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Glossary

ADIVIMA	*Asociación para el Desarrollo Integral de las Víctimas de Violencia en las Verapaces, Maya Achí,* Maya Achí Victims of Violence Development Association of the Verapaces
AI	Amnesty International
AJR	*Asociación Justicia y Reconciliación,* Association for Justice and Reconciliation
AEU	*Asociación de Estudiantes Universitarios,* Students Association [at the State University of San Carlos]
ASCS	Accord on Strengthening of Civil Society and the Role of the Army in a Democratic Society
CALDH	*Centro de Acción Legal en Derechos Humanos,* Centre for Legal Action in Human Rights
CEH	*Comisión de Clarificación Histórica,* Historical Clarification Commission
CEIBAS	*Centro de Estudios, Información y Bases para la Acción Social,* Centre for Studies, Information and Basis for Social Action
CERIGUA	*Centro de Reportes Informativos sobre Guatemala*, Centre for Informative Reporting on Guatemala
CONAP	*Consejo Nacional de Areas Protegidas,* National Council for Protected Areas
CONAVIGUA	*Coordinadora Nacional de Viudas de Guatemala*, Guatemalan Widows' Association
CONFREGUA	*Conferencia de Religiosas y Religiosos de Guatemala*, Confederation of Guatemalan Catholic Clergy
COPREDEH	*Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos,* Presidential Human Rights Commission
CUC	*Comité de Unidad Campesina,* Peasants' Unity Committee
EMP	*Estado Mayor Presidencial,* Presidential High Command
FAFG	*Fundación de Antropología Forense de Guatemala,* Guatemalan Forensic Anthropology Association
FAMDEGUA	Association of relatives of the "disappeared"
FREPOGUA	*Frente de Pobladores de Guatemala*, Shanty-town Dwellers Association
FRG	*Frente Repúblicano Guatemalteco,* Guatemalan Republican Front
GAM	*Grupo de Apoyo Mútuo,* Mutual Support Group, Association of Relatives of the "Disappeared"
HIJOS	*Hijos por la Identidad y la Justicia contra el Olvido y el Silencio* (HIJOS), Association of children [of the "disappeared"] for Recuperation of Identify and Justice, and against Oblivion and Silence
IACHR	Inter-American Commission on Human Rights
INDE	*Instituto Nacional de Electrificación,* State Electricity Institute
MINUGUA	UN Human Rights Verification Mission in Guatemala
NGO	non-governmental organization
OAS	Organisation of American States

ODHAG	*Oficina de Derechos Humanos del* Arzobispado, Human Rights Office of the Archbishopric
PAC	*Patrullas de Auto Defensa Civil*, Civil Defence Patrols
REMHI	*Recuperación de la Memoria Histórica*, Recuperation of the Historical Memory Project (of the Guatemalan Catholic church)

GUATEMALA

Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations

Introduction

This report looks at Guatemala's justice system, describing the gulf between what should occur according to the law and what does occur. It examines the failure of the Guatemalan judicial system to operate effectively, points to the resulting escalation in Guatemala's human rights problems and looks at other sectors in Guatemalan society, including those sometimes referred to as the Corporate Mafia State, which have interfered with the judicial process. Case examples are used to illustrate the apparent inability of Guatemalan institutions, particularly the judiciary, to fulfill the promises and aspirations of the country's 1996 United Nations (UN)-brokered Peace Accords. Because the Guatemalan courts have not addressed past abuses, victims, relatives and human rights groups have sought other remedies, both at home and abroad.

Guatemala's failure to implement the Peace Accords and the recommendations of the Historical Clarification Commission (CEH) agreed under them has contributed to alarming new abuses, particularly directed against those trying to combat impunity. AI hopes that greater international understanding of this issue may help refocus attention on the country and renew the international community's involvement in efforts to promote and protect human rights in Guatemala.

This report concludes with suggestions to overcome Guatemala's long-term pattern of impunity, corruption, and injustice. AI believes these steps are essential to create the state of law which was agreed in the Peace Accords and which is deeply desired and needed by the Guatemalan people.

Guatemala's long-term civil conflict: a devastating legacy

An estimated 200,000 people "disappeared" or were extrajudicially executed during Guatemala's civil conflict, which raged over a period of more than three decades before the military and the armed opposition formally agreed UN-brokered Peace Accords in 1996. Two painstaking post-conflict inquiries firmly attributed the blame for the vast majority of the abuses during the conflict to the counter-insurgency campaign carried out by the Guatemalan

military and their civilian adjuncts, the civil patrols[1] and military commissioners[2], during the late 1970s and early 1980s. One of the inquiries was carried out by the Guatemalan Catholic church's Recuperation of the Historical Memory Project (REMHI), the other by the CEH under the Accords.[3] The atrocities they documented were so widespread and so systematically directed at Guatemala's indigenous peoples that the CEH concluded that the Guatemalan army had carried out genocide in four specific areas. Both bodies made recommendations aimed at identifying the officials and uncovering and dismantling the institutions and structures which orchestrated or permitted the atrocities.

The 1996 Peace Accords sought to re-establish the rule of law and to address the underlying causes of the conflict, via agreements regarding the rights and identity of indigenous peoples, socio-economic rights, strengthening civil society, and the role of the army in a democratic society. Yet by February 2002, more than five years later, the human rights-related elements of the Peace Accords and the CEH recommendations have not been implemented and virtually none of those responsible for the massive atrocities have been brought to justice. Far from building the firm and lasting peace called for by the Peace Accords, Guatemala is continuing down the path of lawlessness and terror.

In this prevailing climate of impunity, there has been a resurgence of human rights violations so severe, particularly since May 2000, that observers have described Guatemala as being in

[1] Though ostensibly voluntary, communities in conflict areas were compelled to form patrols (known as the PAC), to provide intelligence and other support for the military. Those who refused were often themselves targeted. The system was formally discontinued following the Peace Accords but former patrol leaders continue to exercise a great deal of power in many communities and some post-war violations have been attributed to re-surfacing patrols.

[2] Though civilians, military commissioners served under army discipline. During the conflict, they had law enforcement and intelligence functions, acting as the "eyes and ears" of the military in rural communities, and often serving as intermediaries between the army and the communities. Frequently, they led the PAC. They too continue to exercise power in local communities, and to intimidate those who try to hold them to account for past abuses.

[3] The church's *Recuperación de la Memoria Histórica* project, Recuperation of the Historical Memory project, (REMHI) undertook a three-year study of the conflict years in Guatemala. Its 1998 report, *Nunca Jamás, Never Again*, documented 55,000 cases of human rights violations, and attributed 50,000 of them to the Guatemalan armed forces and their civilian adjuncts, the military commissioners and the civil patrols. The CEH studied a sample of 42,000 abuses, including 29,000 extrajudicial executions or "disappearances." It concluded in its 1999 report, *Memoria del Silencio, Memory of Silence* that in all, more than 200,000 people suffered such violations in the course of the conflict, and that 93 per cent of the abuses had been carried out by official security forces and the paramilitary groups affiliated to them.

"human rights melt-down". Prominent among the victims are those pressing for implementation of the Peace Accords or seeking justice for the atrocities of the past. Death threats, attacks and other acts of intimidation against those advocating social change or combatting impunity are a daily occurrence. Offices have been broken into and important data stolen. Others have been subjected to electronic surveillance and their e-mail traffic monitored. Computers have been hacked into and important information altered or destroyed. Guatemala's human rights community is living under siege.

Having committed mass murder with impunity during the conflict years, those responsible see little reason to rein in their activities now. They have also engaged in a whole new range of economically motivated crimes, abetted and covered up by state agencies, in what has been

Peace Accord Celebration 29.12.96 (b/w).jpeg

Hopeful crowds throng Guatemala City's central square to celebrate the signing of the Peace Accords, 29 December 1996. © Roger Plant

referred to as Guatemala's "Corporate Mafia State."

Meanwhile, crime rates and vigilante justice spiral, as citizens lose respect for the law.

New government: New human rights disappointments

The Peace Accords were agreed under President Alvaro Arzú (1996-2000). However, he left office with little accomplished on impunity issues and human rights protection.

Hopes rose again when Alfonso Portillo came to office in January 2000 promising that the Accords would be state policy; the recommendations of REMHI and the CEH would be implemented; parallel structures interfering with the administration of justice would be dismantled and the notorious *Estado Mayor Presidencial* (EMP), Presidential High Command, would be disbanded.[4]

The new president also promised that the murder in 1998 of Bishop Juan José Gerardi would be solved in the first six months of his administration. In fact, it was 17 months after President Portillo took office, and following extended international pressure, that three military officers were finally sentenced to the maximum 30 years' imprisonment for Bishop Gerardi's extrajudicial execution. Proceedings were left open against a number of other military officers for possible involvement.

Today, some five years since the Accords and more than two years after President Portillo assumed office, implementation of the Accords appears stalled once again, and the human rights-related recommendations of the CEH remain largely unfulfilled. President Portillo now says the EMP will be dismantled only in 2003.

Observers consider that President Portillo's failure to implement his promises reflects his early loss of a power struggle within his own party to General Efraín Ríos Montt. Efraín Ríos Montt presided over one of the worst phases of the army's scorched earth counter-insurgency campaign during the early 1980s, when tens of thousands of non-combatant indigenous men, women and children were killed in hundreds of army massacres, often preceded by torture including rape. The policy targeted civilians in order to annihilate the guerrillas' social base in rural Mayan communities in the west and northwest.

Efraín Ríos Montt was the architect and implementor of this policy. Today, as Congressional President, he is said to hold the power to ensure that he and hardline military officers still control events. They can obstruct efforts to bring violators to justice via a murky "parallel power structure" and the appointment of people such as former military intelligence officer, Byron Barrientos, as Interior Minister.

Chapter 1: The Guatemalan judicial system – failure to deliver

Undoubtedly the failure of the Guatemalan legal system to deliver on the promises of the 1996 Peace Accords is a major contributory factor to Guatemala's human rights crisis.

[4] The EMP is nominally detailed to offer security to the President and his family, but has operated over the years as a military intelligence centre, regularly implicated in some of Guatemala's most high profile abuses, including the extrajudicial execution of Bishop Juan José Gerardi in 1998, discussed below.

Guatemalan law: the theory

The Guatemala judicial system should operate in accord with international standards for human rights protection. Under international treaties and conventions to which Guatemala is party and its own laws, the judiciary should be independent:

> " Magistrates and judges are independent in the carrying out of their duties, and are subject solely to the Constitution and the laws. Whoever attempts to undermine the independence of the Judicial Organism in addition to the penalties set by the Penal Code, would be barred from exercising any public office. Juridical functions are the sole prerogative of the Supreme Court and the other courts as established by law. No other institution can intervene in the administration of justice." (Article 203 of the Constitution)

The Law of the Judiciary (Decree Law 2-89, Ley del Organismo Judicial) and the Code of Penal Proceedings have similar articles providing for the complete independence of the judiciary (Articles 57 and 7 respectively). These are in line with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (acceded to by Guatemala in 1992) and the American Convention on Human Rights (ratified by Guatemala in 1978). Guatemala accepted the competence of the Inter-American Court of Human Rights in 1987.

Both the Constitution (Article 46) and the Law of the Judiciary (Article 9) establish that international law takes precedence over Guatemalan legislation.

The reality: justice obstructed

In reality, the situation remains much as it was described in 2000 by a Guatemalan non-governmental organization (NGO):

> "In our society, agents or former agents of the State have woven a secret, behind-the-scenes network dedicated to obstructing justice. They have created a virtual alternative government that functions clandestinely with its own standardized and consistent *modus operandi.* In such a context, crimes are not clarified, and those responsible are not identified. Society finally forgets the cases and becomes resigned.
>
> "If the actual material authors left evidence at the scene of their crimes, they then decide who to implicate as scapegoats. If there are actually any inquiries and if these eventually lead to any arrests, these are always of low-ranking members of the army, or at best, an official not in active service.

> "When they can't pin the crime on some scapegoat, the scene of the crime is contaminated and legal proceedings are obstructed and proceed at a snail's pace. If nonetheless, investigations still continue, these powerful forces hidden behind the scenes destroy the evidence. And of course it cannot be forgotten that pressure, threats, attacks and corruption are all part of the efforts to undermine and demoralize the judiciary, who, knowing they are not able to count on a security apparatus that will guarantee that the law is enforced, feel obliged to cede in the face of this parallel power."[5]

Guatemala's judicial system is thus unable to operate or to assure citizens their rights. Nor is it combatting impunity. There are endless delays in appointing personnel and courts to hear cases, particularly those seeking to convict official security force personnel for past atrocities. Suits drag on for years, depriving plaintiffs and defendants of timely justice and rapid remedies when their rights are violated, as guaranteed under the American Convention on Human Rights (Articles 8, 7.5 and 25) and Article 9.3 of the International Covenant on Civil and Political Rights.

Key human rights cases are habitually assigned to judges who appear to be partial to the accused, reportedly because they have been bribed, or because they fear making decisions which could lead to reprisals. Evidence is often inexplicably lost and translation facilities for indigenous witnesses lacking or insufficient.

Often, those involved in efforts to convict perpetrators of past abuses must repeatedly return to court, as decisions are appealed all the way up to the Constitutional Court. Witnesses must therefore repeatedly remember and describe deeply traumatic and horrific events, under constant pressure from intimidation, threats and attacks. These pressures have caused some witnesses and survivors to withdraw their suits. Others have fled abroad in fear of their lives, while other key witnesses in human rights trials have reportedly accepted bribes to withdraw their testimonies. Still others have been killed. The few sentences passed have customarily been derisory or overturned upon appeal.

As a result of this continuing pattern of impunity in Guatemala, perpetrators feel they will never have to answer for their past crimes and can continue to get away with murder. This in Amnesty International (AI)' s view is a key factor in new and escalating violations.

Meanwhile, the slowness and complexity of the process, as defendants charged with human rights violations use every tactic to evade justice, make it difficult for the international public to sustain interest in or even understand what is happening. However, continued interest and pressure on these cases from abroad is one of the factors which has helped bring a handful

[5] Statement by the Guatemalan Institute of Political, Economic and Social Studies, IPES, 2000.

of perpetrators to justice. These few convictions have in turn aroused hopes that new, more coordinated and tenacious efforts may eventually bring results.

Interference in the judiciary

Guatemala has a long history of direct interference in the judiciary by the government and others.

This tendency was exacerbated during the civil conflict. As the CEH put it:

> "The justice system, non-existent in large areas of the country before the armed confrontation, was further weakened when the judicial branch submitted to the requirements of the dominant national security model ... by tolerating or participating directly in impunity, which concealed the most fundamental violations of human rights, the judiciary became functionally inoperative with respect to its role of protecting the individual from the State, and lost all credibility as guarantor of an effective legal system. This allowed impunity to become one of the most important mechanisms for generating and maintaining a climate of terror."[6]

As late as 1993, the Minister of Defence was said to call judges into his office, where he and other officials expressed displeasure at attempts to charge members of the army with crimes, and threatened judges with severe consequences if they persisted.

Today, there is little doubt that political interference in legal cases, particularly those where human rights charges have been laid against highly placed officials is still the norm. After a visit to Guatemala in 1999, Param Cumaraswamy, the UN Special Rapporteur on the independence of judges and lawyers, found that corruption, influence-peddling and their associated ills remained rife, fed by the political factors which continued to influence the tenure, appointment and dismissal of judges. He noted that Congress, now dominated by President Portillo's ruling party, the *Frente Repúblicano Guatemalteco* (FRG), Guatemalan Republican Front, continues to play a major role in naming both appeal and Supreme Court judges. A 1994 reform lessened this political control somewhat, by stipulating that Supreme Court judges would serve five-year terms, and that their names would be put forward to Congress by a Nominations Commission. However, the process remains highly politicised, with each political party selecting judges in proportion to the number of its Congressional seats.

[6] *Guatemala: Memory of Silence*, CEH Report, Conclusions and Recommendations, at 56, p. 28 English edition, 1999.

Legal analysts also suggest that the Supreme Court's dual role as both the highest court in the land and the highest judicial administrative entity undermines the independence of judicial officials. For example, the Supreme Court names lower court and appeal judges, supervises judicial studies and determines disciplinary sanctions, transfers, nominations and dismissals. Reportedly, a number of recent dismissals were aimed at judges who had tried to bring perpetrators of past abuses to justice.

Other factors which interfere with impartial administration of justice include: lack of regulation of judicial careers; instability in appointments; arbitrary selections; lack of adequate disciplinary procedures; lack of adequate resources and structures; and widespread judicial corruption.

The effect on the courts of such factors is perhaps most disturbing when it comes to impunity, described by UN Special Rapporteur Cumaraswamy as a "cancer," which if not arrested and excised would slowly but surely destabilize society. He particularly warned of military pressures on the judiciary to protect its personnel from prosecution for past abuses and regretted the government's lack of political will to address this and other grave judicial issues. As a result, he feared that the average citizen had little faith in the judiciary, pointing to a 1997 opinion poll which had found that 88 per cent of Guatemalans interviewed found the judicial system inadequate.[7]

Reform efforts

Before the 1996 Accords, there were periodic efforts to strengthen the rule of law. The Criminal Procedure Code was reformed for example in 1994, abolishing the inquisitorial system in favour of the common law adversarial system, including the presumption of innocence, the right to be present at trial, the right to legal counsel and the possibility of release on bail. Provisions were also made for interpretation when needed, and prosecutors were placed in control of investigation and prosecution.

The Peace Accords themselves addressed the judiciary. The 1996 Accord on Strengthening of Civil Society and the Role of the Army in a Democratic Society (ASCS) acknowledged that "One of the greatest structural weaknesses of the Guatemalan State is its justice system". It stated that "Reform of the justice system is a priority, in order to counteract the prevailing inefficiency, eradicate corruption, guarantee free access to justice, impartiality in its application, judicial independence, assure its ethical authority, the integrity of the system as a whole and its modernization."

[7] See *Report of the Special Rapporteur on the Independence of Judges and Lawyers: Mission to Guatemala*, E/CN.4/2000/61/Add.1 January 2000.

To carry out the intent of the ASCS, a Commission on Strengthening the Justice System was mandated to make detailed recommendations on speedy implementation of the Accord. In its final report in April 1998 it found that "The Guatemalan judicial system has been at the service of the political, economic and military powers' elite and has not satisfied the needs of all Guatemalans, the majority of whom are poor." Far-reaching recommendations for reform advocated modernization; professional standards; access to justice; speeding up of trials; security and justice; and constitutional reforms.

Similar conclusions were reached by REMHI and the CEH, both of which concluded that weakness in the Guatemalan judiciary had allowed impunity to become one of the most important mechanisms for generating and maintaining a climate of terror.

Failure of the reform process

A grave blow to human rights protection came in May 1999 when a public referendum defeated some 50 Congressional proposals to reform the Constitution and other legislation to implement the Accords. Only 18 per cent of those eligible voted.

Defeat was attributed to a variety of factors. Some of the proposed reforms would have required substantial Constitutional amendments or would have created conflicts of power between various state agencies. The decisions put to the voters were numerous and complicated. Further, the reforms were opposed by powerful sectors, and so not well publicized by the government. The decisions required by voters and the voting process had not been well explained and little effort was made to facilitate voting in the countryside where support was believed strong because of the indigenous rights elements. Racist fears were also cited, and allegations made that inordinate weighting had been given to results in the capital. Whatever the reasons for the defeat, legal measures to advance the aims of the Peace Accords must now be approved individually.

The failure of the Constitutional reform referendum reflects a failure of political will. More is required than mere adjustments to the Guatemalan judiciary. There is no question that a genuine commitment from the authorities to creating and supporting a functional judiciary, and to combatting impunity, will be necessary if justice is ever to be achieved in Guatemala.

The need for an effective witness protection program was clearly articulated in the Accord on Strengthening Civil Society which called for "an effective plan for the protection of witnesses, prosecutors and others involved in the justice system". Text for such a provision, charging the Office of the Public Prosecutor with providing security for people in relation to the administration of justice, was published shortly afterwards. It was approved by Congress and was to have entered into force 20 days after publication in the official Congressional record in January 1997.

However, according to all reports, the program has never been genuinely constituted. Lack of public confidence in security and public order forces may have contributed to the program's failure. However, lack of will on the part of the Public Prosecutor's Office and the Ministry of the Interior has been a major factor. The Supervisory Council proposed was never constituted, nor was a director named for the envisaged Protection Office, while jurisdictional disputes between various institutions in Guatemala and contradictions between several items of legislation have contributed to the Ministry of Public Finance's failure to allocate adequate funds and assure their disbursement. Some training has taken place, but the trainees have largely been assigned to protect public figures. Others allegedly accorded protection have suffered new abuses.

The high price of justice

Survivors, relatives and local non-governmental organizations have identified a number of possible paths to justice via the Guatemalan courts and abroad. These initiatives are discussed later in this report. Some have achieved limited results, but at a high price. Perpetrators have struck out with increased vehemence against their accusers, particularly when plaintiffs have not been content to see low-level civil patrollers and soldiers carry the full responsibility for abuses ordered by senior military or political personnel. Fears among the Guatemalan military that they could eventually have to answer for their crimes have been raised by the efforts to prosecute General Augosto Pinochet of Chile in the Spanish courts, the 2001 convictions in the Bishop Gerardi case, and the filing in Guatemala in 2000 and 2001 of two suits against former officials for genocide.

The judiciary has been one sector clearly targeted by those fearing prosecution. After his 1999 visit, UN Special Rapporteur Cumaraswamy urged the government to address impunity and to take steps to end threats against and harassment of judges and lawyers. The attacks continued. From January to August 2000 alone, 81 threats against people involved in the justice system were reported, although not all were necessarily connected to human rights issues. Eight people were murdered, seven of them witnesses in important cases. In February 2001, the president of the Guatemalan Bar Association transmitted six cases to the UN Human Rights Verification Mission, MINUGUA, in which lawyers or judges had been murdered in the 100 days after 31 October 2000.

In May 2001, UN Special Rapporteur Cumaraswamy returned to Guatemala at the request of human rights organizations. They cited 22 further instances of intimidation, attacks or threats directed at judges, magistrates and lawyers, including another murder of a lawyer and the lynching of a judge. He concluded that the human rights situation had not improved since his August 1999 visit and expressed his regret that Guatemala had largely ignored the recommendations he had made following that visit.

Chapter 2: Human rights community under siege

All those involved in some way in efforts to confront impunity – survivors, witnesses, NGOs, journalists and politicians – have been faced with a dramatic escalation in human rights violations since mid-2000. The recent wave of abuses against those pursuing justice has been so severe that Guatemala's human rights community is living under siege.

Rather than investigate, officials have typically asserted that reports of abuses were fabricated by defenders trying to "destabilize" the country. They have often characterized the threats, attacks and raids as the work of common criminals who steal computers and other office equipment for resale, not because of the information they contain. Government spokespersons have also suggested that human rights organizations risk being attacked by unknown forces, in effect declaring open season on them. AI considers that such ill-considered public statements encourage or at least tacitly support attacks on those seeking to bring perpetrators to justice.

President Portillo's predecessor, Álvaro Arzú, made similar attacks on Guatemalan human rights activists. In September 1998, for example, he said that those critical of his government's supposed advances in human rights protection and implementation of the 1996 Accords were "traitors to the country". To the astonishment of delegates he used his welcoming speech to the 1999 Organization of American States (OAS) General Assembly in Guatemala to assert that human rights groups were being used as the tools of foreign governments. Unsurprisingly, human rights defenders suffered repeated threats and harassment under his administration.

Government broadsides against Guatemalan NGOs took on a new virulence with Byron Barrientos' appointment as Minister of the Interior in July 2000. Attacks on those involved in important human rights cases or pressing for implementation of the Accords escalated markedly in volume and ferocity.

The government escalates the war of words

Despite repeated protests by local and international human rights organizations at the appointment of Byron Barrientos as Minister of the Interior and the general anti-human rights stance being taken by the Portillo administration, Barrientos's provocative statements continued. In September 2000 he declared "These groups want to cause instability, to create chaos and anarchy." He also suggested NGOs might be attacked by groups "who plan to set off bombs that will scatter propaganda leaflets when they explode ... they will also burn the central offices of NGOs", apparently a signal of government support for attacks on human rights NGOs. Two days later, local newspapers quoted the Vice-President of Congress as declaring that "The Minister of the Interior and the Director of the National Civil Police have informed us that there are some individuals, who claim to be human rights activists, that want to create instability in the country by causing confrontations."

Minister Barrientos stepped down in November 2001 in connection with corruption charges, but Guatemalan human rights groups reported that the man appointed his sucessor, former General Eduardo Arevalo Lacs, almost immediately made similar remarks about human rights organizations.[8] AI believes that such statements encourage the campaign of intimidation aimed at undermining and silencing the work of those involved in human rights work and combatting corruption. AI is also concerned that the Guatemalan government is failing to respect its obligations under both international law and its own national law to protect members of civil society involved in efforts to bring past perpetrators to justice.

Recent assaults on human rights defenders

The upsurge in abuses against activists working to combat impunity became apparent from around May 2000, and accelerated as the year progressed. In July for example, two staff members of an organization working to advance indigenous rights were killed in Sololá Department, apparently victims of extrajudicial executions committed in order to intimidate those working for implementation of the indigenous rights Accord.

In August, staff of the *Fundación Rigoberta Menchú,* Rigoberta Menchú Foundation, received death threats after filing suit in Spain against a number of former Guatemalan officials for genocide and other crimes against humanity (see below). Other Guatemalan NGOs, including the indigenous rights group *Comité de Unidad Campesina* (CUC), Peasants' Unity Committee, who joined the Menchú writ, also reported threats and harassment.

In the same month, threats were sent to Miguel Angel Albizures, a contributor to the newspaper *El Periódico* and a prominent member of the NGO umbrella group, the *Alianza contra la Impunidad,* Alliance against Impunity, and two other journalists. They had published a paper on the existence of a clandestine intelligence service whose existence was denied by the government.

Assault on CALDH worker

Also in August 2000, Celso Balán, a representative of the *Centro de Acción Legal en Derechos Humanos* (CALDH), Centre for Legal Action in Human Rights, in San Martín Jilotepeque, Chimaltenango was seized by two men in plain clothes posing as journalists, but believed to be members of a paramilitary organization. He was interrogated, beaten, robbed, drugged and left unconscious.

[8] Local human rights groups also reported that former General Arévalo Lacs may have been responsible for the training of the patrol that carried out the 1982 massacre at Dos Erres, see below.

Celso Balán was working with CALDH, assisting relatives to exhume mass graves of villagers massacred by the Guatemalan army and the civil patrols (PAC) during General Ríos Montt's administration (March 1982-August 1983). CALDH had already alarmed military circles when it filed its first collective suit for genocide in May 2000, accusing a number of officials of General Romeo Lucas García's administration (1978-1982) of responsibility for 10 massacres carried out in nine villages. The members of Lucas García's administration are no longer politically active or powerful, but when CALDH turned to collecting evidence intended for a second genocide suit against officials of the Ríos Montt administration, eventually filed in June 2001, those aiding relatives to collect evidence through exhumations were soon targeted.

Celso Balán's captors interrogated him about a particular mass grave at Mixco Viejo, Chimaltenango Department. The remains of those massacred by the army at the hamlet of Chipastor, San Martín Jilotepeque, Chimaltenango in 1982 had recently been exhumed there and returned to families for a traditional Mayan burial ceremony. Celso Balán was asked how it was possible to establish that army bullets had killed the victims. He was then forced to accompany his assailants to the local CALDH office, where he was beaten with a gun-butt while they ransacked and searched the office for information.

Celso Balán was then forced to drink a strong sedative which doctors say could have produced paralysis or even death had the dose been only slightly stronger. He regained consciousness two days later at the local cemetery. Following his ordeal, he required treatment for neurological, physical, psychological and emotional problems. Warned not to talk about the attack, Celso Balán nevertheless went public and announced that he intended to continue his work with other local communities still seeking exhumations. Local analysts believe his assailants may be linked to those responsible for the Chipastor massacre, and that their orders may have come from army personnel at the Chimaltenango military base.

FAMDEGUA targeted

In September 2000 the headquarters of FAMDEGUA, one of the Guatemalan associations of relatives of the "Disappeared", were raided. Members of their staff and of HIJOS, (Children), another organization working from their offices, were assaulted by four men, three of them heavily armed. When the assailants left, they took most of the organization's computers containing records of important human rights cases FAMDEGUA is investigating, including the Dos Erres El Petén massacre of some 350 men, women and children in 1982 (see below), other office equipment, money, and one of the group's vehicles.

HIJOS is a relatively new organization, formed by people who were children when their parents "disappeared", who have recently joined together to try to establish the fate of their parents and to educate the new generation about the years of repression.

FAMDEGUA is one of Guatemala's oldest and most respected human rights organizations. It has played a key role in promoting exhumations and initiating proceedings to bring to justice those responsible for massacres. It is particularly associated with investigations of the Dos Erres massacre.

Examples of other incidents

Frepogua.jpeg

William Mazariegos has been constantly threatened and intimidated because of his work with FREPOGUA, a shanty-town dwellers association. © AI

Alianza Nueva Nación's left-leaning presidential candidate in the last elections, Alvaro Colom Caballero, lost computers and party records in an August 2000 raid on his office. Perpetrators left vulgar messages behind.

Ricardo Lobo, a worker for the *Centro de Estudios, Información y Bases para la Acción Social* (CEIBAS), Centre for Studies, Information and Basis for Social Action, was fired at from a truck in September 2000 by unidentified individuals yelling insults. CEIBAS has campaigned for implementation of social, economic and cultural rights as agreed in the Accords. Ricardo Lobo also belonged to the *Movimiento Ciudadano por la Justicia y la Democracia*, Citizens Movement for Justice and Democracy, a civil society coalition demanding that General Ríos Montt and 19 other FRG Congressional deputies be expelled from Congress and stripped of Congressional immunity to stand trial for the so-called Guategate incident. This involved charges that they acted at the behest of powerful liquor interests to alter a liquor duties law already passed by Congress. Repeated attacks upon CEIBAS eventually forced it to stop working in Guatemala and reorganize abroad.

Staff members of the *Fundación de Antropología Forense de Guatemala* (FAFG), Guatemalan Forensic Anthropology Association, were attacked in October 2000 by two heavily armed men who then stole their vehicle. FAFG has been exhuming some of Guatemala's mass clandestine graves.

Staff members of the *Frente de Pobladores de Guatemala* (FREPOGUA), Shanty-town Dwellers Association, went on hunger-strike in October outside the President's official residence to demand government housing programs for homeless people. They were shot at from a car and later that same day attacked by former civil patrollers. Since then, FREPOGUA offices have been monitored by the police and leaders have received threats on their mobile phones and in the office, indicating that their conversations and movements

are constantly monitored. In May 2001, during a meeting at FREPOGUA's offices, a caller warned "When the meeting ends, we're going to finish off all of you."
On another occasion, a man approached a director and warned "I was in the army too. I killed people." Later that month, the car in which a FREPOGUA director was travelling was rammed as he returned to the capital with journalists after visiting shanty dwellers.

The office of the *Asociación de Estudiantes Universitarios* (AEU), Students Association, at the University of San Carlos, the state university, was broken into, also in October 2000. The AEU has traditionally been outspoken on political and human rights issues and its leaders have been frequently targeted.

The offices of the *Asociación de Mujeres Vamos Adelante*, Women's Association: Lets go forward, in Guatemala City were raided in October 2000 by four armed men who stole computers holding their information on women's aid programs. An employee was reportedly raped.

The director of the Human Rights Procurator's office of Sololá Department, Urías Bautista Orozco, and Luz Margoth Tuy Jiatz were both investigating the October 2000 killing of indigenous peasant Teodoro Saloj during a land rights demonstration in El Quiché Department. They reported police intimidation and monitoring of their movements by an unknown person. After they concluded in November that police had been responsible for Teodoro Saloj's killing, the intimidation and threats increased. In April 2001 Luz Margoth Tuy Jiatz was arrested and accused of incitement, participation in an illegal demonstration and threatening behaviour, after she tried to mediate for local villagers protesting against their mayor. The charges were apparently in reprisal for her actions in the Saloj case, and there were fears for her safety while she was detained. Subsequent death threats have been reported.

PDH Sololá.jpeg

Luz Marcela Tuy Jiatz (l) and Urías Bautista Orozco (second from right) of the Sololá office of Guatemala's Human Rights Procurator, shown giving testimony to a 2001 Amnesty International delegation. Since finding the police responsible for the October 2000 killing of an indigenous land rights demonstrator whose widow is pictured on the right, the two investigators have been subjected to constant surveillance, threats and intimidation. © AI

Members of the *Coordinadora Nacional de Viudas de Guatemala* (CONAVIGUA), Guatemalan Widows' Association, received death threats because of their efforts to bring a former military commissioner to justice for repeated rapes in 1999 of a 12-year-old indigenous girl. The man had allegedly carried out serial rapes of indigenous women in her village during the conflict, utilizing his position as military commissioner to ensure that he enjoyed virtual immunity from prosecution. AI believes the victim was sexually assaulted because of her parents' work with indigenous rights groups. Her father and Rosa Tuis Guarcax, who covers the case for CONAVIGUA, reported new threats in December 2000. In February 2001, a second daughter was briefly abducted.

Members of the *Grupo de Apoyo Mútuo* (GAM), Mutual Support Group, in both the countryside and the capital reported death threats and surveillance in November and December 2000. A vehicle was also stolen in December, and a member in El Quiché Department threatened and attacked by an army collaborator. GAM is one of Guatemala's oldest human rights groups, formed in the 1980s by relatives to try and establish the fate of "disappeared" family members.

Staff of the *Oficina de Derechos Humanos del Arzobispado* (ODHAG),Human Rights Office of the Archbishopric, are frequently targeted because of ODHAG's efforts to bring the killers of Bishop Gerardi to justice (see below). In December 2000 for example, two armed men forced entrance into the home of Mynor Melgar, lead ODHAG lawyer on the case, and bound him, his wife and their two children, threatening "This is a warning, the next time ..."

Radio Novedad broadcasters Juan Carlos Aquino and Marvin Alfredo Herwin González reported death threats, most recently in January 2001, apparently in reprisal for their critical reporting on activities of local Zacapa officials.

Staff of the *Fundación Myrna Mack*, Myrna Mack Foundation,, and members of a REMHI team disseminating conclusions of the REMHI report in Chimaltenango reported threats in February 2001. Myrna Mack Foundation staff have also been repeatedly targeted because of their unending efforts to bring to justice those who ordered and carried out the extrajudicial execution of anthropologist Myrna Mack in 1990 (see below).

El Periódico journalist Sylvia Gerea was grabbed by the neck in March 2001 and warned that she and her associates would be killed if they wrote anything further on irregularities surrounding loans arranged for powerful people by a credit bank. Later that month two armed men issued further threats against several journalists and the paper's director, José Rubén Zamora, because of its coverage of the loans. *Prensa Libre* journalists received threats around the same time because of similar investigative journalism. *El Periódico*'s offices had previously been attacked by supporters of the FRG protesting against articles questioning the policies of the then Minister of Communications, Luis Rabbé.

FAMDEGUA director Aura Elena Farfán and her driver, Otto Villanueva, were briefly abducted, questioned about FAMDEGUA's work and threatened in May 2001 by two armed men, despite the presence of security personnel assigned to protect FAMDEGUA after previous attacks.

CALDH employees appeared to have been especially singled out in April 2001 by FRG supporters reportedly bussed into the capital to confront demonstrators calling for Ríos Montt's Congressional immunity to be lifted so that he could be tried for the Guategate affair. Earlier, in February 2001, CALDH reported that groups of soldiers were visiting various communities included in the second CALDH-assisted collective suit for genocide against officials of the Ríos Montt government. The soldiers were apparently intimidating community members to dissuade them from testifying to CALDH about massacres they had witnessed. Former civil patrollers warned potential witnesses, "Forget the bones, if you want to complain about what happened here in the village, you're going to go through the same thing again."

In June 2001, AI itself was targeted, when an AI delegate was seized outside her hotel room in Guatemala City. Her colleagues found her bound and gagged on the hotel's fire escape stairs some two hours later. A formal complaint about the attack was lodged with the Public Prosecutor's Office, but rather than initiate a serious investigation, the then Minister of the Interior, Byron Barrientos publicly accused AI of fabricating the attack.

Journalists working with the *Centro de Reportes Informativos sobre Guatemala* (CERIGUA), Centre for Informative Reporting on Guatemala, received death threats in July 2001, the latest in a series. CERIGUA has been reporting on political and human rights topics in Guatemala since its foundation in 1983, and has been constantly targeted. In 1994 the Centre was raided and robbed and its archives destroyed.

Also in July, several attacks were carried out against members of the *Asociación Justicia y Reconciliación* (AJR), Association for Justice and Reconciliation, the group of massacre survivors on whose behalf CALDH has filed its two suits. One person was killed, and another, the President of the Association, was stabbed with a knife.

Massacre survivor Anselmo Roldán Aguilar, president of the Association for Justice and Reconciliation, pictured fourth from left with CALDH and AI staff, at the June 2001 event at which survivors filed a genocide suit against officials of the Ríos Montt government. He suffered a knife attack a month later. The banner reads: "Obtaining justice is the road to reconciliation. Justice for Genocide, June 2001." © AI

In October 2001, Matilde Leonor González, a historian with AVANSCO, the social science research institute with which Myrna Mack was working at the time of her murder, was repeatedly followed and intimidated, apparently because of her findings regarding the role the military has played in manipulating local power structures to incite mob violence and lynchings throughout the country.

In the same month, staff members of a church centre in the capital reported threats after they allowed representatives of the rural communities involved in the two CALDH suits to lodge at the centre while in Guatemala City to attend an event related to their suits.

In November, staff of the Human Rights Procurator's Quetzaltenango office reported death threats, and a office break-in, apparently in reprisal for their work in investigating corruption in state institutions in Quetzaltenango Department. Similar threats were reported against local staff of the Procurator in Huehuetenango, Izabal and Retalhuleu Departments.

Chapter 3: Impunity – three case studies

Many of the attacks on human rights defenders briefly listed above are clearly linked to specific anti-impunity initiatives. The case studies which follow illustrate in more detail the costs of even slight progress towards justice and the inextricable links between the failure to punish perpetrators for past abuses and new outrages.

A full exposition of obstacles and delays faced in the cases chosen would require several volumes, but some detail is given to give an idea of how prolonged and frustrating it has been to pursue these cases through the Guatemalan courts in even these prominent cases.[9]

Silencing the past: The murder of Bishop Gerardi

Efforts to bring those responsible to justice for the murder of Bishop Juan José Gerardi in 1998 present one of the most instructive examples of the difficulties and the costs of the struggle against impunity.

[9] AI's information on the cases detailed here comes in part fromdirect observation by lawyers sent to observe various stages of the relevant trials under the auspices of AI's Guatemala Trial Observers Project.

Geradi banner ODHAG (+photo insert)jpeg

Bishop Juan José Gerardi headed the Guatemalan church's inquiry into the abuses of the conflict years. He was battered to death in April 1998 two days after presenting the project's findings. The banner displayed outside the courtroom where three military officials were eventually found guilty of his killing in June 2001 reads "Justice for a just man. Mons. Gerardi, Martyr to the Truth." © AI

Bishop Gerardi headed the *Oficina de Derechos Humanos del Arzobispado* (ODHAG), Human Rights Office of the Archbishopric. He was the driving force behind the church's REMHI report. On 26 April 1998, he presided over the report's presentation to the Guatemalan and international public at a ceremony at the Metropolitan Cathedral in Guatemala City. Two days later he was clubbed to death outside his home in central Guatemala City. He was the highest-ranking Guatemalan clergyman ever to be extrajudicially executed. The international community considered the case an important indicator of whether Guatemala's judicial system could be made to function, asking themselves how the average person could count on the law to protect the innocent and punish the guilty, if justice could not be done in the case of an internationally renowned Bishop.

From the outset, those pressing for genuine inquiries were subject to constant threats and harassment, while official investigations seemed designed to obscure rather than uncover the causes of Bishop Gerardi's death. The crime scene itself was not even cordoned off and evidence was destroyed, removed or contaminated. Videos show investigators examining

evidence without rubber gloves and tramping through Bishop Gerardi's blood. Other blood stains were scrubbed clean.

Human rights groups believed that sectors and individuals opposed to inquiries into past human rights violations may have been behind the Bishop's murder. Indeed, witnesses insisted that EMP members were present on the scene, even before the police arrived.

It was a year before authorities admitted that EMP members were present, claiming that they were asked to go there by a prominent Guatemalan rights activist, which she denied. The authorities also refused to pursue any line of inquiry which implied that Bishop Gerardi may have been extrajudicially executed because of his involvement in human rights activities, particularly REMHI.

Instead, the first theory to explain his death was that indigents who customarily slept near his home and were seen nearby on the night of the murder had killed him, possibly in the course of a robbery, possibly while under the influence of drink and drugs. A number were arrested and held briefly. After their release, an anonymous death squad claimed responsibility for the Bishop's murder. Meanwhile, ODHAG staff said that they had already provided the special commission named by the government to investigate the case with information implicating military personnel, but that rather than following this up, the authorities were engaged in a cover-up.

The next theory circulated by military intelligence was that Bishop Gerardi's murder stemmed from a homosexual quarrel. A variation was that he was killed by the priest with whom he shared his residence, Mario Orantes Nájera, when Bishop Gerardi discovered Mario Orantes with a male lover. Mario Orantes and the priests' housekeeper were detained and held for some time, while these theories were pursued. The housekeeper was also accused of concealing evidence, for having washed away the Bishop's blood after the murder, apparently on Mario Orantes' orders.

Another scenario floated was that Bishop Gerardi was killed because he had discovered that church officials were involved in theft of church treasures for international sale. This theory was propounded by a relative of one of the military officials implicated, apparently to deflect inquiries.

It was even suggested that Mario Orantes' dog attacked and killed the Bishop on Orantes' orders. This was based on the findings of a Spanish forensic expert, brought into the inquiry by the Public Prosecutor's Office, that autopsy photographs of the Bishop's face showed dog bites. The animal was duly taken into custody, where he eventually died of old age.

Frustrated at official focus on the dog theory, ODHAG requested and eventually received co-complainant (*querellante adhesivo*)[10] status. It ODHAG requested a second autopsy to lay the dog bite theory to rest. Finally, in September 1998, the body was exhumed for a second autopsy. US experts were present along with two forensic experts named by ODHAG and the original Spanish expert. Officials blocked the US experts from participating, but they were allowed to observe. They reported that wounds and marks on Bishop Gerardi's body did not accord with the dog bite theory, and did not match the dental mould of the dog's teeth. The Spanish expert continued to insist that Bishop Gerardi was attacked and bitten by the dog.

In November 1998, a former attorney general contracted by the Church to assess official inquiries into the murder concluded that the killing had all the hallmarks of an extrajudicial execution and that Mario Orantes had been wrongfully accused.

ODHAG and other NGOs continued pressure for three named military officials to be investigated. Abroad, the European Parliament and the US government were among those who repeatedly called for those responsible to be brought to justice. Finally, the initial prosecutor, whom ODHAG accused of incompetence, partiality and conflict of interest because of his links to the military, was pulled off the investigation. His successor went into exile after death threats, to be replaced in December 1998 by a third prosecutor, Celvin Galindo. Shortly afterwards, the initial judge also withdrew.

In February 1999, the President of the Guatemalan Bishop's Council stated that the government had approached church officials, offering to arrange Mario Orantes' release in exchange for church silence on possible military or government involvement. The government denied these allegations.

In March 1999, Prosecutor Galindo announced that he would investigate possible political motives for the murder. The following day the new judge on the case withdrew after receiving threats to himself and his family. In October 1999, following repeated threats, Celvin Galindo too left the country.

Little progress was made for some time while those continuing to press for justice faced new threats and attacks. In April 2000 for example, three heavily armed men forcibly entered the

[10]Guatemalan law authorizes the victim (or persons harmed) to initiate criminal proceedings or join those already initiated by the Public Prosecutor's Office, as "*querellante adhesivo*" or co-complainant. Any citizen or association of citizens can exercise this role when public officials or employees are accused of human rights violations or have committed crimes abusing their office. Human rights groups often use this technique to push forward prosecutions when state officials are incompetent or partial and most human rights cases which have made any progress would not have done so without the active participation of querellantes adhesivos.

home of Ronalth Ochaeta, then ODHAG's Director. They searched the house and threatened Ronalth Ochaeta's domestic employee and his four-year-old son. They left behind a concrete block, apparently a reference to the cement block found near Bishop Gerardi's body, which was the presumed murder weapon. Around the same time, Archbishop Próspero Penados and the Auxiliary Bishop Mario Ríos Mont, who replaced Bishop Gerardi at ODHAG, received death threats.

In May 2000, two members of the ODHAG Gerardi case investigatory team received death threats after the case judge case ruled that three high-ranking military officers, one of them a former director of military intelligence, another his son, and the third a former member of the EMP, all named by human rights groups as suspects from the start, should stand trial for the murder. The judge herself received threats and was followed by unknown individuals.

Shortly after the judge's order, ODHAG staff member Rodrigo Salvado received the first of many telephoned threats warning he was on a "black list" of people being investigated by the government. He received some 20 such calls in a single day, from a man who insulted him and his family and said a group was on its way to kill him. Mario Domingo, ODHAG's legal adviser on the Gerardi case, received calls at his work place; once a song called *El Desaparecido*, The "Disappeared", was played.

One of the military men indicted claimed that he could not have been involved because he was in custody for another killing at the time of the murder. However, it was found that prison records had been altered, apparently to enable such a claim. His cell-mate, who testified about his absence from prison when the murder occurred, received threats in prison and feared for his life. Another witness was murdered in prison, and an attack attempted against one of the detained army officials, which local analysts suggested may have been intended to eliminate him and so prevent him from implicating more senior officers.

After further twists and turns in the case, the three military men and Mario Orantes were taken into custody and the housekeeper released into provisional liberty. Delaying tactics by their lawyers continued, one suggestion being that trial should be before a military court.

As detailed above, by the time proceedings reopened in spring 2001, a judge and two prosecutors had fled the country, after receiving threats. One of the prosecutors had also found five army officers staking out his house. Dozens of others involved in the case reported serious intimidation and another dozen, including an EMP member who implicated colleagues in the murder, had also fled the country. Three witnesses who stayed were killed, as were six of the indigents sleeping outdoors near Bishop Gerardi's home the night of the crime.

Further incidents followed: a grenade was thrown at the home of presiding judge Yasmín Barrios the day before the trial reopened in March 2001. In April, Mynor Melgar, lead

ODHAG lawyer, received yet another threat two days after announcing that ODHAG was helping prepare a suit for genocide against General Ríos Montt.

Five employees of the Myrna Mack Foundation also reported threats in April 2001 linked to the case. One was retired Peruvian general, Rodolfo Robes, who testified in both the Myrna Mack and Gerardi cases, on working methods of Latin American military intelligence agencies and the likely effect of the REMHI project on the Guatemalan military.

The April 2001 threats to ODHAG staff and others elicited an angry denunciation from Auxiliary Bishop Mario Ríos Mont, who then himself received threats, two days after giving his testimony. In the same month, an AI member published an article in the USA emphasizing the abuses against those pursuing justice for the murder, and likewise began to receive threats.

In June 2001, the three military men were convicted of extrajudicial execution and sentenced to 30 years' imprisonment. Mario Orantes received 20 years as an accomplice and the housekeeper was cleared. The case remained open against other military allegedly involved.

The decision was immediately appealed and new threats reported against Judge Barrios and another of the judges. Judge Barrios also saw a helicopter overflying her home. In the past, such overflights have presaged fatal attacks upon those under surveillance. One witness was told to withdraw his testimony or his wife would be kidnapped and murdered. Another was attacked in prison and a third went into hiding abroad. Leopoldo Mario Zeissig, prosecutor at the time of sentencing, followed his predecessors into exile after threats against himself and his family.

Myrna Mack.jpeg

Anthropologist Myrna Mack linked the plight of the tens of thousands of indigenous peoples displaced during the civil conflict to the army's counter-insurgency policies. She was knifed to death in 1990. The Guatemalan State accepted institutional responsibility for her death, and the actual perpetrator has been imprisoned, but those who ordered her extrajudicial execution have still not been brought to justice. © Rony Ivan Veliz

Meanwhile, observers question whether the material and intellectual authors of the crime have yet been identified. They note that the highest ranking of the three convicted officers had been an important supporter of General Oscar Mejía Víctores who overthrew General Ríos Montt as head of state in 1983 and had since been involved in further internal military manoeuverings against General Ríos Montt's supporters.

The long road to justice: The case of Myrna Mack

In 1989 anthropologist Myrna Mack, founder member of the social science research institute

AVANSCO, published a path-breaking study which concluded that government counter-insurgency policies caused internal displacement of Guatemala's indigenous peoples and their resultant suffering. It came as peace talks began, and was highly damaging to the government.

On 11 September 1990, she was stabbed to death as she left AVANSCO's office in the capital. The victim's sister Helen Mack immediately took up the case as *querellante adhesivo* and fought tirelessly to bring those who ordered and carried out her sister's death to justice. Irregularities, incompetence and attacks against witnesses and professionals involved in the investigation were soon evident. Despite the almost immediate presence of the Police Chief on the scene, the murder scene was not properly protected and footprint evidence was destroyed. Plastic possibly used as a ligature and evident in photographs was discarded as irrelevant. The victim's hands were cleaned, destroying any evidence left by an apparent struggle with her attacker.

Eventually, based on eye-witness testimony from two former members of the police department's criminal investigations unit, police investigators concluded that Myrna Mack had been under surveillance by members of army intelligence. Among those following her was an army anti-narcotics agent and EMP security sergeant Noel de Jesús Beteta Alvarez, who was identified from photo archives. The police investigators also concluded that she had been murdered because of her report.

The EMP refused to turn Noel Beteta over for inquiries and the police report was only submitted to the Public Ministry months later. A shortened version entered into the court record had no reference to military involvement. When the original report eventually became public, the then Attorney General admitted that the killing was political. Shortly afterwards, the police inspector responsible for the report was shot and killed as he prepared to travel to testify before the Inter-American Commission on Human Rights (IACHR), where the case had also been filed. His co-investigator fled the country.

Noel Beteta was arrested in the USA in November 1991 for illegal entry and deported to Guatemala to face charges for the murder of Myrna Mack. By the time he was sentenced in 1993 to 25 years for the murder, there had been 13 judges on the case, many of whom had withdrawn because of security concerns. Several witnesses withdrew their original police statements following threats. Journalists following the case were threatened to stop further reporting. Noel Beteta himself allegedly tried to commit suicide in prison in 1994, but Guatemalan sources said that in fact an attempt had been made to murder him to prevent him from giving any evidence that might implicate more senior officers.

After Noel Beteta's conviction, Helen Mack immediately filed suit, asking for his superiors to be prosecuted. An appeal against a Supreme Court decision allowing this was immediately lodged with the Constitutional Court. Constitutional Court president, Epaminondas González

Dubón, was due to rule on the appeal when he was extrajudicially executed in April 1994 (see below). In November, a number of prisoners in the same prison as Noel Beteta were killed, allegedly to intimidate him and fellow inmates who were willing to give evidence about higher ranking military officers who had ordered specific killings.

Since then, the defendants have used every imaginable legal manoeuvre to paralyse the judicial process, including claims that they are eligible under amnesty laws and that proceedings should be conducted by military courts. Each appeal has made its way labouriously up to the Constitutional Court. Meanwhile, judges and Public Ministry officials have repeatedly "lost" evidence, have denied they were competent to hear the case and have tried to restart proceedings altogether, under an obsolete penal code.
Oral hearings against the alleged intellectual authors of the crime were at last scheduled to begin in October 2001, eight years after first requested, but were delayed again after a further defence appeal.

Helen Mack also pursued the case via the Inter-American system. The IACHR accepted the case even though domestic remedies had not been exhausted, on the grounds that the complainant had been impeded in her efforts to pursue domestic remedies and that there had been unjustified delays in such proceedings. In the meantime, proceedings initiated before the Commission in a number of cases resulted in "friendly settlements" between the complainants and the Guatemalan state in March-April 2000, in accordance with procedures set out under Articles 48 and 49 of the American Convention on Human Rights. In this context (given that if such agreements are finalized they normally preclude a decision from the Inter-American Court), Guatemala accepted institutional responsibility for the murder of Myrna Mack and agreed to pay compensation. As a result of that admission, Helen Mack entered into a preliminary agreement with Guatemala to explore the possibility of reaching a "friendly settlement", dependent upon trial of those responsible for the crime and conclusion of the relevant legal proceedings within a reasonable period of time.

The reports of those appointed to monitor compliance indicate that the agreements reached were clearly not fulfilled by Guatemala. Given this situation, Helen Mack decided that it was not possible to reach a 'friendly settlement", and asked that proceedings continue on the case within the Inter-American system. The case was duly filed by the Commission before the Inter-American Court of Human Rights, which is expected to deliver its decision in 2002.

Gonzalez Dubon2.jpeg

Constitutional Court president Epaminondas González Dubón shown here meeting a 1993 AI delegation, was killed in April 1994 shortly after he cast the deciding vote to extradite an army official to the United States to face drug-trafficking charges. © AI

Striking at the judiciary: The case of Judge Epaminondas González Dubón

Constitutional Court president Judge Epaminondas González Dubón was killed in April 1994, when unidentified men opened fire on his car as he returned to his home in Guatemala City. Guatemalan human rights groups were convinced from the outset that he was the victim of an extrajudicial execution and that his assailants were acting for hard-line Guatemalan military officers. His case illustrates that even the highest ranking members of the judiciary are at risk when they try to fulfill their professional obligations. As in the Gerardi case, it also raises doubts as to whether the real culprits and those who ordered their actions have been convicted.

The authorities maintained that Judge González was the victim of common crime, but neither his family nor local human rights groups agreed. He had received anonymous telephoned death threats before his murder, a funeral wreath was repeatedly thrown into his garden and five men in a pick-up with polarized windows were seen monitoring his home and neighbourhood the week before.

There were also possible political motives for his murder. The previous year for example, Judge González had declared illegal the ultimately unsuccessful effort by then President Jorge Serrano to seize unconstitutional powers in an "*auto-golpe*" (self-imposed coup). He had also ruled that Jorge Serrano's Vice-President, Gustavo Espina, could not take over after Jorge Serrano left the country, as, having been involved in the coup, he was constitutionally ineligible. As a result of his rulings, two powerful generals had to leave the army.

In another decision made shortly before his death and also likely to have antagonized powerful sectors, Judge González ruled that attempts to prolong the tenure of Congressional deputies were unconstitutional. He also cast the deciding vote to accept a US writ for extradition of an army lieutenant colonel for narco-trafficking. The officer was the first member of the Guatemalan armed forces for whom the USA had issued an extradition request. Nine days later, Judge González was killed. Two days afterwards, the same court then voted against extradition. Papers relating to the original extradition decision had been "lost".

At the time of his murder, Judge González was also on the verge of making important rulings in the Myrna Mack case. For example, an appeal from the military officials accused of being the intellectual authors of Myrna Mack's murder was before the Constitutional Court. The Supreme Court had overturned an Appeal Court's decision to close the case without prosecuting the intellectual authors, and Judge Gonzalez was to rule on the officers' challenge to the Supreme Court's decision.

Officials obstructed the investigation into the Judge's killing from the outset. According to reports, highly placed officials called police investigators hours after the murder and instructed them to treat it as a common crime. The police and the Minister of the Interior duly attributed it to an attempted car theft gone wrong. However, they could not explain why the Judge's car had not been stolen.

Irregularities and delays stalled proceedings for several years, until in 1996 a "Criss Cross" car theft gang member testified about the involvement of an EMP officer. According to this testimony, the EMP member identified himself as a sub-lieutenant, used a car belonging to a named member of the EMP, provided gang members with false EMP credentials, paid Q325,000[11] as first installment for Judge González' extrajudicial execution, and made another payment after the killing.

As the family continued to press to get to the bottom of the affair, documents were found to have gone missing from court files. The lawyer representing two brothers charged with the killing withdrew in 1996 after receiving death threats. These began when she stated that she had a tape recording in which a third individual, a minor when Judge González died, said he was the killer. He was arrested for another crime, but eventually linked to Judge González' murder. A police officer was allegedly bribed to tamper with his file: information on a string of previous arrests was either not recorded or had been removed, as had a previous arrest warrant never acted on.

The leader of the Criss Cross gang reportedly said that he would have this third individual killed in prison, but eventually he and another gang member were murdered in unresolved

[11] Approximately US $40,323 on the basis of exchange rates prevailing in late 2001.

separate killings. An eyewitness and one of those charged received death threats while in prison.

Six people were eventually convicted in 1996, but received relatively light terms of two to 12 years. The Public Ministry appealed against their sentences as too lenient, but the Appeals Court rescinded the sentences and freed the accused. One had already escaped, apparently with police connivance. The judges who rescinded the sentences then reported death threats. Eventually, the Supreme Court reversed both decisions of the lower courts, fined the judges involved for not having identified and corrected violations of due process, and ordered the case back to the first instance court for retrial.

The Public Ministry then tried to withdraw the action against the judges, leading Judge González' son to charge the Ministry with "violating procedures intended to ensure impartiality", saying that its action reflected "a fundamental decision to allow impunity to prevail". The Court Supervisory Body, the *Supervisión General de Tribunales*, concurred that justice had not been prompt nor adequate. Meanwhile, MINUGUA noted that two other suspects named in police records had not been investigated.

The victim's son tried to revitalise the case in 1997 by becoming "*querellante adhesivo*," and the Constitutional Court ordered the case reactivated. Judge González' nephew was then attacked in circumstances similar to those in which his uncle died. Judge González' son suggested that the attack was in reprisal for the family's continued pursuit of the case. Also in 1997, the charge was changed from homicide to first degree murder, possibly to support the car theft theory.

Eventually, in 1998, two men were sentenced to 27 years' imprisonment for robbery and murder and a third to two years for aggravated robbery. Various subsequent legal manoeuvres ended in October 2001 with the sentencing court's announcement that the two were to serve 25 years for murder. The escapee suspected of the killing remains at large. The intellectual authors also remain unpunished, despite the naming by the Public Prosecutor's Office in 1997 of four former "narco-military" officers as those who ordered and contracted the Criss Cross gang to carry out Judge Gonzalez' murder on orders from the now disarticulated Colombia-based Cali Cartel. The Cartel reportedly acted to prevent the extradition of the Guatemalan army lieutenant colonel, a Cartel member, to the USA.

Following the October 2001 decision, the victim's family blamed the EMP for having ordered Judge González' death and expressed dissatisfaction that no efforts had been made to bring the intellectual authors of the crime to justice.

Chapter 4: A genocide ignored: unresolved massacres

It is estimated that more than 600 indigenous villages were virtually eliminated in large-scale rural massacres by the Guatemalan military and the PAC during the conflict. Children, even tiny infants, were amongst the victims: Of the 6,159 "disappearances" recorded by the CEH, 11 per cent were children, while 33 per cent of the remains exhumed by ODHAG between 1997 and 2000 were those of children.

Children victims of the Los Josefinos, El Petén massacre of March 1982. © AI

Three of the few cases where some progress has been made in identifying the culprits are detailed below. The road to justice has been long and hard, and those involved have paid a heavy price.

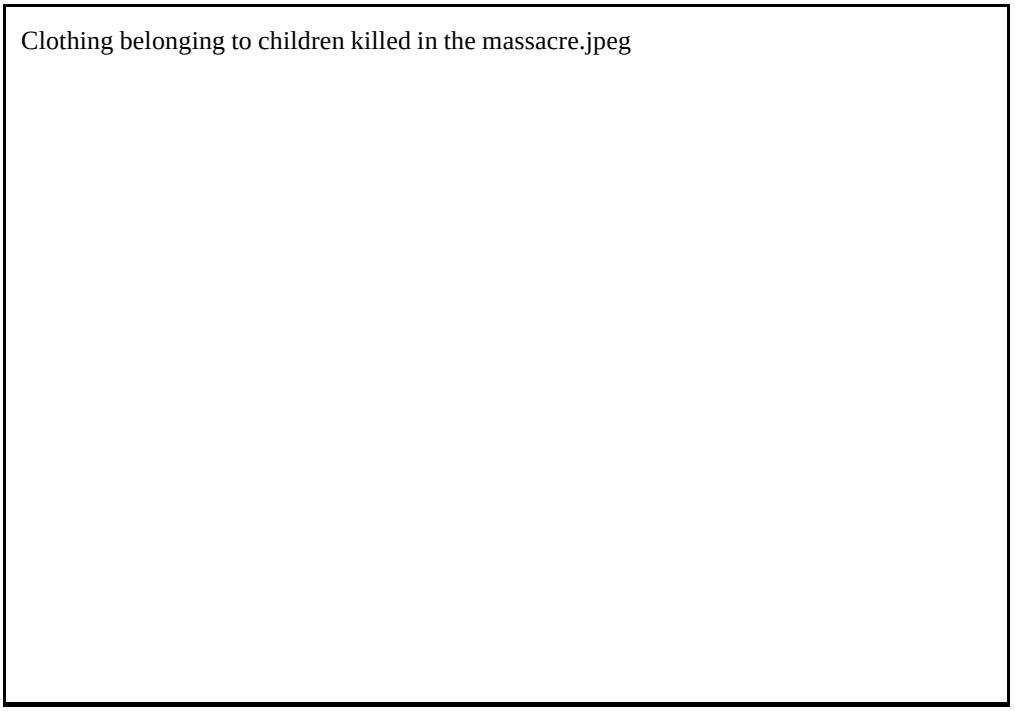
Digging for the truth: The Dos Erres massacre

On 5 December 1982, an army squad of *kaibiles*, the Guatemalan special forces analogous to the US Green Berets, and some paratroopers, entered Dos Erres, La Libertad, Petén Department. When they left three days later, more than 350 men, women and children had been massacred, the women after mass rapes. Many of the corpses were thrown into the village well and others left in nearby woods. The village was then razed to the ground. A local resident had apparently been tortured to make him say that villagers were guerrillas and to lead the army there. According to an eyewitness, parts of the guide's body were then hacked off before he was garotted.

In following years, local parish priests gathered testimonies of survivors and victims' relatives and passed them to ODHAG and then to FAMDEGUA, to act for the survivors.

There the matter rested for nearly 12 years, until July 1994, when the *Equipo Argentino de Antropología Forense*, Argentine Forensic Anthropology Team, was invited by FAMDEGUA and ODHAG to exhume the site where Dos Erres once stood. By July 1995, the team had uncovered the remains of 171 individuals, most from the well, others from the woods. Sixty-seven were aged under 12, many still bore milk teeth. The team established the identities of three victims; relatives and survivors identified 16 others, aged 6 to 65.

During the exhumations, relatives of identified victims reported repeated death threats from a military commissioner. FAMDEGUA and the team required police protection after stones were thrown at their temporary accommodation and machine-guns fired into the air.



An army led unit massacred more than 350 indigenous villagers at Dos Erres, El Petén in December 1982. The clothing and remains recovered clearly illustrate that many of the victims were children: Sixty seven were aged under 12; many skeletons still bore milk teeth. © Argentine Forensic Anthropology Team

The Public Prosecutor continued to show little interest in the case, failing to call witnesses and survivors to testify, despite receiving their testimonies from FAMDEGUA. No efforts were officially made to pursue information from FAMDEGUA regarding those in command in Petén during the massacre. Despite repeated requests to the Attorney General's Office

for appointment of a special investigating attorney (*fiscal especial*), this only happened in 1996. Evidence collected by FAMDEGUA was then transferred to the capital without adequate protection, raising fears of contamination or loss.

Little occurred until July 1997 when Mynor Melgar, from ODHAG's legal department, replaced the first special investigating attorney and called senior army officers to testify. Among those he called were General Ríos Montt and General Mejía Víctores, who was Minister of Defence when the massacre occurred. All those who appeared denied knowledge of this or other massacres and said the killings had been carried out by guerrilla forces.

In October 1997, Mynor Melgar announced that he would charge 14 soldiers with the massacre and was considering charges against Generals Mejía Víctores and Ríos Montt for covering up the atrocity: A lower ranking officer had stated he had reported the army's actions at Dos Erres to his superiors at the time. Further threats and intimidation against FAMDEGUA and MINUGUA staff working in Petén were then reported.

After being suspended for several months, inquiries resumed at the beginning of 1998, but were stalled when two former soldiers present at the massacre, who had given pre-trial testimony, failed to appear. They were unwilling to risk giving formal testimony until they could be assured of security for themselves and their families.

AI interviewed one of the witnesses in hiding in 1997 and obtained a copy of the other's pre-trial statement. Both stated that an army intelligence (G-2) commander at the Santa Elena military base had ordered the massacre, apparently to cover up the rape of a village woman earlier that day by another officer. They described how the *kaibil*-paratrooper unit was dressed as guerrillas and provided with guerrilla armaments to confuse villagers and avoid army accountability.

According to their testimonies, after the order was given, events transpired as follows:

> "As for the massacre, after the meeting at which the officers decided to kill all the people in the village, the execution was started at 2 pm. It began with a child of 3 or 4 months who was thrown down a well. The execution continued doing the same with all the children. [Meanwhile] ... the adults were inside the evangelical church, we could hear them praying to God. Among the women there were girls of 12 and 13 years old which some soldiers started to rape. They brought people to the edge of the well and hit them with clubs. Then they threw them in the well. After the women, they killed the men and then the older men, throwing them all down the well."

The Argentinians' exhumations confirmed that children's bodies were at the bottom of the heaps of remains, indicating they had indeed been killed and thrown in first. Women's bodies were in the middle, the men's on top. Items of clothing found and their placement supported accounts of mass rape.

One of the ex-soldiers told of other killings, preceded by rapes of women and young girls, which were ordered and carried out in the area by specific commanders and soldiers after his unit left Dos Erres.

At the beginning of 1999, special investigator Mynor Melgar's contract was not renewed for "administrative reasons". A new special investigator, already overloaded with other high profile human rights cases, was named. Observers considered that it was his call for high level army officials to testify that led to Mynor Melgar's removal. He subsequently received further death threats. He left Guatemala temporarily, another exile to add to the list of four witnesses, three former *kaibiles* and one survivor, six years old at the time of the massacre, who had already fled abroad. This exiled survivor learned in the course of testifying to the IACHR about the massacre that he had been raised by someone directly involved.

By March 2000, arrangements were in place for the witnesses who were former soldiers to leave Guatemala after testifying, and a hearing was scheduled in Petén for the prosecutor to take their depositions. Four international observers, including one sent by AI's Trial Observers Project, were not allowed to attend the hearing because the prosecutor's office was "too small". FAMDEGUA reported that the witnesses' depositions omitted much of the information that they had previously given, as a result of pressure from the prosecutor. Nonetheless, the new prosecutor announced arrest orders against 15 soldiers.

Just as the case seemed at last to be gathering momentum, the government announced "friendly settlements" with the Inter-American Commission on Human Rights in several cases, including that of Dos Erres. The case was first presented to the Commission by FAMDEGUA in 1996. In a reply to the Commission in 1997, the government of President Arzú acknowledged that it was impossible to deny what had happened at Dos Erres and that "a legal system cannot tolerate nor conceal acts which are at odds with justice, so the law should be applied without distinction to those found to be responsible." The government asked however, that the Commission take into account the "prevailing insecurity" of the time. In October 1998, FAMDEGUA extended its suit to ask for compensation for survivors and relatives of victims, and asked the Commission to help negotiate governmental payments.

Then on 1 April 2000 came the "friendly settlement". This was to comprise truth, justice and reparations. "Truth" required an apology from the state, and the state was obliged to ensure "justice" within the terms of agreement within specified time limits. "Reparation" meant economic and moral compensation – for Dos Erres, a monument to the dead, a video about the massacre, to be presented nationally, and psychiatric help for witnesses and survivors.

By accepting the "friendly settlement", the government ensured that the case would most probably not result in an Inter-American Court ruling against Guatemala. However, FAMDEGUA considered that the agreement implied only that the state recognized its responsibility for the massacre, and family members continued their suit before the Guatemalan courts.

Also in April, the Public Ministry announced that police had been "unable to find" any of the accused to serve arrest orders and that nine had fled the country. FAMDEGUA said the real reason they had not been served was because they named high level officials. It filed an unsuccessful *habeas corpus* application for one of the accused soldiers who had been admitted to a military health centre along with about six others named. FAMDEGUA also asked for General Ríos Montt to be stripped of his Congressional immunity so that he could be prosecuted for the massacre.

The military argued that accepting the testimony of the ex-*kaibiles* prior to trial had violated the presumption of innocence and due process, and that their testimony was invalid because of their involvement in the Dos Erres military action. Those charged also claimed immunity under the 1996 Law of National Reconciliation. This granted exemption from prosecution to members of the armed forces and those under their command for unspecified common crimes carried out in the context of the conflict aimed at preventing, repressing or punishing crimes by armed opposition groups. However, the Law did not exempt those responsible for forced "disappearance", torture and genocide. The Appeals Court turned down the soldiers' arguments, and rejected their *amparo* (petition of enforcement of constitutional rights) for stays of execution of their arrest warrants. However, upon appeal, the Constitutional Court provisionally granted *amparo* and the arrest orders were rescinded. The accused remain at large.

Meanwhile, in August 2000, President Portillo publicly accepted responsibility for some abuses, including deaths at Dos Erres, and assured the victims' families that they would receive compensation. In September came the armed raid on the FAMDEGUA offices described above, in which the computer files stolen included records on Dos Erres.

In April 2001, the head of the *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos*, COPREDEH, Presidential Human Rights Commission, who had formally accepted responsibility on behalf of the state in the "friendly settlements", was dismissed. The dismissal was apparently the result of pressure from military factions who feared that his generalized acceptance of state responsibility for this and other abuses made their own eventual prosecution more likely. His deputy was removed shortly afterwards for the same reasons.

Nonetheless, a compensation agreement was announced in May 2001, but it was not immediately implemented. In November 2001, in a renewed agreement between the parties

under the aegis of the IACHR, the government promised speedy implementation of the April 2000 accord, including payment of the proposed compensation within two weeks and monitoring of the legal proceedings to overcome the obstacles that had been blocking their completion.

Finally, in December, 2001, nineteen years after the massacre, the government paid Q14 million to the families of the people massacred by the Army at Dos Erres. Relatives welcomed the award, but continued to insist that those responsible be brought to justice. They pointed out that at least four officials who participated in the massacre are still in active service, and that the new Minister of the Interior, Eduardo Arévalo Lacs, appointed in November 2001 was believed to have trained the military patrol responsible.A May 2001 compensation agreement was finally implemented in December 2001.

Confronting the past: The massacres at Río Negro

Five massacres were carried out at the Achí village of Río Negro, Rabinal municipality, Baja Verapaz Department between 1980 and 1982 in the course of the counter-insurgency campaign there. Local human rights groups say 4,000 to 5,000 people were killed during that period in the wider Rabinal area, and that 444 of the 791 inhabitants of Río Negro were extrajudicially executed. Río Negro may have been especially targeted because Guatemala's *Instituto Nacional de Electrificación* (INDE), State Electricity Institute, wanted its lands to build the Chixoy hydroelectric power dam. The dam was part of the government's economic development plan for the Transversal del Norte zone, where many generals, including the country's then leader General Lucas García and his brother, General Manuel Benedicto Lucas García, had property. Initial funding came from the Inter-American Development Bank and the World Bank, but much of it reportedly ended up in the pockets of corrupt military officials.

The local community says that it was never consulted throughout the planning and development phases of the project in the 1970s. Most residents refused resettlement, although some did initially agree a move to Pacux, outside Rabinal. Such "poles of development", model villages or "strategic hamlets", were established in various conflict areas to enable the army to monitor people in areas considered sympathetic to the guerrillas. However, villagers found conditions at Pacux inferior to what was promised and returned to Río Negro, to the annoyance of the army and INDE. Villagers also refused army orders to form civil patrols. Their attitudes apparently caused INDE to consider the community "subversive."

In the climate of the time, singling out a community this way was tantamount to declaring it a legitimate target. In 1980, the killings began. First, seven people were killed at a meeting. Later, INDE asked community representatives to its offices to discuss land title issues. They

were apparently ambushed on their way. Their mutilated bodies were later located, but the community's land rights documentation was never recovered.

Then, in 1981, a civil patrol was formed in nearby Xococ, a community long in conflict with Río Negro over land ownership and other issues. Xococ residents felt the patrol gave them authority to settle old scores with Río Negro and in February 1982, Río Negro villagers were ordered to present identification documents in Xococ. Seventy-four people went to do so. Only one returned. She said the others had been massacred by the PAC and soldiers. The young women were first raped.

The Xococ patrol returned repeatedly to Río Negro, searching for "guerrillas". In fear of their lives, the remaining Río Negro men fled to the mountains, believing that their families would not be targeted. But they were wrong. In March 1982 the army and Xococ patrollers returned to Río Negro yet again. Seventy women and 107 children were marched into the mountains and killed. Three women escaped and18 children were taken by patrollers as virtual slaves. After years of beatings and other ill-treatment they were finally allowed to return to their few surviving family members. Several of these children, now adults, have been key witnesses in efforts to bring those responsible for the massacres to justice, and to obtain compensation for the community's lost lands and possessions.

Even those who fled the immediate area were not safe: In May 1982, 84 survivors were killed by the army in their place of refuge in the Río Negro valley. Fifteen women were taken off in a helicopter and never seen again. In September 1982, 30 children and young people taken in by the nearby community of Agua Fría were reportedly massacred along with 62 villagers.

The massacres virtually cleared the village and its immediate vicinity of inhabitants and in 1983, construction of the Chixoy dam began. The community was flooded and survivors lost their lands and belongings; sacred sites also disappeared under the water. Some survivors were resettled. Others took to the mountains where they lived on the run for several years, only coming down to Pacux following an amnesty announced in 1985 by General Mejía Víctores. Even after resettlement at Pacux, former inhabitants of Río Negro were reportedly singled out for ill-treatment by the army, suffering detention, interrogation and torture. Some survivors died there of malnutrition and dehydration.

For many years, the survivors, like the rest of Guatemala, remained silent about their ordeal, fearing further repression. As one child survivor, who lost his parents, younger brothers, older sister and her two children, put it: "What could we do? Go to the police? Go to the civil defence patrols? Go to the army? They had killed our parents. They would kill us if we denounced the massacres so we kept on working and living as we had always done. We didn't even go and bury the dead ... And the army and PAC came regularly. They told us

that our family members, the ones they themselves had murdered were not dead, that they 'went with the guerrilla, or 'to live in the US'."

Gradually, over the years, the real story emerged, and in the early 1990s, what the survivors call "confronting the past" began. In 1993 a Widows and Orphans Association was formed which began to speak out and document the events, as a first step towards justice.

An early leader was Carlos Chen Osorio, who had lost two young children and his wife. She was one of the three victims definitively identified after the exhumation, as she had been heavily pregnant when murdered. Carlos Chen relates how he and 23 other men fled the village in fear of attack, to hide in the jungle. At dawn on 13 March 1982, from their hiding place, they heard an attack and the screams of their wives and children. Then they heard shots. And then silence. Fearing the worst they dared to return to the village. All was silent, but smells of freshly prepared coffee still permeated the air. Torn clothing was strewn about, and the men followed it to two nearby ravines. They could see that bodies has been thrown down the ravines.

Jesús Tecú Osorio, another survivor, was 10 years old in 1982. He has told AI how he and his three younger brothers went to live with his older married sisters after his parents went to Xococ in February and never returned. The four brothers were forcibly marched into the mountains with the rest of the women and children on 13 March. There, the patrollers and soldiers raped many of the women before killing them with machetes or garottes. Many of the children were smashed against rocks and trees, including the young brother Jesús Tecú had been looking after. Jesús Tecú was one of 18 children taken to serve as virtual slaves by members of the patrol convicted years later for the massacres.

Jesús Tecú + group of women (bw).jpeg

Jesús Tecú Osorio and other members of ADIVIMA, the Verapaces massacre survivors association, who are campaigning for compensation. Tecú witnessed the army-led mass killing of 177 women and children, including his young brother at Río Negro, Baja Verapaz in March 1982. He was spared when one of the perpetrators, a civil patroller, decided to take him as a child slave. © AI

Another dramatic story was rescued from oblivion in 2000 when Denese Becker, formerly Dominga Sic Ruiz, declared that she too was a Río Negro survivor. In testimony to AI she explained how her father was killed in the February 1982 massacre and how, aged nine and a half, she witnessed the 13 March raid. Her mother was grabbed by the soldiers but managed to tie her

nine-day-old sister to Denese's back before telling her to run for her life. Denese fled and hid. She watched the mixed army-PAC squad march 177 women and children into the hills. An hour later she heard hundreds of gun shots. She never saw her mother again. Her baby sister died from exposure as Denese hid in the mountains existing on roots and berries. She eventually made contact with other surviving villagers who smuggled her to an orphanage in Guatemala City. From there was she was adopted into the USA. Some 17 years later, she learned of Carlos Chen's visit there to raise support for Río Negro survivors, and made contact. She then returned to Guatemala to find her surviving relatives and confront her memories.

Denise collage.pdf

Nine year old Denese Becker (Dominga Sic) survived the 1982 Río Negro massacre when her mother and many other relatives died. Adopted into the United States, she returned to Guatemala in 2000, to help other survivors seek justice and compensation. Pictured: Denese reuniting with an uncle, surveying the flooded site where Río Negro once stood, at the clinic for DNA testing to confirm her identity; and other survivors turning out to greet her. © AI

Alongside testimonies of survivors like Carlos Chen, Jesus Tecú and Denese Becker, the dead have also helped reveal how they died and who was responsible. Between 1994 and 1995 the Widows and Orphans Association filed 27 requests with the Public Ministry for exhumations of nearby mass graves. Independent forensic anthropology groups began work in 1993, but only a few of the 60 sites believed to lie in Rabinal municipality have been excavated. By 1994, three sites had yielded the remains of some 143 people. At least 85 were judged to be those of children, three as young as six months. One of these died from a gun shot to the head, the other two from severe rib fractures. Other young children were killed by blows to the head with a heavy object. Toys were found among their remains. At least four of the women were in advanced pregnancy at the time of their murder. Many appeared to have been thrown into the graves nude or semi-nude, and then burned.

Following exhumation of the March 1982 victims in 1994, the commander, sub-commander and one member of the Xococ PAC were detained while attempting to move remains from another Río Negro clandestine grave-site. Initially held for disturbing a crime scene, they were later charged with murder, aggravated theft and illegal possession of arms. Survivors and their families immediately began to receive threats, warning them not to testify. A monument was knocked down, reportedly by the patrollers who had killed those it commemorated.

As the initial August 1996 trial date approached, the accused argued that they were eligible for amnesty under a 1986 amnesty law, passed four days before the country returned to nominal civilian rule after more than two decades of military government. The law exempted from prosecution perpetrators and their accomplices responsible for "political crimes and related common crimes during the period 23 March through 14 January 1986" and those who covered up such acts or intervened to repress or persecute those carrying them out. The Human Rights Procurator responded with a ground-breaking resolution, classifying three massacres in Rabinal municipality, including Río Negro, as crimes against humanity and urging that there should be no amnesty or pardon for those responsible. The patrollers' claim was ultimately rejected by the Constitutional Court in 1997.

As a new trial date in 1998 approached, former patrollers and soldiers were increasingly visible in Rabinal and witnesses and their families reported further intimidation. Carlos Chen Osorio was fired upon as he walked his son home from school. The accused threatened to lynch witnesses and their families if they testified. None of the acts of intimidation directed at members of the Widows and Orphans Association was ever investigated. The prosecutor assigned to the case did not even reply to requests, including from four US Senators, for protection for witnesses. In an extraordinarily restrictive interpretation of procedural law, prosecutors required that testimony come not from all witnesses to the events, but only from survivors who had seen specific individuals commit specific killings.

Eventually, the court convened and witnesses could at last describe how the women and children were whipped along with thorned branches and sticks to their place of execution. A child survivor said the women were first forced to dance with soldiers and patrollers to the sound of tapes stolen from the community. The younger women were then raped, before all were extrajudicially executed, some with machetes, some with garottes and others by shots to the head or machine gun fire. One child survivor related: "The patrollers would grab the women one by one and drag them to the edge of the ravine, about 15 metres away. There they would slaughter them and throw them over the edge. I remember seeing that the sandals of the patrollers were covered and full of blood."

He continued: "I saw when they killed a woman named Tomasa López Chen. They had her face down, lying on the ground and they tied a rope around her neck. Then they turned the stick, choking her, but she didn't die. When they took the rope off her neck, she was still moving. A patroller had a huge stick and he hit her with it as if he were killing a snake." He named the man responsible and said he was still living in Xococ. Regarding the death of Petronila Chen, he related, "They killed her one metre from me. I remember how she could no longer talk because they were choking her, then I heard her neck break."

Babies and children were also brutally killed. The witness saw one small baby sliced in two with a machete as he lay on his mother's back in the sling in which indigenous women carry infants. The mother was then hacked to death.

In December 1998, 16 years after the massacres at Río Negro and Agua Fría, three patrollers were convicted of the murder of three victims – three women it had been possible to identify because of their advanced pregnancies. They were cleared of the other charges. Theirs was the first conviction of anyone for the massacres of the late 1970s and early 1980s. Proceedings were instituted against some defence witnesses for having given false evidence, and the case left open against 45 other former patrollers.

Days after the verdict, the seven- year-old-son of a leader of the Widows and Orphans Association was shot and wounded as he played in front of his home in Rabinal.

Initially, the former patrollers were sentenced to death, but they appealed against both their conviction and sentence. In February 1999 both were set aside on grounds of "insufficient evidence". The Appeal Court also accepted the argument that the PAC had not even existed until 1986, the date when their existence was formalized. This despite the fact that the patrollers had already applied for amnesty for these very acts, which they acknowledged were carried out while they were patrollers.

The prosecution appealed against the Appeal Court ruling to the Supreme Court. Further proceedings were ordered and the patrollers were again found guilty, this time for two deaths, and sentenced to 50 years' imprisonment. Relatives of the men took a local judge

hostage in protest but were not prosecuted. An AI trial observer saw former patrollers force a court session to be suspended by breaking in and shouting intimidating slogans and threats at officials and witnesses through loud-speakers. They were apparently attempting to free the patrollers, as had occurred in April 1999 when 100 former patrollers forced their way into a Huehuetenango prison and released 14 former patrollers serving 25 years for the 1993 murder of a land activist.

No arrest warrants have yet been issued against any other patrollers involved and none of the military officials who planned, ordered and led the massacre have been cited. Survivors fear further attacks from families and former colleagues of those convicted, but continue their struggle for compensation for relatives, homes, families, belongings, sacred sites and cultural heritage lost in the Río Negro massacres.

The Tululché massacre [12]

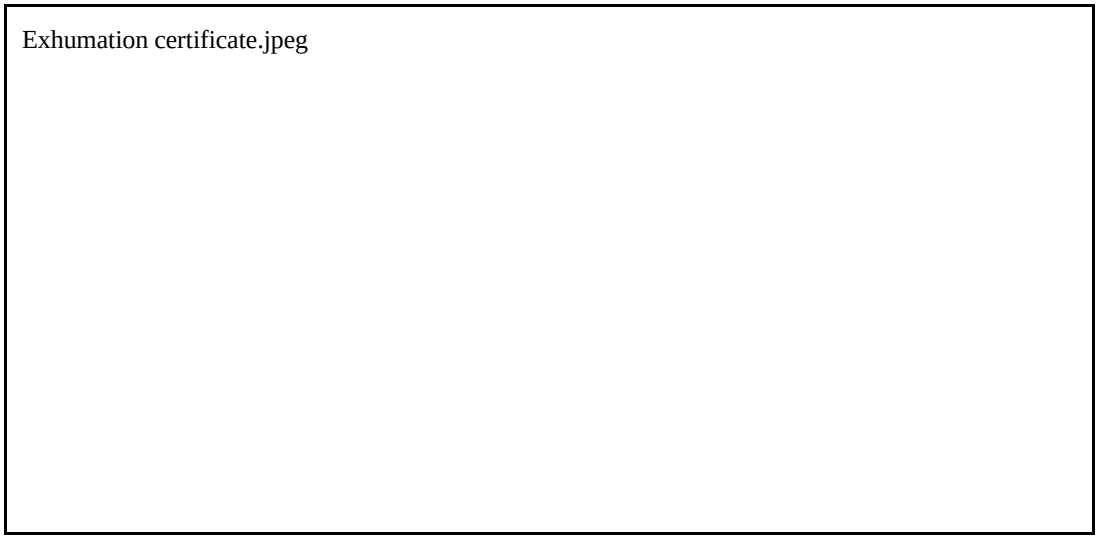
Tululché is another of the handful of cases in Guatemala to end in convictions after years of local and international persistence. Even then, only Cándido Noriega, local strongman and commander of a PAC responsible for atrocities, was brought to justice. Army officials who ordered, commanded and permitted his patrol's activities were never charged.

Cándido Noriega was charged with more than 150 abuses including 35 murders, 44 kidnappings, 14 rapes and 53 other attacks on individuals, including torture. These abuses were allegedly carried out by him or under his leadership in the early 1980s, against Quiché indigenous villagers from the Tululché *finca* (estate) in El Quiché Department. Cándido Noriega denounced his victims as "subversives", to gain official sanction for their elimination, apparently so he could then obtain their lands.

Prosecutions were initiated in 1992 against Cándido Noriega and five others, including his former fellow military commissioner. However, four of the others could not be located and the fifth took refuge in a military hospital when his arrest was ordered. The military then apparently flew him to the USA, where he remains. The warrant remains open.

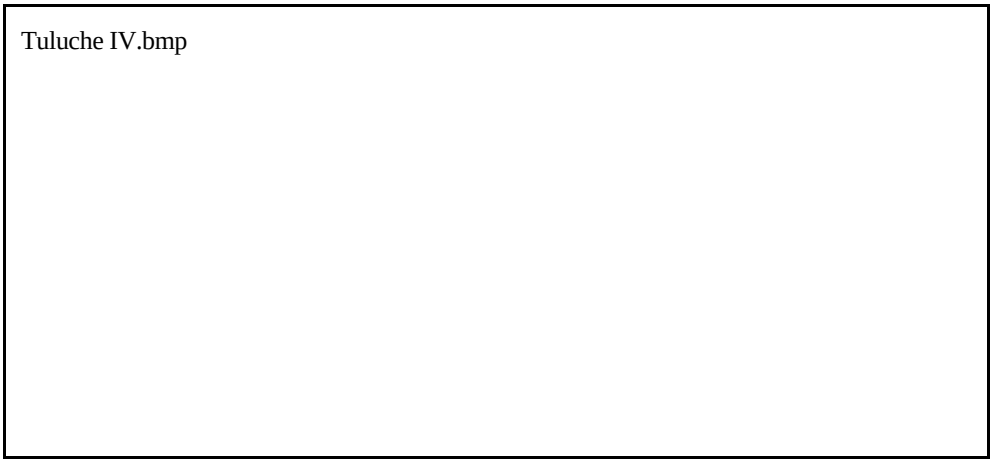
[12] In March 1999, just before the second trial, an AI delegation visited the Tululché area to interview witnesses, survivors, lawyers and staff of the *Conferencia de Religiosos de Guatemala* (CONFREGUA) Conference of Guatemalan Catholic Clergy, involved with the prosecution. It also visited the site where Tululché men were massacred in 1982, and several locations where various other victims were clandestinely buried before being finally exhumed and re-buried in the early 1990s. Much information included here reflects findings of AI's delegation and observations made by lawyers subsequently sent by AI's Trial Observers Project to various phases of the Tululché proceedings.

Exhumation certificate.jpeg



Exhumation record of one of the Tuluché massacre victims. Like the other Tuluché victims he suffered multiple injuries including a fractured skull. © AI

Tuluche IV.bmp



These women were widowed in the course of the more than 150 abuses including 35 murders, 44 kidnappings and 14 rapes carried out by the local civil defence patrol against indigenous villagers at Tululché, El Quiché during the conflict years. The patrol leader was reportedly trying to obtain the villagers' lands. They are here showing a 1999 AI delegation where their husbands were clandestinely buried. © AI

In itial trial

Cándido Noriega reportedly terrorized surviving victims and witnesses for years. Many were widows of his extrajudicial execution victims and had themselves been raped by patrollers. It is therefore perhaps not surprising that it was only in 1992 that they gathered courage to

come forward and initiate proceedings against him, supported by co-complainant CONFREGUA.

However, proceedings ended in 1997 in acquittal after a trial marred by what MINUGUA termed "serious irregularities". These included failure by the court to provide interpretation for the indigenous witnesses; unwarranted dismissal of evidence; and repeated death threats and intimidation directed against lawyers acting for CONFREGUA and others involved in the proceedings, including witnesses. In some cases the defendant's family and supporters shouted abuse at witnesses even as they gave their testimonies. Judges also failed to pay due attention to witnesses. One, known to have adjusted charges in other cases involving the military, repeatedly dozed off during proceedings.

In response, the IACHR granted precautionary measures, asking the government to provide protection for witnesses and lawyers, and COPREDEH and the National Police said they would investigate the incidents of intimidation. Nothing was heard about any such investigations and the lawyers reported further threats.

Noriega Tululche.jpeg

Former civil defence patrol leader Cándido Noriega shown (straw hat) during the reconstruction of events regarding the Tululché massacres, 1999. He was eventually sentenced to 220 years for six murders and two homicides. He was not convicted for the many rapes he allegedly carried out during the conflict years. © AI

The case goes back to court

After the acquittal, the prosecution requested that proceedings be reinitiated on grounds of technical irregularities in the first proceedings. The court ruled the second hearing could only deal with crimes for which the Statute of Limitations was not yet exceeded. Prosecution attorneys decided to concentrate during the second proceedings on the best-documented incidents: six extrajudicial executions, five "disappearances" and a rape.

Cándido Noriega was once again acquitted of all charges in April 1999. The court considered that 30 indigenous witnesses had lied, drawing upon press coverage to agree a common version and conspiring amongst themselves to ensure consistent testimonies. They did it, according to the court, to "undermine Noriega's reputation" and so obstruct his efforts to buy their lands. At the

same time, the court found the witnesses' evidence contradictory. Finally, it found the accused to be an "honourable, respected and hard-working person".

As most of the witnesses were illiterate non-Spanish speakers, AI's trial observer queried whether they could have drawn upon press coverage to ensure consistent testimonies. He found the suggestion that they had "invented" their stories "ridiculous" as bodies had been exhumed from precisely the spots indicated by survivors as clandestine grave sites, while the massacres described conformed to the general pattern in the area at the time.

The villagers' lawyers had submitted a motion to enter the CEH report as evidence, in order to locate the acts of which Cándido Noriega was accused in their social-historical context, and to demonstrate that allegations against him were consistent with army and PAC actions in Quiché during that period. The motion was turned down as "irrelevant", as the accused was charged with homicide, not "massacre". (This charge could not be lodged as it is not defined as a crime in the Guatemalan Penal Code.) In AI's view, the CEH report was highly relevant, particularly as its detailed study of massive extrajudicial executions and "disappearances" during the conflict had concluded that one of the areas where the army and PAC had committed genocide was Chiché, Joyabaj, Zacualpa, El Quiché, precisely where Tululché is located.

AI's trial observer felt witnesses had been subjected to confusing and capricious questioning and inadequate or non-existent interpretation, which sometimes meant they did not understand questions. He considered minor contradictions in the testimonies of various witnesses regarding a particular massacre arose because the building where it occurred now lay in ruins, making exact reconstruction difficult. Generally, he considered reconstructions to have been mere formalities rather than genuine attempts to elicit the truth. During one, a judge walked off without listening to witnesses' testimonies.

AI's trial observer also found consistent bias in favour of the defendant and a racial element in rejection of the eyewitness testimony. One biassed decision was the Public Ministry's rejection as "ill-timed" and "unnecessary" the request to exhume an alleged victim to verify whether he had been mutilated before being extrajudicially executed as witnesses charged.

AI's observer also judged that the defendant and his supporters may have intimidated or suborned the clearly inexperienced judges who heard the case. Furthermore, although witnesses testified that the defendant carried out abuses accompanied by soldiers, there was no effort to establish their identities, nor to charge any soldiers as perpetrators or accessories.

MINUGUA again expressed concern at serious irregularities, concluding: "The conduct of the trial and the sentence of the Court of First Instance provide an example of the defects

and shortcomings described by the Agreement on the Strengthening of Civil Society and which the peace process in Guatemala aims to overcome."

Prosecution lawyers appealed, expressing concern that release of the defendant pending resolution of the appeal could lead to renewed threats and attacks against those involved in the prosecution.

CONFREGUA worker seized

Juan Jeremías.bmp

Juan Jeremías Tecú acted as accompanier and translator for indigenous witnesses giving evidence in the Tululché massacre case. Shortly after accompanying a 1999 AI delegation to the area, he was seized, beaten and interrogated about his work on the case. © AI

No steps were taken, however, to protect those involved in the trial. A few days after the court granted the appeal request in May 1999, religious lay-worker Juan Jeremías Tecú was seized as he arrived for work at CONFREGUA's Guatemala City office. He was held for two hours by men armed with sub-machine guns, beaten and interrogated about his work with CONFREGUA, particularly the Tululché case. Jeremías Tecú had translated for witnesses and accompanied them to proceedings to protect them. He had also acted as a guide and interpreter for AI's March 1999 delegation and for its April trial observer.

Juan Jeremías Tecú and his family were severely affected by his ordeal, which brought to the surface suppressed memories of his father's persecution during the conflict, and massacres Juan Jeremías Tecú had witnessed in his community as a child.

Third proceedings

The Appeals Court eventually ruled that the second proceedings had also been flawed by technical errors and ordered Cándido Noriega to be kept in detention pending another

hearing. CONFREGUA lawyers were concerned that the decision had been made on narrow legal grounds, ignoring their arguments and those of the Public Prosecutor on the merits of the case against Cándido Noriega. By this time, many of the indigenous witnesses were unsure if they could bear the strain of going to court again, while lawyers wondered if the order to hear the case a third time was a manoeuvre to exhaust the prosecution financially and emotionally, as has happened in other high profile human rights cases. In the end, continuing international interest in the case convinced witnesses and CONFREGUA to return to court.

In September 1999, proceedings reopened, and in mid-November, some 17 years after the abuses were committed, the defendant was convicted of six first degree murders and two homicides, and sentenced to 220 years' imprisonment. Under Guatemalan law, he could serve 30 years maximum. He was acquitted of kidnapping, aggravated robbery, setting a person alight, bodily harm, breaking and entry, and larceny. Renewed threats were immediately directed against the prosecutor and eyewitnesses by Cándido Noriega's relatives. The Guatemalan human rights community attributed the conviction to the courage of the indigenous widows who testified, the persistence of their supporters at CONFREGUA, and the interest of the international community.

The next appeal

In December 1999, Cándido Noriega's lawyer appealed against the conviction on the grounds that: the sentence had not been properly issued; the judges had not properly considered the evidence; the charges had incorrectly recorded the dates on which the crimes had been committed; the two previous trials had acquitted him based on the same evidence. This appeal was rejected in February 2000, with an AI observer again present.

The case then went to the Supreme Court for confirmation of the sentence, which came in August 2000. Since then, Cándido Noriega's sons reportedly continue to intimidate those who testified against him, firing warning shots into the air and issuing verbal threats. Meanwhile, 26 Mayan women were especially recognized by ODHAG for their courage in testifying.

Further legal manoeuvres from Cándido Noriega's lawyers are reportedly being considered. Local human rights groups insist that army officials from the Quiché base under whose authority Cándido Noriega operated and the other former military commissioner and patrol commander who apparently fled to the USA must also be brought to justice.

Chapter 5: Impunity and the "Corporate Mafia State"

Failure to act against perpetrators of past atrocities except in a handful of hard-fought cases has encouraged past perpetrators and others to abuse their authority to commit crimes with impunity.

One category of abuses involves crimes carried out by or on behalf of the so-called "Corporate Mafia State". This term encompasses the "unholy alliance" between traditional sectors of the oligarchy, some "new entrepreneurs", elements of the police and military, and common criminals. Members of all these sectors collude to control lucrative "black", "dirty" or illegal industries, including drugs and arms trafficking, money laundering, car theft rings, the adoption racket, kidnapping for ransom, illegal logging and other proscribed use of state protected lands. They also conspire to ensure monopoly control of legal industries such as the oil industry.

Such crimes were always current, but are more visible and prevalent in post-conflict Guatemala. Those involved use their connections – political and with the military and police – to reap profits and intimidate or even eliminate those who get in their way, know too much, offer competition, or try to investigate their activities. The victims are not targeted for "classic" human rights reasons, such as reasons of conscience or opposition to the government. They are victimized because they threaten the financial interests of Guatemala's powerful economic elite and those in the security forces who protect them or share the spoils. That, plus the fact that state agents are accomplices in the crimes or help cover them up, mean that in AI's view, such acts are a cause for concern not only to Guatemalans but also to the international human rights community.

Inquiries into such abuses, some of which are described in this report, also reveal the insidious linkages which can exist between multinational corporations and powerful Guatemalan economic interests, traditional politicians, and the security services. Too often they collude in or turn a blind eye to abuses against weaker members of Guatemalan society who stand in their way, and then cooperate to help ensure that the perpetrators enjoy complete impunity.

No justice for the poor

The situation in El Estor, Izabal Department, illustrates how little the average citizen can expect from the Guatemalan justice system, particularly when they are poor and indigenous, and live in remote areas where powerful interests collude to protect lucrative illegal activities. An in-depth look at two recent cases suggests ways in which business interests, including some multinational corporations, are reportedly colluding with local entrepreneurs at the cost of the poorest of the Guatemalan poor, and how local powers rely on their influence and connections with judicial and military authorities to distort, manipulate and eventually escape the legal process.

For more than two decades, peasants from El Estor, Izabal Department, who encouraged their neighbours to understand and defend their rights have been targeted for human rights abuses. In the 1980s, a series of catechists preaching the most basic of human rights

discourses "disappeared" or were killed. Allegedly, local landowners took advantage of the civil conflict to denounce and eliminate as "subversives" people whose lands they wanted.

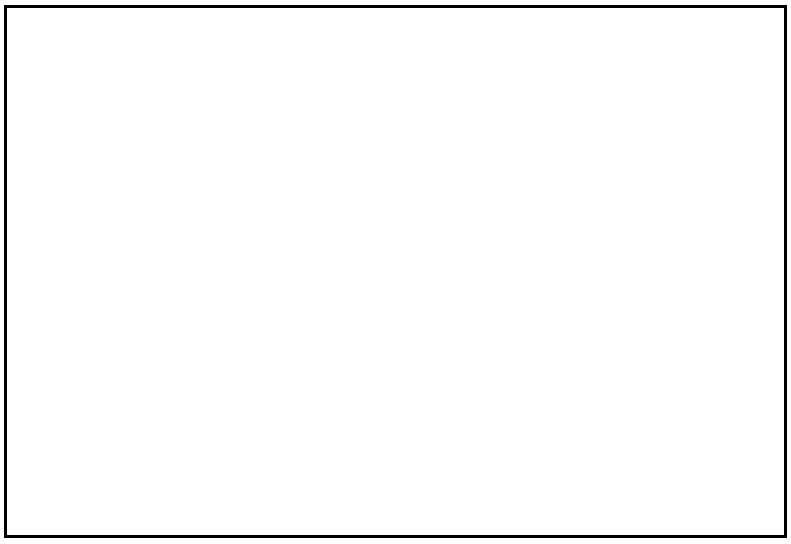
In the 1990s, several more peasants were killed in incidents which were never investigated. US national Daniel Vogt, who worked as a priest with the local peasantry for many years, was also a long-term target of threats and intimidation. Daniel Vogt had first become involved with peasants from El Sauce, El Estor, when 21 community members were arrested and charged with illegal deforestation after one of them had picked pine branches to decorate the parish church. Pine needles are traditionally used to carpet the floor and otherwise adorn churches or other places of celebration in indigenous Guatemala.

The branches had been gathered in an area where the community had traditionally collected firewood, but which is now part of a concession awarded to a Canadian mining company. The lands have been unused since the mining company shut down nickel extraction in 1982, and are said to be the largest tract of idle land in Guatemala. A local landowner allegedly pays off locally hired representatives of the company and the local military in exchange for being allowed to carry out illegal logging and/or transport of the illegal timber on the lands. Meanwhile, the landowner reportedly routinely informs the authorities when peasants collect fallen timber there according to traditional practice, and they are arrested.

Further arrest orders for sedition and incitement to violence were issued against hundreds of others who demonstrated to urge the mayor to intervene or who demanded his resignation for corruption. Daniel Vogt was placed under surveillance by military intelligence, received death threats and was charged with being a guerrilla sympathizer. The IACHR twice issued "precautionary measures" to protect him but the threats against him and other members of the parish continued. He no longer works in the area.

Rosa Pec Chub

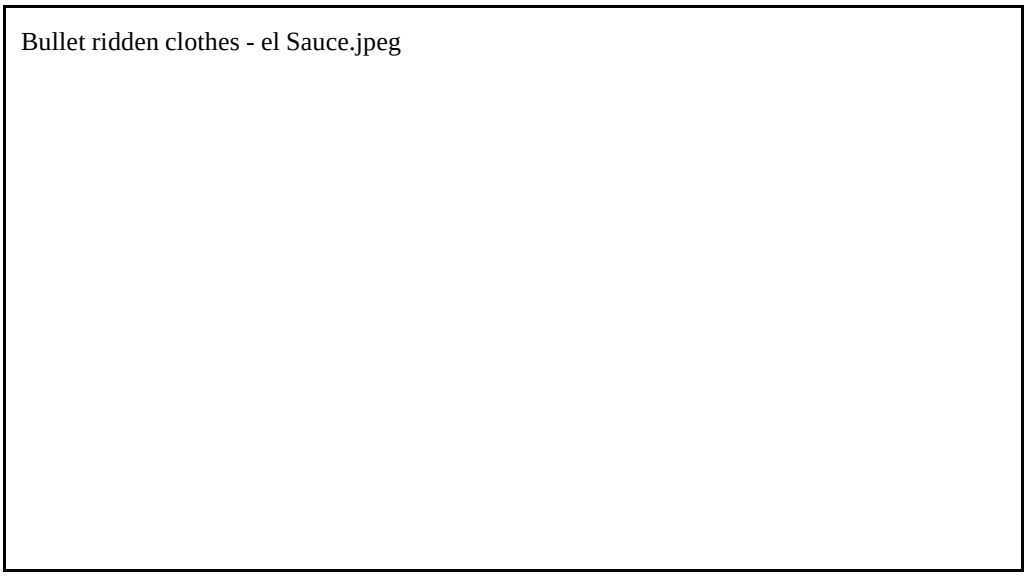
Rosa Pec Chub was extrajudicially executed in 1997. The 15 indigenous families that live in her community, El Sauce, have been engaged in a long-term dispute with the local landowner mentioned above, who apparently wanted their lands for his cattle ranching and logging enterprises.



Rosa Pec Chub (top, second from left), killed by private security guards at El Sauce, Izabal in 1997. Her killers have never been brought to justice. © Private

After years of smouldering tension, violence erupted on 24 January 1997. Led by the local land-owner, between 70 and 100 heavily armed individuals, some private security guards[13] and other of his employees, raided El Sauce at 5am, firing at the residents. They claimed to be executing an eviction order, but El Sauce's lands had been bought for them by a religious order and no such order existed. The assailants' arms were also illegal.

Eyewitnesses reported that after the initial burst of gun-fire, the landowner began shouting and swearing at several women preparing breakfast. He then fired at them, killing 57-year-old Rosa Pec Chub. When her son protested, the landowner reportedly shouted "Shut up, son of a bitch, get out of here, this is my land" and shot him in the side. The assailants then began destroying the community's homes, crops and chapel. A judge who saw the devastation afterwards said they had acted "with brutal perversity, cruelty, premeditation, in the early



The El Sauce community, El Estor, Izabal, shortly after it was attacked in January 1997 by private security guards led by a local land owner engaged in a long term land dispute with the villagers. The women's clothing shown here was riddled in the hail of bullets which killed Rosa Pec Chub. © AI

hours of the morning, as a mob and far from any source of help".
Local sources told AI that the landowner was accustomed to acting with impunity because his nephew was Izabal's deputy to Congress. They believed local authorities to be complicit

[13] Private security guards fall "under jurisdiction of the Ministry of the Interior, through the National Police General Management", article 8, Private Policing Law, Decree 73-70, October 1970. According to article 14: "In cases involving the application of Public Security Law, private security guards cooperate directly with the National Police General Management".

in the attack, noting that they had failed to take adequate steps to prevent the incident and guarantee the safety of the peasants, despite several past outbreaks of trouble. The state also failed to exercise control over the private security guards recruited by the landowner for the attack. Such private guards are often former members of the security forces, and they frequently appear to operate with the cooperation and acquiescence of local security forces.

The El Sauce community received little support from officialdom in their efforts to identify and prosecute those responsible for Rosa Pec Chub's murder. The following day, villagers travelled seven hours to El Estor with her body, to denounce the attack and arrange the autopsy necessary for legal burial. Unable to locate a single municipal authority, they believed the authorities already knew what had happened and had intentionally been absent.

Several days later, the landowner's uncle falsely informed departmental authorities that peasants had invaded his estate under Daniel Vogt's leadership. The resources at the command of powerful local interests were reflected in fabricated reports in major newspapers about supposed mass confrontations between the peasants and workers from neighbouring plantations. Local analysts suggested both initiatives may have been intended to cloak an attack on Daniel Vogt.

Arrest warrants for murder, grievous bodily harm and arson were eventually issued in February 1997 against the landowner and some of his henchmen. The judge then received death threats, and asked for a transfer. The landowner disappeared from the area, and no efforts were made to search the farm estate where he was widely rumoured to be hiding out. Meanwhile, some of his workers returned to El Sauce to warn inhabitants that they "intended to finish the job." They also threatened residents of another nearby community, whose lands have been gradually usurped by the first landowner's brother, saying that they would do there what they had done at El Sauce. This incident too went uninvestigated and unpunished.

The landowner eventually returned home and lived openly at El Estor for many months, even visiting the local police office despite an outstanding arrest warrant. When challenged, the police variously replied that: they did not have the human or financial resources to detain him; their police car could not cross the river to reach his home; it had two flat tires and could not leave the station; and their bicycle was also flat and could not be used either.

The landowner's lawyers appealed against his arrest order, and a second instance court suspended it. The complainants in the case were never informed that the appeal had been lodged, as is mandatory under Guatemalan law. After they testified again that the landowner had definitely been present during the raid, the warrant was reinstituted in January 1998. However, it was not until August 1998, after continued local and international pressure on the case, including from the US Embassy in Guatemala, that he was arrested.

In December 1998, charges were again dismissed on grounds that he was too old and infirm to have travelled to El Sauce and taken part in the attack. Local residents however saw him riding horses and driving cars. It was also argued that it was impossible to know who had killed Rosa Pec Chub, as the villagers had been engaged in an armed clash with another community when she died. Finally, it was argued that witness testimony was unreliable as it was too dark to identify the landowner at 5am when the attack took place. Witnesses remembered however that there was a full moon and clear skies on the day. Further, at over six feet, with silver grey hair, the defendant would have been instantly recognizable amongst a crowd of dark-haired diminutive Kekchís. A video reconstruction of events was organized by the Public Ministry and the court on a day when similar conditions prevailed. However, the prosecutor in charge of the case was described as clearly biassed, and the video made at his instruction was said to have been intentionally poorly filmed to "prove" that it was too dark on 27 January 1997 to identify the landowner. He was again released.

The landowner was rearrested in March 1999, and the case heard again in September. This time, court-ordered interpreters did not arrive, and a prison inmate was brought to translate witness testimonies. Again, despite eyewitness identification of the defendant as Rosa Pec Chub's murderer, he was absolved for "insufficient evidence". Guatemalan human rights groups working on the case considered that the decision's wording precluded appeals.

Respected Guatemalan human rights groups monitored the entire case carefully. They judged that the prosecutor had been partial, favouring the defendant and not acting in the public interest. They considered that any progress made was not attributable to the authorities mandated to investigate and prosecute murder, but to pressure from witnesses and relatives.

With few further legal avenues apparently open to them in Guatemala, and fearful of reprisals now the landowner is free, relatives filed a petition to the IACHR for precautionary measures recognizing that their rights protected under the American Convention on Human Rights, including those to a fair trial (Article 8) and to judicial protection (Article 25) had been violated.

Carlos Coc Rax

Carlos Cox Rax (bw).jpeg

Carlos Coc Rax, a Kekchí community leader from El Estor, led villagers' efforts to protect their plots from encroachment by local land owners, including those involved in illegal logging. Shown here giving testimony to a 1999 AI delegation, he "disappeared" shortly afterwards as he returned home from the capital, where he had been negotiating land issues on behalf of several communities. © AI

Carlos Coc Rax "disappeared" in 1999. He was a Kekchí community leader from Santa Rosa Balandra, El Estor, who led efforts to protect local villagers' plots from encroachment by landowners, including those involved in illegal logging. He went missing on 21 April 1999. In the months preceding his "disappearance," he had been repeatedly threatened by a landowner in dispute with the community.
On the day he "disappeared", Carlos Coc Rax was returning from Guatemala City, where he had been negotiating on behalf of 10 local communities. Local authorities made no effort to locate him or pursue the case. When the oldest of his nine children pressed for investigations, workers on the landowner's estate threatened him, "recommending" that he not persist.

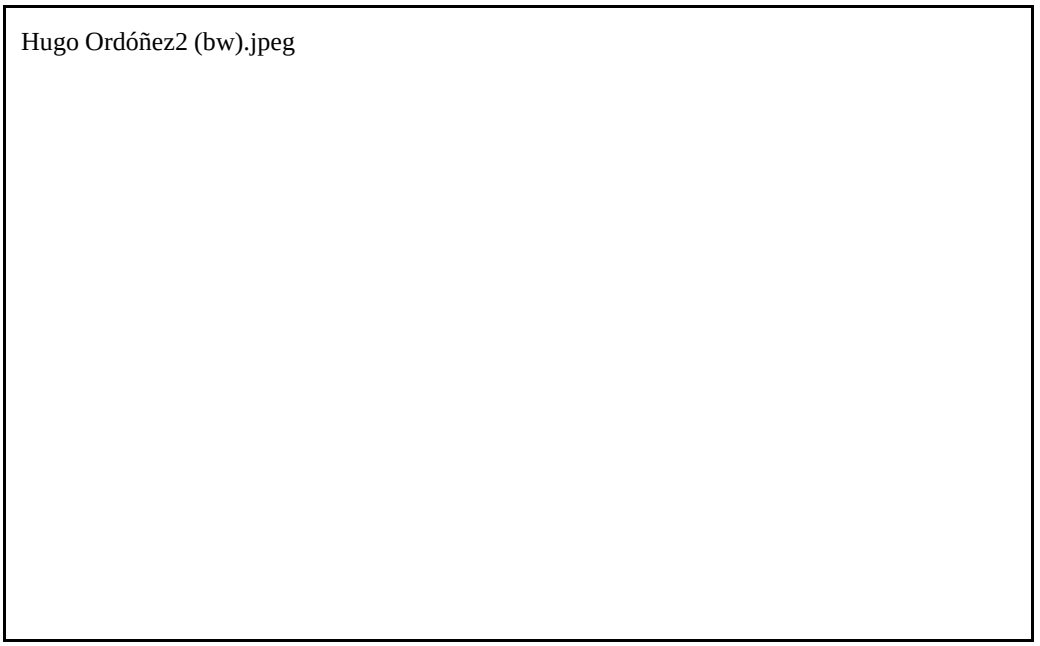
In October 1999, the landowner allegedly responsible was arrested, but his sons pressurized the family to withdraw charges and he was released on bail. The judge assigned the case reportedly succumbed to pressures from local landowners to let the case stagnate and AI

knows of no further developments. Meanwhile, extensive illegal logging in the area reportedly continues.

Killing of competition: The case of Edgar Ordóñez Porta

Another case indicating the inter-play between economic interests, common crime and

Hugo Ordóñez2 (bw).jpeg



Hugo Ordóñez Porta (centre), brother of slain businessman Edgar Ordóñez Porta, shown giving testimony to a 2000 AI delegation. The victim was apparently targeted because the brothers' new oil refining business offered competition to the Guatemalan military who have traditionally controlled the country's oil industry. © AI

human rights violations was the apparent extrajudicial execution of businessman Edgar Ordóñez Porta. He "disappeared" on 3 May 1999 near the port of San José, Escuintla Department after being seized by individuals in a vehicle with polarized windows. His mutilated body was recovered several days later from a nearby well.

Edgar Ordóñez Porta and his brother Hugo Ordóñez Porta were partners in ORPOR, a small oil refining business. After in-depth inquiries, Hugo Ordóñez Porta concluded that military personnel were most likely to have been responsible for his brother's murder. There were two possible motives. One was concern that ORPOR's recent switch from recycling petroleum waste products to processing crude oil and new technology Edgar was developing

for ORPOR would compete with the Guatemalan subsidiary of Basic Resources, a major oil company, which had traditionally been controlled by the Guatemalan military.[14] The second was fears that the plant's presence could affect the values of property owned by military officers living near it. Hugo Ordóñez Porta believed that these military interests had tried to mask the murder as the work of environmental activists, thereby tarnishing the environmentalist lobby, while at the same time eliminating a business competitor.

Just before he "disappeared", Edgar Ordóñez had received threats and had vainly asked for protection. Ostensibly the threats came from nearby residents who charged the plant was contaminating the environment. However, the Ordóñez brothers insisted that tests proved this allegation baseless and believed the complaints were orchestrated by officials, including neighbouring military people.

Hugo Ordóñez was also director of a prominent Guatemalan newspaper. He began to search for his brother the day he "disappeared", and was offered special assistance from various military officials. In return, they implied he should use his influence to mute his newspaper's frequent criticism of the government, then headed by President Arzú.

On 6 May 1999, Hugo Ordóñez was informed that his brother's body had been recovered from the well and was in the departmental morgue in Escuintla. All of his finger tips had been cut off and he had massive head wounds, leaving him virtually unrecognizable. A receipt in his pocket had enabled police to establish his identity.

The military who had offered help to find Edgar Ordóñez now said they would carry out their own special investigation into his murder. Hugo Ordóñez gradually became convinced however that the "parallel" investigation was actually intended to divert inquiries and protect the real perpetrators and undertook his own investigations as a co-complainant.

He discovered that two teenagers living near the well had seen people acting suspiciously there the day Edgar Ordóñez was seized. They noted the vehicle's licence number, which was found to belong to the Ministry of the Interior, but assigned to Military Intelligence, and gave this information to a local policeman. Military Intelligence officers conducting the "special" investigation interviewed the teenagers again to "corroborate" their testimony,

[14] There are many reported links between the Basic Resources Oil Company and past and present Guatemalan government authorities. For example, former Minister of Defence, Marco Tulio Espinoza, is believed to be a shareholder in Basic. US military and government officials have exercised influence over regulations governing Basic's operations and the military's profits. Former CIA sub-director Vernon Walters was sent, for example, as a special envoy to Guatemala during the administration of US President Ronald Reagan to negotiate petrol concessions and reduced royalties, aimed at increasing production and exports of crude oil to the USA. Basic has changed hands several times in recent years and at end 2001 was held by Perenco SA, a European oil company.

which they then "corrected" to say the military intelligence vehicle and operatives near the well were seen a week *after* Edgar Ordóñez "disappeared".

It was also established that various policemen involved in initial inquiries were ordered to change their reports or were pulled off the case. Further, the judge who ordered an autopsy had not ordered the victim's fingertips to be cut off as part of this process, as was claimed. This had been done by the police. The forensic official in Escuintla claimed that an autopsy had shown the cause of death was gunshot wounds to the head. However, when the body was exhumed for a "further" autopsy, it was discovered no autopsy had ever taken place and that the victim had actually died from blows with a heavy object.

The "parallel" military investigation also aroused suspicion because of the diverse, and often defamatory, motives posited for the killing. These included: an unpaid debt allegedly owed to one of those eventually accused; Edgar Ordóñez' supposed narco-trafficking links or other criminal activities; revenge by one of those eventually charged, a former ORPOR employee, dismissed for attempted cheque fraud; a purported affair between the victim and the same individual's wife.

Two members of a small-time criminal gang officially charged with the murder had credible alibis, yet were brought to trial. They were acquitted in August 2000 but the case was left open against the military officials whom Hugo Ordóñez believed were involved in his brother's murder and the attempted cover-up. The court ruled that the Public Ministry had been remiss in permitting other agencies to carry out an illegal investigation, and informed the Public Prosecutor, who heads the Ministry, that the principle of objectivity had therefore been violated. It said that the forensic official who falsely testified regarding the supposed first autopsy, and those who spuriously attempted to implicate the gang of petty criminals, were liable to prosecution for perjury. The court also ordered seizure of the registry of vehicles entering and leaving military intelligence headquarters.

The case left pending against the military officials cited by the court did not progress, and Hugo Ordóñez and his family felt compelled to opt for exile, for their own security.

Challenging the Corporate Mafia State: Abuses against CONAP workers

Erwin Haroldo Ochoa López, a Legal Advisor for Guatemala's *Consejo Nacional de Areas Protegidas* (CONAP), National Council for Protected Areas, and his administrative assistant, Julio Armando Vásquez Ramírez, were fatally shot in February 2000 in Puerto Barrios, Izabal, by a man who fled on a motorcycle. CONAP is a direct dependency of the President's office.

Erwin Ochoa had received repeated death threats, alleged to have been instigated by military authorities with holdings in Basic Resources Oil Company. Erwin Ochoa had previously

worked in the Petén area investigating illegal activities allegedly being carried out by Basic in the protected Biotopo Laguna del Tigre Reserve and National Park. A CONAP report found that these activities had adverse environmental effects including damage to flora and fauna, which it considered the company's responsibility to redress. The Human Rights Procurator stated that Basic's operations in the park were illegal and a human rights violation, and blamed government authorities for granting Basic rights to operate in a protected area. It has also been alleged that some CONAP staff are corrupt, accepting payments in return for illegal concessions or for overlooking illegal activities on protected lands.

Erwin Ochoa received death threats because of his work in Petén and so was transferred to Izabal. There, he attacked illegal deforestation. Drug-running is well established in the area, and an area which he discovered had been illegally cleared was in the form of a landing strip.

Erwin Ochoa reported six weeks before his death that after a meeting on illegal deforestation with the departmental governor and his advisor, a former army colonel, the former colonel made threatening statements against those investigating his illegal timber-cutting operations. Referring to the local prosecutor for example, he said he "didn't like troublesome people", and they were "on the list".

Erwin Ochoa had also issued a complaint against the Port Authority in Santo Tomás, Puerto Barrios, Izabal for ordering the dredging of a dock without considering the environmental impact, which may also have been a factor in his killing.

Investigations into the double murder proceeded slowly, and the victims' colleagues suggested local police were involved in a cover-up. First aid workers who arrived after the shooting said police prevented them from approaching to see whether the victims could still be treated. The police were given the licence number of the motorcycle on which the killer fled, but did not report it or pursue the lead. When the local prosecutor's office questioned them, all eight policemen had "lost their notes".

An AI delegation was told by CONAP officials in May 2000 that the investigation was proceeding smoothly. However, relatives told the delegation of their dissatisfaction with the slowness of the inquiry.

In succeeding months, the case was moved from court to court, and a series of Public Ministry investigators reported constant threats and intimidation. In March 2001, it was reported that the prosecutor pursuing the case had been able to establish the intellectual and material authors of the killings, but was pulled off the case when he asked to issue arrest warrants. No further developments have been reported.

Meanwhile, staff of official environment and natural resources protection agencies continue to be targeted. In December 2000, the head of the Parks Protection Service in Izabal was

shot and wounded by a group of armed men, one of whom he had recently denounced for stripping protected forests. In February 2001, an employee of the National Forestry Institute was shot and killed in Alta Verapaz Department. His death was believed to be related to his efforts to control illegal lumbering and contraband trade in precious woods.

A window into the illegal adoption racket? The "disappearance" of Mayra Gutiérrez

According to a ground-breaking report published by ODHAG in August 2000, Guatemala's illegal adoption racket grew out of the civil conflict, when it became "fashionable" for officers, soldiers and civil patrollers to "adopt" young children whom they found wandering about after their families had been killed or abducted. Many of these children were treated as unpaid child servants. Other children orphaned or separated from their families in the conflict were treated as "war booty" and sold for adoption.

When it became clear how lucrative the trade in children for adoption could be, the number offered for adoption, particularly abroad, spiralled upwards. Today, more Guatemalan children are adopted than from any other country in Latin America and this tiny country is fourth in the world in numbers of children adopted abroad. As many as 98 per cent of all those adopted are adopted outside Guatemala; 80 per cent of them illegally.[15] Some of the children are offered in sale by their destitute families; others are stolen from their mothers' arms, provided with false papers and smuggled abroad. The 200 or so lawyers involved in the baby business are said to charge an average of $25,000 to foreign couples seeking to adopt, and state officials and their families are reportedly involved and determined to protect their large profits.

[15] The figure of 80 per cent was given in August 2000 by the president of the Congressional Commission on Women, Children and the Family. For a general discussion of the "disappeared" children of Guatemala and the illegal adoption racket, see *Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala,* ODHAG, Guatemala, 2000.

One victim of this lucrative trade may have been university professor and social activist Mayra Angelina Gutiérrez Hernández, who "disappeared" in April 2000, the first "disappearance" known to AI since mid-1999 and only the third since 1994.

Mayra Gutiérrez set off as normal on 7 April to catch the bus to Huehuetenango Department where she taught a weekly university class. She has not been seen since. Local observers were concerned that her "disappearance" signalled a return to one of the most reprehensible repressive tactics of the past.

Like their military predecessors, the authorities first denied that Mayra Gutiérrez had "disappeared" for political reasons, insisting she had run off or been killed by a married lover. These suggestions were totally rejected by her family, including her 17-year-old daughter.

Mayra gutierrez.jpeg

Women's rights activist Mayra Gutiérrez had researched Guatemala's illegal adoption racket. She "disappeared" in April 2000. © AI

Portillo children collage2.jpeg

Alma Argentina, Glenda Corina and Rosaura Margarita Portillo, were aged 18 months, 9 and 10 years when they "disappeared" after a raid on their grandfather's Guatemala City home in 1981. Surviving relatives hope they may be amongst the many Guatemalan children illegally adopted. © Adriana Portillo

It was then learned that Mayra Gutiérrez' name appeared on a database apparently compiled by military intelligence during the 1980s, and made public in May 2000 by Edgar Gutiérrez (no relation), the President's Secretary of Strategic Affairs. Reportedly, Edgar Gutiérrez found the list on a government computer, and published it to deflect criticism after killings of protestors in the capital in April 2000. More than six per cent of the population appeared on this list of "suspected subversives"– 650,428 names – each accompanied by a coded number, apparently referring to their status, for example under surveillance, detained and released or "disappeared."

Initially, friends and colleagues suggested that Mayra Gutiérrez may have been targeted because of her affiliation to the University of San Carlos, a long-term target of political repression, or as further reprisal against her politically active family, which had already suffered two "disappearances" in the 1980s. They also wondered whether her activism on women's issues, including research on the illegal adoption racket, explained her "disappearance." Her findings were compiled in a report naming those allegedly involved, which she provided to the UN's Special Rapporteur on the sale of children, child prostitution and child pornography, during the latter's 1999 mission to Guatemala. The Special Rapporteur's subsequent report covered the adoption racket. It was presented to the UN Human Rights Commission and received considerable publicity in Guatemala just days before Mayra Gutiérrez went missing.

Threats around the same time against staff of an agency assisting would-be immigrants to the USA, whose work along borders made them privy to information on the adoption racket, also supported the case that it may have been those involved in the racket who lay behind Mayra Gutiérrez' "disappearance".

In December 2000, apparently in response to continued pressure on the case, Congress named Guatemala's Human Rights Procurator as special investigator. He has favoured the theory that Mayra Gutiérrez was abducted by a thwarted former lover, even though the man in question (not a Guatemalan) has made available air tickets, receipts, and phone bills to show that he was not in Guatemala at the time. He has now fled with his family.

Social cleansing

Apparent immunity from prosecution for illegal acts has also allowed open season for "social cleansing," particularly attacks on street children and sex workers including transvestites. Such attacks may be instigated or carried out by the police – they are certainly not seriously investigated by them.

Recent cases which have not been clarified include the killings in July 2000 of two transvestite sex workers – Astrid la Fontaine (Roberto Martínez Castillo) and Beverly

Lineth[16] – and the August 2001 drive-by shooting of transvestite Mario Leonel Rodríguez Monzón ("Tutis,") in Guatemala City.

In April 2001, *Casa Alianza*, an organization which assists street children, reported that its Street Educator and Legal Program offices had been broken into, following a series of strange calls and increasingly frequent visits by the police. It was possible that these incidents were provoked by *Casa Alianza*'s efforts to bring to justice two uniformed members of the National Civil Police allegedly responsible for the rape of two street girls in January.

Chapter 6: Impunity, common crime and lynchings

Impunity not only encourages new abuses, but also lessens citizens' faith in the rule of law, contributing to both rising crimes rates and lynchings in Guatemala. At worrying levels under his predecessor, lynchings have further increased under President Portillo. MINUGUA reported some 347 incidents between 1996 and mid-2001. In 97.7 per cent of cases, no one had been brought to justice.

The official line is that lynchings are a spontaneous phenomenon, when aggrieved citizens concerned at the rising levels of crime take the law into their own hands to eliminate perceived wrong-doers. Undoubtedly, public concern at the government's inability to control crime is high and lynchings are sometimes impulsive, undertaken by groups of outraged citizens. However there are indications that some apparently spontaneous "lynchings" were actually planned and instigated by outside interests for their own purposes.

For example, villagers near the tourist town of Chichicastenango, El Quiché, said that a mob "lynching" in July 2000 was actually a convenient facade for the elimination by former civil patrollers of eight local residents who had initiated a suit against the patrollers for the massacre of their relatives in 1993. The patrollers allegedly acted with the support of powerful local officials linked to the current ruling party. The police announced that they would be seeking three arrest warrants, but the ringleaders of the attack had reportedly already fled the area.

Similarly, the lynching of a judge in Senahú, Alta Verapaz in March 2001 was characterized as spontaneous expression of local discontent with his alleged lack of respect for indigenous practices. However, a June 2001 AI delegation to Guatemala was told that the real reasons for the fatal attack were the judge's efforts to crack a gang of car thieves, controlled by powerful local and national figures, and inquiries into alleged corruption of local authorities. Legal proceedings were initiated against three indigenous peasants for the judge's death.

[16] See Amnesty International UA 216/00, AMR 34/31/00.

The government's response: wholly inadequate

Rather than address the deep-seated political, social and economic factors which contribute to high crime rates and related increases in lynchings, the state has responded to citizen security concerns with periodic emergency measures, including a stronger military presence in both the capital and the countryside, to "maintain order." Such steps are contrary to the intentions of the Peace Accords, which aimed at the demilitarization of Guatemalan society.

The authorities have also advocated expanded applicability, imposition and execution of the death penalty as appropriate responses to public concern at spiralling crime rates and loss of confidence in the law. This too is a wholly inadequate response, particularly with death penalties imposed by a judicial system as corrupt and inequitable as that in Guatemala. Even in death penalty cases indigenous defendants are often not provided with interpretation (the proceedings are in Spanish) and defence lawyers have faced threats and abuse.

Chapter 7: Paths to justice

Efforts to seek homicide convictions in the Guatemalan courts for extrajudicial executions or massacres have been costly, in money, time and risk to those involved. In many such cases, those accused have claimed exemption from prosecution under the 1996 Law of National Reconciliation, which did not explicitly list individual killings or single massacres amongst the crimes which could *not* benefit under its terms. (Forced "disappearance", torture and genocide were specified as crimes whose perpetrators could not benefit from the amnesty.)

In this context, it is understandable that victims, their families and human rights groups are exploring other possible paths to justice. They include the Inter-American human rights protection mechanisms; suits filed abroad for genocide and other crimes against humanity, based on growing awareness of universal jurisdiction concepts; and collective suits filed in the Guatemalan courts by groups of massacre survivors against past officials for genocide and other crimes against humanity.

Petitions via the Inter-American system

Some organizations and individuals have sought reparations and governmental acknowledgement of abuses via the Inter-American human rights system, sometimes at the

same time as pursuing justice in the Guatemalan courts, sometimes after frustration at years of futile suits at home.

In 2000 these efforts appeared to bear fruit when the Guatemalan government agreed to "friendly settlements" on a number of cases under the aegis of the Inter-American Commission on Human Rights. Under this procedure, the government acknowledged generalized responsibility of state agents for a number of specific past abuses and agreed to pay unspecified compensation. The agreement was in some respects ground-breaking. As regards the 1982 Plan de Sánchez, Baja Verapaz massacre for example, the government acknowledged for the first time state responsibility for the mass rape of indigenous women victims before they were extrajudicially executed by state agents and their civilian adjuncts.

However, compensation agreed in principle has been set and paid in only one of the relevant cases, while some families and survivors did not accept the preliminary settlements or considered that the settlements offered insufficient redress. Some, including Helen Mack in the case of Myrna Mack and FAMDEGUA in the case of Dos Erres, have continued to pursue justice through the Guatemalan courts and/or the Inter-American system.

In general such "friendly settlements", or a failure to exhaust domestic remedies, would prevent the case going before the Inter-American Court of Human Rights. However, there are certain exceptions which can be called into play by those who wish to continue to pursue "agreed" cases though the Inter-American Court. That is, the Court may still rule on cases where it is shown that plaintiffs have not been allowed access to internal remedies or have been prevented from completing such procedures; where the country in question does not have procedures to pursue such recourse; or should it judge, as has been argued in the Myrna Mack case, that an "unjustified delay" has occurred in the domestic legal process.

Universal jurisdiction suits abroad

Some Guatemalan NGOs have come to believe that domestic remedies for justice and redress have proved futile. They have therefore turned to universal jurisdiction and have filed or are considering filing suit abroad for crimes committed in Guatemala, along the lines of the precedent set in the Spanish suit against General Augusto Pinochet of Chile.[17]

[17] General Augusto Pinochet was arrested in London in October 1998 at the request of a Spanish judge. He was charged under the terms of the UN Convention against Torture with gross human rights violations, including crimes against humanity, including genocide, widespread and systematic torture and "disappearances," committed while he led Chile's military government (1973-1990). The United Kingdom Law Lords eventually ruled he did not have diplomatic immunity and could be extradited to Spain on reduced charges of torture and conspiracy to torture for acts allegedly committed after the date in 1988 when the Convention entered into force in the UK, Spain and Chile. As AI said at the time, "The UK courts have confirmed that people accused of crimes such as torture can be prosecuted anywhere in the

Under the internationally recognized principle of universal jurisdiction, all states have the obligation to cooperate in the identification, detention, extradition or trial of persons responsible for certain crimes, regardless of the victims' nationality, the place committed, or the nationality or position of perpetrators. In its Principles of international co-operation in the detention, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, the UN General Assembly clearly states there can be no amnesties for crimes against humanity and war crimes: "States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detention, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity."[18]

Rios Montt AP.jpeg

General Efraín Ríos Montt, Guatemalan head of state from March 1982 to August 1983, at the height of the massacres. Both the Menchú suit in Spain and the second AJR/CALDH suit in Guatemala have laid charges of genocide and other crimes against humanity against him and other officials from his administration. He is now President of the Guatemalan Congress and a powerful political figure in the FRG, the party which brought President Portillo to office. © AI

Although General Pinochet was eventually permitted to return to Chile in March 2000 on health grounds and so did not appear before the Spanish courts, his 14 months' detention in the UK changed the climate of international opinion as regards crimes against humanity and universal jurisdiction. In November 1999 the Spanish National Court reiterated its acceptance of the principle of universal jurisdiction, a position developed with respect to the Pinochet affair, and of a suit filed with it regarding systematic large-scale human rights violations committed during Argentina's military government.

Two suits regarding abuses in Guatemala have now been lodged abroad based on concepts of universal jurisdiction. The first is that filed by the Rigoberta Menchú Foundation (see below). A second, in Belgium on behalf of Belgians subjected to abuses during the Guatemalan conflict, is reportedly in the investigations stage.

The Rigoberta Menchú et al suit in Spain

In December 1999, the Rigoberta Menchú Foundation filed suit before the Spanish National Court against eight former Guatemalan officials, including General Ríos Montt, for

world. They have also firmly established that former heads of state are not immune from prosecution for such crimes." A similar suit was also filed in Spain against Argentinian officials.

[18] UN GA Resolution. 3074 (XXVIII) 1973, Principle 8. The Inter-American Court of Human Rights has clearly established in the Barrios Altos case that laws which confer amnesty for human rights abuses are contrary to the American Convention on Human Rights and are therefore without legal effect. See Inter-American Court of Human Rights: Barrios Altos Case, Judgment (March 14, 2001), and Barrios Altos Case, Interpretation of Judgment (September 3, 2001).

genocide, torture, murder, terrorism and illegal arrest. The suit focussed on three "paradigmatic and illustrative" cases:

- the attack on the Spanish Embassy in Guatemala by the Guatemalan security forces in January 1980 in which 37 people died, including Spanish Embassy staff and Rigoberta Menchú's father;

- persecution suffered by the Menchú family, exemplifying targeting of indigenous peoples by the Guatemalan security services;

- the "disappearance" or extrajudicial execution of several Spanish clergy during Guatemala's conflict years.[19]

Arguing that domestic remedies in Guatemala could not be relied upon to investigate the cited abuses and bring those responsible to justice, the Foundation noted that since the suit was first filed in the Guatemalan courts in January 1981 for the Spanish Embassy attack, the only apparent action by the courts was to replace "genocide" with "murder" on the title page of

Father José.jpeg

José María Gran Cirera, a Spanish missionary and one of four Spanish priests whose cases are included in the suit for genocide and other crimes against humanity filed before Spanish courts in December 1999 by the Rigoberta Menchú Foundation. He was shot and killed in February 1981. The perpetrators have

[19] For AI actions and publications on these abuses at the time they occurred, see: AMR 34/39/80, AMR 34/12/81, AMR 34/36/81, AMR 34/34/83.

the case documents. The experience of the Foundation and its President in the Xamán massacre case also influenced their view that justice is not possible in Guatemala.[20]

A number of other victims, relatives and NGOs joined the Menchú Spanish suit after it was filed. In response, lawyers for the military personnel cited filed charges in Guatemala against Rigoberta Menchú for treason, violation of the Constitution and failure to report an offence (*omisión de denuncia*). They claimed that the suit attacked national sovereignty and unity by suggesting the country's own courts could not judge crimes committed by Guatemalans, and that this offence was punishable by 10 to 20 years' imprisonment.

Alaide Foppa.jpeg

Alaide Foppa was a poet, writer, university teacher and woman's rights activist. She "disappeared" in December 1980 when she returned from exile in Mexico to visit family in Guatemala. Her relatives have joined the Menchú suit. © Private

AI stated publicly that the charges against Rigoberta Menchú were totally unacceptable, and that if she were to be found guilty, it would declare her a prisoner of conscience.

After a Spanish judge ruled in March 2000 that the case could be considered in Spain, Rigoberta Menchú and her colleagues began experiencing harassment and persecution, including death threats.

The ruling of the Spanish judge was appealed by the Spanish Attorney General, who argued that what had happened in Guatemala had occurred in the

[20] In October 1995, 11 peasants, including two young children, were killed and 27 others wounded by the military at a small returned refugee settlement in Alta Verapaz. Outside witnesses including MINUGUA were quickly on the scene and the facts of the case appeared incontrovertible. Rigoberta Menchú acted for several years as co-complainant on the case, but withdrew in 1999, stating that the case had become a "legal farce". Eventually, in August 1999, the commanding officer and 10 of his squad were convicted of aggravated homicide, and 14 of complicity. The most serious charge, extrajudicial execution, was dropped. The groups were sentenced to 5 and 4 years respectively, commutable at 5 quetzales (US 50c) per day. Fifteen other soldiers were absolved. AI was shocked by the lenient sentences and deeply disturbed by repeated reports that army personnel had tampered with evidence, intimidated witnesses and bribed court officials. After appeal, 10 soldiers were sentenced to 12 years' imprisonment for homicide and three others for causing bodily harm. The Appeal Court decision was later set aside, but of the 15 arrest orders issued, only four were executed. The case was to have reopened in July 2001, but a series of further appeals by the defence again delayed proceedings.

context of civil conflict.[21] In December 2000 the Spanish National Court ruled that it did not *currently* have jurisdiction to hear the case. The Rigoberta Menchú Foundation has appealed.

Should the Foundation win the appeal, the next step would be to request detention orders against those cited. It remains to be seen what reaction that would evoke from the Guatemalan authorities. In the case of General Ríos Montt, his immunity as President of Congress would apparently have to be lifted for implementation of such orders.

Testing domestic remedies: AJR/ CALDH genocide suits

The CEH report of 1999 explicitly found that genocide had been committed against Guatemala's indigenous peoples in four specific areas. The 1996 Law of National Reconciliation, though in effect granting amnesty for a range of political and common crimes, explicitly excluded those responsible for genocide. The way was thus left open for prosecutions for genocide in Guatemalan courts. The CEH specifically endorsed such trials saying: " Those crimes for whose commission liability is not extinguished by the said law [Law of National Reconciliation], should be prosecuted, tried and punished."

A first attempt to test this avenue to justice was initiated in May 2000. The case centred on 10 army massacres suffered by nine communities in the Guatemalan highlands over a four-month period during the administration of General Lucas García. Supported by CALDH, indigenous survivors filed collective suit as the *Asociación Justicia y Reconciliación* (AJR), Association for Justice and Reconciliation in the Guatemalan courts for genocide against the civilian Mayan population, crimes against humanity and violations of international humanitarian law. In addition to the massacres, the suit referred to severe physical and mental injuries, torture including gang rape, wanton destruction of crops and houses, and the displacement and destruction of communities.

Those cited were members of General Lucas García's High Command, including the General himself; his brother, General Manuel Benedicto Lucas García, Chief of Staff of the Guatemalan Army from August 1981 to March 1982; and Luís René Mendoza Palomo, Minister of Defence from August 1981 to March 1982. Evidence of their responsibility for the attacks in which over 800 indigenous people died had been carefully collected via witness testimony and exhumations over a three-year period before the suit was announced at a public meeting in May 2000 and proceedings were formally filed before the Public Prosecutor's Office. The prosecutor reportedly initiated wide-ranging inquiries, but was replaced in 2001.

[21] The Spanish Attorney General's Office has argued this position since 1995, but a higher court, the penal section of the Supreme Court of Justice ruled in favour of Spanish jurisdiction over such crimes, leading to General Pinochet's detention.

Caldh man&micro.jpeg

Indigenous massacre survivors testifying and lighting candles (below) in memory of the victims at the 2000 event launching the AJR/CALDH suit for genocide against officials of the Lucas García administration. A second suit was launched in 2001 against officials of the administration of General Ríos Montt (pictured earlier), now President of the Guatemalan Congress. © AI

Caldh candles & woman.jpeg

A second suit filed by survivors of massacres carried out under the presidency of General Ríos Montt (March 1982-August 1983) was filed in 2001 against officials of his administration. Persecution of CALDH workers accelerated as the suit was developed and then filed. The suit was assigned to the same prosecutor now covering the Lucas García administration action. He has reportedly taken some depositions on this second suit.

Chapter 8: Conclusions and Recommendations

It has been said that those who do not remember the past are condemned to repeat it. Guatemala's failure to address its own recent history and bring past perpetrators to justice is unquestionably contributing to current human rights abuses in the country. Not only does impunity clearly signal that perpetrators can continue to get away with murder, but the new wave of abuses is mainly directed against the very organizations and people who are courageously trying to combat impunity and seek justice. The prime targets are non-governmental human rights organizations, journalists, members of the judiciary, witnesses and others involved in human rights inquiries. Human rights abuses protect the interests of Guatemala's powerful elite, while the ordinary citizen sees a rising crime rate, loses confidence in the law, and sometimes turns to vigilante justice.

Analyses of the Guatemalan legal system have been consistent in identifying the problems facing it, and the measures which could make it function. Yet more than five years after the Peace Accords set out such goals, the many promises made regarding return to the rule of law remain unfulfilled.

As Guatemalans struggle for justice, both at home and abroad, what more can be done to combat impunity, assure citizens their human rights and deliver on the promises of the Peace Accords?

AI shares the view that genuine long-term solutions must lie in reforms to Guatemala's judicial system, and political will on the part of the authorities to re-establish citizens' faith in the government and the rule of law.

It recommends that the following steps be taken as a matter of urgency.

Recommendations to the Guatemalan government and state institutions

1. Implement international standards, the Peace Accords and the recommendations of the CEH

AI calls on the Guatemalan authorities to move immediately and concretely to implement the human rights and rule of law elements set out in international standards and in such Accords

as the 1994 Global Human Rights Accord, the 1995 Accord on the Identity and Rights of Indigenous Peoples, and the 1996 Accord on Strengthening of Civil Society and the Role of the Army in a Democratic Society.

AI also strenuously urges implementation of the human rights-related recommendations of the CEH, particularly:

- establishment of special commissions to investigate the conduct of state military and security officials in service during the armed conflict and to take appropriate steps regarding violations of internationally accepted human rights standards;
- determination of the fate those who "disappeared" during the conflict, including numerous children, some of whom may have been illegally adopted; initiation of a government exhumations program to excavate the mass grave-sites of counter-insurgency victims;
- provision of reparations, recognised as a duty under the Peace Accords, to victims of human rights abuses and their families, including women who suffered sexual assault in the context of the conflict;
- promotion, after consultation with human rights organizations, of legislative measures specifically oriented towards the protection of human rights defenders;
- abolition of the EMP.

2. Encourage visits by UN and regional human rights experts and implement their recommendations

AI strongly urges that the important recommendations regarding judicial reform made by the UN's Special Rapporteur on the independence of judges and lawyers after investigatory visits to Guatemala in 1999 and 2001 be implemented.

AI also urges that the authorities extend open invitations to representatives of regional and international human rights monitoring mechanisms, and that they facilitate and cooperate fully with inquiries by these and other international experts, including those mandated by the Inter-American system of human rights protection.

3. Establish an effective judicial personnel and witness protection program

A genuine judicial personnel and witness protection program must be established to ensure that Guatemala's judicial system operates effectively and equitably. AI urges that governments and multilateral agencies consider how they can best support this. Such a program cannot function properly without the active participation of the Public Prosecutor's Office, the Ministry of the Interior and Guatemala's judicial authorities.

As security measures taken thus far to protect those involved in the struggle against impunity have obviously proved inadequate, an independent review should be undertaken of existing protection measures for human rights workers, survivors, witnesses, members of the

judiciary and journalists reporting on such initiatives. This review should aim to produce concrete, specific recommendations and the necessary implementing legislation.

4. Guarantee the safety and work of human rights defenders

AI strongly urges that official institutions and agencies cooperate fully with all efforts to clarify human rights violations, including those directed against human rights defenders, and that results of those investigations be made public. Those responsible for abuses should be brought to justice, whoever they may be, in accordance with international principles for fair trial.

Guatemala should respect and implement the principles set out in its own Global Human Rights Accord as regards human rights defenders and in such international instruments as the 1998 UN Declaration on Human Rights Defenders;[22] the Resolution on Human Rights Defenders in the Americas adopted by the OAS at its 1999 meeting in Guatemala, and supported by Guatemala; and the two further resolutions on human rights defenders passed by the OAS in 2000 and 2001, all of which acknowledge the important contribution of human rights defenders to improving the human rights situation in the region and the need to ensure that they can carry out their legitimate activities without fear of attack or reprisals.

The authorities should publicly announce support for those working to end impunity and for the protection of human rights. They should make clear at the highest level that no further statements from officials intended to incite attacks upon them will be tolerated.

Amnesty International also urges the Guatemalan authorities to appoint a special attorney (*fiscal especial*) with specific responsiblity for investigating cases of harassment, threats and other human rights violations against human rights defenders.

5. Law enforcement agencies must abide by international human rights standards

All "death squads", private armies, criminal gangs and paramilitary forces must be prohibited and disbanded.

A code of conduct based on the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials should be adopted and made legally binding as regards private security guards operating under licence to the National Police.

[22] Full title: United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

The government should publicly state that all identity-based crimes, such as those directed against street children, homosexuals and transvestites and often referred to as "social cleansing", will not be tolerated. It should ensure that all such acts are rigorously investigated, and those responsible brought to justice, whoever they may be.

The Law of National Reconciliation should be amended to exclude those responsible for past individual extrajudicial executions and massacres from its terms.

Steps should be taken to address the grave social and economic factors contributing to the phenomenon of lynchings. All such incidents should be genuinely investigated and their intellectual and material authors brought to justice.

The death penalty, which violates the fundamental right to life, should be abolished. In the meantime, so as not to contravene international human rights standards, its application should not be extended and steps should be taken to ensure fair trials to all defendants in capital cases. Anyone sentenced to death must be provided guarantees in accordance with relevant international standards, including right to appeal.

6. Enhance the role of the Human Rights Procurator

The important role of the Guatemalan Human Rights Procurator's office in human rights defence and the investigation of abuses should be further enhanced.

The Human Rights Procurator's Office must be adequately financed. Its priorities should be determined on the basis of human rights instruments, with protection of the rights to life and physical and mental integrity the overall priority.

The Human Rights Procurator's Office should have powers to investigate the conduct of the police and security forces; to bring legal cases to protect individuals' rights; to submit *amicus curiae* briefs; to offer expert advice on human rights concerns; and to promote changes in law and practice. It must have access to government information, must monitor follow-up of its recommendations and must not be complicit with impunity.

The Human Rights Procurator's Office must have effective powers to protect its staff and all witnesses and others contributing to its investigations, including from frivolous criminal or civil legal actions.

7. Ratification and implementation of international human rights standards

Relevant international standards and procedures regarding human rights protection and the independence of the judiciary should be ratified and implemented. These include: UN Basic Principles on the Independence of the Judiciary; First and Second Optional Protocols to the

International Covenant on Civil and Political Rights; Recognition of the competence of the UN Committee for the Elimination of Racial Discrimination to receive individual complaints; Recognition of the competence of the Committee against Torture to receive individual complaints regarding torture and other cruel, inhuman and degrading treatment; Statute of the International Criminal Court; Protocol to the American Convention on Human Rights to Abolish the Death Penalty; the Optional Protocol to the Convention against the Elimination of All Forms of Discrimination against Women.

AI also urges that the Guatemalan authorities effectively implement elements of the Convention on the Rights of the Child, to which Guatemala has been party since 1990, relating to assisting and protecting children endeavouring to re-establish their identities; assuring that children have not been separated from parents against their will as occurred in Guatemala through "disappearance" of parents or children and illegal adoptions; combatting illicit transfer and non-return of children abroad or illegal adoptions at home; protecting children from physical or mental violence, injury or abuse; assisting children separated from their parents when forced to take refuge abroad to identify and contact surviving relatives; ensuring care for children affected by armed conflict; and promoting physical and psychological recovery and social integration of child victims of armed conflicts, torture or cruel, inhuman or degrading treatment or punishment.

Recommendations to other governments

Representatives of other governments and the international community are urged to press their Guatemalan counterparts to implement human rights-related aspects of the Peace Accords and CEH recommendations.

Representatives of other governments and the international community are urged to explore ways in which they can support relevant initiatives including a national exhumations program and a special commission to determine the fate of Guatemala's "disappeared" children.

Representatives of other governments and the international community are urged to transmit to the Guatemalan authorities the concerns of the international community regarding attacks against those involved in human rights protection and anti-impunity initiatives. They are urged to consider ways in which they can help protect those involved in anti-impunity initiatives, including via public statements of support for the Guatemalan human rights community and pressure for independent review of existing protection measures to produce specific concrete recommendations and implementing legislation.

Representatives of other governments and the international community are urged to press Guatemalan authorities for genuine investigations into all reported abuses including those documented in this report, to announce results and to bring those responsible to justice.

Representatives of other governments and the international community are urged to express concern that state agents may be involved in interfering with the data and communications of local NGOS, and lend support to initiatives intended to help combat this new threat to human rights work.

Governments should indicate support for continued human rights monitoring by MINUGUA, and should press other relevant UN agencies or bodies such as the Working Group on Indigenous Peoples, UNICEF and UNESCO, to examine the human rights situation in Guatemala and to take appropriate steps within their remits.

Representatives of other governments and the international community should support current NGO efforts in Guatemala to create an umbrella organization to coordinate and harmonize the work of local human rights groups.

Other governments should continue to express opposition to the death penalty and should urge the Guatemalan government to address deep-seated social and economic problems, including discrimination and racial inequality, which contribute to Guatemala's high crime rate.

Governments should ensure that no military, security or police transfers from their countries are contributing to Guatemala's grave human rights and citizen security problems.

Recommendations to intergovernmental organizations

AI urges relevant inter-governmental organizations to continue to support the peace process, urging compliance with human rights standards set out there and protected under Guatemalan national law and international standards ratified by Guatemala.

AI calls on intergovernmental human rights bodies to cooperate with Guatemalan NGOs to develop clear standards to measure compliance with the Accords and CEH recommendations and to develop national and international responses to non-compliance.

AI urges the UN and other intergovernmental organizations to maintain political and financial support to MINUGUA and other international efforts to monitor and ensure human rights compliance in Guatemala.

AI calls on intergovernmental human rights bodies to help develop mechanisms to assure continued human rights monitoring once MINUGUA departs.

AI urges the respective Inter-American organs to call Guatemala to account for its failure to comply with the Inter-American Commision and Court on human rights decisions and rulings,

and its failure to adopt appropriate measures in compliance with standards and principles of the Inter-American system of human rights protection.

Recommendations to international financial institutions and multinational corporations operating in Guatemala

AI takes no position on international investments in Guatemala by foreign-owned companies or financed by international finance institutions, nor on financial support for projects in Guatemala from such agencies as the World Bank or the Inter-American Development Bank. However, AI calls upon multinational corporations and the Inter-American and World Banks to consult civil society, including national human rights groups, and to take their concerns into account. AI hopes that consultation with civil society and local communities will ensure greater accountability, and help to prevent future human rights abuses. The Inter-American and World Banks and multinational corporations have to take into account that such consultation requires freedom of expression to be guaranteed if it is to be fully meaningful.

AI calls on the Inter-American and World Banks and multinational corporations to encourage the Guatemalan government to ensure that freedom of expression is protected, and that the work of human rights defenders is not hindered. The Banks should raise cases of attacks against human rights defenders or on freedom of expression which are brought to their attention with the Guatemalan government.

AI calls on the the Inter-American and World Banks to not only invest in Guatemala's economy, but also in the Guatemalan judiciary. Proposed judicial reforms must include respect for human rights, and not just respect for commercial agreements and contracts.

AI calls on the Inter-American and World Banks to send a clear message in words and actions that they recognize that sustainable development which benefits all will not take place until the policies and practices which gave rise to human rights abuses have ended.

AI is calling on the World Bank to consider ways of supporting projects by the UN Development Programme and the Office of the UN High Commissioner for Human Rights and to explicitly include a thorough assessment of Guatemala's human rights record.

AI urges the Inter-American and World Banks and multinational corporations to put in place effective monitoring systems to ensure that their policies and practices are not discriminatory, or conducive or contributory to human rights violations. AI also urges that they commit

themselves to addressing any wrongs that may have occurred because of their past policies and practices.

AI urges the Inter-American and World Bank and multinational corporations to pay close attention to the human rights situation in Guatemala, including by taking into account the reports of UN and other relevant human rights bodies and the work of national and international human rights organizations, and by committing themselves to confronting the government when abuses take place.