared of Guatemala, and the *Oficina de Derechos Humanos del Arzobispado de Guatemala*, Guatemalan Archbishop’s Human Rights Office, enlisted the help of the *Equipo Argentino de Antropología Forense*, Argentinean Team of Forensic Anthropologists, to excavate mass graves containing the remains of more than 350 civilians killed in 1982 by the Guatemalan army in Las Dos Erres, in the northern department of El Petén. Towards the end of July 1995, after two excavations, the team recovered the remains of at least 162 people, among them 67 children. FAMDEGUA claimed that the relatives of those killed in the massacre received repeated death threats by a military commissioner, who stated that he possessed a list of the names of all the inhabitants of the community who had participated in the exhumation, who would be killed if they continued their work. At the beginning of July 1995 materials belonging to the Argentinean Team of Forensic Anthropologists were stolen. During the exhumations members of FAMDEGUA and the forensic team had to receive police protection after stones were thrown at the roofs of their temporary accommodation and machine-gun shots were fired into the air.

*The Equipo de Antropología Forense de Guatemala* (EAFG), Guatemalan Forensic Anthropology Team, a non-governmental organization formed in 1992 to carry out exhumations of clandestine cemeteries in Guatemala, has also been the target of threats and intimidation.

### ***The case of Carlos Federico Reyes López***

On 12 June 1996, an unidentified man sat next to Carlos Federico Reyes López, a 26-year-old forensic anthropologist and member of the EAFG, on a bus in Guatemala City, and pushed a pistol into his ribs and threatened him: “Stop hanging around with those friends because it is dangerous”. A week later, on 19 June, four unidentified men surrounded Carlos Federico Reyes López in Guatemala City; one of them, pointing a gun to his back, threatened him: “We already know where you live, you have a month to change your job, because it is dangerous.... Oh, by the way, we know that your dad is very ill”. A few months before this incident, Carlos Federico Reyes

López had participated in the exhumation of a clandestine cemetery in which the remains of 19 people were found, including six children, victims of the massacre at Los Josefinos, municipality of La Libertad, El Petén. At least 50 people were reportedly killed in the massacre on 29 April 1982, allegedly carried out by members of the Guatemalan armed forces.

### *The case of Efraín Bámaca*

In 1995 there were failed attempts to excavate a site at a military base said to contain the remains of Efraín Bámaca Velásquez, an armed opposition leader who “disappeared” in 1982. Military lawyers had lodged an appeal claiming that the excavation order did not comply with legal requirements; the appeal was upheld. During this whole period, those attempting to clarify the fate of the guerrilla leader received death threats, including the victim’s wife, Jennifer Harbury, a United States citizen, Dr Eduardo Arango Escobar, the prosecuting attorney assigned to the case, and the soldier and witness, Ángel Urizar, who reportedly went into hiding outside the country. Dr Arango Escobar apparently resigned from his post on 1 August 1995. In September 1996, the Inter-American Commission on Human Rights called on the Inter-American Court of Human Rights to declare that “Guatemala has violated the Inter-American Convention to Prevent and Punish Torture, that it should investigate the case and punish those responsible, inform the nearest relative of the whereabouts of Mr Bámaca and return his remains, reform the training of the Guatemalan army and pay just compensation to the victim’s family as well as legal costs”<sup>31</sup>.

Amnesty International has received information regarding the existence of dozens of clandestine cemeteries that have still not been reported to the authorities, because relatives of the victims fear reprisals by security force agents responsible for the “disappearances” and killings. In many cases, those allegedly responsible are CVDC members who live in the same community or town as the relatives or in a neighbouring area.

Exhumations are further obstructed by a lack of resources and technical expertise on the part of governmental bodies responsible for these investigations. In order to facilitate the judicial process, in March 1996 Amnesty International recommended that the Public Ministry appoint personnel to deal specifically with exhumations. However, this recommendation has not been adopted.

The Human Rights Procurator confirmed that he had knowledge of “more than 40 formal complaints concerning clandestine cemeteries,... In some cases excavations had been initiated, but the limited number of forensic anthropologists has made it impossible to attend to the rest.”<sup>32</sup> The Public Ministry reportedly has a maximum of six forensic doctors at its disposal and there are no more than 30 attached to the judiciary. These forensic doctors have received limited training and reportedly lack the expertise necessary to carry out exhumations adequately. For example, exhumations at San Martín Jilotepeque, Chimaltenango, had to be suspended at the end of August 1996, after forensic doctors from the Public Ministry destroyed valuable evidence by using a mechanical digger to exhume the remains of some 40 “disappeared” people.

Forensic reports often lack the essential elements for determining the cause of death. One example is the Xamán massacre, where 11 people were shot dead by soldiers on 5 October 1995 in Chisec, Alta Verapaz. In this case, forensic reports did not indicate the distance at which shots had been fired, thus making it difficult to substantiate witnesses’ claims that the victims had been extrajudicially executed.

To date, no exhumation has led to the bringing to justice of those responsible for authorizing, planning and carrying out the killings. Many witnesses fear reprisals if they testify and in at least one case which has come to the attention of Amnesty International, valuable information in the hands of some members of the security forces who participated in the killings and who were willing to testify was not presented to the relevant authorities.

Judicial procedures are characterized by a lack of cooperation by the security forces, which adds to the deficiencies and irregularities in investigations. For instance, in the

investigations into the case of Las Dos Erres in Petén, where the remains of 162 people were exhumed in 1994, amongst them 67 children,<sup>33</sup> the Minister of Defence, General Julio Balconi, obstructed judicial investigations by refusing to hand over information requested by the courts in August 1996.

### ***The Cuarto Pueblo case***

That same month, MINUGUA attributed the lack of progress in investigations into the Cuarto Pueblo massacre, in which 300 indigenous people lost their lives in March 1982, to excessive delays by the judge and to the poor cooperation of the National Police. The exhumation of the remains was carried out between June 1995 and May 1996, following a formal complaint presented by the community before the courts on 24 March 1995. The police, ignoring the judge's ruling, withdrew from the area before the exhumation had been completed.

Before leaving power in January 1986, the military government passed legislation to prevent the future opening of criminal proceedings against perpetrators of and accomplices to "political crimes and related common crimes during the period between 23 March 1982 and 14 January 1986", as was the case 10 years later with respect to those responsible for the Agua Fría massacre.

### ***The Agua Fría case***

The evidence uncovered from the exhumation and from testimonies of witnesses to the Agua Fría massacre, which took place in the department of El Quiché, led to the arrest of three CVDC members. At least 100 indigenous people lost their lives in the 14 September 1982 massacre, killed by soldiers and CVDC members from the neighbouring town of Xococ, Rabinal, Baja Verapaz.<sup>34</sup> Nevertheless, a few days before the trial of the three CVDC members was due to commence in August 1996, the case was stalled when the defendants sought an amnesty under the terms of Decree Law 08-86, passed by the military government on 10 January 1986, four days before transferring power to the civilian government.

In the period 1994 to 1995 the Public Ministry received formal complaints concerning the existence of at least 27 clandestine cemeteries in Rabinal, Baja Verapaz, of which only two have been excavated. In no case had the exhumations led to the bringing to justice of any of those responsible for authorizing, planning or carrying out the killings. According to local human rights organizations, there are at least 60 mass graves in the municipality of Rabinal.

At the end of 1995, the Human Rights Procurator reached the following conclusion:

*"Clandestine cemeteries are a shameful testimony to the inhumanity which has prevailed for three decades of dirty war. Macabre findings that bear evidence to the suffering of the civilian population faced with contempt for their life and physical integrity, as well as levels of cruelty and sadism only possible in despotic, authoritarian and intolerant states. [...] Guatemalan society and the authorities should join together in the investigation and search for justice for these criminal acts, since it will not be possible to talk of peace or reconciliation as long as these horrific crimes, which are contrary to civilization and humanity, are not resolved; for in some cases those who have lodged complaints have suffered harassment and threats and in others exhumations have been obstructed in open defiance of law."*<sup>35</sup>

## **Foreign support for human rights violations**

The Government of the United States of America has been intervening directly in Guatemala's security situation for more than 40 years. In June 1954, a small army under the command of Carlos Castillos Armas, backed by the United States Government, staged a successful *coup d'état* against the government of President Jacobo Arbenz. United States officials have also participated in serious human rights violations committed by the Guatemalan security forces, including torture and extrajudicial executions.

In October 1966, the Guatemalan police and army undertook major counter-insurgency operations in the departments of Izabal and Zacapa. It is estimated that between 3,000 and 8,000 Guatemalans were killed in the Izabal-Zacapa operations between October 1966 and March 1968. According to information published in Time magazine on 26 January 1968, Colonel John Webber, United States military attaché at the time of the Izabal-Zacapa operations who was later to be killed by armed opposition groups, acknowledged that the operations had been his idea and that, thanks to his initiative, anti-terrorist methods had been implemented by the Guatemalan army in the Izabal area.<sup>36</sup>

### ***Confirmation of foreign support***

In 1995 conclusive evidence came to light linking the United States Central Intelligence Agency (CIA) with Guatemalan military officials implicated in serious human rights violations against United States citizens and their relatives. In March 1995, a United States congressman, Robert Torricelli, revealed that Efraín Bámaca Velásquez, an armed opposition group leader who "disappeared" in 1992 after being injured in combat, had been captured by the army and had been extrajudicially executed after being tortured. Torricelli affirmed that United States officials knew about the events well before informing Efraín Bámaca's wife, Jennifer Harbury, a United States citizen.

Congressman Torricelli also pointed out that the killing of Efraín Bámaca and that of United States citizen Michael Devine (which occurred on 8 June 1990) were carried out by Guatemalan troops under the command of a Guatemalan colonel who was on the CIA payroll at the time of the killings. On 30 March 1995, the President of the United States, Bill Clinton, ordered the Intelligence Oversight Board to examine these and other cases of human rights violations against United States citizens in Guatemala.

In a report published in June 1996, the Intelligence Oversight Board stated that several Guatemalan security force members working for the CIA had ordered, planned or participated in serious human rights violations, such as extrajudicial executions, torture or abductions and that the central headquarters of the CIA Operational Command was aware of these crimes. The report confirms that these security force members also participated in acts of intimidation and in the covering up of human rights violations.

Nevertheless, the Intelligence Oversight Board's report considers "that US national interests, with respect to Guatemala and elsewhere, can in some cases justify relationships with assets and institutions with sordid or even criminal backgrounds."<sup>37</sup> The Board's report also examined several cases of possible human rights violations against United States citizens and their relatives and stated that "very little [intelligence information] was shared with surviving victims or relatives". In the case of United States missionary Diane Ortiz, who was tortured by Guatemalan security force agents in 1989, the Intelligence Oversight Board did not provide any further information on the grounds that "the Ortiz case is still under investigation by the Department of Justice; the IOB [Intelligence Oversight Board] will accordingly refrain from drawing conclusions on the case at this time."<sup>38</sup> At the time of writing this report, the United States Justice Department had still not made public any further information on this case.

### ***The School of the Americas***

The United States Army's School of the Americas was founded in Panama in 1946. Since then 60,000 security force agents and civilians from Latin America and the United States have been trained at the school. In 1984 the School was transferred to Fort Benning, Georgia, United States, following negotiations between the governments of Panama and the United States concerning the Panama Canal Treaty.

On 20 September 1996, the United States Defence Department circulated information on seven manuals, written in Spanish used to train thousands of Latin American security force agents, which describe torture, executions and beatings as useful tools in certain circumstances.

According to the Government of the United States, "two dozen isolated phrases, sentences or short passages, out of 1,100 pages in six of the manuals, were objectionable or dubious"<sup>39</sup> and were in breach of United States laws, regulations and policy.

The manuals include sentences such as the following: "The employee's value could be increased by means of arrests, executions or pacification, taking care not to expose the employee as the information source;"<sup>40</sup> "The CIA agent could cause the arrest of the employee's parents, imprison the employee or give him a beating as part of the placement of said employee in the guerrilla organization."<sup>41</sup> In chapter 25, for example, under the heading "counterintelligence", the term "neutralization" is used and it is stated that "[insurgents] are afraid to be brutalized after capture."<sup>42</sup>

United States Army School of the Americas trainers and mobile training units of the United States Southern Command used these manuals between 1982 and 1991. The mobile training units distributed copies of these manuals to military personnel and to intelligence training bodies in Colombia, Ecuador, El Salvador, Guatemala and Peru. Trainees from nine countries, including Guatemala, have used them at the School.

It is very difficult to estimate how many Guatemalan security force agents received training using instructions contained in the manuals, but between 1982 and 1991, the Guatemalan security forces extrajudicially executed, "disappeared" or tortured tens of thousands of civilians.

Guatemalan security agents implicated in human rights violations, some of whom have charges against them pending, are reported to have received training at the School of the Americas. Among them is a colonel implicated in the "disappearance" of Efraín Bámaca Velásquez in 1992 and in the killing of the United States citizen Michael Devine in 1990, as well as a general implicated through judicial proceedings in the killing of anthropologist Myrna Mack in 1990.

On 4 October 1996, Amnesty International called on the United States Government to carry out a thorough and impartial investigation into the United States army manuals and urged that the personnel involved in the compilation, use and circulation of such manuals be held to account.

## **Returns, refugees and the internally displaced: Xamán and El Quiché**

In the late 1970s and early 1980s, approximately one million people, mainly Mayan indigenous peasants, were forcibly internally displaced within Guatemala. Hundreds of thousands more fled to Mexico, El Salvador, the United States and other countries as a result of brutal human rights violations committed during counter-insurgency operations carried out by the army and its auxiliaries in the Guatemalan highlands.

In the 1980s and early 1990s, Amnesty International documented numerous human rights violations against refugees, returnees (returned refugees), internally displaced people and those who have assisted them.<sup>43</sup> Mexican citizens as well as Guatemalan refugees living in camps located on Mexican territory lost their lives at the hands of Guatemalan kaibiles<sup>44</sup> during military

incursions by these units into Mexican territory. Entire non-combatant civilian communities living in remote highland regions were bombed. Internally displaced people who sought refuge in other parts of the country were located and “disappeared”. Returned refugees were tortured and killed.

Government officials and army representatives justified this persecution by accusing refugees, returnees, internally displaced people and those working on their behalf of being “guerrillas” or “guerrilla sympathizers”, thus making them appear to be “legitimate targets” for attack.

With the help of the Roman Catholic Church and international organizations, displaced Guatemalans formed numerous non-governmental organizations with the aim of defending their right to life and to set up new homes and communities. Members of these organizations have lived and worked in a climate of constant fear and intimidation.

In 1992 refugee representatives signed an agreement with the Guatemalan Government aimed at setting up official mechanisms to put an end to the constant persecution and discrimination to which they were subjected and to guarantee their rights and security. Thus the 8 October 1992 Agreement relating to the Collective and Organized Return of the Refugee Population to Guatemalan Territory established the terms and conditions for the collective return of refugees to Guatemala. In 1994, the URNG and the Guatemalan Government signed the Agreement for the Resettlement of Populations Uprooted by the Armed Conflict, under which the government committed itself to guaranteeing the conditions necessary for the voluntary, safe and dignified return of the internally displaced to their place of origin or a place of their choice.

However, in July 1996, the president of the *Comisión Nacional para la Atención de Repatriados, Refugiados y Desplazados* (CEAR), National Commission for Attention to Refugees, Repatriated and Displaced People, was unable to provide Amnesty International delegates with any information on governmental plans to implement the 1992 and 1994 agreements. In the majority of cases, the only protection available to resettled returnees and internally displaced people is the presence of international organizations such as the United Nations High Commissioner for Refugees (UNHCR) or the many international non-governmental organizations which send volunteers to support these communities.

The cases detailed below — in particular the 5 October 1995 killings on the Xamán estate, where soldiers killed 11 returned refugees — illustrate how refugees, the internally displaced and those assisting them continue to be victims of serious human rights violations. Today, human rights violations committed by security force agents against returnees, internally displaced people and organizations and individuals working with them are selective in nature, rather than widespread and systematic as in the 1980s. This pattern indicates that the attitude of the armed forces in each department and in each military zone is an important factor in ensuring respect for human rights for this sector of Guatemalan society.

### ***The Xamán massacre***

On 5 October 1995, a group of 25 soldiers from the Rubelsanto barracks in Military Zone 21, entered the Xamán estate in the municipality of Chisec, department of Alta Verapaz, and opened fire on a community of returnees who were preparing to celebrate the first anniversary of their return to Guatemala. Eleven people, among them two children, were shot dead by soldiers and another 30 were injured, including three soldiers. Although there is no evidence to conclude that the massacre was premeditated, Amnesty International considers that the circumstances in which several returnees were killed appear to indicate that they were victims of extrajudicial execution. The organization also believes that the incursion by the armed forces into the community was an act of intimidation which resulted in tragedy.

As soon as the soldiers had entered the settlement at 1:30 pm, community leaders and approximately 200 community members congregated around them, forming a semi-circle, to demand the reason for their presence. While the leaders spoke, other members of the community

surrounded the soldiers, hurling verbal accusations at them and telling them to leave the settlement.

The leaders reportedly asked the soldiers to put down their weapons and wait until they were able to speak to MINUGUA by telephone, in order to request that the UN MINUGUA monitor the presence of the army in the community. After half an hour of dialogue, the soldiers attempted to leave making way for themselves through the crowd that surrounded them. One person allegedly grabbed a sergeant's rifle by the barrel. The officer ordered another soldier to open fire, the soldier obeyed and shot dead the person who had grabbed the weapon and another two people who, according to witnesses, had turned and begun to run away.

One witness described what happened as follows:

*“The armed men at the head of the patrol raised their weapons and aimed at the people, I saw four of these men at the front of the patrol raise their weapons and fire at them. Three of them fired automatic weapons directly at body height while the other, who was furthest to the right, fired at the ground.”*

Other soldiers then began to shoot indiscriminately, killing another seven people, some of whom were shot allegedly while lying on the ground wounded, and injuring another 30 people, including three soldiers. Another member of the community, 17-year-old Carlos Fernando Chop Chic, died of gunshot wounds the next day in Salamá hospital.

One soldier shot 8-year-old Santiago Coc Pop in the wrist as he ran towards his house. After the first shot, the soldier reportedly chased Santiago and fired at him again, this time in the head and chest, killing him.

Following the massacre, the military and governmental authorities claimed that responsibility for the events of 5 October lay with the Xamán community. The then Vice-president of the Republic, Arturo Herbruger, stated that neither the government nor the Minister of Defence were responsible for the massacre because the patrol had been “led into a trap.”<sup>45</sup> In an interview on 9 October 1995, the Minister of Defence attempted to incriminate members of the community stating that “[the army] is unable to pursue subversives because refugees will not allow it.”

Investigations into the Xamán massacre have been hindered by threats against witnesses and lawyers representing the victims and by alleged tampering with the evidence. For example, the army took six weeks to hand over the weapons used in the massacre to the Public Ministry for ballistic analysis. Moreover, the Public Ministry's forensic doctor was prevented from visiting the hospital where the wounded soldiers were being treated.

Despite the transfer of judicial proceedings relating to the Xamán massacre from a military tribunal to a civilian court, one year later no one has yet been brought to justice for the death of the 11 returnees and the injuries sustained by 30 others, and neither those injured nor the relatives of those killed have received any compensation. Four days after the events, the Minister of Defence resigned from his post and the commander of Military Zone 21, in Cobán, department of Alta Verapaz, responsible for the actions of the military patrol, was dismissed by President Ramiro de León Carpio. However, according to information available, no criminal charges have been brought against the military commander.

### ***The situation in El Quiché***

In the department of El Quiché, in particular the municipalities of Ixcán and Nebaj, there have been continued reports of human rights violations against returnees, internally displaced people and those working with them. Few cases of this kind have been investigated adequately by the government and in even fewer cases have those responsible for such acts been brought to justice.

On 28 June 1995, CVDC members took hostage six international observers who had been negotiating the return of refugees to a settlement in El Quiché. The captors were said to be operating under the command of the same military commissioner accused of having threatened members of the Junb Chembal Te Kipamal cooperative in Kaibil Balam, municipality of Ixcán, also in El Quiché, on 28 March 1995. Among those abducted were representatives of MINUGUA, UNHCR, *Grupo Internacional de Consulta y Apoyo para el Retorno* (GRICAR), International Support and Consultation Group for the Return of Refugees and Médicos del Mundo, Doctors for the World, some of whom had been involved in negotiations for the return of refugees to San Antonio Tezjá, Ixcán. The observers were released 27 hours later.

Following the abduction of the international observers, warrants were issued for the arrest of seven suspects, including a military commissioner — allegedly responsible for many past human rights violations in El Quiché — who operates in a remote and heavily militarized area, Zona Reyna, with CVDC support. This commissioner was finally arrested following intense international pressure at the end of August 1996, more than a year after the events.

On 9 April 1995, in Nebaj, department of El Quiché, a CVDC member caused serious head injuries to María de León Santiago with a stone and beat her up. María de León Santiago, a member of the *Coordinadora Nacional de Viudas de Guatemala* (CONAVIGUA), National Coordination of Widows of Guatemala, was accused of being a guerrilla and of sheltering members of the *Comunidades de Población en Resistencia* (CPR), Communities of Population in Resistance.<sup>46</sup>

On 16 December 1995, at approximately midday, unidentified individuals shot dead 9-year-old Magdalena Caal Coc and injured 12-year-old Santiago Quix Caal, in Cantabal, Ixcán. The children were members of a returnee community. The Public Ministry did not carry out investigations at the scene of the crime, which hours earlier had been the setting of an armed confrontation between the URNG and the armed forces. No progress has been made in identifying those responsible nor bringing them before the courts.

More than 10,000 returnees and thousands of internally displaced people, among them members of the CPR, who resettled between 1994 and 1996 live in the department of El Quiché. Amnesty International considers that the pattern of human rights violations against these people and against those who work with them can be attributed to two factors. Firstly, the presence of CVDC members and former military commissioners, who maintain control at a local level and act with almost total impunity. And, secondly, the scarce and weak presence in this department of civilian state institutions with responsibility for investigating criminal cases and human rights violations: there are only three officials of the Public Ministry, three delegates of the Human Rights Procurator's Office and approximately 100 police officers in a department inhabited by more than half a million people.

## **Political repression of civil dissent**

Judges, lawyers and witnesses involved in proceedings against military personnel or security force agents are often harassed, subject to surveillance and even killed. Journalists who report on cases of corruption, kidnapping or organized crime in which the security forces or government officials are implicated, are abducted and tortured. Other targets of political repression are trade unionists, students and academics, politicians, church activists and community leaders.<sup>47</sup>

## **Attacks on judges, lawyers and witnesses**

Judges, lawyers, prosecuting attorneys and witnesses seeking an end to the legacy of impunity by holding members of the armed forces accountable and responsible for their actions, face



systematic resistance in the form of dozens of death threats and in some cases they are targeted for killings. The effectiveness of this tactic as a means of weakening the power and independence of the Guatemalan judiciary is illustrated by the fact that only a small number of security force agents have been brought before the courts, in most cases on common criminal charges rather than for human rights violations.

### ***The González Dubón case***

The president of the Constitutional Court, Eduardo Epaminondas González Dubón, was gunned down on the night of 1 April 1994 in Guatemala City, only two days after the signing of the *Global Human Rights Accord*. The perpetrators of the killing were armed men in civilian clothing who, according to human rights organizations were acting on behalf of the armed forces. As president of the Constitutional Court, González Dubón's intervention in reversing the attempted *auto-golpe* ("auto-coup") in May 1993 was decisive in maintaining civilian rule. In June 1995 the *Supervisión General de Tribunales*, Tribunals Supervisory Body, stated that in this case "justice was neither promptly nor adequately administered" and in August 1996 a MINUGUA report stated that only one of the eight suspects was awaiting trial.<sup>48</sup>

In early 1996, Ramsés Cuestas, the then Attorney General, acknowledged that prosecuting attorneys of the Public Ministry were receiving between two and four death threats every month and were frequently being attacked. MINUGUA reported that it had received similar reports and that one of the prosecuting attorneys threatened had subsequently been killed. Another prosecuting attorney had to leave the country. In such conditions it is not surprising that they opt not to continue handling such cases.

### ***The Pérez and Pérez case***

On 3 May 1996, two Public Ministry investigators, Juan Pablo Pérez and José Vicente Pérez, were shot dead on a road 52.5 kilometres from the border with El Salvador. The body of one of them showed signs of having been shot in the face at close range, the body of the other had several bullet wounds. Their motorcycles as well as their guns had been stolen. The two officials had been investigating the possible involvement or collaboration of security force agents in two attacks which had taken place on the same road. In the first attack, which occurred on 25 April 1996, Humberto Centeno, a Salvadorian and son of a deputy of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN), Farabundo Martí National Liberation Front, was shot dead; in the second, which took place a few days later on 1 May, a Russian diplomat, third secretary of the Russian Embassy in Nicaragua, was shot and injured on kilometre 34 of the same road and died 10 days later in Cuba.

### ***Investigations into the Myrna Mack case***

From the outset of investigations into the killing of the anthropologist Myrna Mack by members of the Guatemalan Army, relatives, lawyers, judges and judicial officials, witnesses, journalists and practically all others linked to the case have been threatened and harassed. MINUGUA confirmed in its fifth report of August 1996 that people linked to the case continued to be under surveillance and that trial hearings would take place in a climate of insecurity for those involved in judicial proceedings against the armed forces.

### ***The Villaseñor case***

María Eugenia Villaseñor, an appeal court judge, wrote a book in which she criticized the manner in which the judiciary had handled the case of Myrna Mack. Judge Villaseñor has also intervened in other human rights cases and has been the victim of repeated death threats and acts of

intimidation. On one occasion she was forced to leave the country and in 1994 a police officer who had been assigned to protect her was abducted, beaten and threatened. Judge Villaseñor was finally transferred to Antigua, department of Sacatepéquez. The threats continue and the judge fears for her own safety.

#### ***Investigations into the Carpio Nicolle case***

Jorge Carpio Nicolle, owner of the El Gráfico newspaper, was killed along with three other people by approximately 20 masked men in the department of El Quiché, in July 1993. During the investigations which were conducted into these killings, witnesses, relatives and government officials were subjected to numerous threats and acts of intimidation. On 26 June 1994, a group of armed men destroyed a car belonging to Karen Fischer, a relative in the case, and left a message which said: “Abandon the case or somebody in your family will die.” The next day Karen Fischer left the country, together with her children, for a period of three months. Judicial and security force officials responsible for investigating the killings have also been subjected to threats and intimidation. On 7 November 1996, the prosecuting attorney, Abraham Méndez García, was forced to flee Guatemala after receiving a series of death threats.

#### ***Investigation into the Xamán case***

On 5 October 1995, 11 people lost their lives and 30 were injured on the Xamán estate, Chisec, department of Alta Verapaz, at the hands of an army patrol. Members of the community and of international non-governmental organizations who witnessed the Xamán massacre or who were in a position to give evidence have also received death threats. The fact that some of the witnesses interviewed by Amnesty International prefer to remain anonymous for reasons of safety illustrates the degree of intimidation in this case.

#### ***The Hernández case***

Otto Leonel Hernández was abducted by four individuals on 21 June 1996, at 5:30pm in the city of Quezaltenango. Otto Leonel Hernández is the main witness in the case of the “disappearance” and subsequent killing of Lucina Cárdenas on 27 November 1995, allegedly by members of the security forces linked to criminal gangs operating in the area. During the six days he was held, he was interrogated as to whether he had accused anyone in the course of the proceedings or if he had seen the face of any of the assailants. He was beaten “to jog his memory”, tortured with at least 30 cigarette burns to his back, and when the abductors decided to free him, they said that they were not going to kill him as “those in prison or those outside would take care of that”. Those responsible for his abduction and torture have not been arrested.

## **A pattern of harassment against journalists**

The first six months of 1996 witnessed a pattern of harassment against journalists reporting on human rights, impunity or the involvement of the security forces in cases of corruption or organized crime. During this period the media publicly accused several high-ranking military officers of leading organized criminal groups, especially gangs involved in car theft and kidnapping.

### ***Case No. 1***

While standing at a bus stop in the centre of Guatemala City on 10 February 1996, one journalist was dragged violently into the back of a car by two individuals who threatened him with sawn-off shotguns. The attackers searched and beat him, stealing his watch, his money and documents he was carrying. According to the victim, they interrogated him about street interviews he had carried out in relation to the suspension of dozens of police officers implicated in criminal activities and cases of corruption, and they accused him of manipulating the people he had interviewed for the purposes of his articles. Two days later, the journalist, who wishes to remain anonymous for reasons of safety, reported that he had been followed after leaving his home.

### ***The Pacheco Méndez case***

Another case documented by Amnesty International during the same period is that of Estuardo Vinicio Pacheco Méndez, a reporter for *Radio Sonora*. Pacheco Méndez interviewed several judicial authorities and gathered information on various legal proceedings against people accused of crimes such as kidnapping, drug-trafficking and belonging to gangs of car thieves; in many of these cases the involvement of state security force members is being investigated. On 28 February 1996, he was abducted by four men who gave him some pills which made him faint. His captors held him for three or four hours, during which time they beat him, kicked him, burned his chest with cigarettes and cut the soles of his feet with what appeared to be a blade. His attackers told him that they were releasing him as a warning to other journalists, otherwise they would have killed him. Pacheco Méndez continued to receive death threats following his release and fled the country shortly afterwards.

## **Trade unionists at risk**

Trade unionists have been under constant attack by successive military regimes and civilian governments in Guatemala, on account of their efforts to form trade unions and to promote the rights of workers in Guatemala<sup>49</sup>. Amnesty International has documented cases in which trade unionists have been victims of abduction, torture, attempted extrajudicial execution or death threats on account of their legitimate trade union activities.

### ***The Guzmán Chupén case***

Déborá Guzmán Chupén, union leader at the Lunafil factory in Amatitlán, has been harassed and threatened with death since May 1994, when workers began to protest against the closure of the factory. On 28 February 1995, at 9:30am, she was violently abducted and held for 24 hours. Since her release the death threats have not stopped. She received five between 16 and 28 February 1996. Despite investigations initiated by the Human Rights Procurator's Office, the National Police and the Public Ministry into the abduction of Déborá Guzmán and the threats received by her and her husband, the perpetrators have not been brought to justice. The threats only ceased when Déborá Guzmán decided to give up her trade union activities.

### ***The Durán case***

On 5 September 1996, at 5.30pm, two men on a motorcycle fired at Víctor Hugo Durán, general secretary of the *Sindicato General de Trabajadores de Guatel "22 de Febrero"*, "22 February" General Guatel Workers' Union, while he was travelling by car between Guatemala City and Villanueva, department of Guatemala. Although the bullets hit his luggage and broke a car window, the trade unionist was not hurt. The next day, around midnight, a group of individuals in a pick-up truck fired about 10 shots at Víctor Hugo Durán's house, in the town of Villanueva.

Víctor Hugo Durán left the country temporarily on 19 September. On 20 September, three members of the same trade union were threatened. Amnesty International believes that the threats against the four trade unionists are related to their activities against the privatization of Guatel, a publicly owned telecommunications company. The organization also believes that members of the security forces or persons acting on their behalf may have been involved in the attacks.

## **Violence against students and academics**

Since the 1960s, university professors, students and teachers have been victims of torture, “disappearance” and extrajudicial execution by members of the security forces or “death squads”. These groups, linked to the security forces, have targeted political opponents of the government or suspected opponents for elimination, because of their political activities throughout the last three decades<sup>50</sup>. Information currently available indicates that, during the period covered by this report, students and academics are still occasionally victims of death threats, ill-treatment and extrajudicial executions at the hands of members of the security forces. Irregularities in the investigations and tampering with crucial evidence in the two cases documented in this report, raise fears that, as in past cases of human rights violations, those responsible will never be brought to justice.

### ***The case of Mario Alioto López Sánchez***

On the afternoon of 11 November 1994, about a hundred agents of the *Fuerza de Reacción Inmediata* (FRI), Immediate Reaction Force, the special anti-riot squad of the Guatemalan police, entered the campus of the University of San Carlos to break up a student demonstration. According to witnesses, the FRI agents used tear-gas and opened fire on the students with automatic weapons. Dozens were injured, some by bullets and others as a result of being kicked or being hit with long wooden sticks. Some were hit as they lay injured on the ground. Mario Alioto López Sánchez, a member of the *Asociación de Estudiantes Universitarios* (AUS), Association of University Students, was shot in the leg and taken away by FRI members. He died the next day in the Roosevelt Hospital.

Amnesty International has received several reports concerning his death. The first — from the Procurator General, Acisclo Valladares Molina, who was present at the autopsy on 12 November — affirms that the victim died as a result of several brutal blows and not only from the gunshot wound. The second — prepared five days later by a forensic doctor assigned by the judiciary — affirms that the 18-year-old died as a consequence of “hypovolemic shock as a result of massive haemorrhaging provoked by the severing of the femoral artery caused by a deep gunshot wound in the left thigh.” The original medical notes of this case have disappeared. In a letter dated 13 November 1994, addressed to the President of the Republic, Ramiro de León Carpio, the Procurator General wrote:

*“I fear, Mr President, (...) from what I saw with my own eyes (...) that an official version of this death is being contrived that has nothing to do with reality”.*

In 1995 the arrest was ordered of several National Police and FRI members implicated in the death of Mario Alioto López Sánchez and the ill-treatment of the other students. All the accused except one were reportedly released on bail. On 27 June 1996, the Public Ministry’s request to transfer the only detained suspect from the cells of the Fifth National Police Corps, on grounds that he was being held in the police station that he had previously commanded, was turned down. Amnesty International has received reports that students and lawyers involved in the investigations into this case have been kept under surveillance and threatened.

### ***The Carranza Vallar case***

Apolo Ariosto Carranza Vallar, a professor at the University of San Carlos, “disappeared” on 27 January 1995. Those responsible, allegedly members of the security forces, abducted him when he was leaving his office at the Pan-American Health Organization in Guatemala City.

In May 1995 the press published the news that the professor’s body had been found and named a Military Zone commander as the person who had planned his abduction and death. On 29 May, MINUGUA accompanied the judicial authorities in the exhumation of a body. Through dental records and the victim’s relatives, it was confirmed that the body was that of Apolo Ariosto Carranza Vallar. MINUGUA reported in August 1995 that the unidentified body had been found earlier, on 19 February 1995. At that time, despite evidence of a fatal bullet wound in the head, the chief of police of Santa Lucía, in the municipality of Escuintla, had notified his superiors that the death was due to unknown causes and the judge of Santa Lucía had ordered that the body be buried without ordering any investigation into the identity of the victim or the cause of his death.<sup>51</sup>

In April 1996 the Public Ministry acknowledged that there had been irregularities in the investigation and stated that the judicial official in charge of the case had “acted negligently”<sup>52</sup>. No disciplinary measures were taken against the official. On 11 October 1996, a Public Ministry spokesperson was quoted in the newspaper *Prensa Libre* as saying that records of the judicial proceedings implicating the military commander “had been stolen or had mysteriously disappeared” from the Departamento de Investigaciones Criminalistas (DIC), Department of Criminal Investigations. No arrests have yet been made in relation to the death of Apolo Ariosto Carranza Vallar and the investigations have virtually come to a halt.

### **‘Social Cleansing’: repression against social ‘undesirables’**

In the period covered by this report, members of the security forces took part in “social cleansing” activities intended not only to combat crime, but to eliminate the “socially undesirable”. In her report of 25 January 1995 to the UN Commission on Human Rights, the Independent Expert on Guatemala, Mónica Pinto, stated that some allegations received “point to a state of social cleansing principally affecting marginal groups such as street gangs, street children and prostitutes.”<sup>53</sup> The phenomenon of “social cleansing”, involving extrajudicial execution and torture, violates a whole range of fundamental human rights. The perpetrators are the security forces or their auxiliary bodies, such as the Voluntary Civil Defence Committees, private police members or groups of citizens organized by the security forces or acting in collusion with them. It should be stated that, almost without exception, these human rights violations have not been investigated by the Guatemalan authorities.

In a public ceremony on 12 June 1995, the Minister of the Interior, Carlos Enrique Reynoso Gil, authorized the setting up and deployment of several urban vigilante groups in Guatemala City, under the name of “neighbourhood watchmen”. The Independent Expert, in her end of year report to the Commission, wrote, “The Minister of Defence has stated that the army is supportive of such urban watch groups and is prepared, on request, to assist and train them in the open war on crime.”<sup>54</sup> Amnesty International has received information linking these groups to the murder of common criminal suspects.

Usually, those killed have criminal records or are considered criminals by the community. Their bodies generally turn up at so-called “body dumps”, places in Guatemala City where unidentified bodies normally appear, their hands tied and with signs of having been shot at point blank range or having been stabbed and tortured. The number of people killed in this way is

impossible to estimate. Although some of the killings can be attributed to common crime, Amnesty International has documented cases where evidence points to the involvement of members of the security forces.

At the end of 1995, the director of the *Servicio de Medicina Forense del Organismo Judicial*, Forensic Medical Service of the Judiciary, stated publicly that an average of 10 corpses were brought to the morgue every day, showing signs of having been shot at close range, frequently through the head and with signs of having had their hands tied.

MINUGUA made reference to “social cleansing” in its second report on the verification of human rights in Guatemala (August 1995), stating that “the frequent appearance of corpses in so-called “graveyards”, bearing signs of torture and coups de grace, the fact that the victims are frequently common criminals, and the inability of the competent national agencies to locate the perpetrators, are characteristic of the modus operandi of the organized groups involved in “social cleansing” campaigns, which can hardly operate without the tolerance, complicity or direct participation of agents of the State”<sup>55</sup>. A year later, MINUGUA’s Fifth Report (August 1996) affirmed that “the inaction of institutions responsible for criminal investigations has been noted as a common factor in all these deaths”<sup>56</sup>.

### *Case 1*

Marlon Cristian Viera, Malcom Wilken Lafuente and Ismael Alejandro Siejas González, were abducted on 2 March 1995 on the Avenida Centroamericana, in the capital’s Zone 1, by several armed individuals. The corpses of the first two appeared on 3 March at the La Colina estate, department of Santa Rosa, with multiple bullet wounds, as well as a coup de grace. Marlon Cristian Viera is said to have had a criminal record. The criminal investigations department of the National Police concluded that two National Police agents and an accomplice were responsible for their abduction and murder. At least one of these suspects remains at large.

### *Case 2*

Eighteen-year-old student Gilmar Fernando Miculux Tuctuc was detained on 26 July 1995 in front of his house in Colonia 15 de Agosto in Zone 5 of Guatemala City, by a Military Guard patrol in the course of an anti-crime operation. Gilmar Fernando Miculux Tuctuc and Byron Pérez, who was accompanying him, were both interrogated about criminal gangs operating in the area. According to an eye-witness testimony, the military patrol interrogating them hit them repeatedly: “When I arrived I saw that they were hitting them and were questioning them about the gangs which operate in the district.” Byron Pérez was released immediately, following his wife’s intervention, but Gilmar Fernando Miculux Tuctuc was reportedly handed over by the military patrol to the “nightwatchmen”. At daybreak the next day, his body was found in a street in the same district with six bullet wounds.

The supplement to MINUGUA’s fourth report describes the almost total lack of cooperation by the military authorities with the UN Mission in the investigation into the case. The authorities even concealed information crucial to the identification of the culprits. They reported, for example, that two of the soldiers involved had deserted — though this was not the case — so as to prevent MINUGUA from interviewing them; and the G-2 (military intelligence), which investigated the case and took statements from members of the patrol, never disclosed their conclusions to the Mission<sup>57</sup>. For its part, the Public Ministry took more than a year to carry out ballistic tests because the shells were not found at the site of the shooting; it also failed to ask the Ministry of Defence for the names of the soldiers in the patrol, nor did it request that their weapons be impounded until six months after the killing. Not one member of the group of “neighbourhood watchmen” appears to have been arrested.

### *Case 3*

The following account comes from a witness, whose name cannot be disclosed for safety reasons, to an extrajudicial execution carried out by the army in the course of a “social cleansing” operation in Cobán, department of Alta Verapaz, at the end of June 1995:

*“We arrived at a dark lane in San Cristóbal Verapaz. The Specialist [a branch of the army] got out [of his vehicle], went in and brought out a young man; he was thin and had curly hair in a pony tail.... The Captain [name] told the Specialist to bring him the young man and then [the Captain] told them to hit him. They began kicking and hitting him hard. [The Captain] got out [of the car], made him kneel down and shot him, here, in the nape of the neck; then he shot him again, here, in the forehead, and again, here, in the chest. Then they threw him face down and he slid down [the embankment]. [The Captain] told me that I was to say nothing to anybody about what I had seen, that if I said anything, I knew what would happen to me. He told me that it was his responsibility to kill people who did bad things”.*

After reporting the facts, the witness had to go into hiding and left the country in September 1996, after being intimidated by members of the army linked to these events.

## **Street children**

According to charities working with street children in Guatemala, some 5,000 children, both Guatemalan and of other nationalities, aged between 5 and 18, live on the streets of the capital. Many are orphans, others have been abandoned or are disabled. They search for food among the rubbish and sleep under parked cars or in doorways.

The lack of investigation into the human rights violations against street children once again reflects the extent of impunity in Guatemala. Statistics compiled by *Casa Alianza*, an organization which has been providing food and medical assistance to street children since the early 1980s, reveal the true picture. Since 1990 more than 280 allegations of extrajudicial execution, torture, ill-treatment, intimidation, illegal arrest, threats, injuries and abduction have been reported; in very few cases has there been an investigation by the relevant authorities and in almost none have the alleged perpetrators been brought to justice. Sometimes the perpetrators are unknown or belong to criminal gangs, but according to *Casa Alianza*, there is strong evidence of the involvement of members of the security forces in at least 180 cases of human rights violations against street children between 1990 and 1996, including members of the National Police, the Mobile Military Police, Treasury Police or private police operating under licence from the National Police and the Ministry of the Interior.

Over the last six years, *Casa Alianza* has gathered information on at least 20 private police officers who have committed human rights violations against street children. Private police companies have proliferated in the country due to the climate of public insecurity. They obtain their licence from the Ministry of the Interior, under whose control they operate, and their members must “cooperate directly with the General Directorate of the National Police and [...] are obliged to provide assistance wherever requested.”<sup>58</sup> Over the last six years some 40 members of the National Police have also been involved in human rights violations against street children.

In recent months some sentences have been handed out, although many cases have not been investigated. Witnesses, judges and lawyers have been subjected to threats and intimidation.

### **Case 1**

One of the few incidents for which private police have been sentenced for human rights violations was on 24 September 1994. Rubén García González, aged 14, Daniel Rosales, aged 10 and Víctor Manuel García, aged 12, were trying to sleep in Zone 4 of Guatemala City when a woman nearby

started screaming. Two private policemen from the “*Los Vigilantes*” company approached the boys and opened fire. Daniel Rosales died on the spot and Rubén García died shortly after being taken to the San Juan de Dios hospital. On 6 June 1996, the two policemen were sentenced by a Criminal Court of First Instance to 30 years in prison. In November 1996, following an appeal by the defence, one of the defendants was sentenced to 10 years and the other was acquitted.

However, during the trial, witnesses and human rights organizations were subjected to intimidation and threats. On 5 February 1996, two men armed with guns came to the offices in Guatemala City of a lawyer from the *Centro de Desarrollo Integral Comunitario*, CEDIC, Centre for Integral Community Development, and told him: “If you don’t get the trial stopped or make sure CEDIC loses, you and your witnesses could be killed”. Four different judges presided over the case and one of them left the country after being threatened.

On 7 June 1996, the day after the initial sentence, Judge Luis Gonzalo Vargas Bocanegra announced that “unknown persons have called and left the message that they are going to kill me”. The CEDIC lawyer continued to receive threats by telephone.

### **Case 2**

One of the cases investigated by Amnesty International in the period 1994-1996 is that of the murder of 17-year-old Erwin Américo Orantes Martínez. At 8.30 in the evening of 23 June 1995, Erwin Américo was with other street children when they mugged a pedestrian on 16th Street in Zone 1 of Guatemala City, stealing his wallet. A man dressed in civilian clothing bearing a beer company logo walked up to the children and fired into the air. They ran away frightened.

The man continued shooting and fatally wounded Erwin Américo and injured Nicolás Cruz in the ankle. Street child Rosa Angélica Vega, a witness to the event, ran after the murderer. When he asked her why she was following him, Rosa Angélica Vega asked him: “Why have you shot one of my friends?” The man replied, “And what about it? I’m from the DIC [Criminal Investigation Department of the National Police]”. He then took out his gun and pointed it at Rosa Angélica Vega before running off.

Witnesses to the incident, including several street children, were asked to identify photographs of members of the National Police who were on duty in the area that night. The terrified children did not dare to go into the National Police offices to identify the photographs and this has been used by the authorities as an excuse not to investigate the case. On 6 August 1996, in a reply to Amnesty International, the Presidential Human Rights Commission (COPREDEH) stated that “there has been no further action on this case in view of the fact that the complainant has not wished to appear before the DIC of the National Police to review files relating to members of the Department. While the Presidential Human Rights Commission acknowledges that the person responsible is “presumably a member of the Department (DIC)”, no substantial investigation has taken place to find the person responsible for the child’s death.”

### **Case 3**

According to eye-witnesses, Ronald Raúl Ramos, aged 16, was beaten and killed on 20 September 1996 in Tecún Umán, department of San Marcos. He was shot at close range by a uniformed member of the *Guardia de Hacienda*, Treasury Police, a police force under the jurisdiction of the Ministry of the Interior. The bullet apparently entered through the nose and exited through the back of the neck.

Testimony given by the street children who witnessed the death of Ronald Raúl Ramos confirmed the facts:

*“[The policeman] shouted at us, “stop, keep still, I’ll kill anyone who moves, give me all the money you have”. He pinned the four of us against a wall and then turned to Ronald and started hitting him with his rifle butt. He hit him with both ends of the rifle, saying to him, “You son of a*



*bitch, you're going to die right here" [...] the three of us cried when we saw him hitting Payaso [the Clown - Ronald Raúl Ramos' nickname]. [...] After several punches, Payaso flew into a rage and managed to hit the policeman twice in the chest. [The policeman] took his rifle and shot Payaso in the forehead [...]"*.

The body of Ronald Raúl Ramos was found by the judicial authorities on 20 September on the banks of the river Suchiate, under the "Rodolfo Robles" bridge which joins Guatemala with the state of Chiapas in Mexico, in an area known as "El Frijol".

According to information received by Amnesty International, the member of the Treasury Police suspected of the murder later handed in his weapon to Treasury Police personnel and fled. To date he has not been arrested.

The international community has repeatedly expressed its concern at these human rights violations against street children. The UN Human Rights Committee, examining Guatemala's periodic report in April 1996, pursuant to Article 40 of the International Covenant on Civil and Political Rights, deplored "the situation of Guatemalan street children who are subjected to serious violations of the human rights recognized in the Covenant, in particular the right to life and the right not to be subjected to torture and ill-treatment."<sup>59</sup>

## **Repression in the context of labour demands and land disputes**

Extrajudicial executions, torture, threats, intimidation and even one documented case of "disappearance" have also occurred in the context of disputes over land ownership between peasant farmers and land owners, or of peaceful protests for better working conditions.

The perpetrators of these violations are also members of the security forces or members of private police companies who guard property and operate under licence from the Ministry of the Interior — functioning, by law, as auxiliaries of the police force<sup>60</sup> — acting with the complicity of the landowners.

Church representatives attempting to mediate in land disputes, themselves become victims of abuse, threats and intimidation.

In the vast majority of cases no judicial investigations are conducted and where they do take place, they are extremely slow.

### ***The Case of San Juan el Horizonte***

Workers on the San Juan el Horizonte estate, located in the municipality of Coatepeque, department of Quezaltenango, had been occupying the estate peacefully since 18 July 1994. They were seeking a minimum wage, one rest day a week and access to the services of the state health care system.

On 19 July the company requested the intervention of the Public Ministry which, with surprising speed, processed the request the same day. Two days later, on 21 July 1994, the Second Judge of First Instance of Coatepeque ordered the National Police to arrest the workers occupying the estate on charges of illegal land seizure and threatening behaviour, orders which he renewed and extended on 1 and 16 August.

At 11am on 24 August, over 200 members of the National Police riot squad entered the estate and started to spray tear gas and to open fire on the workers. Three workers died, 11 were injured, some of them after being shot in the back as they tried to run away; 40 people were detained. Basilio Guzmán Juárez died from gunshot wounds within the boundaries of the estate; Efraín Recinos Gómez died of the same causes in the hospital where he was taken after the attack;

and Diego Orozco García, another of those occupying the estate, who was wounded in the eviction and who had been taken away by helicopter, was found dead in El Nuevo Palmar, 60 kilometres from the estate.

In November 1994, the Guatemalan government, through the Presidential Human Rights Commission, presented a different version of the events in its reply to the Inter-American Commission on Human Rights: "In spite of peaceful discussions, a group of 200 men, strategically positioned around the grounds, armed with high calibre weapons, fragmentation grenades, Molotov cocktails, nail bombs ... opened fire on the National Police from different angles...".

This version of events was refuted by independent investigations by national and international human rights and church organizations. In a press release on 25 September 1994 the Bishop of Quezaltenango, Víctor Hugo Martínez, stated that the police had fired against the workers, who could only defend themselves with sticks and stones. According to the Human Rights Procurator, the police "used unlimited force".

More than two years after the eviction, a trial has still not taken place and the members of the security forces involved remain unpunished. The authorities responsible for the investigation have been slow or inactive and reluctant to bring the perpetrators to justice. This attitude, coupled with the irregularities in the proceedings, is in stark contrast to the diligence shown by the judiciary in authorizing the eviction.

The Public Ministry took statements from the police officer responsible for the eviction plan in October 1995, more than one year after the start of the investigation. The police officer in charge of the practical implementation of the plan did not testify before the Public Ministry until January 1996. Nine police officers who testified were released on bail and other police officers have not even responded to the Public Ministry's demand that they come forward to testify.

Despite the fact that the pilot of the helicopter which transferred Diego Orozco declared in his statement to the Public Ministry on 17 January 1996 that there was a wounded peasant farmer on board and that the director general of the La Exacta company was also travelling with him, the pilot has not been called to testify. Furthermore, the judge presiding over the case decided in March 1996 that it was not necessary to summon the owner of the estate to testify.

### *The Los Cerros Case*

For almost four years the workers of the Los Cerros estate, some 45 kilometres from the capital of the department of San Marcos, have been undertaking legal action and other activities in protest against working conditions on the estate. On 12 February 1996, in protest at the fact that court rulings ordering their reinstatement and back payment of wages were being ignored, the workers took hostage the judge and clerk of the court of San José el Rodeo, Byron Primitivo de León and Rocal Barrios, as well as the estate supervisor, Ramiro Herrarte and another five people linked to the estate. On 28 February they were released.

Monsignor Alvaro Ramazzini, Bishop of San Marcos, had been providing legal assistance and basic supplies to the workers on the estate since the beginning of the labour conflict as part of his work with the human rights office of the Bishopric of San Marcos. On 14 February 1996, the company owning the estate published notices in several newspapers and on national radio accusing Monsignor Ramazzini of having abused his position as spiritual leader "to train the peasant farmers ... turning them into criminals and [to have used] international missions and human rights organizations as a shield and protection for his activities".

It was from this point in time that William González, a lawyer in the human rights office of the Bishopric of San Marcos, began to receive death threats over the telephone, which went on until April. One of these calls said, for example, "we know where your children are, so do not be surprised if something happens to them". The threats and acts of intimidation against Monsignor Ramazzini and other members of the Church have continued.

### ***The Case of El Tablero***

On 17 April 1996, in the context of another land dispute, more than 300 officers from different branches of the National Police, including members of the Immediate Reaction Force (FRI), tried for the third time to evict more than 30 families who had been occupying the El Tablero estate, in the town of El Tumbador, department of San Marcos, since 22 November 1995.

This time the operation led to a confrontation between the police and the peasant farmers during which, according to a report from the Guatemalan Archbishop's Human Rights Office, the head of the FRI, Ernesto Soto Hernández, died from "two machete blows, one to the head and one to the neck". On 19 April, according to the same report, farm worker Roberto Felipe Velásquez López died from "a bullet wound in the abdomen", while two other farm workers and eight policemen were injured.

Monsignor Ramazzini and personnel from MINUGUA and the Human Rights Procurator's Office visited the peasants at the El Tablero estate the day after the events. At the end of April, threats and intimidation against Church members increased with the publication in the media of an anonymous statement signed by the "Emerging Committee for the Defence of Private Property". Referring to the occupation of estates, the statement threatened: "Our committee will take its own steps, including the execution of those directly responsible for the anarchy which we are condemning and for the systematic destabilization which is taking place". The anonymous notice threatened Monsignor Ramazzini, two nuns of the Congregation of the Assumption and community leaders in general.

Investigations into the origins of these threats have produced no results.

### ***The El Estor Case***

Daniel Vogt, a North American priest, has for several years been parish priest in the seventy communities making up the diocese of El Estor, department of Izabal. For more than a year and a half, Father Vogt and other members of the Church have been subjected to harassment and surveillance, death threats and failed attempts on their lives by unidentified individuals. They have also been accused of crimes such as deforestation and sedition by the company Cerro Alto S.A. and by local authorities. This harassment and intimidation occur in the context of a land dispute between the community of Rubelpec and the company.

Initially, Daniel Vogt requested that the authorities intervene in the land dispute, but did not receive a satisfactory reply. Meanwhile, the presence of the army around Rubelpec became a permanent feature, in an apparent attempt to intimidate the people who worked around the parish. In March 1994, armed members of an army patrol entered a church while mass was being celebrated and, in the words of Father Vogt, "for months, in every parish, whether baptism or funeral, the soldiers would enter with their weapons".

In November 1994, the Presidential Commission for Human Rights (COPREDEH) offered Father Vogt personal police protection. "I did not accept because [...] COPREDEH made the offer in an aggressive and threatening way [...] and because the presence of bodyguards is neither convenient nor appropriate for a Catholic priest." On 14 December, somebody identifying himself as belonging to army intelligence informed Father Vogt that his name appeared "on a list of subversives who would be eliminated not by the army, but by other people".

On 12 June 1995, during a peaceful march by the inhabitants of El Estor, farm worker Carlos Lee Juc was stabbed to death — a killing attributed to the local authorities — and another farm worker, Francisco Pérez, was injured by a military commissioner who also threatened to kill three members of the *Comité Pro Defensa del Pueblo*, the People's Defence Committee, a local human rights organization. Daniel Vogt continued to receive telephone threats throughout 1995. Almost a year later, on 12 April 1996, the president of the Inter-American Court of Human Rights requested "that the government of the Republic of Guatemala immediately take whatever steps are

necessary to protect the life and integrity of Father Daniel Vogt and that it investigate the events and punish those responsible". However, the threats continued.

On 14 May 1996, in its report to the Inter-American Court of Human Rights, the Guatemalan government admitted that it had not taken any steps for his protection, "since Father Daniel Vogt lives and moves freely in these communities and even travels abroad."

On 30 May, Carlos Solórzano, one of those accused of sedition and a member of the People's Defence Committee, was murdered by a former soldier who threatened Father Vogt that "he would take his revenge and kill him". On 18 June and 26 July two anonymous leaflets, intended to discredit him, were distributed in the community accusing him of plotting against the land owners and of being "a homosexual and a drunkard".

In a resolution of 27 June 1996, the Inter-American Court of Human Rights reiterated its request to the government for "provisional [protection] measures" and to take "effective steps to investigate the alleged events and, where appropriate, punish those responsible".

Daniel Vogt is not the only Church member who has been threatened in the last two or three years. César Pop, a church worker in the same parish recounted in September 1996 that: "Community members at the third training meeting (in June 1996) informed us that they had heard that Ramiro Choc [another parish worker] and I belonged to the guerrilla movement. We are being watched by army intelligence and sometimes by people with political and economic power who do not look favourably on our work."

In a communication addressed to Amnesty International in August 1996, Daniel Vogt explained that: "Since February 1993 I have made formal complaints to the appropriate authorities regarding death threats and other human rights violations [...] In each case I have requested a thorough investigation into the threats and acts of intimidation, but to date there have been no concrete results...".

### ***Attacks against CONIC members***

Arnoldo Xi, a peasant farmer and member of the *Coordinadora Nacional Indígena y Campesina*, CONIC, National Indigenous and Peasant Coordination, "disappeared" on 23 March 1995 on a road near the village of Matucay, municipality of Purula, department of Baja Verapaz. Armed men shot and injured him from inside a red car and then bundled him into the vehicle. Someone accompanying Arnoldo Xi and who witnessed the events thought they could identify the occupants of the car as administrators of two of the disputed properties and several private guards under licence from the Interior Ministry. The whereabouts of Arnoldo Xi are still unknown, despite the fact that two habeas corpus writs were presented on his behalf.

Another CONIC member, 50-year-old Raúl Juárez López, was attacked on the night of 26 March 1996. After firing more than 60 shots at his house from inside a van, the attackers fled. The area of San Roqué, Génova, in Quezaltenango, where Raúl Juárez lives and works, is an area of serious conflict over land tenure. In August 1996, MINUGUA said that it was "public knowledge that there were private security forces in the area, many of which have joined together into illegal groups to intimidate the rural population into withdrawing their demands..."<sup>61</sup>

## **Silencing the voices of protest: repression against human rights defenders**

For decades, human rights defenders have struggled to survive repression and campaigns intended to discredit their legitimate work and criminalize defenders by describing them as subversives, terrorists or common criminals.<sup>62</sup> Few human rights defenders active in the 1960s and 1970s survived the persecution against them. Many were extrajudicially executed or "disappeared". Others fled in fear of their lives. The human rights movement was practically destroyed.

In the 1980s new human rights defenders emerged, the majority of them women whose husbands or sons, and sometimes both, had died at the hands of members of the armed forces or their auxiliaries. In 1980 several people joined together to form a human rights committee. However, they were forced to disband when their leader, the journalist Irma Flaquer, “disappeared” following her abduction in the centre of Guatemala City. Shortly before her “disappearance”, she had accused the government of complicity in “death squad” killings and had resigned as president of the committee, considering that it was “useless and suicidal” to work for human rights in Guatemala. Irma Flaquer’s whereabouts are still unknown.

Four years later, in June 1984, a group of people trying to trace their relatives formed the *Grupo de Apoyo Mutuo por el Aparecimiento con Vida de Nuestros Hijos, Esposos, Padres y Hermanos* (GAM), Mutual Support Group for the Reappearance Alive of our Sons, Husbands, Fathers and Brothers (“Mutual Support Group”). GAM members were systematically persecuted for trying to discover the truth about past atrocities.

In an army press conference in 1986, Nineth Montenegro, then president of GAM, was accused of impugning the honour and prestige of the army, and GAM’s activities were branded as “dangerous”. Two of its leaders, Héctor Gómez Calito and Rosario Godoy de Cuevas, had been brutally murdered by the security forces in March and April 1985. Their killings were never investigated and their portraits, which hang on the walls of the GAM offices together with those of many other victims of human rights violations, are a powerful testimony against impunity.

The transfer of power from the army to a civilian government in 1986 saw an increase in the number of human rights defenders beginning to organise. However, the intimidation and repression continued. The Council of Indigenous Communities “Runujel Junam” — (“We are all equal”) (CERJ) has had at least 17 members killed since its founding in 1988.

### ***Human Rights Defenders and the Global Human Rights Accord***

In Clause 7 of the Global Human Rights Accord, the Guatemalan government reiterated its promise to protect human rights defenders and to guarantee their freedom to continue their work. However, as can be seen from the cases described in this report, this commitment has repeatedly been broken.

Mónica Pinto, the UN Independent Expert on Guatemala, confirmed in her December 1995 report to the UN Commission on Human Rights that “acts of physical violence with evidence of torture have taken place, in tandem with a pattern of intimidation which threatens the security of all organised civilian sectors and those who have demonstrated support for the peace process in general.”<sup>63</sup>

The information collected by Amnesty International indicates that those who work to end impunity are frequently targeted for death threats, ill-treatment, short term abduction and, in some cases, torture and killings.

### ***Intimidation and Criminalization***

Government officials and Voluntary Civil Defence Committees frequently try to discredit human rights defenders: they accuse them of being guerrillas or describe their activities as subversive, making them appear to be “legitimate targets” for attack.

In July 1994, for example, a Guatemalan army spokesman, Colonel Morris de León, stated publicly that the indigenous leader Rosalina Tuyuc, then president of the National Coordination of Guatemalan Widows (CONAVIGUA) was known under the alias of “Julia” in the insurgent movement and that her brothers were guerrillas specialising in the demolition of bridges and collecting “war taxes”. The Tuyuc family has reported other cases of threats and intimidation against its members since the founding of CONAVIGUA at the end of the 1980s, in what can only be described as a deliberate and calculated campaign against them.

The most recent incident of this campaign was an attack against Rosalina Tuyuc's sister, María, on 19 May 1996, in front of the CONAVIGUA offices in Guatemala City. María Tuyuc was repeatedly hit and sexually assaulted by a man dressed in plain clothes who, before running away, warned her that they would meet again. Some days earlier, two unidentified men in a car with tinted windows tried to kidnap Josefa Ventura and Sebastiana Hernández, also members of CONAVIGUA. The attackers insulted the two women, who were eventually able to escape to safety. CONAVIGUA considers that these attacks and recent threats are related to a march organized as part of their campaign for conscientious objection.

In many cases, the pattern of intimidation against human rights defenders is an extension of the repression they suffered during counter-insurgency campaigns in the late 1970s and early 1980s. In June 1996, members of the community of Todos Santos, in northern Huehuetenango, were threatened by two CVDC commanders who interrupted a community meeting, drew up a list of all people present and accused them of being guerrillas. Apparently the CVDC commanders had mistaken the community gathering for a meeting of a recently created human rights committee. These threats exacerbate the suffering of a community in which some 85 people were extrajudicially executed between 10 and 15 July 1982 and where death lists used to circulate as a warning to those who were the next target of repression. The human rights committee of Todos Santos is made up mainly of victims of past human rights violations.

Other forms of intimidation include illegal searches of the offices of human rights workers and the theft of information and equipment essential for judicial investigations. For example, on Sunday 13 October 1996, the offices of the *Centro para la Acción Legal en Derechos Humanos* (CALDH), Centre for Human Rights Legal Action, were illegally searched. Computer equipment was stolen and files were rifled. A note left on the meeting room table read: "The time has not yet come". A newspaper had been left open and an article referring to security force involvement in a crime had been highlighted. In 1995, MINUGUA confirmed that vehicles used for surveillance of CALDH offices and staff were registered as property of the Presidential Chief of Staff.<sup>64</sup>

### ***Attacks***

Human rights defenders are often victims of physical attacks, in many cases carried out at the instigation of local government officials, mayors in particular, and in collaboration with members of the security forces.

In November 1995, César Ovidio Sánchez Aguilar, a member of the Myrna Mack Foundation, a human rights group founded by Helen Mack following the killing of her sister, was forced to go into hiding after receiving death threats from the local CVDC. After organizing a human rights workshop, he was summoned to the office of the mayor of Santa Bárbara, Huehuetenango, where personnel from the mayor's office and members of the CVDC criticized him for working with the Foundation, threatening him and accusing him of being a guerrilla. The following week a meeting organized with the mayor to discuss the incident had to be abandoned when CVDC members again insulted and threatened César Sánchez and his family. MINUGUA representatives who attended the meeting were also threatened and César Sánchez fled the community together with his family. To date, none of the seven people implicated in the César Sánchez case have been brought to trial.

Human rights defenders are also victims of extrajudicial execution. But even in cases where the perpetrators have been identified and temporarily detained, they are hardly ever brought to justice.

On 7 July 1995 the body of evangelical minister Manuel Saquic Vásquez was found in an unmarked grave. His throat had been cut and he had been stabbed 33 times. Manuel Saquic, coordinator of the Human Rights Committee of the Kaqchikel Mayas in Panabajal, department of Chimaltenango, had "disappeared" on 23 June after being abducted by CVDC members. The

residents of Panabajal are convinced that Manuel Saquic was murdered because of his human rights work and because he was the sole witness to the short-term abduction of another colleague of the Panabajal Human Rights Committee by members of the CVDC<sup>65</sup>. Those working on the case of Manuel Saquic, including his relatives and members of the Conference of Evangelical Churches of Guatemala in Chimaltenango, have received several death threats. María Francisca Ventura, the widow of Manuel Saquic and mother of five children, is one of those who has been threatened. Not only has the family been threatened by individuals, sometimes soldiers in uniform, asking about María Francisca's whereabouts, but threats have also been delivered to the market stall in Antigua, Sacatepéquez, where she sells textiles. On 24 May 1996, a man came to the stall and said to María Francisca Ventura's colleague: "You know María, you know who her parents are, you could easily give us her address. Tell her that she knows who I am — I am from Chimaltenango, and if I don't find her, then her family here [in Antigua] will pay". María Francisca Ventura, who is working with other human rights defenders to see that those responsible for the death of her husband are brought to justice, told Amnesty International delegates in August 1996 that although she wanted the threats to end, she would never give up, as she wanted to see the guilty in prison.

In August 1996 human rights organizations participating in the commission investigating the death of Manuel Saquic withdrew their support following the refusal by the military representative to hand over to the commission or to the Public Ministry an army report concerning the death of Manuel Saquic. The military representative also accused the human rights defenders of trying to discredit Guatemala before the international community. Although the Minister of Defence, General Julio Balconi, reportedly promised disciplinary action against the military representative responsible for the accusations, information available indicates that no action has been taken. A military commissioner implicated in the killing of Manuel Saquic was reported in October 1996 to be in hiding, allegedly under the protection of the army, despite several warrants for his arrest.

### ***Government Promises and Government Practice***

A Guatemalan government spokesperson on human rights claimed before the UN Human Rights Committee in New York that efforts to protect human rights had been hindered because "regrettably [...] in a number of cases, such threats had been reported directly through the mass media and often to international organizations and non-governmental organizations, rather than to the competent authorities in the country. In such cases, the government had been prevented from showing its readiness to provide all necessary protection to those who were being threatened"<sup>66</sup>.

In July 1996 in its fifth report to the UN General Assembly, MINUGUA stated that the government had not adopted any special measure to provide guarantees or protection to individuals and organizations working in defence of human rights. The report added that the threats and acts of intimidation against these individuals and organizations had not been investigated and confirmed that the practice of linking human rights promotional work with subversive activities was continuing in some regions, especially by some members of the army, the CVDCs and former military commissioners. "While this message persists, individuals and organizations working on human rights will continue to be a particularly vulnerable sector."<sup>67</sup>

Human rights defenders continue to suffer psychological, verbal and physical attacks by government officials and members of the security forces, despite repeated expressions of concern by the international community and the specific commitment made in clause 7.2 of the Global Human Rights Accord. Despite this reality, human rights defenders persevere dauntlessly in their efforts to seek an end to impunity. In September 1996, several Guatemalan human rights organizations and Amnesty International organized a seminar in the capital entitled "The defence of human rights and the construction of democracy", in which they discussed the threats they were confronting in the context of the political transition and the development of the peace process.

They agreed to set up a national network of organizations as a first step towards putting into practice some of the recommendations made during the meeting regarding training, working with governmental human rights organizations, the media and on joint protection measures.

## **The return of the death penalty**

Amnesty International is unconditionally opposed to the death penalty as the ultimate violation of the right to life as embodied in the Universal Declaration of Human Rights. Although it recognizes the duty of governments to bring perpetrators of violent crimes to justice, it considers the death penalty the ultimate form of cruel, inhuman and degrading treatment. Moreover, it is a punishment which has never been shown to have a unique deterrent effect and is one that is brutalizing to all those involved in its application<sup>68</sup>. Currently the Guatemalan Penal Code provides for the death penalty for certain crimes including aggravated murder of the President or Vice-president of the Republic, the murder of a kidnapped person and rape of children under 10 years of age. Its application is optional for parricide, murder and the assassination of the president or the vice-president, but obligatory for rape and kidnapping resulting in death, when the victim is under 10 years of age.

In March 1995 the Guatemalan Congress approved Decree 14-95, which extended the application of the death penalty to anyone convicted of kidnapping, including accomplices and those who attempt to cover up these crimes. However, President Ramiro de León Carpio neither ratified nor vetoed the law within the legal time-frame and therefore its status remained unclear. Paradoxically, statistics issued by the National Police indicate that, immediately following approval of the decree, the number of kidnappings increased considerably. In July 1995 a new Decree (48-95) was approved which extended the death penalty to cover extrajudicial execution by members of the security forces against persons under 12 or over 60, as well as “disappearances” resulting in serious injuries, permanent psychological trauma or death.

By increasing the scope of the death penalty’s application, Guatemala has violated its international obligations as a State Party to the American Convention on Human Rights, which states in article 4.2, related to the death penalty: “Nor will its application be extended to crimes to which it is not currently applied.

The extension of its use is even more worrying given the failings of the judicial system, such as the lack of expertise in the documentation of evidence and the use of coercion to obtain confessions; these deficiencies considerably increase the possibility of unfair convictions.

The wave of public insecurity resulting in 1996 from the high number of kidnappings, armed robberies and street lynchings, led many sectors of Guatemalan society to consider the death penalty as an effective means of combatting common crime. Thus, at 6am on 13 September 1996, Pedro Castillo Mendoza and Roberto Girón were legally executed by firing-squad, following their conviction for the rape and murder of Sonia Alvarez García, a 4-year-old girl, in Guanagazapa, department of Escuintla. Tantamount to a public execution, it was televised throughout the country, with images showing one of the prisoners being shot in the head as he had not died during the first round of fire. A journalist from the newspaper *La Hora* who witnessed the execution wrote the next day that the execution had “confirmed his aversion to the death penalty”.

All legal remedies had been exhausted. On 11 September, the Guatemalan Supreme Court had also rejected a petition from the Inter-American Commission on Human Rights urging that “precautionary measures” be taken, that is to say, the suspension of the execution. According to the Court, Guatemalan legislation does not provide for such measures.

The execution of Pedro Castillo Mendoza and Roberto Girón, the first to be carried out in Guatemala for 13 years, had initially been set for 23 July 1996, but had been delayed by a series of



appeals. Concern about this case was heightened when it became known that due process had not been observed and that the detainees had not had access to a lawyer for the first three weeks of their arrest, a vital period for the documentation of evidence. They were subsequently defended by inexperienced law students. Although permissible in Guatemala under the supervision of a lawyer, the defence of prisoners by inexperienced students is a totally inadequate procedure in trials which may result in the imposition of the death penalty.

After the execution of Pedro Castillo Mendoza and Roberto Girón, Congress approved new legal provisions replacing execution by firing-squawith execution by lethal injection, a practice adopted in the United States of America in 1982.

At the end of 1996 there were at least 4 people awaiting execution in Guatemala: Manuel Martínez Coronado, convicted of murdering 7 members of one family, among them three children, in May 1995 in El Palmar, municipality of Quezaltepeque, department of Chiquimula; and Aníbal Archila Perez, Miguel Angel López Caló and Miguel Angel Rodríguez Revolorio, three policemen convicted of murdering two men on the outskirts of Guatemala city in February 1995.

## II. THE PROTECTION OF THE CITIZEN: THEORY AND REALITY

The vast majority of human rights violations, whether committed during the 1980s or subsequently under civilian rule, remain unpunished. Relatives do not know what happened to their loved ones, nor who was responsible. In the majority of cases neither the victims nor their relatives have received any compensation for “disappearances”, extrajudicial executions and torture.

Whenever there are any indications of the involvement of members of the security forces, especially the military, in human rights violations, judicial investigations in all but a handful of cases are extremely slow. Evidence is concealed or lost, orders for the arrest of those responsible are not carried out, while witnesses, relatives, judges, Public Ministry representatives and those members of the security forces who dare to carry out their duties properly are harassed, threatened and even killed.

This degree of impunity is all the more alarming given that Guatemalan legislation and international law — if complied with in practice — would allow for the full observance of human rights. Furthermore, there already exist State bodies charged with guaranteeing respect for human rights, investigating violations and bringing those responsible to justice.

### **Legislative protection in theory**

#### **National legislation**

Human rights are recognized and articulated in detail in Guatemalan legislation. The 31 May 1985 Constitution of the Republic states in Article 1 that “the State of Guatemala is organized to protect the individual and the family; its principal aim is the achievement of the common good”. Article 2 states that “it is the duty of the State to guarantee life, liberty, justice [and] security... to the people of the Republic”.<sup>69</sup>

The guarantees outlined in the Constitution were subsequently developed in the Law of *Amparo* (Enforcement of Constitutional Rights), *Habeas Corpus* and Constitutionality<sup>70</sup>, Article

1 of which seeks to secure “adequate protection of human rights and the effective functioning of the guarantees and protections of the constitutional order”; Article 8 “protects individuals against the threat of violation of their rights or restores respect for human rights where a violation has occurred”.

## **International law**

The Guatemalan Government is also party to a number of covenants and treaties for the protection of human rights which take precedence over domestic law, including the Constitution. These include the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II).<sup>71</sup>

Guatemala has also ratified several regional instruments for the protection of human rights, such as the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture.<sup>72</sup>

## **Institutional protection in theory**

### **The judiciary**

The Political Constitution of the Republic of Guatemala recognizes the independence of the judiciary, both in terms of its functions and budget. Its independence is guaranteed under the Law of the Judiciary of 1989. This Law emphasizes that the State must offer the courts “every assistance they may require to ensure their decisions are complied with.”<sup>73</sup>

The judiciary in Guatemala is made up of several types of courts, each with its own jurisdiction: the Supreme Court, Appeal Courts, Juvenile Courts, Military Courts, Courts of First Instance and Offices of the Justice of the Peace. A Constitutional Court also exists, the independence of which is recognized in the Constitution and whose main functions include the defence “of the constitutional order” and “to hear all appeals filed before any court of law.”<sup>74</sup>

### **The Public Ministry**

The Public Ministry “is an auxiliary institution of the civil service and of the courts, which has autonomous functions and acts as the guardian of strict adherence to the laws of the country.”<sup>75</sup>

The Public Ministry, as regulated by Decree 40-94, is responsible for heading the criminal investigation and prosecution of crimes. During legal proceedings, therefore, the security forces come under its authority. The Public Ministry is headed by the Attorney General of the Nation, elected by Congress for a period of five years. The Public Ministry must act *ex officio* when it is informed of an offence, whether or not it has received a formal complaint.

### **The Human Rights Procurator : ‘Defender of the People’.**

The post of the Human Rights Procurator, established in the 1985 Constitution, was further defined by the Law of the Congressional Human Rights Commission of the Republic and of the Human Rights Procurator.<sup>76</sup> Under Article 275 of the Constitution, the role of the Procurator includes “promoting the proper and timely functioning of governmental administrative procedures relating to human rights, investigating all allegations of human rights violations made to the Human Rights Procurator’s Office by anyone and recommending either privately or publicly that

officials modify any objectionable administrative behaviour”. He is also empowered to initiate investigations into human rights violations *ex officio*.

The Human Rights Procurator is “a commissioner of the Congress of the Republic”.<sup>77</sup> He is elected every five years by Congress and must submit an annual report on human rights violations. The Human Rights Procurator is supported by Auxiliary Human Rights Procurators’ Offices in different departments of the country.

### **The Congressional Human Rights Commission**

The Congressional Human Rights Commission was created by Decree 54-86, which also created the post of Human Rights Procurator, and the two are closely linked. The Commission is made up of one member of each political party represented in Congress. Its responsibilities include: presenting to Congress a shortlist of candidates for the post of Human Rights Procurator, acting as liaison between the Procurator and Congress and deciding on the dismissal of the Procurator.

The Human Rights Commission may also “recommend that State bodies adopt measures to promote human rights and request relevant information from them” or “carry out studies of current legislation with a view to proposing draft legislation to the plenary session of Congress”.<sup>78</sup>

### **The Presidential Coordinating Commission of the Executive’s Policy on Human Rights**

The Presidential Coordinating Commission of the Executive’s Policy on Human Rights, (COPREDEH) was set up on 12 July 1991.<sup>79</sup> It is responsible to the Presidency of the Republic and is made up of a representative of the President of the Republic, the Ministers of Foreign Affairs, Interior, Defence and the Procurator General of the Nation.

COPREDEH has departmental offices to carry out the functions assigned to it by law, including “coordinating action [...] to implement the Executive’s human rights protection policy; collating information on allegations of human rights violations and initiating investigations through the Ministry of the Interior and the Public Ministry; establishing a mechanism for constant monitoring of investigations into human rights violations; promoting international cooperation and financial and technical assistance; setting up links, information channels and assistance projects with international human rights bodies and seeking effective communication and cooperation with the Judiciary and the Human Rights Procurator’s Office [...]”

### **The Office for Professional Responsibility of the National Police**

The Office for Professional Responsibility of the National Police (ORP) was created in the 1980s and its mission is to carry out internal investigations into offences or misdemeanours committed by National Police agents. It operates either on the basis of formal complaints, for example from the Human Rights Procurator’s Office, or *ex officio*. It has no operative legal framework and is responsible to the Director of the National Police.

If internal investigations establish that an offence has been committed, this must be brought to the attention of the Public Ministry for it to initiate judicial proceedings against the officer responsible. If the investigation establishes that there has been a misdemeanour, the officer is disciplined internally. The majority of investigations conducted by the ORP relate to misdemeanours such as drunkenness, but it also investigates cases of burglary, theft, grievous bodily harm, bribery or extortion.

## **The lack of real protection**

The law is the principal line of defence for the human rights of individuals. Nevertheless, no matter how adequate a country's human rights legislation may be, it will have little impact on the protection of the individual if the government lacks the political will to enforce it, or does not provide all the necessary means to ensure that human rights legislation is applied in all cases and violations investigated.

However, for decades it was the highest levels of government that authorized political repression in Guatemala and, as part of an explicit policy, ordered extrajudicial executions, "disappearances" and torture of actual or suspected opponents. For decades guarantees were non-existent and national and international law was deliberately ignored.

Subsequent governments further attempted to prevent investigations into this repression, decreeing amnesties which, under the pretext of national reconciliation, shielded those responsible for the atrocities both in law and in practice.

In recent years, the introduction of certain measures, some legislative, has spurred hopes of progress in the protection of human rights. These include the signing of the Global Human Rights Accord between the government and the URNG in March 1994, which allowed for the presence of MINUGUA to monitor the human rights situation in the country; the demobilization in September 1995 of military commissioners, responsible for thousands of human rights violations; the informal cease-fire between the army and the URNG in March 1996; and, crucially, the June 1996 legal reforms whereby members of the armed forces could be tried in civilian courts for human rights violations against civilians.

The current Government of Guatemala, which has been in office for a year, has also shown some signs of political will in drafting legislation enhancing human rights protection. Certain legislative measures arising from the peace process could, if the agreements are fully implemented, yield positive results and contribute to an improvement in the human rights situation in the country.

## **A lack of political will**

However, as the Human Rights Procurator himself said, there is still "a dramatic imbalance between the formal Constitution and the real Constitution. The excellent [...] political framework of our constitutional text bears no relation to the alarming reality".<sup>80</sup>

As Amnesty International's report shows, threats, harassment and, in some cases, killings of members of church and human rights organizations, of journalists, trade unionists and those who dare to initiate judicial proceedings against members of the security forces, are not a thing of the past. Investigations are stalled and in the majority of cases, the suspects are not even detained. Even where they have been identified, members of the security forces are rarely brought before the courts.

Nor has there been any progress in investigations relating to the exhumation of clandestine cemeteries. On the rare occasion when cemeteries reported to the authorities are exhumed, no effort is made to identify the perpetrators.

In the context of "social cleansing", criminal suspects and, at times, even children are killed with impunity. Usually, the authorities do not bother to investigate the alleged involvement of members of the security forces and bring them to trial, however clear the evidence may be.

## **A measure of political will**

Political will is measurable. If it begins with the introduction of legislative changes and is clearly demonstrated through full investigations into human rights violations, then political will can be measured primarily by the impact that investigations have on progress in specific cases, as well as by:

- the number of security force members detained and prosecuted;
- whether those arrested in connection with past or current human rights violations, threats and acts of intimidation are charged with offences or misdemeanours.<sup>81</sup>
- the effective dismantling of internal repressive structures within the security forces, including the Voluntary Civil Defence Committees and former military commissioners, responsible for human rights violations; and
- combating impunity for past human rights violations, by investigating the facts and not passing legislative measures preventing investigation and punishment.

## **Institutional problems and deficiencies**

To secure respect for human rights and take action against violations, the government must ensure that the institutions responsible for upholding and applying the law are capable of carrying out their responsibilities. They must have the necessary resources, any assistance they require from government bodies and the total protection and backing of the State.

However, in the case of Guatemala, these institutions cannot count on such protection and backing. This report highlights the frequency with which human rights violations, such as threats, intimidation and harassment, are committed by some State agents against members of the judiciary, the Public Ministry or the Human Rights Procurator's Office, with the aim of undermining their independence.

The cases investigated by Amnesty International and featured in this report illustrate very clearly the lack of cooperation on the part of the security forces, especially the army, in investigations into human rights violations in which their own members are implicated.

The international community has repeatedly expressed its concern at these threats and the lack of security force cooperation during judicial inquiries. MINUGUA argued that “the persistence of threats and coercion against judges and prosecuting attorneys demonstrates the urgent need to implement special protection programs and coordinate the work of state institutions.”<sup>82</sup> It has also stated its concern at the repeated threats to the Human Rights Procurator and said that the “state agents or people linked to them abuse their relationship to the State, not only in committing crimes and violations, but also in obstructing their clarification and in avoiding punishment”.<sup>83</sup>

In addition to the constant harassment to which they are subjected, both the judiciary and the Public Ministry have to tackle structural weaknesses, such as their scarce or non-existent presence in many rural areas of the country. This prevents the population having access to them when their rights are violated and makes investigation into these violations impossible. Their weak presence in many parts of the country allows the army and its auxiliaries — the CVDCs and former military commissioners — to maintain their influence in rural areas. Mónica Pinto, the UN Independent Expert, stated that “without prejudice to the progress made over the past ten years, the military retains a decisive influence in the conduct of public affairs. Real power and formal power do not always coincide. The power exercised by the military structure shows that it is the only organization with a presence throughout the country and that it is an extremely efficient one.”<sup>84</sup>

The inability of the judiciary and the Public Ministry to investigate and punish reported violations greatly contributes to the state of impunity in Guatemala. Other obstacles include a lack of resources and staff in the Criminal Public Service, which should provide free legal defence assistance, or assistance with other legal procedures; the lack of material and human resources in

the judiciary and shortcomings in the training of judges and Public Ministry representatives. The Independent Expert highlighted in her December 1995 report that between October 1994 and October 1995 more than 14,000 criminal and civil cases were handled by the various law courts, but only 72 sentences were passed. Information from the Public Ministry indicates that only 750 charges had been publicly filed during this same period.

This failure is even more marked in those cases, both past and present, in which members of the security forces are allegedly involved. The inability and lack of political will to carry out full investigations into certain cases are sometimes concealed by the setting up of special *ad hoc* commissions to investigate particularly serious cases which have provoked public outrage, in an attempt to give Guatemalans and the international community the impression that the government is combating impunity effectively. This was done in several of the cases mentioned in this report, such as the killing of student Mario Alioto López Sánchez in November 1994; the violent eviction of workers at La Exacta estate on 24 August 1994; and the killing of 11 peasants at the Xamán estate on 5 October 1995. To date, trials have not taken place in any of these cases and none of those responsible has been brought to justice.

In other cases involving members of the security forces, institutional inadequacy manifests itself even after the government has taken the initial decision to remove security force members from their posts. This was the case, for example, in January 1996, when 113 members of the security forces were dismissed for criminal offences. The judicial investigation has not yet led to the prosecution and conviction of those responsible. In other instances this inadequacy is highlighted by the failure to carry out arrest warrants, especially those issued against members of the security forces or their auxiliaries, such as the CVDCs or former military commissioners. Reports issued by the Human Rights Procurator's Office have highlighted, in a large number of cases, the shortcomings and lack of will on the part of the State in preventing, investigating and punishing human rights violations. The conclusions of the Human Rights Procurator include recommendations to the government concerning specific cases of human rights violations. In his report of 1995, the Procurator himself acknowledges that in many cases of human rights violations have been ignored by the government. The Human Rights Procurator's recommendations are not binding on State institutions, but the extent to which they are implemented, or not implemented, is a measure of the degree of the government's political will to tackle impunity.

The Presidential Coordinating Commission of the Executive's Policy on Human Rights, COPREDEH, has been used since it was set up in 1991 as a government tool to coordinate a response to frequent national and international criticism of the human rights situation, rather than to promote genuine investigations into these cases. On 17 August 1995, the Human Rights Procurator defined COPREDEH as "a Commission accountable to the Ministry of Defence and the Ministry of the Interior which implements human rights policies from the perspective of the army and the government and not of the people of Guatemala, who are the victims of human rights violations"<sup>85</sup>.

Similarly, when representing the Guatemalan Government in international fora, COPREDEH's role has been to justify the actions of the government, as in the case of the student killed by police in November 1994 or the eviction of peasants from La Exacta estate in August of the same year. Contradicting reports from independent organizations, it justified the actions of the security forces, accusing the victims of provocation or of having contacts with "subversives". In the case of the killing of peasants on the Xamán estate in October 1995, COPREDEH sent photographs of the killing, without legal authorization, to the Ministry of Defence, which was itself implicated in the case.

In June 1996, Marta Altolaguirre took over the presidency of COPREDEH. In one of her first public statements she declared that this institution would cease to be "an umbrella for the government" and that she intended to "bring about trials resulting in the identification of those

responsible.”<sup>86</sup> She also stated that one of her priorities would be to “follow up the recommendations of the Human Rights Procurator.”<sup>87</sup>

Although Amnesty International is encouraged by the statements made by the new COPREDEH president, as well as by her prompt reply to Amnesty International’s request in August 1996 for information on 33 cases of human rights violations, the information provided indicates that in most of the cases there has been no progress in the investigations. Nor have there been any substantial reforms to COPREDEH’s powers which could enhance its independence from the Executive.

For its part, the Human Rights Commission does not appear to have satisfactorily fulfilled the role assigned to it in Congress, which is that of guaranteeing respect for human rights in Guatemala. Although the law obliges the Commission to “make recommendations to State bodies regarding measures they should adopt to promote human rights”, to request reports and follow up “communications and complaints regarding alleged human rights violations addressed to the Congress of the Republic by individuals or organizations abroad,”<sup>88</sup> Amnesty International is not aware that these obligations have been fulfilled. Similarly, Amnesty International knows of only two human rights bills carried forward by the Human Rights Commission since 1991. One refers to the setting up of human rights commissions in municipal councils (1991) and the other refers to reparation and compensation for victims of human rights violations (March 1996), which is still under discussion.

## **Necessary reforms**

The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society, signed between the government and the URNG in September 1996, recognizes that “one of the biggest structural weaknesses of the Guatemalan State lies in the system of the administration of justice”<sup>89</sup> and proposes structural reforms to the Public Ministry, the judiciary, the legislature, the National Police and the army, with the necessary financial resources.

These reforms include guarantees regarding free access to legal assistance, the strengthening of the independence and impartiality of judges, reforms to the Penal Code to include the crimes of coercion and threats to judicial officials and the creation of a new National Civilian Police force operating “in strict accordance with respect for human rights.”<sup>90</sup> If these reforms were fully implemented, important changes would be brought about in the reform of state institutions responsible for guaranteeing respect for human rights.

However, the lack of political will and adequate means to investigate human rights violations, to try and convict those responsible and to offer adequate reparation to the victims, together with structural deficiencies and the lack of material and human resources in the institutions which are supposedly charged with guaranteeing the rights of the citizen in Guatemala, mean that national and international law protecting the individual against abuses by the State remains at the level of pure theory, leaving the individual totally defenceless. As MINUGUA points out, the lack of protection for the citizen in Guatemala is illustrated by the fact that “the treatment of those detained or even the very decision to detain them depends very often on whether they belong to a particular social, economic or racial group, or whether by contrast they are members of a particular state institution, in particular the army.”<sup>91</sup>

### **III. THE ROLE OF THE INTERNATIONAL COMMUNITY**

The UN set up a number of human rights field operations in the 1990s. The effectiveness of these operations depends to a large extent, although not exclusively, on the terms of the mandate agreed between the respective parties in the country in question, on the time frame available for it to achieve its objectives and on the resources allocated by the international community.<sup>92</sup>

#### **MINUGUA: the eyes of the international community**

MINUGUA was set up in the context of the peace process between the Guatemalan Government and the URNG. On 29 March 1994, after the peace process which had been suspended since May 1993 was resumed and following the appointment of Jean Arnault, a French national, as UN moderator, the parties signed the Global Human Rights Accord, which called for the setting up of a UN Mission to monitor human rights and the fulfilment of the commitments made in the Accord.

In the Global Human Rights Accord, the parties requested that, when verifying human rights, the UN Mission receive, consider and follow up all allegations of human rights violations; establish whether relevant national institutions had carried out the necessary investigations independently, effectively and in accordance with Guatemalan and international human rights standards; and determine whether a violation had occurred. The UN Mission was also empowered to make recommendations to be considered by bilateral bodies made up of representatives of the Mission and of the parties to the Accord.

The parties also agreed that, in verifying the Accord, the UN Mission would pay “particular attention” to the right to life, integrity and security of person, individual liberty, due process, freedom of expression, freedom of movement, freedom of association and political rights. Clause 7 of the Accord, entitled “Guarantees and protection for individuals and organizations working for the protection of human rights”, stresses the importance of the role of human rights defenders and calls for special measures to protect them and to fully investigate human rights violations against them.

The Global Human Rights Accord also empowered the UN Mission to cooperate with national institutions and organizations in ensuring the effective protection and promotion of human rights; to sponsor technical cooperation programs and carry out activities for the strengthening of institutions; to offer support to the judiciary and its auxiliary bodies, as well as to bodies responsible to the Executive, such as the Human Rights

Procurator’s Office and COPREDEH, or those responsible to Congress, such as the Congressional Human Rights Commission; to promote international financial and technical cooperation to strengthen the Human Rights Procurator’s Office and other national institutions and organizations; and to work jointly with State bodies and non-governmental organizations to foster a culture of respect for human rights.<sup>93</sup>

MINUGUA has been fully operational since 1 March 1995 and has eight regional offices in Guatemala City, Cobán, Huehuetenango, Quezaltenango, Santa Cruz del Quiché, Santa Elena, Sololá and Zacapa, and five sub-regional offices in Barrillas, Cantabal, Escuintla, Nebaj and San Marcos.

MINUGUA is not the only UN body operating in Guatemala. Since 1983 there has been a UN Independent Expert, appointed by the UN Commission on Human Rights, whose mandate is



to analyse the human rights situation, to assist the Guatemalan Government in human rights matters and to report to the UN Commission on Human Rights. This post is currently filled by Mónica Pinto, an Argentine national. The question of the future role of the Independent Expert has yet to be resolved. Amnesty International supports the extension of the UN expert's mandate until such time as there are *clear and unequivocal signs* that the policies and practices which gave rise to serious human rights violations have been ended.

Various UN agencies, such as the UN Development Program (UNDP) and the UN High Commissioner for Refugees (UNHCR), are carrying out programs in Guatemala in the area of development and the return of refugees and the internally displaced. These agencies, which are also responsible for monitoring some of the agreements of the peace process, coordinate their work with MINUGUA.

There is no doubt that the international community's recent interest in Guatemala, manifested by the presence of MINUGUA, has had an important and positive effect in some respects on the human rights situation in the country, although human rights violations, in particular threats and intimidation, continue on a large scale.

Most importantly, MINUGUA's verification of human rights violations has helped to establish a clearer picture of the human rights situation in Guatemala. Never before in the history of the country have so many human and technical resources been devoted to investigating and verifying human rights violations, nor has such a rigorous and systematic process for documenting and following up allegations been implemented.

MINUGUA's monitoring and reporting on due process has revealed the extent of impunity for human rights violations. This has helped to isolate and identify specific measures which need to be taken to combat the problem.

Moreover, UN verification of clause 7 of the Global Human Rights Accord, relating to human rights defenders, has helped legitimize their activities, allowing them to act more openly than in previous years due to the explicit recognition of their work.

In general terms, the presence on the ground of some 400 MINUGUA officials has had a preventive effect, deterring human rights violations and preventing a worsening of the human rights situation in Guatemala.

As part of its verification work, the UN Mission has also drawn up a series of recommendations, which are published in their periodic reports for consideration by the parties to the Accord. These recommendations provide an important and impartial framework for initiatives to be taken to improve the human rights situation in Guatemala.

MINUGUA has also been responsible for a number of projects aimed at strengthening institutions, as well as other activities which it classifies as follows: public security; equality before the law and access to legal assistance; judicial independence; human rights protection within the judicial system; and the fostering of a human rights culture. For example, in Santa Cruz del Quiché the UN Mission, together with popular and indigenous organizations, has set up a public legal aid service, "Justice for all", which aims to improve public access to justice and to guarantee adequate legal representation for a greater number of people involved in legal proceedings. On 22 May 1996, the Ministry of the Interior and MINUGUA signed an agreement to improve human rights protection in the prison system.

The UN Mission has also played a significant role in initiating human rights education for members of the security forces and in local communities.

Its work has also been important in raising human rights awareness through direct contact with the population or through the media, particularly the radio.

### **Amnesty International's observations**

Although Amnesty International considers that overall the work carried out by MINUGUA has been positive, the organization is concerned that certain factors have a negative impact on the work of the UN in Guatemala, or could do so in the future.

a) Firstly, Amnesty International fears that the short duration of MINUGUA's mandate could give rise to a degree of insecurity which could limit the Mission's capacity to establish long-term objectives and projects. The mandate, initially for one year, was subsequently extended by nine months, up to 31 December 1996, and then extended for a further three months. Amnesty International fears that budgetary cut-backs at the UN could jeopardize MINUGUA's continued operations in Guatemala. Another important consideration in this context is that the threat of MINUGUA's imminent departure may discourage some people from reporting human rights violations through fear of reprisals when the Mission leaves the country. Reports indicate that, in spite of everything, there is still widespread fear among many sectors of society. Amnesty International supports the extension of MINUGUA's mandate until such time as there are clear and unequivocal signs that the policies and practices which gave rise to serious human rights violations have ended.

b) Secondly, the verification of individual cases of human rights violations should continue to be a fundamental part of the work of the UN Mission in Guatemala. Its other functions, such as verification of the peace agreements and its role in the legislative and institutional reforms which the agreements entail, should complement its current role of verification, monitoring and regular reporting on human rights violations.<sup>94</sup>

c) Thirdly, no formal mechanisms appear to exist to tackle the problem of non-compliance with the Accord by the parties. While MINUGUA has full access to the media and disseminates its findings, it is not clear what steps national institutions, the UN Mission, other bodies of the UN or of the international community could take, when its recommendations are implemented only partially or are not implemented at all. Given that the Global Human Rights Accord makes MINUGUA's recommendations binding on the parties, Amnesty International fears that the inability to tackle non-compliance could undermine the impact and effectiveness of the wide-ranging work carried out to date. An illustration of this is the need to ensure full implementation of MINUGUA's recommendation that radical and comprehensive measures be taken for the tighter control of weapons belonging to disbanded or inactive CVDCs and to prevent them from being handed over to other similar organizations.<sup>95</sup>

d) The deficiencies in investigations carried out by Guatemalan authorities into human rights violations by members of the security forces (whether arising from professional incompetence, lack of resources or complicity), combined with the climate of intimidation surrounding these acts, seriously limit MINUGUA's ability to collect sufficient information to verify the facts. For example, in the first six months of 1996, MINUGUA was only able to verify satisfactorily six of the 69 reported extrajudicial executions.<sup>96</sup> This situation is made even worse by the lack of cooperation of military and state officials which obstructs the UN Mission's efforts to verify human rights violations. Since MINUGUA's recommendations arise from its verification work, such obstruction may hinder the Mission from devising a comprehensive program of initiatives to

improve the human rights situation. For example, MINUGUA personnel have been denied access to judicial proceedings, and on some occasions their presence during interviews has been restricted, in particular in the case of the Xamán massacre (although this was later rectified), despite the fact that the Global Human Rights Accord guarantees the freedom to carry out such activities. Another method used to obstruct verification has been the intimidation of MINUGUA personnel by members of the CVDCs and former military commissioners.<sup>97</sup> They have even been physically attacked on several occasions by members of the security forces or their auxiliaries or else taken hostage by the CVDCs. Amnesty International fears that such attacks are intended to undermine the Mission's credibility and independence and its ability to influence the human rights situation.

## **Military and police training**

Over the last few years, several countries have participated in the training of the military and police in Guatemala. In some cases, training has been carried out within the context of MINUGUA's program for the strengthening of institutions. Military and police personnel from Argentina, Brazil, Canada, Colombia, Italy, Spain, Sweden Uruguay and Venezuela provide training to Guatemalan military and police personnel in their capacity as Mission officials, as well as participating in the verification of individual cases of human rights violations. This training aims to enable the security forces to operate according to professional standards and MINUGUA reports publicly on the development of this program in its reports on the human rights situation in Guatemala.

In other cases military and police training arises from individual programs set up by the Government of Guatemala and foreign governments. For example, according to press reports, on 31 January 1995 the then Interior Minister, Carlos Reynoso, announced that the Ambassadors of Germany, Spain, USA, France, United Kingdom and Venezuela had offered assistance and formal training to the Guatemalan National Police<sup>98</sup>. In contrast to MINUGUA's training program, no information is publicly available on these bilateral training programs.

In the summer of 1995, the United Kingdom Government sent police officers to Guatemala to give police training, while Guatemalan security force members received training in the United Kingdom. The terms and conditions of this cooperation are still unknown. According to official reports from the British parliament,<sup>99</sup> members of the Guatemalan security forces received police training in the United Kingdom between January 1991 and November 1995. These reports do not detail the content of the training, nor do they indicate whether it included a human rights component.

The Spanish Government set up a police training program in Guatemala in August 1996, when it sent a contingent of the Spanish Civil Guard. The program is reported to last four years, will be carried out by 49 members of the Civil Guard, and will include, for example, training in riot control, criminal investigation and police procedures. A Spanish newspaper<sup>100</sup> quoted the Guatemalan Deputy-Minister of the Interior, Mario René Cifuentes, as having confirmed that the training program would involve the transfer of security equipment from Spain. According to the Spanish authorities, one of the objectives of the program is "to modify current police procedures and behaviour, specifically with regard to human rights". However, the program makes no reference whatsoever to international human rights standards nor to whether the instructors themselves have received training in these standards.

The peace agreements signed between the government and the URNG increase the possibility of technical and financial cooperation by the international community in the training of the training of the Guatemalan security forces. The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society, signed on 19 September 1996, specifically calls on the

international community to provide financial and technical assistance to ensure the modernization and professionalization of the public security system in Guatemala.

Amnesty International believes that governments should ensure that all military, police or security training provided to the Guatemalan security forces, whether through MINUGUA or through bilateral or multilateral cooperation agreements, includes a strong and compulsory human rights protection component. This training should conform to international human rights standards on police and military training. Moreover, the instructors should be shown to have received training in international human rights standards. Training should be linked to effective measures to put an end to impunity and to ensure that members of the security forces are held accountable for human rights violations in Guatemala.

## **IV. AMNESTY INTERNATIONAL' RECOMMENDATIONS: A 35-POINT PROGRAM TO END IMPUNITY AND HUMAN RIGHTS VIOLATIONS IN GUATEMALA**

### **Recommendations to the Guatemalan authorities**

The government, the Public Ministry, Congress and the judiciary have a duty to do everything possible within their spheres of responsibility to break the cycle of impunity in Guatemala.

Their efforts should concentrate on a series of measures which Amnesty International is putting forward as a:

### **35-POINT PROGRAM TO END IMPUNITY AND HUMAN RIGHTS VIOLATIONS IN GUATEMALA**

#### ***Bringing those responsible to justice***

1. The authorities should ensure that all reports and allegations of extrajudicial executions, torture and "disappearances" are investigated without delay, impartially and effectively; these investigations should be under the responsibility of a body which has no connection to those allegedly responsible and which has the powers and resources necessary to carry them out. The methods and conclusions of the investigation should be made public.

Investigations into extrajudicial executions and "disappearances" should be carried out in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Declaration on the Protection of All Persons from Enforced Disappearance.

Security force agents responsible for extrajudicial executions, “disappearances” and torture should be brought to justice in accordance with international standards for fair trials. This principle must be upheld in all cases, independently of where the perpetrators happen to be, the place where the crime was committed and the nationality of those responsible or the victims.

The government should immediately carry out all pending warrants for the arrest of security force agents and private police, who should be detained according to the rule of law.

As a consequence of this recommendation, where there is evidence suggesting that an agent of the security forces has been involved in “disappearances”, extrajudicial executions or torture, the relevant authorities should ensure that he is immediately suspended from his post pending prosecution and should make this decision public.

The authorities should also set up an information system to ensure that no agent of the security forces dismissed because of possible involvement in a human rights violation is employed in other official departments on similar duties.

Similarly the authorities should act *ex officio* in order to ensure that, in the absence of a formal complaint by the victim or his or her relatives, an investigation may be initiated and is not curtailed.

2. The government should not introduce any legislative measures, such as the National Reconciliation Law which has already been passed, which could prevent investigations into human rights violations committed by security force agents, the prosecution of those alleged responsible, their sentencing in the event that they are found guilty and adequate reparation for the victims; the government should repeal the relevant provisions of earlier amnesty laws.

The government should also avoid granting *de facto* pardons. The organization considers that, parallel to a demobilization process verified by bodies independent of the Executive, investigations should be initiated to bring to justice those former military commissioners and members of the Voluntary Civil Defence Committees responsible for grave human rights violations, such as torture, “disappearances” and extrajudicial executions.

3. The Historical Clarification Commission should identify not only the direct perpetrators of torture, extrajudicial executions and “disappearances”, but also those who planned or ordered them, establishing chain-of-command responsibility. It should have access to statements, documentary evidence or other information related to military intelligence or the security forces if relevant to the case or situation which it is investigating. Existing forensic medical records and court files should also be made available. Civilian and military officials, whether on active service or retired, should be obliged to collaborate with the Commission.

Amnesty International considers that, in order to create a climate in which respect for human rights can flourish in Guatemala, the process set in motion by the Commission should be based on the thorough knowledge of the whole truth about human rights violations and abuses committed during the period under investigation. All victims and their relatives have the right to register their cases officially and to have the facts totally clarified.

The Commission should be empowered to investigate the fate and whereabouts of those who “disappeared” following their arrest by State agents or persons linked to them. Such investigations should identify the location of clandestine cemeteries.

The Commission should investigate deliberate and arbitrary killings, attributed to the URNG and to former armed opposition groups, of military personnel or persons linked to the military, government agents and other persons held by these groups. Amnesty International considers that deliberate and arbitrary killings and torture of persons deprived of their liberty by armed opposition groups should also fall within the Commission’s scope. Amnesty International urges the URNG to provide the Commission with all the information necessary to carry out these investigations.

Furthermore, the Commission should and must recommend legal, political or administrative measures to prevent the repetition of these acts and should insist that the results of its investigations be taken up by the appropriate courts of law.

Similarly, the Commission should ensure that superior officers are held responsible for acts committed by personnel under their command when there are sufficient grounds to suppose that they could have prevented or punished these acts.

The Commission should ensure that all victims of such human rights violations and abuses, as well as their relatives, receive the compensation and reparation prescribed in international standards.

Finally, the Commission should receive adequate human and material resources from the State to guarantee effective examination of all the evidence and allegations.

4. The appropriate authorities should ensure that all allegations concerning clandestine cemeteries are investigated without delay, impartially and effectively, that the investigating body has no connection to those allegedly responsible and that it is empowered with the means and resources needed to carry out these investigations. The methods and conclusions of the investigations should be made public.

The methodology of the exhumations, autopsies and analysis of skeletal remains should conform to the model protocols proposed by the United Nations, based on the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and on the Model Autopsy Protocol included in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Through the appropriate chain of command, the government should ensure the cooperation of the army in the investigations, making clear that the destruction of evidence, the obstruction of justice or threats against those involved in the exhumations will not be tolerated but will be considered a criminal offence.

5. The government should disband “death squads”, private armies, criminal gangs and paramilitary forces which, although outside the official chain of command, operate with the support or consent of the State, and should ensure that members of these groups who have committed extrajudicial executions, torture or “disappearances” are brought to justice.

#### ***Prevention of human rights violations***

6. Those responsible for the security forces should maintain strict chain-of-command responsibility to ensure that agents under their command do not commit extrajudicial executions, “disappearances” and torture. Officers who order or permit agents under their command to commit human rights violations should be brought to justice for such acts.

7. The government and relevant State bodies should comply with the recommendations of the Human Rights Procurator and it should be possible to hold officials to account before the courts in the event of non-compliance.

8. The government, the judiciary, Congress and the Public Ministry should commit themselves publicly and decisively to respect, in the course of their duties, article 46 of the Constitution which establishes “the general principle that, in matters relating to human rights, the treaties and conventions ratified by Guatemala take precedence over domestic law” and should acknowledge the contribution of international organizations to the protection and defence of human rights by complying with the recommendations made by MINUGUA.

The government should ensure that Guatemala ratifies the Inter-American Convention on the Forced Disappearance of Persons.

It should also incorporate into Guatemalan legislation the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Declaration on the Protection of All Persons from Enforced Disappearance.

9. The government should guarantee effective protection to people at risk of extrajudicial execution or “disappearance”, as well as to those who receive death threats.

To this end, the government and the Public Ministry should provide the resources needed to implement the measures established under the Law on the Protection of Witnesses and Defendants and Persons Linked to the Administration of the Criminal Justice System<sup>101</sup> to protect those persons who are threatened or who run the risk of being threatened in the course of judicial proceedings.

The government and the Attorney General’s Office should put this law into practice with immediate effect and apply it to those trials in which threats, intimidation and other human rights violations have already been committed during the proceedings, allegedly by security force agents. The authorities responsible for putting this law into practice should report periodically on its application.

10. The government should adopt and publish a code of conduct for all agents of the State security forces and private police which operate as auxiliaries of the security forces. This code should be based on the UN Code of Conduct for Law Enforcement Officials and on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Non-compliance with this code should lead immediately to disciplinary action and criminal prosecution of the agents involved.

11. The government should ensure that all security force agents and private police receive appropriate training on human rights provisions in national and international law, as well as on measures for human rights protection.

### ***Implementation of judicial guarantees***

12. The government should provide the Public Ministry, the judiciary and the Human Rights Procurator with the technical and financial resources to carry out their duties adequately by maintaining a coordinated, effective and permanent presence throughout the country.

13. The government should undertake immediately the reforms to the judicial system set out in the Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society in order to guarantee the right to unimpeded access to justice and the right to a fair, prompt and impartial trial, in particular through the establishment of a Public Criminal Defence Service, which should be independent, endowed with the necessary resources and personnel to cover all parts of the country and able to provide easy and direct access to justice for the indigenous population, in accordance with the Agreement on the Identity and Rights of Indigenous Peoples.

14. International standards regarding the judiciary, including the UN Basic Principles on the Independence of the Judiciary, should be incorporated into Guatemalan legislation and reflected in legal practice in order to create an independent, impartial and effective judiciary. In order to comply with these Principles, the necessary resources should be provided and all allegations of corruption, particularly in cases of human rights violations, should be investigated promptly and impartially.

### ***Abolition of the Death Penalty***

15. The government should abolish the death penalty, which violates the fundamental right to life, and should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

16. Pending abolition, the government should not extend the application of the death penalty so as not to contravene international human rights standards such as the American Convention on Human Rights, Article 4.2 of which states: “The application of such punishment shall not be extended to crimes to which it does not presently apply.”

17. Pending abolition, the government and the appropriate judicial bodies should ensure all due process guarantees to defendants in capital cases, particular the right to minimum defence guarantees. The death penalty may only be imposed when the guilt of the defendant is established on the basis of clear and convincing evidence.

The defence of those charged with crimes which could carry the death penalty should only be undertaken by qualified, practising lawyers.

Those sentenced to death should be provided guarantees in accordance with relevant international standards, particularly the International Covenant on Civil and Political Rights and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council.

#### ***Protection of human rights defenders***

18. The government should publicly recognize the legitimacy of the role of those who defend human rights and their “right to defend them”. It should also guarantee, in an effective manner, the free exercise of the right to promote and defend human rights and should not promote or support legal restrictions which could impede this right.

19. The government should issue the necessary instructions to guarantee that statements made by security force agents cease to link the defence of human rights with “subversive” activities.

20. The government, in compliance with the Global Human Rights Accord, should take all necessary steps to effectively prevent threats, intimidation or other human rights violations against human rights defenders. Those responsible for such acts should immediately be brought to justice.

21. The government should actively support the approval and incorporation into Guatemalan legislation, without delay, of the Declaration on Human Rights Defenders which is being debated at the UN Commission on Human Rights; within the framework of the regional system for the protection of human rights, it should support the drafting of an Inter-American Declaration on the Protection of Human Rights Defenders.

#### ***Reparation for the Victims***

22. The victims of human rights violations committed by agents of the State, or by individuals acting with the State’s consent, should receive adequate reparation. Amnesty International considers that reparation should include financial compensation and rehabilitation measures, as well as medical care and assistance which would help the victim and his or her relatives to overcome the consequences of physical or psychological injury. It should also include any legal measures necessary to restore the victim’s dignity and reputation.

The body responsible for handling reparation for the victims should receive the necessary resources to carry out its work.



23. Congress should move forward swiftly with the discussion of the Statute of the Guatemalan Institute for Comprehensive Care for Victims of Human Rights Violations, which has been before Congress since 12 March 1996. This Statute should be in accordance with the Global Human Rights Accord and with provisions of international law which recognize the right of victims to reparation.

***Protection of returnees and the internally displaced***

24. The government should comply with the requirements of the Agreement of 8 October 1992 concerning the Organized and Collective Return of the Refugee Population to Guatemalan Territory and the Agreement on the Resettlement of the Population Uprooted by the Armed Conflict and should guarantee the protection and security of returnees and the internally displaced.

These guarantees should include the permanent and coordinated presence of the civilian authorities in communities of returnees and the internally displaced. The authorities should consult with the returnee and internally displaced communities and international organizations, as well as the Public Ministry, the Ministry of the Interior and the Office of the Human Rights Procurator.

25. The government, through the appropriate chain of command, should issue explicit orders to the commanders of military detachments and heads of the Voluntary Civil Defence Committees based close to the communities of returnees and internally displaced who are returning to their original communities, to the effect that they should act within the framework of national and international law and that invoking any exceptional circumstance as justification for violating the human rights of these members of the population will not be permitted. If such violations occur, the government should ensure that investigations are opened and that those responsible are held to account.

26. Through the appropriate chain of command, the government should issue clear and explicit orders to security force agents, especially the army and, in particular, military detachments based close to returnee communities, that in future any unfounded statements linking these communities to “subversion” will not be tolerated.

27. The government should ensure that security force agents, especially members of the army and, in particular, military detachments based close to the communities of returnees and the internally displaced, are trained to respect the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in the course of their daily activities.

**Recommendations to the international community**

***Guaranteeing respect for human rights and an end to impunity***

28. The international community should maintain its presence and influence in Guatemala, through the work of MINUGUA and the independent expert of the UN, until there are clear and unequivocal signs that the policies and practices which gave rise to grave human rights violations have ended.

“Clear and unequivocal signs” should be understood as being: evidence that those responsible for human rights violations are being brought to justice; evidence that extrajudicial executions, “disappearances”, torture, ill-treatment or death threats are no longer occurring; evidence of the ability and capacity of the State to investigate human rights violations thoroughly, independently and impartially, without risk of interference by security force agents in the judicial proceedings; and evidence of the State’s capacity and ability to supervise and regulate the official

bodies responsible for the protection and defence of human rights. The specific criteria used to assess and measure this progress should be based on long term trends and not on short term statistical data.

It is important, therefore, that sufficient resources are made available to ensure the continued operation of the UN Mission and the protection of human rights through rigorous verification of the agreements concluded within the framework of the peace process.

29. The international community should also ensure that the verification, follow up and public denunciation of individual complaints of human rights violations continue to be the focus and main priority of the human rights component of the UN Mission in Guatemala and that peace-building measures, such as institutional and legislative reforms, education and training, always complement the verification role.

30. In order to supervise the full implementation of MINUGUA's recommendations regarding compliance with the Global Human Rights Accord, national and international mechanisms should be set up to tackle non compliance. These mechanisms should seek guarantees that those who have committed, authorized, planned or covered up human rights violations will be brought to justice and that appropriate disciplinary measures are taken against anybody who obstructs implementation of the recommendations or fails to implement them fully. These mechanisms should be established with the collaboration and participation of non-governmental human rights organizations and should pay particular attention to the supervision of the judiciary and the judicial system.

31. Assistance should be made available to safeguard human rights projects already initiated by MINUGUA, aimed at establishing *permanent, independent and effective* national institutions for the long-term protection of human rights and the restoration of the rule of law, including an independent judiciary and a criminal justice system which offers the appropriate guarantees. While Amnesty International considers that national institutions, and human rights commissions in particular, can play an important role in strengthening human rights protection, they should never substitute or undermine the safeguards inherent in a comprehensive and effective judicial framework, enforced by an independent and accessible judiciary. It is important that such initiatives are accompanied by a firm policy against impunity in order to prevent such institutions serving to shield rather than expose those who have violated human rights.

32. Finally, before the withdrawal of MINUGUA, the international community should establish safeguards guaranteeing protection to those persons who have collaborated with the Mission and protection of the information it has gathered.

#### ***Collaboration with the Historical Clarification Commission***

33. Governments should make available to the Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which have Caused Suffering to the Guatemalan People (also known as the Historical Clarification Commission), all available information on the collaboration of officials of other governments with Guatemalan officials in encouraging, facilitating or covering up human rights violations by the security forces or abuses by armed opposition groups in the period under investigation. This should include information regarding the international transfer of military, security or police equipment, technology or training, the principal aim of which, in practice, was the violation of human rights.

#### ***Police and military training***

34. The international community should guarantee that international military, security and police training to Guatemala does not contribute to the violation of human rights.

35. The international community should guarantee that any form of military, security or police training for the Guatemalan security forces includes a solid and obligatory component regarding the protection and promotion of human rights, whether imparted through MINUGUA or directly through bilateral or multinational co-operation. This training should guarantee that police and military practice complies with international human rights standards and therefore trainers must have demonstrable knowledge of these standards.

Moreover, since training is not sufficient in itself, it should be linked to effective measures to put an end to impunity and to ensure that the Guatemalan security forces are held accountable for the human rights violations which they have committed.

## **APPENDIX: THE PEACE PROCESS AGREEMENTS**

Late 1980s	The government seeks informal contacts with the URNG in the context of the regional peace process initiated under the Central American Peace Agreement or Esquipulas II.	The peace process begins to take shape.
February 1990	Appointment of Monsignor Quesada Toruño as President of the National Reconciliation Commission.	The peace process enters a more dynamic phase.

26 April 1991	Signing of the Agreement on the Process for Seeking Peace by Political Means (Mexico Agreement)	<p>First meeting between government, the army and armed opposition groups. The presence of the UN observer of the peace process is confirmed.</p> <p>The agenda for negotiations is approved.</p>
10 January 1994	The Framework Agreement is signed.	<p>Confirms the issues for negotiation already approved in the Mexico Agreement.</p> <p>Establishes the UN's mediation function. The Frenchman Jean Arnault is appointed as mediator.</p> <p>The Agreement calls on the governments of Colombia, Spain, USA, Mexico, Norway and Venezuela to form a "Group of Friendly Countries" to support the UN's efforts.</p> <p>It provides for international verification of all the agreements and requests that the UN carry out this task.</p>
29 March 1994	The Global Human Rights Accord is signed and comes into force immediately.	<p>This is the only agreement which enters into force immediately and which is verified by the UN.</p> <p>The government commit itself to the total observance of human rights and to improve mechanisms for human rights protection.</p>
17 June 1994	The Agreement for the	The government commits

	Resettlement of Populations Uprooted by the Armed Conflict	itself to guaranteeing the conditions necessary for the safe return of the internally displaced to their places of origin or to another place of their choice.
23 June 1994	The Agreement on the Establishment of the Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which have caused Suffering to the Guatemalan People (also known as Historical Clarification Commission), is signed.	Sets up the Commission responsible for clarifying human rights violations and acts of violence during the period of armed conflicts.
31 March 1995	Signing of the Agreement on the Identity and Rights of Indigenous People.	The government commits itself to making ethnic discrimination a crime, repealing discriminatory legislation and promoting and disseminating indigenous people's rights.  It also commits itself to promoting constitutional recognition of indigenous languages, including their use in judicial proceedings.
6 May 1996	Signing of the Agreement on Social and Economic Aspects and on the Agrarian Situation	Contains a series of provisions on democratization and participatory, social rural development, as well as the modernization of public administration and financial policy.
19 September 1996	The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society is signed.	The government commits itself to carrying out reforms to the legislature, the administration of justice, including the judiciary, the Executive, Congress, the National Police, etc.  Repeals the decree

		creating the Voluntary Civil Defence Committees for disbands the Mobile Military Police and reduces the size and budget of the army.
December 1996	Agreement on the Definitive Cease-Fire.	Several operative agreements.
	Agreement on Constitutional and Electoral Reform.	
	Agreement on the Basis for the Legal Reincorporation of the URNG.	
	Agreement on a timetable for the Implementation, Fulfilment and Verification of the Peace Agreements.	
29 December 1996	The Agreement on a Firm and Lasting Peace is signed.	The Agreement brings the armed conflict to an end.
		All Agreements signed previously become effective.
		The Government of the Republic of Guatemala “reaffirms its adherence to the principles and standards aimed at guaranteeing and protecting full observance of human rights, as well as its political will to ensure they are respected”.

## ENDNOTES

1 An armed opposition group

2 See Appendix: The Peace Process Agreements

3 This covers the period from the signing and coming into effect of the *Acuerdo Global sobre Derechos Humanos*, Global Human Rights Accord, to the date of Amnesty International's memoranda to the government (October 1996). The majority of cases mentioned in this report illustrating the situation in Guatemala were documented by the organization in this period.

4 Global Human Rights Accord, Article 3.1.

5 The Human Rights Procurator referred to 223 proceedings initiated into "extrajudicial killings" and complaints of torture and cruel, inhuman or degrading treatment continued. The Procurator indicated that these violations were rooted "in the authoritarian culture which informs the actions of the security forces and the police, and in the legacy of the armed conflict". *Annual Report for 1995*, Human Rights Procurator, pages II and III.

6 Military commissioners were auxiliaries of the Guatemalan army, they formed an integral part of the army and took part in numerous human rights violations, including extrajudicial executions. They were demobilized in September 1995 but, despite being formally disbanded, Amnesty International has continued to receive reports indicating that former military commissioners continue to commit human rights violations under orders from the armed forces.

7 The Voluntary Civil Defence Committees, previously known as *Patrullas de Autodefensa Civil*, Civil Defence Patrols, were auxiliary bodies of the armed forces. They were compulsory under previous governments and later became theoretically voluntary, although in practice forced recruitment was reported to continue. Members of these Committees have been accused of carrying out serious human rights violations. In August 1996, the government announced that demobilization of these Committees would begin and in December, when all the agreements of the peace process came into effect, the decree which had legalized them was repealed.

8 See Amnesty International's memorandum to the Guatemalan Government: *The Right to Truth and Justice*, (AI Index: AMR 23/26/96), October 1996.

9 This Commission, created under the Agreement of 23 June 1994, was charged with the clarification of human rights violations and acts of violence committed during the armed conflict. The Agreement came into effect with the signing of the peace agreement in December 1996.

10 This Law is based on the *Acuerdo sobre Bases para la Reincorporación de la URNG a la Legalidad*, Agreement on the Basis for the Legal Reincorporation of the URNG, signed by the government and URNG in Madrid on 12 December 1996.

11 National Reconciliation Law, 27 December 1996, Article 9.

12 Ibid, Article 10.

13 Ibid, Article 8.

14 *Misión de las Naciones Unidas de verificación de derechos humanos y del cumplimiento de los compromisos del Acuerdo Global sobre Derechos Humanos*, United Nations Mission for the Verification of Human Rights and of compliance with the commitments of the Global Agreement on Human Rights in Guatemala.

15 See the final part of this report for a "35-point Program to End Impunity and Human Rights Violations in Guatemala".

16 Constitutive Law of the Guatemalan Army: "The Additional Forces will be made up of Military Commissioners and their adjutants. When these are in the process of fulfilling a mission ordered by the appropriate military authority they will have the same duties and rights as members of the Permanent Forces ...", Article 92.

17 The Civil Defence Patrols were legalized through Decree 19-86 of January 1986, days before the civilian government of President Vinicio Cerezo took office and then became known as Voluntary Civil Defence Committees.

18 *Siglo XXI*, 13 October 1996.

19 *El Gráfico*, 12 October 1996.

20 Similarly MINUGUA, in its fifth report of July 1996, stated that "the [United Nations] Mission was concerned to note the emergence of a growing number of organizations, whose

creation was encouraged or supported by the army and which include former military commissioners and members of the CVDC. These new organizations formally have different names and objectives, but their armed activities and their relations with the army are frequently the same as those that characterized the PAC and CVDC". Fifth Report of the Director of the United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA), 19 July 1996, A/50/1006, paragraph 85.

21 Supplement to MINUGUA's Fifth Report, August 1996, case #46.

22 Supplement to MINUGUA's Fourth Report, March 1996; Commitment III, Against Impunity, case #2.

23 See Guatemala: Secret detention of hors de combat and non-combatant prisoners, (AI Index: AMR 34/11/93), April 1993.

24 MINUGUA's Second Report, August 1995, A/49/929, paragraph 37.

25 Extract from the Declaration of *Amnesty International's International Conference on "Disappearances" and Political Killings*, 4 to 6 September 1992.

26 Amnesty International condemns the killing of prisoners and other deliberate and arbitrary killings committed by armed opposition groups, as well as torture and the taking of hostages. Such condemnation is based on principles drawn from international humanitarian law, in particular Common Article 3 of the Geneva Conventions of 1949. See "*Disappearances" and Political Killings. Human Rights Crisis of the 1990s* (AI Index: ACT 33/01/94).

27 See *Guatemala: Impunity - A question of political will* (AI Index: AMR 34/17/93, page 3).

28 *Annual Report for 1994*, Human Rights Office of the Archbishop of Guatemala.

29 The number of clandestine graves and exhumations which have been carried out to date are only estimates: many sites have still not been formally reported to the authorities; each may contain between one and 20 graves, containing one or more corpses each. Moreover, the related documentation is extremely deficient.

30 See *Guatemala: Lack of investigations into past human rights abuses: clandestine cemeteries*, (AI Index: AMR 34/10/91), March 1991.

31 Inter-American Commission on Human Rights, 34th regular session, 9-20 September 1996, case 3c.

32 *Annual Report for 1995*, Human Rights Procurator, page 364.

33 *Guatemala: Victims of 1982 army massacre at Las Dos Erres exhumed* (AI Index: AMR 34/24/95)

34 The same CVDC members have been accused of the massacre of Río Negro, Rabinal, Baja Verapaz, on 13 March 1982, in which at least 143 people, of which 87 were children, were killed.

35 *Annual Report for 1995*, Human Rights Procurator, page 364.

36 See *Amnesty International Briefing: Guatemala*, December 1976, pages 3-4.

37 *Intelligence Oversight Board (IOB) report*, 28 June 1996, page 5, "Human rights abuses by assets or liaison contacts".

38 *Ibid*, page 16, "*Involvement by US officials*".

39 United States Defence Department, Memorandum for Correspondents, 20 September 1996, paragraph No. 217-M.

40 Manual on "Handling of Sources", page 66, paragraph 80.

41 *Ibid*, page 65, paragraph 79.

42 Manual on "Revolutionary War and Communist Ideology", paragraph 61.

43 See the following Amnesty International publications: *Guatemala: Impunity — A question of political will*, (AI Index: AMR 34/17/93); *Guatemala: Targeting displaced people* (AI Index: AMR 34/20/92); *Guatemala/Mexico: Human rights violations by the Guatemalan army in the Mexican border area* (AI Index: AMR 02/01/91); *Guatemala: "Disappearance" of María Tiu*



- Tojín and her one-month-old daughter, María Josefa Tiu Tojín (CPR members)* (AI Index: AMR 34/70/90).
- 44 Elite counter-insurgency units.
- 45 Public statement made by Arturo Herbruger, Vice-president of Guatemala, published in the Guatemalan press on 9 October 1995.
- 46 The CPR are organized Mayan indigenous communities which fled the violence and went into hiding in the mountains following massacres by the armed forces at the end of the 1970s and beginning of the 1980s.
- 47 See below for details on the risks facing human rights defenders.
- 48 Supplement to MINUGUA's Fifth Report, 19 July 1996, UN doc. A/50/1006, case #28.
- 49 See: Guatemala: *Maquila workers among trade unionists targeted* (AI Index: AMR 34/28/95); *Guatemala: Trade Unionists and Political Activists targeted under the new government* (AI Index: AMR 34/28/91); *Guatemala: Human rights violations directed against trade unionists and trade union theatre and music group members* (AI Index: AMR 34/42/89); *Guatemala: The Human Rights Record*, pages 25 and 118-122 (AI Index: AMR 34/04/87); *Guatemala: Amnesty International's concerns regarding past human rights violations directed at workers and trade union leaders at the Embotelladora Guatemalteca S.A.* (AI Index: AMR 34/24/84).
- 50 See: Guatemala: Impunity - A question of political will (AI Index: AMR 34/17/93); Guatemala: Dr Carmen Angelina Valenzuela (AI Index: AMR 34/09/90); Guatemala: The Human Rights Record (AI Index: AMR 34/04/87).
- 51 MINUGUA's Second Report, August 1995, paragraph 39.
- 52 Supplement to MINUGUA's Fifth Report, 19 July 1996, UN Doc. A/50/1006, paragraph 63.
- 53 Report of the Independent Expert of the UN Commission on Human Rights, 25 January 1995, E/CN.4/1995/Corr.1, paragraph 65.
- 54 Ibid. paragraph 45.
- 55 MINUGUA's Second Report, August 1995, A/49/929, paragraph 105.
- 56 MINUGUA's Fifth Report, 19 July 1996, A/50/1006, paragraph 73.
- 57 Supplement to MINUGUA's Fourth Report, 11 March 1996, case #2.
- 58 Decree 73-70 of October 1970, Articles 8 and 14
- 59 Consideration of reports submitted by States Party under Article 40 of the *International Covenant on Civil and Political Rights*, *Human Rights Committee*, 3 April 1996, CCPR/C/79 add 63, paragraph 20.
- 60 Decree 73-70 of October 1970.
- 61 Supplement to MINUGUA's Fifth Report, August 1996, page 29, paragraph 159.
- 62 See Central America and Mexico: *Human Rights Defenders in the Front Line* (AI Index: AMR 02/01/96)
- 63 Report of the United Nations Independent Expert on Guatemala to the United Nations Commission on Human Rights, December 1995, Paragraph 30.
- 64 MINUGUA's Third Report, November 1995, paragraph 132.
- 65 See *Central America and Mexico: Human Rights Defenders in the Front Line* (AI Index: AMR 02/01/96)
- 66 UN Human Rights Committee, 56th session, 26 March 1996, UN Doc. CCPR/C/SR.1486, Paragraph 33.
- 67 MINUGUA's Fifth Report, August 1996, Paragraph 182.
- 68 See *When the State Kills* (AI Index: ACT 51/07/89), 1989, and *The abolition of the death penalty worldwide* (AI Index: ACT 50/07/96), 1996.
- 69 Decree 1-86 of 8 January 1986, revised under Agreement 4-89 of 10 March 1989.
- 70 Political Constitution of the Republic of Guatemala, Article 46 and the Law of Amparo (Enforcement of Constitutional Rights), Habeas Corpus and Constitutionality, Article 3.

- 71 Guatemala acceded to the Covenant on 5 May 1992, acceded to the Convention on 5 January 1990 and ratified Additional Protocol II on 19 October 1987.
- 72 Guatemala ratified the American Convention on Human Rights on 25 May 1978 and recognized the jurisdiction of the Inter-American Court of Human Rights on 9 March 1987. The Inter-American Convention was ratified on 29 January 1987.
- 73 Article 57 of the Law of the Judiciary of 28 March 1989, Decree 2-89.
- 74 Political Constitution of the Republic of Guatemala, Part IV, Chapter IV.
- 75 Ibid., Article 251.
- 76 Decree 54-86, reformed in 1987 by Decree 32-87.
- 77 Political Constitution of the Republic of Guatemala, Article 274.
- 78 Decree 54-86, 1 October 1986
- 79 Governmental Agreement 486-91 of 12 July 1991, amended 4 June 1992.
- 80 *Annual Report for 1995*, Human Rights Procurator, page 1, paragraph 4.
- 81 A large proportion of arrests are made on criminal charges relating to misdemeanours rather than on offences or human rights violations. According to MINUGUA, “In 1995 approximately 45% of the total number of those detained throughout the country were arrested [for criminal misdemeanours]. Arrests for drunkenness and breach of the peace alone make up a third of total arrests by police”. MINUGUA’s Fifth Report, 19 July 1996, A/50/1006, paragraph 35.
- 82 MINUGUA’s Fifth Report, 19 July 1996, A/50/1006, paragraph 50.
- 83 Ibid, paragraph 56.
- 84 Report of the UN Independent Expert on the Situation of Human Rights in Guatemala, 5 December 1995, E/CN.4/1996/15, paragraph 119.
- 85 *Annual Report for 1995*, Human Rights Procurator, page 388.
- 86 *Siglo XXI*, 5 August 1996.
- 87 *La Hora*, 8 June 1996
- 88 Decree 54-86, 1 October 1986, Article 4.
- 89 *Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society*, Part III: The Judicial System, Point 8, of 19 September 1996.
- 90 Ibid, Part IV: The Executive, Point 23.
- 91 MINUGUA’s Fifth Report, 19 July 1996, A/50/1006, paragraph 30.
- 92 For an assessment of recent United Nations peace-keeping initiatives, see *Amnesty International: Peace-keeping and Human Rights, January 1994* (AI Index: IOR 40/01/94).
- 93 MINUGUA’s First Report, 1 March 1995, UN doc. A/49/856, paragraph 3.
- 94 As of the end of 1996, the Director of MINUGUA had submitted five reports to the UN Secretary-General.
- 95 MINUGUA’s Fifth Report, 19 July 1996, UN doc. A/50/1006, paragraph 223a.
- 96 Ibid, paragraph 24.
- 97 Ibid, paragraph 16.
- 98 *Cerigua*, 3 February 1995.
- 99 *Hansard*, 22 November 1995.
- 100 *El Mundo*, 2 September 1996.
- 101 Decree No. 70-96, 27 August 1996.

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APRIL 1997

**Villagers of Cuarto Pueblo carry the exhumed remains of over 300 victims. © AFP**

**The skull of a woman exhumed during the Rio Negro exhumations, Rabinal, Baja Verapaz.**

**Relatives and friends surround the body of 39-year-old, Juana Jacinta Felipe, one of 11 people killed during the Xamán massacre on 5 October 1995 in Chisec, Alta Verapaz**

**CPR women making tortillas, traditional flat bread made from maize. The Comunidades de Población en Resistencia (CPRs), Communities of Population in Resistance, sought refuge in the highlands, but abuses against them have continued. © Kenny Brown**

CPR children in the northern department of El Petén. While many CPR communities have been resettled under an agreement signed between the government and the URNG in 1994, others, such as this one, continue to live almost completely isolated from the rest of society. © Kenny Brown

Anthropologist Myrna Mack Chang, extrajudicially executed in September 1990 in Guatemala City. © Rony Ivan Veliz

Members of the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA), National Coordination of Guatemalan Widows.

Journalist Estuardo

Vinicio Pacheco Méndez was abducted and tortured” as a warning to other journalists”.

Portrait of Mario Alioto López Sánchez painted by members of the Association of University Students. Mario Alioto López Sánchez was beaten and shot by members of the security forces on 11 November 1994 during a student demonstration in Guatemala City. He died 24 hours later.

Some 5,000 children aged between 5 and 18 live on the streets of Guatemala City.

17 year-old Erwin Américo Orantes Martínez. A member of the security forces is alleged to be responsible for his killing.

Land conflict in El Estor, eastern department of Izabal.

Land and community activist, Arnaldo Xi, who “disappeared” on 23 March in Purula, Baja Verapaz. His whereabouts remain unknown.

Members of the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA), National Coordination of Guatemalan Widows.

The body of evangelical pastor and human rights defender, Manuel Saquic Vásquez, was found with his throat cut and 33 stab wounds. His killing has been attributed to the security forces

The head of the execution platoon fires the coup de grace at Pedro Castillo while his accomplice, Roberto Girón, hangs dead. Escuintla, Guatemala, 13 September 1996. © Jorge Uzón/AFP

Refugees returning to Guatemala in 1996 after more than 13 years in exile in camps in neighbouring Mexico. They still need protection. © Clive Shirley

Drawing by a child refugee of a massacre in 1982.

A memorial to more than 200 people massacred in Rio Negro, Rabinal, Baja Verapaz in 1982 © Clive Shirley

17 year-old Erwin Américo Orantes Martínez. A member of the security forces is alleged to be responsible for his killing.

**A small group of 76 returnee refugees make their way from Campeche, eastern Mexico, to Ixcán, in the Guatemalan department. The 1992 and 1994 Agreements have promised them dignity and security. © Clive Shirley**

**Journalist Irma Flaquer “disappeared” after being abducted in the centre of Guatemala City in October 1980. Shortly before her “disappearance”, she had accused the government of complicity in “death squad” killings. Almost 17 years later, her whereabouts remain unknown.**

**Villagers from Cuarto Pueblo, Ixcán, El Quiché, sift earth looking for the remains of community members massacred in March 1982 during counter-insurgency operations by the Guatemalan army.**