

GUATEMALA

BRIEFING TO THE UN COMMITTEE AGAINST TORTURE

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INTRODUCTION

This briefing is submitted to the United Nations (UN) Committee against Torture (hereafter the Committee or the Committee against Torture) prior to its consideration of Guatemala's combined fifth and six periodic reports on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention).

It details Amnesty International's concerns about the failure by Guatemala to comply with its obligations under the Convention, including articles 12, 13, 14 and 16. The submission, while welcoming progress in prosecuting crimes under international law committed during the internal armed conflict, focuses particularly on the Guatemalan government's remaining obligations to tackle impunity and effectively investigate crimes under international law, ensuring criminal prosecutions of those responsible and reparations to victims and their families. The government should make available information which could shed light on the fate of the hundreds of thousands of those executed or forcibly disappeared and provide information for criminal prosecutions by opening the military archives. Furthermore, the government should ensure the establishment of a proposed national commission to search for victims of enforced disappearance.

IMPUNITY AND FAILURE TO PROVIDE REDRESS FOR TORTURE (INCLUDING SEXUAL VIOLENCE), KILLINGS AND ENFORCED DISAPPEARANCES

1. BACKGROUND

In 1999 the UN-backed Historical Clarification Commission (HCC) presented its report on the violations and abuses committed during the conflict, and estimated that over 200,000 people were killed or forcibly disappeared in Guatemala during the 1960-1996 period.¹ Countless others suffered torture and sexual violence.² To date, there has been impunity for the vast majority of these crimes: survivors and their relatives continue to endure pain and suffering resulting from the prevailing impunity.

The Committee has previously expressed its concern about impunity in Guatemala. In 1998 it noted its concern with the "[t]he persistence of impunity for crimes, particularly grave human rights violations."³ In 2000 the Committee noted "[t]he continuing existence of impunity for offences in general and for human rights violations in particular, as a result of repeated dereliction of duty by the government bodies responsible for preventing, investigating and punishing such offences. Impunity exists for most of the violations committed during the internal armed conflict and those committed after the Peace Agreements were signed."⁴ During the last consideration of

¹ "The [HCC] estimates that the number of persons killed or disappeared as a result of the fratricidal confrontation reached a total of over 200,000" Conclusion no.2, Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations, Chapter IV: Conclusions, available in English at <http://shr.aaas.org/guatemala/ceh/report/english/conc1.html> [accessed on 15 April 2013]

² Conclusions nos. 28, 29, 41 on sexual violence, torture and cruel, inhuman and degrading treatment, and slavery Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations, Chapter IV: Conclusions, available in English at <http://shr.aaas.org/guatemala/ceh/report/english/conc1.html> [accessed on 15 April 2013]

³ Concluding observations of the Committee against Torture, Guatemala, A/53/44, paras.157-166. 27 May 1998, paragraph 164(a).

⁴ Concluding observations of the Committee against Torture, Guatemala, A/56/44, paras. 67-76 Guatemala. 6 December 2000, paragraph

Guatemala, in 2006, the Committee concluded that it was “concerned with the impunity that persists regarding most of the human rights violations committed during the internal armed conflict, with over 600 massacres documented by the Historical Clarification Commission still to be investigated”⁵ and recommended that Guatemala should ensure “the initiation of prompt, effective, independent and thorough investigations of all acts of torture and other grave human right violations committed during the internal armed conflict” and that it grants adequate compensation to the victims.

CARLOS ERNESTO CUEVAS

Carlos Cuevas, a student and activist, disappeared on the morning of 15 May 1984. According to eyewitnesses, he was riding his motorbike in central Guatemala City when two cars intercepted him and forced him into a police van at gunpoint. In 2008 his family discovered that he had been executed three months after his capture, when they uncovered his details in a leaked Guatemalan military document (the “Diario Militar”). No-one has ever been held to account for his disappearance and Carlos has never been found, despite the tireless efforts of his family.

“For years after Carlos’ abduction I suffered from PTSD (depression, suicidal thoughts, anxiety, nightmares, etc.). Today I have realised that the pain will never go away, but I have learned to live with it - but it continues to affect my daily life. Not having achieved justice is particularly hard because we have been actively seeking it for 30 years.” Ana Lucía Cuevas, sister

2. IMPUNITY

The internal armed conflict came to an end in 1996, and since then progress has been slow and limited in holding to account those suspected of criminal responsibility for human rights violations and violations of international humanitarian law. However, the past four years have seen important trials in seven cases.

In August 2009, a former military commissioner was tried, convicted, and sentenced to 150 years, for the enforced disappearance of six people in the area of Choatulum between 1982 and 1984.⁶

In December 2009 a former colonel and three former military commissioners were tried, convicted and sentenced to 53 years each for the enforced disappearance in 1981 of eight people in the village of El Jute.⁷

In October 2010, two former police officers were tried, convicted and sentenced to 40 years each for the 1984 enforced disappearance of student activist Edgar Fernando García.⁸

In 2011 three former soldiers and an officer were tried, convicted and sentenced to life imprisonment for their role in the 1982 massacre of more than 200 men, women and children in Dos Erres village in the north of the country.⁹

In March 2012 another former soldier was also sentenced to life imprisonment for his part in the Dos Erres killings – taking the total to 5 former members of the Army convicted in the case.¹⁰

Also in March 2012, a former military commissioner and four former civil patrollers were tried, convicted and sentenced to life imprisonment for their part in the 1982 Plan de Sánchez massacre of over 250

73(b).

⁵ Concluding observations of the Committee against Torture, Guatemala, CAT/C/GTM/CO/4, 25 July 2006, paragraph 15.

⁶ “Guatemala makes landmark civil war conviction”, Reuters, 31 August 2009 <http://www.reuters.com/article/2009/09/01/us-guatemala-rights-idUSTRE5800F720090901> [accessed on 15 April 2013]

⁷ “Condenan a 53 años a 4 involucrados por desaparición forzada”, El Periódico, 4 December 2009, <http://www.elperiodico.com.gt/es/20091204/pais/127059/> [accessed on 15 April 2013]

⁸ “Condenan a responsables de desaparición de García”, El Periódico de Guatemala, 29 October 2010, available at <http://www.elperiodico.com.gt/es/20101029/pais/180745/> [accessed on 15 April 2013]

⁹ “Milenaria condena contra autores de masacre de las Dos Erres, Petén”, El Periódico de Guatemala, 3 August 2011, available at <http://www.elperiodico.com.gt/es/20110803/pais/198966/> [accessed on 15 April 2013]

¹⁰ “Caso Dos Erres: Condenan a exkaibil a seis mil 60 años”, Presa Libre 13 March 2012.

villagers.¹¹

In August 2012, a former police officer was tried, convicted and sentenced to 70 years for the enforced disappearance in 1981 of university student Edgar Sáenz Calito.¹²

Amnesty International welcomes and recognises the importance these cases hold for survivors, relatives of the victims and society as a whole. The organization also notes the efforts and role of local human rights organizations and the Public Prosecutor's Office in prosecuting those trials.

However, while such advances are to be welcomed after many decades of stasis, Amnesty International notes that there remains impunity for the vast majority of human rights violations and violations of international humanitarian law committed during the internal armed conflict. Of the 626 massacres recorded by the Historical Clarification Commission, only two have been investigated and resulted in convictions.¹³ Of the estimated 45,000 cases of enforced disappearances, only five cases have resulted in convictions.¹⁴ In most of the cases where convictions have been secured, only lower-ranking officials have been held to account - as is the case with both the Dos Erres and Plan de Sánchez massacres, for example.

The effect of the denial of justice on the survivors and relatives of the victims is devastating. Many have spent decades in the search to find out what happened to their loved ones, or to clarify who was ultimately responsible for the violations they themselves suffered - and to bring those responsible to justice. For victims, the pain and suffering caused by the original violation are compounded by the lack of justice.

2.1 IMPUNITY FOR SEXUAL VIOLENCE

As well as the general steps which the Guatemalan state must take to address the deep-rooted impunity for human rights violations from the past, the issue of impunity for sexual violence committed during the conflict deserves special attention. The Historical Clarification Commission (HCC) report registered 1,465 incidents of sexual violence, while stressing that this figure underreported and did not reflect the true scale of sexual violence which was committed.¹⁵

Ninety-nine per cent of those who suffered sexual violence in the conflict were female, 88 per cent of the victims were of Mayan descent, and approximately a third were girls under the age of 18.

The HCC noted that a high number of the rapes and summary executions of women it documented were committed against women who were pregnant. According to HCC the vast majority of those who committed acts of sexual violence were members of the Guatemalan armed forces, civil defence patrols or were military commissioners.¹⁶ The HCC noted that based on the massive and systematic nature of the sexual violence it

¹¹ "Sala confirma sentencia por masacre en aldea Plan de Sánchez", Prensa Libre, 22 October 2012, http://www.prensalibre.com/noticias/justicia/audiencia-genocidio-militar_0_794920781.html [accessed on 15 April 2013]

¹² "García Arredondo, 70 años de carcel", El Periódico de Guatemala, 22 August 2012, available at <http://www.elperiodico.com.gt/es/20120822/pais/216815/> [accessed on 15 April 2013]

¹³ Dos Erres and Plan de Sánchez

¹⁴ The case of El Jute (six disappeared in 1981, one conviction in 2009); the case of Felipe Cusanero (a former military commissioner found guilty in 2009 of the enforced disappearance of six people from 1982-84); the case of Edgar Fernando García (student activist disappeared in 1984; two police officers were convicted in 2010); the case of Edgar Sáenz Calito (student activist disappeared in 1981; Pedro García Arredondo, former head of Comando 6 of the National Police, convicted in 2012); the case of Edgar Paredes Chegüen (student activist disappeared in 1982; a former military commissioner convicted in 2013).

¹⁵ Conclusion no. 39 on sexual violence, torture and cruel, inhuman and degrading treatment, and slavery Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations, Chapter IV: Conclusions, available <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol3/mujer.html> [accessed on 15 April 2013]

¹⁵ Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations, Chapter IV: Conclusions, Chapter 2, Vol.III, para. "Las cifras de violación sexual, por lo anteriormente señalado, muestran un subregistro en términos absolutos y también con relación a otras violaciones de derechos humanos. La CEH obtuvo un registro de 1,465 hechos de violación sexual, available at <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol3/mujer.html> [accessed on 15 April 2013].

¹⁶ Ibid. para.44 "De acuerdo a los datos recibidos por la CEH, los autores materiales de la violencia sexual fueron: miembros el Ejército, responsables de participar en el 89% del total de las violaciones sexuales registradas, miembros de las PAC, en el 15.5% de las violaciones

concluded that such violence formed part of a planned strategy.¹⁷

Several individual cases of sexual violence are detailed in the case against former president Ríos Montt and his former head of intelligence Mauricio Rodríguez Sánchez for genocide and crimes against humanity (see section 2.4). A separate case is currently being brought by 15 women who allege that they were subjected to sexual violence by members of the Guatemalan army between 1982 and 1986. However, with the exception of these two cases, there has been impunity for the acts of sexual violence committed in the context of the conflict and the stigma attached to these crimes means that special efforts to investigate and prosecute those responsible must be made.

The UN High Commissioner for Human Rights has urged the Guatemalan government to design and implement an integrated reparation policy which includes a gendered perspective.¹⁸

While NGOs have worked with some survivors of sexual violence from the conflict years to provide psycho-social support, the vast majority of survivors have not had access to specialist psychological services provided by the state.

2.2 ATTEMPTS TO INTRODUCE AMNESTY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

Some of those accused of responsibility for human rights violations and violations of international humanitarian law during the conflict have attempted to invoke previous amnesty laws to avoid prosecution.¹⁹ The 8-86 law, passed in 1986 but repealed in 1997, had established Amnesty for some crimes and lawyers for retired General Ríos Montt had argued it still applied to their case. Their arguments were eventually dismissed but it is possible that in future legal cases either the 8-86 law or other arguments related to amnesty may be used either to avoid prosecution or to appeal convictions.

In the January 2013 annual report from the Office of the UN High Commissioner for Human Rights in Guatemala, the High Commissioner expressed her hope that national law continues to be interpreted in accordance with Guatemala's international human rights obligations, recognizing that serious human rights violations cannot be

reportadas, comisionados militares, en el 11.9%, otras fuerzas de seguridad en el 5.7%. Nota: Los porcentajes suman más del 100% porque se ha calculado el porcentaje de participación de cada actor sobre el 100% de violaciones. Puede ser que los actores hayan participado solos o en conjunto con otras fuerzas de seguridad. Según los testimonios existe un 2.3% de casos en los que participaron otros grupos, 0.5% de casos sin identificar responsable".

<http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol3/mujer.html#Note20> [accessed on 15 April 2013]

¹⁷ Ibid. para.49 "Con base en la forma masiva y sistemática, con la que el Ejército perpetró las violaciones sexuales de las mujeres, la CEH llegó a la convicción de que no se trató de actos aislados y excesos esporádicos sino sobre todo de una planificación estratégica. La desvalorización de la cual fueron objeto las mujeres resultó absoluta y permitió que elementos del Ejército pudieran agredirlas con total impunidad porque se trataba de mujeres indígenas de la población civil." <http://shr.aaas.org/guatemala/ceh/mds/spanish/cap2/vol3/mujer.html#Note20> [accessed on 15 April 2013]

¹⁸Annual Report of the United Nations High Commissioner for Human Rights, Addendum, Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala, A/HRC/22/17/Add.1, 7 January 2013: "42. The National Reparations Programme announced a restructuring process, aimed at improving transparency and implementation, focused on productive projects. A State policy with consistent criteria and a gender perspective should be elaborated to ensure the comprehensive implementation of all reparation measures, including cultural reparation, dignity of victims and acknowledgment by the State of the violations committed during the internal armed conflict. Special attention should be given to women victims of sexual violence."

¹⁹ 'Niegan amnistía a Ríos Montt y continuará proceso por genocidio', Prensa Libre, 1 March 2012, available at

http://www.prensalibre.com/noticias/justicia/MP-cierre-amnistia-Rios-Mott_0_655734584.html [accessed on 15 April 2013]

'Buscan apelación en caso contra Ríos Montt', El Periódico de Guatemala, 5 March 2012, available at

<http://www.elperiodico.com.gt/es/20120305/pais/209012> [accessed on 15 April 2013]. On 4 November 2011, a retired army officer accused of genocide submitted a constitutional appeal which asserted that Article 8 of the 1996 National Reconciliation Law was unconstitutional. Article 8 of that Law states that there is no extinction of criminal responsibility for the crimes of genocide, torture, enforced disappearance and other crimes for which there is no applicability of the statute of limitations, committed during the internal armed conflict: *Art 8. La extinción de la responsabilidad penal a que se refiere esta ley, no será aplicable a los delitos de genocidio, tortura y desaparición forzada, así como aquellos delitos que sean imprescriptibles o que no admitan la extinción de responsabilidad penal, de conformidad con el derecho interno o los tratados internacionales ratificados por Guatemala.*

subject to an amnesty.²⁰

In addition, the Committee against Torture had stated in 2006 that: "The State party should strictly apply the National Reconciliation Act, which explicitly excludes any amnesty for the perpetrators of acts of torture and other grave human rights violations, ensures the initiation of prompt, effective, independent and thorough investigations of all acts of torture and other grave human right violations committed during the internal armed conflict, and grants adequate compensation to the victims."²¹ In an oral statement at the March 2012 Human Rights Council on the occasion of the adoption of the Universal Periodic Review (UPR) of Guatemala, the Guatemalan government stated that the Guatemalan courts would decide the scope of the exceptions to the amnesty law.²²

2.3 DENIAL OF ACCESS TO INFORMATION ON SERIOUS HUMAN RIGHTS VIOLATIONS

Although there has been some progress in bringing those suspected of responsibility for human rights violations and violations of international humanitarian law committed during the internal armed conflict to trial, such progress continues to be marred by the lack of will on the part of the military to cooperate with investigations into past human rights abuses.

The Guatemalan army has failed to cooperate with investigations into human rights violations, and has refused to release documents relating to military operations conducted during the internal armed conflict. In 2010 a Presidential Commission tasked with looking into the declassification of military archives relating to the conflict recommended the declassification of over 11,000 documents. The army subsequently released the documents in question. However, documents from 1980-1985 – the period in which the vast majority of human rights violations occurred – were not amongst those released.²³ According to information received from human rights groups, the declassified documents that have been made available have not been indexed, summarised or systematised, and are only accessible by visiting the offices of the army's Joint Chiefs of Staff in Guatemala City in person. The Presidential Commission's report on the declassification has never been made public, nor have the criteria used in determining which documents should be declassified.

The Guatemalan army has also refused to fully comply with a judicial order to release specific documents relating to military operations in the early 1980s. The army's failure to cooperate – and the government's failure to ensure their compliance - means that information which would enable survivors and victims' relatives to discover the truth about what happened, and bring to justice those accountable for serious human rights violations, including torture and other ill-treatment, remains out of reach.²⁴

The Guatemalan authorities must ensure the disclosure of all information relevant to the establishment of truth about torture and other human rights violations occurring during the armed conflict from 1960 to 1996.

²⁰ Annual Report of the United Nations High Commissioner for Human Rights, Addendum, Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala, A/HRC/22/17/Add.1. 7 January 2013

"39. The High Commissioner reiterates the inadmissibility of amnesties in cases of serious human rights violations, and underscores that the interpretation of national legislation should be consistent with this principle. She salutes the fact that the Supreme Court reaffirmed this principle in its appeal judgment of 8 August in the Dos Erres case. It is hoped that the pending actions regarding the non-applicability of amnesties to serious crimes will be resolved in accordance with the State's obligations under international law".

²¹ Op cit. CAT/C/GTM/CO/4, 25 July 2006. paragraph 15.

²² See minute 4:33, Consideration of Guatemala UPR Report, 35th meeting, 22nd regular session of the Human Rights Council, available at <http://webtv.un.org/watch/consideration-of-guatemala-upr-report-35th-meeting-22nd-regular-session-human-rights-council/2224462274001/> [accessed on 15 April 2013]

²³ 'Archivos militares de los años 80-85 no aparecen' El Periódico de Guatemala, 14 December 2010, available at <http://www.elperiodico.com.gt/es/20101214/pais/186029/> [accessed 15 April 2013]

²⁴ Special Procedures Advisory, General Comment on the right to truth, Working Group on Enforced or Involuntary Disappearances, Geneva (22 July 2010):

2.4 TRIAL FOR GENOCIDE AND CRIMES AGAINST HUMANITY

On 19 March 2013, the trial of Generals Efraín Ríos Montt and Mauricio Rodríguez Sánchez opened in Guatemala city. Efraín Ríos Montt was de facto President of Guatemala between 1982 and 1983, and Mauricio Rodríguez Sánchez his head of Intelligence. Both are charged with being the intellectual authors of genocide and crimes against humanity relating to killings, torture, sexual violence (including sexual slavery) and forced displacement of 1,776 victims of Maya-Ixil ethnicity by the army between 1982 and 1983.

In the context of the trial for genocide and other crimes under international law, the repeated assertions that genocide never occurred made by high-ranking state officials - including the President, a former general - are of concern. Amnesty International has voiced its concerns in this regard, and in 2012 the UN Human Rights Committee urged the Guatemalan state to make clear its support for the legal process in the genocide case and other cases of human rights violations from the conflict years.²⁵ However, the assertions that genocide did not occur continue to be made.²⁶

The start of the trial was the result of 12 years of efforts to hold Generals Efraín Ríos Montt and Mauricio Rodríguez Sánchez accountable for allegations of genocide and crimes against humanity, in both Guatemala and Spain.

The trial is a step forward in confronting the crimes of the past and examining the chain of command responsibility.

However, the trial from the outset was subject of a number of procedural appeals by the defence which argued that it should be delayed, suspended and/or annulled. In the final phases of the trial, after over 100 witnesses and experts had given their evidence, on the morning of 18 April, the defence team walked out of the Court in protest at the Judge's decision to deny another defence motion to suspend the trial. That same day, in the afternoon, another judge in a different Court resolving on a previous procedural appeal ordered that all the proceedings in the trial court be annulled – effectively stopping and cancelling the trial – and that the legal process be set back to the pre-trial phase.

The 18 April annulment decision was on a procedural aspect around an earlier request by Ríos Montt's lawyers to have a number of witnesses heard. A judge had denied the request during the pre-trial phase on the grounds that they were irrelevant to the issue to be tried. The judge overseeing the trial, however, had permitted the defence to present all the witnesses and experts they proposed, and all the defence witnesses that had turned up the trial to date had been heard.

On 19 April, the judge overseeing the trial refused to accept the annulment, but did suspend proceedings in expectation that the country's highest court, the Constitutional Court, issue a ruling on the matter. At time of writing, 19 April 2013, the Constitutional Court was expected to rule at some point during the week commencing 22 April 2013.

²⁵ Amnesty International, Guatemala: Submission to the UN Human Rights Committee for the 104th session of the Human Rights Committee (12-30 March 2012), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Guatemala_3_HRC104.pdf; and Ibid: CCPR/C/GTM/CO/3, 19 April 2012. "6. The Committee welcomes the progress in the investigation, prosecution and punishment of genocide and other serious human rights violations committed during the internal armed conflict. Nevertheless, the Committee is concerned at the personal messages issued by high-level representatives of the Executive Power, who are questioning and undermining those efforts, and at the lack of an overall State policy to support the investigation and punishment initiatives that are under way. The Committee also regrets the persistent gaps in the legal authorities' institutional capacity to perform their duties adequately in all cases (arts. 2 and 14).

The State party should take a clear position in support of the processes initiated by the Public Prosecution Service and the courts in cases of genocide and other serious human rights violations committed during the internal armed conflict. The State party should also provide the legal and investigative institutions with all necessary human and material resources so that they can comply with their international human rights obligations."

²⁶ "En Guatemala no hubo genocidio", *Díario de Centroamérica*, 13 March 2013, available at <http://www.dca.gob.gt/index.php/template-features/item/14263-%E2%80%9CEn-guatemala-no-hubo-genocidio%E2%80%9D.html> [accessed 15 April 2013]

3. RIGHT TO TRUTH AND THE NATIONAL SEARCH COMMISSION FOR THE DISAPPEARED

Even in cases where those suspected of criminal responsibility have finally been brought to trial, the fact that justice has been delayed for so many decades causes relatives to question the nature of the justice eventually served. While still recognising the value of the convictions obtained, the extensive delay serves as a signal to others who could bring their cases forward.

EDGAR FERNANDO GARCIA

Edgar Fernando García was a student and trade union activist. On 18 February 1984, police officers from the BROE (Brigada de Operaciones Especiales) stopped Fernando García and a friend in the street. When Fernando García tried to flee, he was shot in the legs and forced into a police vehicle. A group of police later raided his home and took his belongings.

In 2010, 26 years after Fernando García disappeared, two former police officers were each sentenced to 40 years for the crime. Two other low-ranking police officers remain on the run. In 2011, two higher-ranking security force personnel - retired Colonel Héctor Bol de la Cruz and former Chief of the Fourth Corps of the National Police²⁷ Jorge Alberto Gómez López - were arrested in connection with Fernando García's disappearance. Proceedings have been started against them.

"You can't call this justice. We were fighting for his life for over 25 years; justice was delayed for an entire lifetime. I was a child, and first I trained to be a lawyer, and then I took the case to court before justice could finally be done. A whole lifetime, you can't call that justice... it took so much for the sentences to be passed, and there is still a delay in bringing the intellectual authors to trial. Of course I recognise the value of the sentences, but I think justice also implies something more"²⁸ Alejandra García, daughter of Fernando García

Despite the efforts of victims' relatives and human rights groups who have campaigned for a commission to investigate the estimated 45,000 cases of enforced disappearances from the internal armed conflict, the creation of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance has still not been approved. A bill (No. 3590) was presented in 2007, but Congress has failed to pass this into law in the intervening six years.

Although Guatemala has been a state party to the Inter-American Convention on Forced Disappearance of Persons since 1978, it has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2007 and, therefore, has not recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims.

Most cases of enforced disappearance from the years of the Guatemalan conflict remain in impunity, and most relatives have never been able to discover the truth of what happened to their loved ones. The Working Group on Enforced or Involuntary Disappearances General Comment on Enforced Disappearance as a Continuing Crime makes clear that enforced disappearance must be seen as a continuing crime, until such a time as the state acknowledges that the detention took place or provides information on the whereabouts and fate of the victim.²⁹ The Working Group has also made clear that the ongoing impact on the relatives of the disappeared caused by a

²⁷ Cuarto Cuerpo de Policía

²⁸ A eso no se le puede llamar justicia. Estuvimos reclamando por la vida de él más de 25 años, hubo un retraso de justicia de toda una vida. Yo era una niña y primero yo me hice abogada, y he logrado yo llevar el caso antes de que pudiera haber justicia. Toda una vida, no podemos hablar que hay justicia...costó tanto que se dieron la sentencia condenatoria, y aún hoy por hoy para llevar a juicio a los autores intelectuales hay mucho retraso. Por supuesto reconozco la sentencia, pero creo que la justicia también implica otras cosas.

²⁹ Working Group on Enforced Disappearance: General Comment on Enforced Disappearance as a Continuous Crime, available at <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf> [accessed on 15 April 2013]. In the December 2009 'Choatulum' case (see section 2 above) Guatemala's Constitutional Court recognized enforced disappearance as a continuing crime.

State's denial of information as to the truth of what happened must be classed as torture.³⁰

Even when the victim's disappearance is ruled to have taken place, the trauma of not knowing exactly what happened continues. The fact that the disappeared person's death or manner of death cannot be confirmed by documentation; or by an admission of the facts by those found responsible; or by the location of the body, means that relatives continue to hope against the odds that their family member may still be found alive.

"I knew that my dad was in a clandestine prison and that he was being tortured, and I always held the hope that he was alive because it was so very hard to face. Even today sometimes I have the hope that maybe he could appear alive."³¹

Alejandra García, daughter of Fernando García, disappeared in 1984.

As the years pass, the urgency of finding the disappeared grows. Many of the relatives of the disappeared are now elderly or suffering from health problems, which in some cases they link to the trauma they have suffered. The growing belief that they may never be able to bury their loved ones or know what happened to them is an additional source of suffering. As the Human Rights Committee noted in its General Comment 14, immediate family members and dependents are also victims, in addition to the person who suffered the harm.³²

JORGE HUMBERTO GRANADOS HERNÁNDEZ

Jorge Granados, a baker, trade unionist and activist, was disappeared on 9 May 1984 after he had left home to attend a meeting. He never returned. A neighbour told his wife she had seen him being beaten in the back of an unmarked vehicle parked nearby, some hours later. Later that evening, police officers from the BROE (Brigada de Operaciones Especiales) raided the home Jorge shared with his wife and three young children, stealing money and possessions and terrorising his family. He has never been found, and his family still have no information as to his fate.

"Time is running out. If you look at it like this, many of the compañeras, the wives [of the disappeared], have already died. So I start to think: I'm going to die and I will never see my husband's remains."³³ Sara Poroj, wife of Jorge Granados.

³⁰ Working Group on Enforced or Involuntary Disappearances: General Comment on the Right to Truth in Relation to Enforced Disappearance, available at http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf 4. Paragraph 6 of Article 13 [of the Declaration on the Protection of All Persons from Enforced Disappearance] provides that: "An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified." The obligation to continue the investigation for as long as the fate and the whereabouts of the disappeared remains unclarified is a consequence of the continuing nature of enforced disappearances (see the Working Group's general comment on article 17 and its general comment on enforced disappearance as a continuous human rights violation and continuous crime). It also makes it clear that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right. This absolute character also results from the fact that the enforced disappearance causes "anguish and sorrow" (5th preambular paragraph of the Declaration) to the family, a suffering that reaches the threshold of torture, as it also results from article 1§2 of the same Declaration that provides: "Any act of enforced disappearance (...) constitutes a violation of the rules of international law guaranteeing, (...) the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment." In this regard, the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives.

³¹ Yo sabía que mi papa estaba en alguna cárcel clandestina y que él estaba siendo torturado y bueno, yo siempre guardé la esperanza de que estuviera vivo porque eso sí, fue sumamente difícil de afrontar y hoy por hoy a veces todavía tengo la esperanza de que de repente él pueda aparecer vivo.

³² Committee against Torture, General comment No. 3, CAT/C/GC/3, 13 December 2012.

³³ El tiempo va avanzando. Si lo veamos así, ya se murieron un montón de compañeras, de esposas, entonces yo me pongo a pensar: me voy a morir y no voy a ver los restos de mi esposo.

The Human Rights Committee called on the state in 2012 to pass the bill which would allow for the establishment of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance, to create a single centralized registry of disappeared persons, and to provide the Commission with all necessary resources.³⁴ During the public meeting on the consideration of the report to the Human Rights Committee the same year, Guatemala committed to including the adoption of the aforementioned Act in the legislative agenda of Congress. To date, the bill has still not been passed into law.

“The state must make an effort to find the disappeared, it’s like a stamp that marks your life forever. There are many families who don’t want to take their cases through the courts, but do want to know where their relatives are. I believe that it is the state’s duty, even when there isn’t a legal case, to try to find the disappeared and to be accountable to their families and society to heal these wounds.”

Alejandra García, daughter of Fernando García, disappeared in 1984.³⁵

RECOMMENDATIONS

Amnesty International urges the Guatemalan state to take all necessary steps to:

- Ensure that all cases from the conflict years move forwards through the courts without further delay. Survivors and relatives must be able to exercise their right to justice, truth and reparation.
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- Ensure that no-one suspected of criminal responsibility for crimes under international law be granted an amnesty now or in the future. The Guatemalan government should make a categorical statement to this effect.
- Ensure the executive branch of government refrain from any action which could be construed as interfering in the judicial process. In any event, a determination on whether or not genocide was committed by particular individuals is a consideration for the Courts.
- Ensure that the Ministry of Defence fully complies with all judicial orders for the release of documentation and other information necessary for any investigation into human rights violations.
- Ensure that gendered reparation is available for victims of rape and other forms of sexual violence, in consultation with victims and those working to assist them, including the provision of psycho-social services.

³⁴ United Nations Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, Guatemala, CCPR/C/GTM/CO/3, 19 April 2012 In order to promote and facilitate the mechanisms for justice, truth and reparation for victims of forced disappearances committed during the armed conflict, the State party should adopt draft act No. 3590 on the establishment of a national commission to investigate the whereabouts of disappeared persons, provide it with the necessary human and material resources and establish a single centralized registry of disappeared persons.

³⁵ Sobre la responsabilidad del estado, que se haga un esfuerzo de búsqueda de los desaparecidos, esos son como sellos que dejan por siempre marcada la vida de uno. Hay muchas familias que simplemente no desean promover el caso a nivel legal pero si seguramente quieren saber donde están sus familiares. Creo que le corresponde al estado que aún así no hayan casos legales, debe hacer un esfuerzo de búsqueda de los desaparecidos y por rendir cuentas a las familias y a la sociedad para solventar todas estas heridas.

Efforts in this area should include a programme to address the stigmatisation and marginalisation of survivors of sexual violence.

- Ensure the establishment of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance, passing bill 3590 (establishing the Commission) into law without further delay. Amnesty International further calls on the Guatemalan government to assign all necessary resources to the National Commission once it is established, to allow for its proper functioning.
- Ensure ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2007, and implement it through national law. Amnesty International also urges Guatemala to fully implement the Rome Statute of the International Criminal Court into national law (ratified in 2012); in particular by making all crimes set out by the Treaty criminal under national law.

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