

Guatemala

A Summary of Amnesty International's Concerns

with regard to the Guatemalan Government's implementation of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

I. Introduction.

Amnesty International is submitting this summary of its concerns relating to torture and ill-treatment in Guatemala in advance of the examination by the Committee against Torture (the Committee) at its 36th session in May 2005 of the fourth periodic report submitted by the State of Guatemala on implementation of the provisions of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention). Guatemala ratified the Convention in January 1990 but with reservations to articles 28 (1) and 30 (2). These reservations were withdrawn in May 1990.

The Constitution of the Republic of Guatemala confers prevailing status on international human rights treaties ratified by Guatemala.¹ Legally speaking, this means that any lower-ranking norms, such as laws, regulations and other rules, are only applicable if they are compatible with the content and scope of such treaties. If they are not, the requirements of the treaties are applicable and must be enforced. It also means that all decisions by the Guatemalan authorities must comply with the provisions of such treaties. Article 201 BIS of the Penal Code refers to prohibition to commit acts of torture. The offence of torture in Article 201 BIS remains, however, inadequately defined, as noted previously by the Committee.²

This document focuses on the failure of the Guatemalan government to ensure that Articles 16, 10, 12 and 13 of the Convention are upheld and its promotion of policies which are in contravention of these articles. The document is divided into four sections: background, failure of due diligence, evictions as a policy and Amnesty International's conclusions.

Amnesty International is aware that there are many other issues surrounding Guatemala's fulfilment of its obligations under the Convention. This briefing, in particular, is dedicated only to two main issues. First, the ongoing suffering of hundreds of relatives seeking justice for women who have been brutally killed in recent years. Their suffering is exacerbated by

¹Article 46 of the Guatemalan Constitution reads: "Pre-eminence of International law: the general principle is established that in matters of human rights, treaties and covenants accepted and ratified by Guatemala have pre-eminence over national laws". [EDAI: "Preeminencia del Derecho Internacional. Se establece el principio general de que en materia de derechos humanos, los tratados y convenciones aceptados y ratificados por Guatemala, tienen preeminencia sobre el derecho interno."]

² *Concluding observations of the Committee against Torture: Guatemala, A/56/44*, 6 December 2000, para. 73(d).

discrimination evidenced by authorities during the investigatory and prosecutorial process. Second, forced evictions in rural areas and the subsequent suffering caused to hundreds of rural communities who have been made homeless and seen their livelihoods destroyed.

II. Background.

It is almost ten years since the end of Guatemala's internal armed conflict, which lasted for 36 years. The conflict ended with the signing of the Peace Accords in December 1996. A major objective of the Peace Accords was to achieve a state based on the rule of law, where justice was accessible to all citizens and human rights protected.

Successive governments have pledged to fulfil the Peace Accords, end impunity and implement recommendations of the two landmark human rights reports prepared after the end of the conflict, with little in the way of actual results.³ The current government of President Oscar Berger came to power in January 2004. Like his predecessor President Berger committed to fully implementing the Accords, staging a symbolic public re-launching of the Peace Accords a few weeks after coming to office.

Little has been achieved. Impunity for past and present human rights violations and crimes remains a permanent and widespread feature of Guatemalan life. The vast majority of human rights violations committed in the present remain unpunished with the vast majority lacking thorough investigation. Those responsible for past human rights violations including policies of systematic torture, forced "disappearances" and genocide remain at large, unaccountable for their actions, in some cases enjoying considerable political influence in present day Guatemala.

Few of the specific agreements relating to socio-economic issues of the Peace Accords have been developed or implemented. The resulting situation is one of high levels of poverty and social exclusion for a significant part of the population, disproportionately affecting Guatemala's indigenous population which accounts for 66 per cent of the population.⁴ Insecurity of tenure and the acute concentration of land in the hands of a few owners of land remains at the heart of the socio-economic exclusion faced by the poor *campesino*⁵ and indigenous population, as it was 50 years ago before the start of the internal armed conflict.

³ See among others, Historical Clarification Commission report, prepared under the auspices of the United Nations, published in 1999, and the report of the Recuperation of the Historical Memory Project, published in 1998.

⁴ United Nations Development Programme, Human Development Report 2004, page 92, available at: <http://hdr.undp.org/2004/>

⁵ *Campesino* is a commonly used term in Spanish meaning someone who works the land and lives in a rural area, but does not own a large amount of land. *Campesino* can be translated as farmer, peasant or rural worker, although it has no true equivalent in English

III. Failures of due diligence in investigating the killing of women.⁶ (Arts. 10, 16, 12 and 13)

A climate of impunity has fuelled extraordinarily high levels of violent crime: in 2004 and 2005 the police reported a total of 4,346 and 5,338 murders, respectively. This places Guatemala amongst the countries with the highest murder rates in Latin America, with approximately 44 murders per 100,000 inhabitants.⁷ The number of women being killed has steadily risen in the past four years. In 2004 and 2005 the police reported 572 and 665 women killed, respectively.

The proportion of women killed as part of the total amount of killings in Guatemala has risen sharply in the past four years: in 2002 women accounted for 4.5 per cent of the total amount of killings, whereas according to police figures released in January 2006, women accounted for 12.5 per cent of all killings in 2005.

What the above figures do not reveal is the exceptional brutality of many of the killings. Many women, before being killed, were raped, tortured and mutilated. The Guatemalan Human Rights Ombudsman's Office noted: "*In the case of women, the brutality used in cases of mutilation is definitely unique by comparison to male victims. Although sexual violence has been used in the case of many murdered women, it is also true to say that there have been cases of women who have been mutilated without being subjected to sexual violence which also demonstrates a particular type of cruelty that manifests itself in cuts to the face and inherent notion of the disfigurement of women's beauty, the severing of organs In other cases, the murders are similar to those of men in that the bodies are found with the hands tied and with a single shot to the head, as happened in the past*".⁸

The rising numbers of women killed and increasing brutality has not resulted in a parallel increase in the successful prosecutions of those responsible. There are chronic deficiencies in the criminal justice system. According to press reports, of the 5,338 people killed in 2005, there were 222 criminal sentences, which amounts to approximately four per cent of cases.⁹ A recent report of the International Commission of Jurists noted that "*in Guatemala serious deficiencies persist in the organisation and functioning of the judicial system, which are due to an inadequate normative framework and certain practices which do not allow an independent, impartial and effective administration of justice which respects human rights.*"¹⁰ In the cases of

⁶ For further information, please refer to Amnesty International's report *No Protection, No Justice: Killings of women in Guatemala* (AI Index: AMR 34/017/2005, June 2005), available at: <http://web.amnesty.org/library/index/engamr340172005>.

⁷ Based on a population of 12 million, cited in *United Nations Development Programme, Human Development Report, 2005*. Page 234. , available at: <http://hdr.undp.org/2005/>

⁸ Human Rights Ombudsman's Office, *Muertes Violentas de Mujeres en el 2003*, October 2004.

⁹ Prensa Libre, '*Jueces y fiscales se inculpan por la falta de fallos condenatorios*', 3 March 2006.

¹⁰ International Committee of Jurists, *La Justicia en Guatemala: un largo camino por recorrer*, December, 2005. Page 79. [EDAI: en Guatemala persisten serias deficiencias en la organización y el funcionamiento del sistema judicial, que obedecen a un inadecuado marco normativo y a ciertas prácticas que impiden una administración de justicia independiente, imparcial, efectiva y respetuosa de los derechos humanos.]

killings of women, a survivors association asserted that between 2001 and 2005 only five of the 1,897 cases had been resolved in the courts.¹¹

The suffering of relatives of women killed is exacerbated by the failure of government authorities to adequately investigate the fate of their loved ones and the attitude of gender discrimination shown by government officials charged with the responsibility of investigating the killings and prosecuting those responsible. The discrimination on the basis of gender manifests itself most prominently in a tendency to discredit the victims placing the blame for their own deaths on their conduct or background, and in the procedures initially used to classify crimes which in turn influences the prosecutorial and investigatory process.¹² Amnesty International believes this unduly prolonged and aggravated suffering amounts to cruel, inhumane and degrading treatment.

Amnesty International notes with concern the rising murder rate against women, and the apparent lack of political will to investigate cases promptly, effectively, independently and impartially and to bring the perpetrators to justice, including through the elaboration of an effective and rights-based legal regime against impunity.¹³ The jurisprudence of the Inter-American Court of Human Rights has for many years emphasized the importance of states exercising due diligence to make rights a reality, even when rights are abused by non-state actors. It has stressed the need to establish an “apparatus” of state organization which enforces rights, and does not allow private citizens to abuse the rights of others with impunity.¹⁴

¹¹ *Feminicidio en Guatemala: Crímenes contra la humanidad, Investigación preliminar, Bancada de la Unión Revolucionaria Nacional Guatemalteca, Congreso de la República, November 2005, Citing Asociación Sobrevivientes. Page 119.*

¹² According to Guatemalan law public prosecutors lead criminal investigations with the police playing a supporting role.

¹³ See for instance: European Court of Human Rights, *A. v. the United Kingdom*, (100/1997/884/1096), *Judgment of 23 September 1998*, para. 11: “... The Court considers that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, **including such ill-treatment administered by private individuals...**” (emphasis added).

¹⁴ See *Velásquez Rodríguez v. Honduras, Judgment of July 29, 1999*, para. 172: “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required in the Convention.”; para. 173: “What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, **or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible...**”; para. 176: “The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. **If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of rights recognized in the Convention.**”; para. 166: “... This obligation [to ‘ensure’ the free and full exercise of the rights recognized by the Convention] implies the duty of States Parties to organize the governmental apparatus, and in

Even when killings are committed by non-state actors, the state has a responsibility to investigate promptly, effectively, independently and impartially, without discrimination. Amnesty International believes that the failure by the state of Guatemala to do so, including by treating the relatives of the dead with contempt for their suffering and therefore increasing it, amounts to cruel, inhuman and degrading treatment, or even ways of torture, which violate – among others – Guatemala's obligations under the Convention, including Articles 16, 10 and 12.¹⁵

Amnesty International interviewed relatives of a number of victims, many of whom complained about having to prove their relative was “respectable” or that she had not been involved in any crime before the authorities would take their complaint seriously. Relatives also complained about having to provide new evidence to compel the authorities to take action to investigate the case. Several gender experts, including both the UN Special Rapporteur on violence against [women](#), its causes and consequences and the Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights, Guatemalan human rights defenders and Amnesty International, have observed that members of the police and Public Prosecutor's Office frequently attempt to discredit individual cases of killings of women by suggesting the victim is to blame or in some way deserved to be killed. Amnesty International has seen no evidence that assertions contained in the Guatemalan State's report to the Committee, specifically regarding courses delivered to prosecutors on human dignity and other issues, have had any real effect in changing attitudes in the Public Prosecutor's Office.¹⁶ In addition, Amnesty International believes that the opinion of police

general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.” (emphasis added).

¹⁵ Similar failure by the state has been identified as a violation of the right to humane treatment under Article 5 of the American Convention on Human Rights. See for instance: Inter-American Court of Human Rights, *Blake case, Judgment of January 24, 1998*, paras. 115 and 116: “Consequently, the Court considers that such suffering, to the detriment of the mental and moral integrity of Mr. Nicholas Blake's relatives, constitutes a violation by the State of Article 5 of the Convention [on the right to humane treatment] in relation to its Article 1(1).”; *Suárez Rosero case, Judgment of November 12, 1997*, para 102: “The Court is of the opinion that the effects that Mr. Suárez-Rosero's incommunicado detention may have had on his family would derive from the violation of Articles 5(2) [on torture and ill-treatment] and 7(6) of the American Convention...”; and *Report of the Inter-American Commission of Human Rights on the situation of human rights in Argentina, (OEA/Ser.L/V/II.49), 11 April 1980*, para. 2: “... [‘disappearance’] is, moreover, a true form of torture for the victims' family and friends, because of the uncertainty they experience as to the fate of the victim and because they feel powerless to provide legal, moral and material assistance.”. See also: European Court of Human Rights, *Kurt v. Turkey, (15/1997/799/1002), Judgment of 25 May 1998*, paras. 133 and 134: “Having regard to the circumstances described above as well as to the fact that the complainant was the mother of the victim of a human rights violation and herself the victim of the authorities' complacency in the face of her anguish and distress, the Court finds that the respondent State is in breach of Article 3 in respect of the applicant.”.

¹⁶ Guatemala's fourth periodic report to the Committee against Torture, CAT/C/74/Add.1, 27 May 2005. para 104.

officers in the Female Homicide Unit dismissing most victims as “gang members”, is representative of institutional attitudes.¹⁷

This public perception and general belief promoted by some government officials, that the majority of victims are gang members, has not been confirmed in other studies.¹⁸ According to the Guatemalan Human Rights Ombudsman’s Office (*Procuraduría de los Derechos Humanos* – PDH) the majority of victims were students, housewives and workers: in 2003 of the 383 women killed the PDH was only able to identify six women with tattoos on their bodies (tattoos are commonly used as a form of gang identification).¹⁹ References to the victims by some state authorities as gang members or prostitutes suggests deep-seated discrimination in some sectors that has characterised the response of the authorities to the murders.

The case of María Isabel Franco.

*“My 15-year-old daughter María Isabel was a student and worked in a shop in the holidays. On the night of 15 December 2001, she was kidnapped in the capital. Her body was found shortly before Christmas. She had been raped, her hands and feet had been tied with barbed wire, she had been stabbed and strangled and put in a bag. Her face was disfigured from being punched, her body was punctured with small holes, there was a rope around her neck and her nails were bent back.”*²⁰

According to Rosa Franco, the mother of 15-year-old María Isabel Veliz Franco, her daughter was left for dead on some waste ground at 10 o’clock in the evening of 17 December 2001. A man reportedly informed police officers that a dying woman had been found. However, police officers failed to arrive at the scene that night and only turned up in the afternoon of the following day when the Public Prosecutor’s Office arrived to remove the body. There was a failure to collect and preserve evidence crucial to a proper investigation into María Isabel Veliz Franco’s death: *“They didn’t even do a fluids analysis. They gave me all her clothes in a bag and when I saw some white stains on it, I asked at the morgue: what’s this, is it semen? My little girl had been very badly treated, there was blood on her front and back but they didn’t do any blood analysis or anything. It’s two years and eight months since she was murdered. Where are the forensic tests?”*²¹ The forensic services’ failure to carry out a fluids analysis and preserve samples of specimens such as seminal fluid, blood, skin or hair seriously reduced the possibility of identifying and prosecuting those responsible.

Rosa Franco reported that her daughter had had her mobile phone with her when her body was found. She reportedly asked the Public Prosecutor's Office dealing with the case to investigate the calls on it which they apparently failed to do. She obtained a list of calls and handed the numbers over to the prosecutor’s office. The phone numbers were never investigated and the list was reportedly filed. The Public Prosecutor's Office in Mixco also failed to go to the house where the car from which a witness reportedly saw the dying María Isabel being dragged was seen, nor did it order a search of the addresses that had been identified. They reportedly went to the site on one occasion but did not go

¹⁷ AI interview with Female Homicide Unit officers, 27 May 2004.

¹⁸ According to a press report the Minister of the Interior (Ministro de Gobernación) attributed the majority of crimes to gangs, see La Prensa Libre, *Vielmann también responsabiliza a las pandillas de gran parte de estos crímenes*, 14 December 2004.

¹⁹ *Revista Hablemos*, Diario de Hoy (El Salvador) 16 January 2005, quoting Sergio Morales, head of the PDH. (<http://www.elsalvador.com/hablemos/2005/160105/160105-1.htm>)

into the house.

Rosa Franco reported that whenever she goes to the Public Ministry to inquire if the case is progressing, it is the staff members of the office who ask her if she has anything new to report. She complained to the Attorney General about the lack of progress in the investigations who concluded that the office in Mixco had acted properly in the investigation. Meanwhile, the case is at a standstill.

Despite failures to properly investigate the crime, the Public Prosecutor's Office did, however, report extensively on María Isabel Franco in a way which sought to discredit her. The Public Prosecutor's Office report noted that she was “*always dressing provocatively*” and that she “*[..] was known under the alias ‘the mad girl [la loca]’ ... her school attendance was irregular, she was absent on Fridays, she was told off for wearing skirts that were too short ... She was described at her workplace as a young woman with no love for life ... interested in sales commission. The other young ladies in the boutique started the day with a prayer ... she didn’t like joining in. Other things the minor liked to do included going to nightclubs for which her mother gave her great freedom ... she often used to come home in the early hours in different cars. She had connections with the Salvatrucha gang who once beat her up.*”²²

The discrimination of the state authorities only increased the suffering of Rosa Franco: *They said my daughter was an atheist but in fact she went to the Adventist church. They said she was a member of a youth gang but she was studying and working. She hated the youth gangs, they didn’t say that when she was beaten up by them, it was because she refused to join them. The PDH report had five pages on how ‘bad’ my daughter and I were, none of it is true and nothing was said about the facts and evidence about the criminals contained in the case file. They did not investigate them or order their arrest*”.²³

Four and half years after the death of her daughter Rosa Franco has yet to see justice. She has continued to pressure the authorities to investigate properly the murder of her daughter and prosecute those responsible. She has also received threats and been subjected to acts of intimidation by individuals presumed to be those responsible for the murder of her daughter, or linked to them. She is currently receiving protection after the Inter American Commission on Human Rights ordered the Guatemalan State to provide her with protection.

²⁰ Testimony of Rosa Franco, mother of María Isabel Veliz Franco, aged 15, who was abducted and murdered in December 2001, interview with Amnesty International, October 2004.

²¹ *Ibid.*

²² *Ibid.*, “*la menor Maria Isabel Veliz Francoera conocida como alias “la loca”,(...) alumna irregular, faltaba los viernes, se le llamaba la atención por llevar la falta demasiado corta. Donde trabajaba la describieron como una joven sin amor por la vida (...) interesada en las comisiones sobre ventas. Las demas señoritas en la boutique inician el día con una oración, a ella no le gustaba participar. Otras preferencias de la menor consistían en frecuentar club nocturnos, con mucha libertad de su mama. (era habitual que llegara en la madrugada en diferentes vehículos. Estuvo relacionada con la mara Salvatrucha quienes en una oportunidad la golpearon. Vestía siempre muy provocativa.*”

²³ *Ibid.*, “*Dijeron que mi hija era atea y en realidad iba a la iglesia adventista, dijeron que era marera pero ella estudiaba y trabajaba. Ella detestaba las maras, no dijeron que cuando la golpearon fue porque ella se negó a ingresar a ellas. El informe del MP tenía cinco páginas sobre lo malas que éramos mi hija y yo nada cierto y nada se dijo sobre los hechos y las pruebas que han en el expediente judicial sobre los criminales, no los investigan, ni ordenan su captura.*”

The police tend to place both the crimes and the victims in discriminatory categories, which are inappropriate to a professional criminal investigation: Police are often first to arrive at a crime scene and their assessment of the situation and decisions to classify the murder and motive has an immediate and generally negative bearing on the route the investigation takes. Police statistics compiled up until May 2004 record that a third of the killings of women were “due to personal problems”. According to the police, a fifth of the reported cases of killings of women occurred due to “passionate problems”. The term is applied to cases that fulfil two of the characteristics established by the police in the “Definition of motives, their frequency and characteristics” relating to the killing of women. These are: (a) that “*the victims are women who have been married more than once*” and (b) that “*the suspects and even those arrested turn out to be former partners who do not seem to have entered into another relationship*”.²⁴

Classifying the killings as relating to “personal problems” or “crimes of passion” implies these cases are rarely investigated and are de-prioritised. Categorizing the cases in this way also undermines the impartiality of any investigation that does take place and reinforces a perception that violence against women in the family is a private matter rather than a crime which the state has a duty to prevent and punish. International human rights standards place a clear responsibility on States to take effective measures to deal with any types of conduct by private individuals which impede the full exercise of human rights, including violence against women in the context of the family or the community. Amnesty International believes this practice of the police forces runs contrary to the Guatemalan State’s assertions contained in its report to the Committee that “the criteria for conducting the investigation are those established by the Constitution and international human rights treaties ratified by Guatemala”.²⁵

The case of Nancy Peralta:

On 1 February 2002, Nancy Karina Peralta Oroxon, aged 30, left home at 6 in the morning to go to work and then on to the University of San Carlos in Guatemala City where she was studying. She failed to return home that evening. After a sleepless night, her anxious family began searching for her at local hospitals and stations. When her sister went to report her missing at the local police station, she was asked whether she was sure she had not run off with her boyfriend. She was told she would have to wait 48 hours to lodge a missing persons’ report. She provided a description of her sister and left a photograph. She also called the morgue and gave a description of her sister but was reportedly informed that no young woman had been admitted. In fact, a death certificate had been issued a few hours earlier on behalf of an unidentified woman. Time of death was registered at 11pm, 1 February 2002.

On 3 February 2002, the family identified Nancy Peralta in the morgue. This was after an article and photograph in the press about the discovery of the body of a young unidentified woman, wearing a white jumper, who had had her throat cut. Recognising the clothing, her father rang the morgue and gave them Nancy Peralta’s name and a physical description of her that matched the characteristics of the unidentified woman. Despite the police having been given a description and a photograph of Nancy Peralta, it appears no effort was made to cross-reference data on a woman reported missing with

²⁴ *Situación General de la Violencia Contra la Mujer*, Policía Nacional Civil de Guatemala, 27 May 2004.

²⁵ See CAT/C/74/Add.1, para. 119.

that of unidentified murder victims.

The case of Nancy Peralta highlights how the investigating authorities frequently fail to open a proper investigation to determine whether an offence has been committed. In this case, the authorities failed to act on the probability that a violation might have been committed and assumed that Nancy Peralta was missing of her own accord without carrying out a thorough assessment or investigation of the circumstances in which she went missing. In treating the report by her family that she was missing as a minor incident, the authorities put the burden of proving she did not leave voluntarily on to the family. Such practices mean that initial investigations to establish whether a crime has been committed can be limited, or, as in the case of Nancy Peralta, non-existent.

Nancy Peralta's family insisted the Public Ministry call potential witnesses and asked for an identikit picture to be made of the witness who had called the police and fire brigade, the night she was murdered. They also repeatedly asked for the area where Nancy's dead body was found to be inspected but were reportedly told that the inspection would be carried out in a couple of weeks. Over two years later, the site had yet to be examined. On 8 March 2004, Nancy Peralta's sister attended a march to mark International Women's Day during which she managed to speak to a government minister. A few days later, an investigator from the Public Ministry came to the house to question the relatives. When relatives read statements in the case file, they reportedly found that their statements had been changed.

Four years on the family are still waiting for those responsible for the murder of Nancy Peralta to face justice.

IV. Violent forced evictions and house demolitions in rural areas.²⁶

Rural households in Guatemala constitute 77 per cent of all households considered poor and 93 per cent of those considered extremely poor.²⁷ Indigenous people are disproportionately represented in those considered to suffer from high social exclusion.²⁸ The concentration of land in the hands of a few is acute in Guatemala: In 2000 1.5 per cent of property owners accounted for 62.5 per cent of land whereas 94.1 of property owners accounted for 18.6 per cent of land.²⁹

In such conditions, agrarian disputes are a regular phenomenon in rural Guatemala. The governmental agency for solving land conflicts, Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA), reported in December 2005

²⁶ For further information, please refer to Amnesty International's report *Guatemala: Land of injustice?* (AI Index: AMR 34/003/2006, March 2006), available at: <http://web.amnesty.org/library/index/ENGAMR340032006>.

²⁷ *Guatemala, Informe Desarrollo Humano, 2002*. UNDP, 2002, page 105.

²⁸ *Human Development Report 2004*, UNDP, page 37.

²⁹ Guatemala, *Informe de Desarrollo Humano 2002*. Programa de las Naciones Unidas para el Desarrollo 2002, citing Tabulaciones de la ENCOVI 2000, page 107.

the existence of 1,052 cases of agrarian disputes³⁰ – up from the 911 cases reported in October 2004.³¹

The rise in the number of agrarian disputes in recent years is linked to the decline in coffee prices since 1999, which led to some 108,000 job losses as farm owners laid off workers.³² The departments of Alta Verapaz and Baja Verapaz in the north of country were worse affected and, according to CONTIERRA, represent a quarter of all cases. Many rural workers, who for years had been demanding *prestaciones laborales* (labour entitlements), also began to demand redundancy payments after losing their jobs. Denied an effective judicial or other remedy, many *campesinos* feel they have no option but to occupy portions of the farm as an act of protest. In response farm owners, with acquiescence or direct involvement of the police, forcibly evict them from the farm, destroying their homes. In many cases the *campesinos* are to be considered occupying land simply because they did not move off the land they had lived on for years once they had been made redundant. In other cases *campesinos* moved from their homes on the farms they had lived and worked on for years to occupy other parts of the farm in protest – normally the central hub of the farm.

In January 2004 a new government, headed by former businessman and landowner President Oscar Berger, took office. With an already desperate situation for many in rural areas and after years when very few evictions were reported, a widespread unofficial policy of resolving disputes by executing pending eviction orders for land occupied by rural workers began. Between January and November 2004, 36 evictions took place, more than half of which were violent.³³

Forced evictions have been recognized by the Commission on Human Rights to be a gross violation of human rights, including, the right to adequate housing.³⁴ Amnesty International believes that the mental and physical suffering caused by forced evictions can amount to cruel, inhuman and degrading treatment. The organisation believes that the cases documented below represent violations of Guatemala's obligations under the Convention against Torture, including Articles 16, 10, 12 and 13. In so concluding, Amnesty International is guided by the views of the Committee in its Decision on Complaint N° 161/2000 (*Hajrizi Dzemajl et al. v. Serbia and Montenegro*).³⁵ As in that case, those outlined below include the burning and

³⁰ *Mapa de Ubicación de Conflictos De Tierra, Según Tipología, Guatemala*. Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA) & Secretaria de Asuntos Agrarios.

³¹ *Opinión de CONTIERRA en relación a los conflictos de tierra*. Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (CONTIERRA), October 2004.

³² Guatemala Country Report May 2004, Economist Intelligence Unit, page 21.

³³ Number of evictions compiled from *Informe Sobre Desalojos* (Enero a Junio) MINUGUA Asesoría Socio-económica, 25 June 2004 and press reports. MINUGUA puts violent evictions at 51 per cent, non-violent at 3 per cent and has no information regarding the remaining 46 per cent.

³⁴ Commission on Human Rights Resolution 1993/77 on forced evictions, particularly the operative point 1.

³⁵ Committee against Torture, Decision on Complaint N° 161/2000 (*Hajrizi Dzemajl et al. v. Serbia and Montenegro*), CAT/C/29/D/161/2000, 2 December 2002. Para 9.2. "... the Committee first considers that the burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment. The nature of these acts is further aggravated by the fact that some of the complainants were still

destruction of houses, aggravated by the particular vulnerability of the victims, and the acquiescence of the police in the targeting of vulnerable people by private individuals. Additionally, these cases illustrate patterns of the active involvement of the police in carrying out forced evictions including excessive use of force, house burning and demolition, in all cases without any provision made to ensure adequate alternative accommodation, resulting in hundreds of vulnerable people being made homeless. They also illustrate a disturbing willingness on the part of the police and judiciary, and other public officials, to swiftly act to evict poor rural farm workers, irrespective of their outstanding claims for labour entitlements.

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

The case of Trece Aguas farm: The Farm, also known as Oxlajujá in Q'eqchi, is located in the municipality of Senahú, in the south-east of Alta Verapaz department. Workers living on the farm used to number approximately 500 families, all Mayan Q'eqchi group. In March 2001, the farm owner called all the workers to a meeting and, referring to low coffee prices, terminated their employment. In lieu of unpaid labour entitlements, the farm owner offered them land.³⁶

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

The 90 families denounced intimidation at regular intervals. In February 2002 in a letter to the President of Congress, they said that the farm owner threatened to make their community leaders "disappear". In June 2002, according to a complaint submitted to the Public Prosecutor's Office by a member of the community, some of the farm owner's private security guards visited the house of a community leader at around midnight and kicked in the door to intimidate him.

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

hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation. Moreover, the Committee considers that the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16 of the Convention". Additionally, see Conclusions and recommendations of the Committee against Torture: Israel, CAT/C/XXVII/Concl.5, 23 November 2001, para j, "Israeli policies on house demolitions, which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention)."

³⁶ AI interview with the legal representatives of the farm owner, Guatemala City, 24 August 2005.

evict them and demolish their homes

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

The *campesinos* allege that the police and farm employees used chainsaws to cut down their houses and then, as these fell, set fire to them. Their belongings, including reserves of maize, were burned. Their crops of chillies, pumpkin and cardamom were destroyed. The official police report of the eviction states: "[At] 1300 hours the disarming of approximately 50 houses built of wood, planks and corrugated iron began, but because of the time and topography of the area it was not possible to destroy all the houses, around 25 houses remained standing. However, all the belongings were removed. The eviction of all the invaders ended at 0030 hours".³⁷

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

Once the area had been cleared of the *campesinos*, the farm owner provided 45 trucks for the transport of the evictees. The police knew that the evicted *campesinos* had nowhere to go as the official police report states that "the *campesinos* did not have any housing alternative because the majority of the adults had lived and worked on the farm for up to 50 years".³⁸ The trucks of the farm owner drove the *campesinos* to the area of El Estor in the department of Izabal. On arrival, the *campesinos* refused to disembark from the trucks because the area had no water or electricity and there was no information as to whom the land belonged. The *campesinos* then allege that the trucks divided up and delivered different groups to seven different points in the country, including Guatemala City. A police report notes that the farm owner repeatedly insisted the *campesinos* not be allowed to travel on roads near Trece Aguas Farm for fear that they would reoccupy. In addition to supplying the trucks, the farm owner also provided food and gasoline for the police but could not specify quantities.

In subsequent days the mayors of Senahú and Panzós (5 and 20 kilometres from Trece Aguas Farm respectively) offered the evicted community the use of a disused market and municipal hall, where they remain to this day. Some of the community took shelter with relatives in surrounding communities.

At the time of writing the *campesinos* had not received any of their unpaid labour entitlements and the abuses committed during the eviction were not being investigated by the Public Prosecutor's Office.

³⁷ *Secretaría Comisaría Cincuenta y Uno, Cobán, Alta Verapaz, Oficio No. 031-2004, Ref AMGT/POP, 20 May 2004. (emphasis added).*

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

There is no specific training on evictions for Guatemalan police officers. The general attitude of the police was summarized by the National Deputy Director of the Police who told Amnesty International that "what stays behind after the eviction is the property of the farm. They are not really houses just shacks".³⁹ Contrary to what is asserted in the Guatemalan State's report to the Committee, Amnesty International believes that police officers have not received any training that has had any effect on their conduct during evictions and on the prohibition of perpetrating cruel, inhuman or degrading treatment.⁴⁰

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

These are criminal acts, for which no provision is made in the eviction orders signed by judges. On certain occasions, evictions take place in the presence of police officers, sometimes hundreds of officers, sent by the judge to execute the eviction order. Other authorities present include representatives of the Public Prosecutor's Office, and the PDH. There are documented reports of the direct participation of the police in the forced dismantling and burning of *campesino* homes. However, in most cases, employees of the farm owners are the ones that carry out this destruction, with police and other authorities passively looking on.

Reports detailing abuses during evictions, presented by PDH delegates to the Public Prosecutor's Office, do not seem to have been followed up by the latter. It would seem that these actions during evictions are considered normal.

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

The current dispute centres primarily on the lack of payment of labour entitlements, but has also involved disagreement over the right to use access paths which cut across the farm to the plots allocated to the workers for their own crops.

In April 2002 the community moved from the plots allocated to them (on the fringes of the farm) and occupied part the hub of the Chitocán farm. A few days after the occupation of the hub, the farm owner submitted criminal complaints to the Public Prosecutor's Office in Cobán for "usurpation"⁴¹ and theft

³⁹ AI interview with the National Director of Police and National Deputy Director of Police; Guatemala City 25, August 2005.

⁴⁰ See CAT/C/74/Add.1, Para. 97 in which the state asserts that the Police have received training on basic aspects of the Convention against Torture.

⁴¹ Article 256 of the Criminal Code, entitled Usurpation, states that: "Whomsoever, in order to take possession or illicit advantage, shall despoil or attempt to despoil someone of the possession or the right over such real estate, or who, illicitly, with any aim, invades or occupies any real estate, shall commit the crime of usurpation. The

of cattle. The Public Prosecutor's Office subpoenaed the accused, personally verified the occupation and requested an eviction order from the local judge. Although informed about the communities' claim for unpaid labour entitlements, the Public Prosecutor did not consider the issue because it was a civil law issue and not a criminal one.

During the next two years there was no progress on either the payment of labour entitlements or ending the occupation of the farm. Although under Guatemalan law the Public Prosecutor's Office is supposed to be independent of political pressure or interference, an Assistant Public Prosecutor explained the delay⁴²:

"... under the previous government [January 2000-January 2004] we couldn't carry out any eviction orders, we used to receive instructions from the Ministry of the Interior to halt evictions, but with the new government things changed, so we reactivated all the eviction orders".⁴³

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

The forced eviction of 52 families was carried out on 5 May 2004 by 519 police officers. There was no prior notification of the eviction order to the communities (the Assistant Public Prosecutor notified the community on the day of the eviction). There was no attempt to negotiate. The police allege that they were attacked by the community who fired fireworks at them and threw stones. The community alleges that the police began firing in the air and used tear gas, and then advanced on the homes of the fleeing community. The police reported three wounded, claiming that members of the community throwing fireworks were to blame for one of the injuries. The community disputes this, saying the police officers fell on rocks.⁴⁴ Six *campesinos* were arrested including one who was taken to the hospital suffering from bruising to the chest, knee and abdomen, and an internal injury in the abdomen.

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

permanence on such real estate constitutes flagrancy in this crime. The Police, the Public Ministry or the Judge are duty bound to prevent punishable actions from continuing to cause ulterior consequences, ordering or proceeding in such manner as may be necessary to the immediate eviction. The individual responsible for usurpation shall be imprisoned for one to three years."

⁴² Ley Orgánica del Ministerio Público, Decreto Número 40-94 del Congreso de la República de Guatemala.

"Article.3. Autonomy. The Public Prosecutor's Office will act independently, on its own will and according to the functions assigned to it by law, without subordination to any body of the State or authority, other than what is established in this law. The Public Prosecutor's Office will have a yearly budget within the national budget and will manage autonomously its resources according to its own requirements."

⁴³ AI interview of Assistant District Attorney, Cobán, Alta Verapaz, 17 August 2005.

⁴⁴ The official police report details one officer bitten by a snake, one with a bruised foot and one with burns caused by fireworks. *Oficio No. 028/2,004. Ref AMGT/ical co. Policía Nacional Civil, Comisaría 51, Cobán AV, 5 May 2004.*

⁴⁵ *La Prensa Libre*, 6 May 2004.

⁴⁶ *El Periódico*, 8 June 2004.

⁴⁷ *Oficio No. 028/2,004. Ref AMGT/ical co. Policía Nacional Civil, Comisaría 51, Cobán AV, 5 May 2004.*

⁴⁸ COPREDEH, *Informe de Verificación y Seguimiento Situacional a los Casos de Desalojos de Fincas en Alta Verapaz*, 7 June 2004.

⁴⁹ *La Prensa Libre*, 27 June 2004.

⁵⁰ AI interview with farm owner and legal representative, 19 August 2005.

least 20 people, including children, suffered intoxication from tear gas.⁴⁵

The community says that their homes were all burned and that their possessions were either burned or stolen, including reserves of maize and other basic foodstuffs, clothes and livestock. The community alleges that police officers and civilians hired by the farm owner burned their homes. In press reports, the police officer in charge of the Cobán station declared: "If there were any burnings it was because the members of the community themselves set fire" to their own homes.⁴⁶ The official police report states:

"[D]uring the incidents and the confrontation between the police and invaders, the real owners of the farms assigned various workers [not part of the community being evicted] to set fire to the majority of houses which were being emptied, in addition the invaders set fire to various houses".⁴⁷

A review of evictions in Alta Verapaz carried out by the Presidential Human Rights Commission (*Comisión Presidencial de Derechos Humanos – COPREDEH*) states that during the Chitocán eviction private individuals hired by the farm owner set fire to the homes of the community. The COPREDEH report also notes that properties in Las Pacayas and Imperio Maya, adjacent to the Chitocán farm but outside the area authorized in the eviction order, were also burned down.⁴⁸ Press reports concur with the destruction described by COPREDEH, but specifically blame the police for the burning and the looting of a shop.⁴⁹ The farm owner of Chitocán paid compensation to the home and shop owners in Las Pacayas and Imperio Maya for the damage caused.⁵⁰

After the eviction, negotiations resumed between the farm owner and the community. The farm owners offered to sell them 45 hectares on another property (Choctún farm) for US\$129,032. According to the community, lawyers representing the farm owner threatened them with another eviction if they did not accept the offer. The community agreed and moved to the Choctún farm on 22 May 2004. Amnesty International understands that the community has still not been made the legal owners of the Choctún farm as funding, which had been promised, has not been secured.

The Public Prosecutor's Office is not investigating any human right violations that took place during the eviction, despite the press and COPREDEH reports of criminal damage caused by the police and private individuals, and despite the official police report detailing the burning of houses by private individuals. Amnesty International sought clarification from representatives of the Public Prosecutor's office present during the eviction as to whether they had witnessed the burning of houses. They said they had not witnessed police destruction of houses, but did not indicate whether they had witnessed private individuals setting fire to houses during the eviction.

V. Conclusions.

Amnesty International considers the State of Guatemala is not taking effective action to eliminate gender discrimination in the criminal justice system, ensure proper investigations and bring those responsible for the killing of women to justice. This failure has meant increased suffering on the part of relatives of women killed, which Amnesty International believes amounts to cruel, inhuman and degrading treatment. Furthermore, the state is pursuing a policy of forced evictions which runs contrary to precedents already established by the Committee. The resolution of outstanding agrarian disputes by the use of forced evictions causes mental and

physical suffering to hundreds of rural communities, amounting to cruel, inhuman and degrading treatment, often in cases where the community had legitimate grievances.

Amnesty International notes that paragraphs 132 and 133 of the Guatemalan State's report to the Committee detail the assertion that cruel, inhuman and degrading treatment is legally prohibited. The Guatemalan State, in its report, does not explain, however, the steps taken to ensure that the prohibition to perpetrate cruel, inhuman and degrading treatment is *enforced*. In recent years, Amnesty International has not seen evidence that cruel, inhuman and degrading treatment on the part of state officials is actively dissuaded, investigated, punished or remedied. In regard of both issues presented in this briefing, a number of recommendations have been made by the UN, the Organization of American States and other international organisations in addition to Amnesty International. These public recommendations have been made after careful consideration of the facts and with a view to overcoming both technical difficulties as well as detrimental institutional policies. These recommendations, however, must concur with a clear will of the State of Guatemala to protect human rights.