

Guatemala
Memorandum to the Government of Guatemala: Amnesty International's concerns
regarding the current human rights situation

Amnesty International has been monitoring human rights in Guatemala for more than 40 years. During that time Amnesty International has consistently called on the government to improve the situation of human rights in the country. In September 2003 Amnesty International wrote to all presidential candidates calling for their commitment to implement the Peace Accords, strengthen the justice system, amongst other human rights recommendations¹. The new Government of President Oscar Berger took office after an election which included the presidential candidature of former General Efraín Ríos Montt, whose Government in 1982-83 committed widespread and serious human rights violations which have amounted to allegations of crimes against humanity and genocide. Since coming to power, Amnesty International has written to President Berger on several occasions, raising human rights concerns.

At the beginning of his administration President Berger made several public commitments on human rights, including committing to implement the Peace Accords and apologising on behalf of the State for gross human rights violations committed during the internal armed conflict by members of the Guatemalan army and members of the Civil Defence Patrols². Several prominent members of the human rights defenders community have been appointed to human rights-related positions within the new administration. The new government also progressed on issues relating to the military, initiating several reforms to the Guatemalan army aimed at modernising the institution and reducing the size of the armed forces.

The final report of MINUGUA, the UN body established to monitor implementation of the Peace Accords, whilst commending successive governments for certain human rights improvements also noted that impunity was still widespread and that grave obstacles remained to improving the justice system³. Amnesty International remains concerned at the apparent lack of political will of the present government to take concrete and effective action to eliminate impunity and to ensure the rule of law prevails in Guatemala.

Amongst Amnesty International concerns during 2004, were efforts of the current administration to reduce the scope, depth and strength of the annual report on the human rights situation to be presented by a new UN Office of the High Commissioner for Human

¹ *Open Letter from Amnesty International to Guatemalan Presidential Candidates for the November 2003 Elections*, 19 September 2003 (AMR 34/052/2003). This and other Amnesty International Guatemala related materials available at <http://web.amnesty.org/library/eng-gtm/index>. As the candidate for the *Gran Alianza Nacional (GANNA)* Mr Berger won the Presidency in the second round of elections held on 28 December 2003 and assumed office on 14 January 2004.

² *Patrullas de Auto Defensa Civil (PACs)*. The PAC were initiated in 1981 under the Presidency of General Romeo Lucas García, (1978-1982). They were comprised of male *campesinos* (peasant farmers) primarily from rural Guatemala and were charged by the army to act as their civilian adjuncts.

³ *A/59/307 Report of the Secretary-General*, United Nations Verification Mission in Guatemala (MINUGUA), 30 August 2004.

Rights, to be established in Guatemala⁴. Amnesty International believes that international monitoring of the human rights situation is essential if the government is committed to improving respect for human rights in Guatemala.

Amnesty International is also concerned that the military continues to have a role in internal security, with a programme of joint police patrols in population centres being carried out during 2004. Army units have been implicated in evictions in which use of excessive force by the security forces resulted in fatalities and injuries, as well as policing operations at demonstrations in which the security forces were alleged to have been implicated in the death of at least one protestor⁵. In addition, no progress has been made to modifying the security doctrine of the army to limit its role to external security, in accordance with the provision of the Peace Accords. The tendency for the police to use excessive force when carrying out evictions of rural communities or policing demonstrations is also of concern.

In February 2005, the Constitutional Court, the country's highest court, ruled that payment to former members of the Civil Defence Patrols for their services during the conflict would be unconstitutional. Despite this, President Berger has reportedly agreed to pay compensation, via 'reforestation projects' which would involve the government paying the former Patrollers for planting trees. Members of the Civil Defence Patrols were responsible for some of the worst human rights violations, including many massacres, both independently and together with the army. Virtually no progress has been made on investigations into these and other past human rights violations.⁶

In this memorandum Amnesty International is highlighting four areas which are of concern to the organisation: The killing of women and the lack of thorough and impartial investigation

⁴ The latest agreement to establish an Office of the High Commissioner for Human Rights, signed by the UN and the Government of Guatemala on 10 January 2005, must still be ratified by Congress before it comes into force. Since 23 February the Agreement has been with the Foreign Relations and Home Affairs Committees of the Guatemalan Congress.

⁵ On 31 August 2004 the Army provided support to the police during the eviction of protesting rural workers at the Nueva Linda Farm, in Retalhuleu, Southwest Guatemala; 4 police officers and 8 rural workers died as a result of injuries during the eviction. On 15 March 2005 the army and police, reportedly violently cleared a public road of a social protest in the department of Huehuetenango, Northeast Guatemala; at least one person died and 10 were injured, see Amnesty International press release 16 March 2005 (AI Index AMR 34/012/2005).

⁶ Whilst in existence, the patrols were responsible for many thousands of abuses: The *Recuperación de la Memoria Histórica* REMHI project, (Recuperation of the Historical Memory Project), the report of the *Oficina de Derechos Humanos del Arzobispado de Guatemala* (ODHA), Archbishop's Human Rights Office into Guatemala's internal armed conflict attribute over 90% of the documented cases of human rights violations to the Guatemalan armed forces and their civilian adjuncts, the military commissioners and the civil patrols. Of those cases registered by REMHI, the Civil Defence Patrols themselves were implicated independently in 1,731 incidents of human rights violations (out of a total of 3,424 victims) and in 1,799 incidents in combination with the military (out of a total of 10,602 victims), including participation in 342 massacres. For more information on the see *Guatemala: The Civil Defence Patrols Re-Emerge*, 4 September 2002 (AI Index: AMR 34/053/2002).

into their deaths; human rights violations within the context of agrarian disputes which have become more severe under the new administration; attacks against human rights defenders; and, the potential impact of trade policies on human rights.

Human rights concerns in Guatemala have fundamentally changed since the time of the internal armed conflict. The challenges facing the present government are to effectively overcome impunity and strengthen the administration of justice, including bringing those responsible for past human rights violations to account. During the internal armed conflict the Government of Guatemala was characterised as a state sponsoring the systematic abuse of human rights. The present Government of Óscar Berger must find the political will to challenge impunity and strengthen the administration of justice as an important step toward addressing human rights abuses – past and present.

Killings of Women⁷

The large number of killings of women in exceptionally brutal circumstances suggesting many victims also suffered some form of sexual violence before their death, is the subject of both national and international concern.

Establishing a comprehensive overview of the killings of women in Guatemala is still difficult because of a lack of reliable official information systems. This stems primarily from the failure of national institutions to efficiently coordinate the monitoring and documenting of the killings⁸.

However, according to press reports, police recorded 527 women violently killed during 2004, up from 383 in 2003 and 163 in 2002⁹.

In the past three years, violent deaths of both men and women have increased but the noticeable rise in killings of women is of particular concern. The percentage of women killed within the overall total has steadily grown: according to police records, in 2002 women accounted for 4.5 per cent of all killings, in 2003 11.5 per cent and in 2004 12.1 per cent¹⁰.

⁷ In view of the deficiencies in regard to the collection and management of data, the statistics presented in this report should not be read as definitive. However, the OAS Special Rapporteur on women, UN Special Rapporteur on violence against women, the Guatemalan Human Rights Ombudsman's Office *Procuraduría de los Derechos Humanos* (PDH), Women's Office of the Public Prosecutor's Office and police whilst presenting different statistics all concur on the general trend of an increase in the murders of women. As such, statistics presented in this report should be used as a guide to the trend.

⁸ PDH, *Muertes violentas de mujeres durante el 2003*. (2004) 24

⁹ Figures for 2002 and 2003 from the PDH, *Muertes violentas de mujeres durante el 2003*. (2004) 25, citing police records. Figure for 2004 from La Prensa Libre, 4 January 2005, citing police records.

¹⁰ Figures for 2002 and 2003 from Procuraduría de los Derechos Humanos, *Muertes violentas de mujeres durante el 2003*. (2004), page 31, citing police records. Figure for 2004 from La Prensa Libre,

The number presented by the police for 2004 attribute 175 deaths to gunshot wounds, 27 to knife wounds and 323 to 'other causes'. These categories mask the savage nature of many killings in which the victim's bodies present evidence of rape, torture, dismemberment and mutilation in moments prior to their death. In just under one third of the cases being investigated by the Public Prosecutor's Office, *Ministerio Público*, the victims were sexually abused before being killed¹¹.

Amnesty International believes that the full extent of violent killings of women in Guatemala is probably under-reported as many deaths are classified as accidental instead of violent. According to the Guatemalan Human Rights Ombudsman's Office *Procuraduría de los Derechos Humanos* (PDH) many bodies which present evidence of trauma are classified by the morgues as death by multiple trauma "*muerte por politraumatismo*" with no sub-classification as to the origins of the trauma (e.g. violence, accident, etc), this lack of detail may lead to unreported or misreported violent deaths¹². This lack of reliable information means that the number of women violently killed in 2004 is likely to higher than 527

One repeated demand by civil society organisations in Guatemala and recommendations by international experts has been for the government to reform and improve its criminal statistics system, by establishing coordination between relevant institutions and applying uniform standards in the determination of killings and record management¹³.

Non-governmental women and human rights organizations in Guatemala along with the Special Rapporteurs on Women from both the UN and the Organisation of American States (OAS) have noted the inadequate response from the government to the killings of women¹⁴.

Another concern frequently raised is the limited amount of personnel, financial and technical resources assigned to the investigation of the killings of women. After the visit of the UN Special Rapporteur on Violence Against Women in February 2004 a new Female Homicide Unit *Unidad de Homicidios Contra Mujeres*, part of the Criminal Investigation Service

4 January 2005, citing police records. (Total homicides in Guatemala: 2002, 3631; 2003, 4237; 2004, 4346).

¹¹ Comunicado de Prensa No. 20/04, *La Relatora Especial de la CIDH evalúa la vigencia del derecho de la mujer guatemalteca a vivir libre de la violencia y discriminación*, 18 September 2004; citing data provided by the Women's Office, *Fiscalía de la Mujer*, of the *Ministerio Público*.

¹² AI interview with the PDH, 6 October 2004.

¹³ For example, according to the PDH, the National Institute of Statistics classifies accidental as well as suicide deaths as violent. *Procuraduría de los Derechos Humanos, Muertes violentas de mujeres durante el 2003*. (2004) 24.

¹⁴ Yakin Ertürk, United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences visited Guatemala in March 2004, see Preliminary note on the mission to El Salvador and Guatemala (2-14 February 2004) 8 March 2004, E/CN.4/2004/66/Add.2. Susana Villarán, Special Rapporteur on the Rights of Women of Inter-American Commission on Human Rights of the Organisation of American States visited in September 2004, See Press Release No. 20/04 *La Relatora Especial De La CIDH Evalúa La Vigencia Del Derecho De La Mujer Guatemalteca A Vivir Libre De La Violencia Y Discriminación* (<http://www.cidh.org/Comunicados/Spanish/2004/20.04.htm>)

Servicio de Investigación Criminal of the Police was set up to investigate cases of killings of women. The OAS Special Rapporteur on the Rights of Women, visiting seven months later, reportedly found the Unit functioning with 15 officers with one car, one cellular phone and two computers, of which only one worked, for the whole unit¹⁵. With few resources many cases go un-investigated.

These chronic deficiencies in investigatory procedures are common to most criminal investigations. However, Amnesty International has found that these deficiencies are compounded by the discrimination that frequently characterizes the authorities' response to the murders of women and that guides the way in which the investigations and prosecutions into the murders are conducted.

The police and Public Prosecutor's Office tend to place both the crimes and the victims in discriminatory categories. According to police statistics, categories such as 'personal problems' and 'crimes of passion', accounted for 50 per cent of killings of women in the first half of 2004 in the department of Guatemala¹⁶. Within the definition of what police refer to as 'crimes of passion' they note that "*the victims are women who have been married more than once*"¹⁷. Categorizing the cases in this way undermines the impartiality of the investigation 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.

Several gender experts and human rights defenders, including 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. For instance, officers of the Female Homicide Unit interviewed by Amnesty International dismissed most victims as "*gang members*"¹⁸. 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 studies¹⁹. According to the 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)²⁰.

¹⁵ La Prensa Libre, 14 September 2004.

¹⁶ Policía Nacional Civil, *Situación general de violencia contra la mujer*, May 2004, page 4.

¹⁷ Ibid., page 5. ("*Las víctimas son mujeres que han sostenido más de un matrimonio*")

¹⁸ AI interview with Female Homicide Unit officers, 27 May 2004.

¹⁹ According to a press report the Minister of the Interior (Ministro de Gobernación) attributed the majority of crimes to gangs, see La Prensa Libre, 14 December 2004. *Vielmann también responsabiliza a las pandillas de gran parte de estos crímenes.*

²⁰ *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>)

Blaming the victims is widespread and both the Special Rapporteurs on Women from the UN and OAS as well as women's human rights groups in Guatemala have repeatedly drawn attention to this discriminatory attitude and the pain it causes the surviving relatives of victims.

The PDH estimates that 90 per cent of cases have not been investigated and the motives of the homicide are unknown, although the Women's Office of the Public Prosecutor Office, with regard to crimes committed in 2003, noted that 66 per cent were not being investigated.²¹

Agrarian Disputes

Thousands of rural families, mostly either occupying land in protest at alleged violations of their labour rights or living on disputed land, were evicted from their homes during 2004.

In the first six months of 2004, according to UN figures, there were 31 evictions, more than half of which were violent²². Most violent evictions witnessed excessive use of force on the part of security forces resulting in abuses such as beatings, ill treatment and in some instances killings, as well as inadequate provision of basic safeguards (such as adequate alternative housing and food) for those evicted²³. There were fatalities and injuries to both evictees and police officers, as evictees in some instances also resorted to violence to oppose the evictions.

The community of Chitocán, in the department of Alta Verapaz, was evicted from their homes on 5 May 2004 by 900 police officers. The community had been in dispute with the owner (and their former employer) over alleged failure to pay legally mandated labour entitlements since the early 1990's. In April of 2002 the community moved from the plots allocated to them and occupied part of the Chitocán farm in order to exert additional pressure during the negotiations of their labour entitlements. Following failed negotiations the community occupied another part of the Chitocán farm. On the day of the eviction, according to the community, there was no prior notification and there was no attempt to negotiate. Reportedly the police began by firing their weapons into the air and using tear gas and then proceeded to advance on the homes of the fleeing community members. The Red Cross is reported to have stated that at least 20 people, including children, suffered intoxication from tear gas²⁴. Three police officers were reportedly wounded, for which the police blame members of the

²¹ AI interview with the PDH, 6 October 2004; AI interview with Women's Office of the *Ministerio Público*, October 2004.

²² *Informe Sobre Desalojos (Enero a Junio)*, MINUGUA Asesoría Socio-económica, 25 June 2004

²³ On guidelines for acceptable use of force see *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 7 September 1997 (<http://www.ohchr.org/english/law/firearms.htm>) and *UN Code of Conduct for Law Enforcement Officials*, adopted by the UN General Assembly on 17 December 1979 (http://www.unhcr.ch/html/menu3/b/h_comp42.htm). On guidelines for acceptable evictions see paragraph 15 of General Comment Number 7 (*The right to adequate housing (Art. 11.1): forced evictions. 20 May 1997*) of the UN Committee on Economic, Social and Cultural Rights (<http://www.ohchr.org/english/bodies/cescr/comments.htm>)

²⁴ *La Prensa Libre*, 6 May 2004.

community (the community dispute this arguing the police officers fell on rocks)²⁵. A review of evictions in Alta Verapaz carried out by the Presidential Commission on Human Rights, *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia 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 authorised in the eviction order, were also burnt down²⁶. In a press interview, the police officer in charge of the Cobán station declared that “*If there were any burnings it was because the members of the community themselves set fire [to their own homes]*”²⁷. The official police report on the eviction states that members of the community set fire to their own homes. It also alleges proprietors of the farm burnt some homes²⁸.

Amnesty International recognises the right of the authorities in Guatemala to maintain law and order and protect property. The organization does not condone the actions of protestors which involve use of violence or damage to property. However, steps must be taken to ensure disputes are resolved non-violently and to guarantee that human rights are protected during evictions.

A particular characteristic of agrarian disputes in Guatemala is that the full weight of the law and judicial system is often levied in order to enforce evictions, but not to issues relating to labour rights of rural workers or land tenure of rural communities. MINUGUA in its final report noted that “[t]he change in Administrations also brought with it a troubling increase in forced, sometimes violent, evictions of squatters, a trend that gave the impression of undue deference by the Government to the demands of landowners”²⁹.

The Peace Accords, signed in December 1996, provided a new framework for resolving labour and land disputes in rural areas. The Peace Accords included key commitments from the Government aimed at solving long term problems related to labour and land which had greatly contributed to originating the internal armed conflict between 1960 and 1996. The government agreed to promote access to land ownership for rural communities, provide a legal framework for resolving conflicts and improve security of land tenure, establish a Land Registry (*Catastro*) and ensure labour protection for rural workers³⁰. Amnesty International

²⁵ La Prensa Libre, 6 May 2004 & Eyewitness testimony given to AI.

²⁶ COPREDEH, *Informe de Verificación y Seguimiento Situacional a los Casos de Desalojos de Fincas en Alta Verapaz*, 7 June 2004.

²⁷ El Periódico, 8 June 2004.

²⁸ Policía Nacional Civil Report No. 206/2004 ref. AMGT/POP 5 May 2004, cited in *Informe de Ordenes de Desalojos del Departamento de Alta Verapaz*, Supervisores Auxiliares de Tribunales, 25 June 2004.

²⁹ A/59/307 Report of the Secretary-General, United Nations Verification Mission in Guatemala (MINUGUA), 30 August 2004. Paragraph 14

³⁰ See sections (B) Access to land and productive resources; (E) Legal framework and juridical security; (G) Land register and (H) Labour protection of part III, Agrarian Situation and Rural Development, of the Agreement on Social and Economic Aspects and Agrarian Situation, of the Peace Accords.

believes little progress has been made towards these benchmarks. In the case of labour protection, for example, the Peace Accords state that the Government will “ensure that labour legislation is effectively applied in rural areas” and will pay “urgent attention to the abuses to which rural migrant workers, casual workers and day labourers”³¹. In 2003, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in his report of a mission to Guatemala noted that basic rules relating to pay, security of employment or working conditions for rural workers fell short of international standards and the situation had not improved since before the internal armed conflict³².

The misuse of the judicial system to persecute or punish rural community leaders and activists appears to have increased significantly under the new government. At the time of writing, over one hundred rural activists were reportedly being investigated for suspected criminal wrongdoing, ranging from crimes such as ‘usurpation’ to ‘public incitement’³³. AI believes many of these charges could be unfounded or disproportionate in relation to the alleged crime committed, or in some cases politically motivated³⁴. For example, members of the legal aid office of the Catholic church in Quetzaltenango and San Marcos (both south-west Guatemala) are being investigated by the Public Prosecutor’s Office in relation to the crimes of ‘coercion’ and ‘threats’, charges presented after the members of the legal aid office mediated during a demonstration organised by community members campaigning for their labour rights. In a similar fashion, eight members of the organisation Communities Affected by the Chixoy Dam³⁵, were charged with ‘activity against the interior security of the nation’, after they

³¹ Agreement on Social and Economic Aspects and Agrarian Situation, Section H Labour Protection, Paragraph 39, b) *Prestar atención urgente a las prácticas abusivas de las cuales son víctimas los trabajadores rurales migrantes, mozos colonos y jornaleros en el contexto de la contratación por intermediario, medianía, pago en especie y uso de pesas y medidas. El Gobierno se compromete a adoptar sanciones administrativas y/o penales, contra los infractores.*

³² Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen *Mission to Guatemala* 24 February 2003 E/CN.4/2003/90/Add.2

³³ According to article 256 of the Guatemalan Criminal Code, ‘Usurpation’, is punishable by one to five years imprisonment; Article 289 states that, ‘Public Incitement’ is punishable by six months to two years imprisonment and a fine of 100,000 quetzales (approximately 13,000 US Dollars)

³⁴ According to the *Comité de Unidad Campesina* (CUC), Committee for Peasant Unity, of the over one hundred rural activists facing criminal charges, 19 are in el Petén; 55 in Cobán, Alta Verapaz; six in Sololá (for blocking a road in protest to mining operations); seven in el Puerto de San José (occupation of farms) and nine in Chixoy, Alta Verapaz (peaceful occupation of a hydro-electric plant).

³⁵ Members of several communities in the Rabinal municipality, Baja Verapaz department were evicted from their land over 20 years ago to allow for the construction of the Chixoy hydro-electric dam. On 7 September 2004, around 2,000 members of the Chixoy dam affected communities participated in a peaceful protest at the Chixoy hydroelectric dam. The communities were protesting the lack of reparations for past human rights violations (including massacres committed by the Guatemalan Armed Forces during the internal armed conflict), for the losses incurred during the construction of the dam, and for the lack of free running water and electricity in the communities as promised to the communities before the construction of the dam. On 8 September 2004, the community ended the protest following an agreement with representatives of the *Instituto Nacional de Electrificación*, (INDE),

staged a demonstration which according to the conclusion of a police report was non-violent and resulted in no criminal damage³⁶. Amnesty International believes, in both cases, that the charges being levied against the activists are unfounded and politically motivated.

MINUGUA noted in its final report: “*Extreme poverty and income inequality, skewed land distribution, State abandonment of the rural areas and the exclusion of the rural population from political and economic decisions were among the root causes of the armed conflict*”³⁷. Amnesty International believes that failure to resolve the underlying causes of agrarian disputes will prevent rural communities from exercising their right to a decent standard of living, including adequate food and housing, effectively leaving them in poverty, at risk of violence and insecurity.

Attacks on Human Rights Defenders

Clandestine and illegal armed groups still operate with impunity in Guatemala. These groups have been linked to organised crime and are thought to have infiltrated the police, army and some state institutions³⁸. Clandestine groups are considered to be responsible for many attacks against human rights defenders who have denounced the activities of such groups or campaigned for justice for past violations committed by their members or former members of the security forces.

According to the Human Rights Defenders Protection Unit of the National Movement for Human Rights, a Guatemalan non-governmental organization, in 2004 there were 122 attacks

State Electricity Institute, the authorities and observers from the PDH, the state human rights ombudsman's office, to negotiate with the communities. For more information see, Guatemala Human Rights Defenders at Risk, 1 November 2004 (AI Index AMR 34/019/2004).

³⁶ Article 214 *Coacción*, Coercion (carries a maximum sentence of two years), Article 215 *Amenazas*, Threats (carries a maximum sentence of three years) and Article 390 *Actividades Contra La Seguridad Interior De La Nación*, Activity Against The Interior Security Of The Nation (carries a maximum sentence of five years), all of the Criminal Code, *Codigo Penal*.

³⁷ *Report of the Secretary-General, A/59/307*, United Nations Verification Mission in Guatemala (MINUGUA), 30 August 2004. Paragraph 50

(<http://www.minugua.guate.net/informes/infocronog/9threport30aug2004.pdf>)

³⁸ The term clandestine groups refer to criminal networks involving the business sector, private security companies, common criminals and gang members. Preliminary investigations have also implicated members of the police and the both ex and current members of the armed forces. These clandestine groups are closely linked to both organised crime and so-called "hidden or parallel powers"; These represent an informal group of powerful individuals, both civilian and military, who have embedded themselves within the state structure and use their positions and contacts to control lucrative illegal activities and guarantee immunity from prosecution. Through the clandestine groups, they also intimidate those who threaten their perceived interests. Many of the increasing number of attacks against human rights defenders, whilst often disguised as common crime, are believed to be carried out by members of clandestine groups.

against human rights defenders³⁹. The beginning of 2005 witnessed a renewed attack from clandestine groups and organised crime aimed at intimidating and hindering the work of human rights defenders. Twenty-six human rights defenders were reportedly threatened or attacked between 1 January and 25 February 2005⁴⁰. This included an attempt to murder a trade unionist, attempts to burn alive a municipal worker who had complained about corruption, and numerous 'robberies' of human rights organizations, in which equipment and human rights information were taken from the premises⁴¹. Some international organizations operating in Guatemala have also been subject to harassment during the first year of President Berger's administration⁴².

Members of the international community welcomed efforts by the Guatemalan Government in 2003 to investigate the perpetrators suspected of involvement in many attacks and threats to human rights defenders. Much praise was given to the agreement, signed in March 2003, to create the Commission to Investigate Illegal Bodies and Clandestine Security Apparatus (CICIACS). The Commission's role was to investigate clandestine groups and initiate prosecution of its members. However, in August 2004 the Constitutional Court, Guatemala's highest court, delivered an opinion in which it held that parts of the CICIACS agreement were unconstitutional. After the Constitutional Court delivered its opinion the current government announced it would restart the CICIACS process to identify and prosecute members of the illegal clandestine groups whilst respecting the opinion of the Constitutional Court.⁴³

Two years on from the original agreement, attacks against human rights defenders – human rights activists, journalists, justice officials, trade unionists, religious officials and others - have continued. More than 10 years after the Guatemalan government recognised its obligation to combat clandestine groups in Guatemala, the alliance between organized crime and the state apparatus is stronger than ever. Clandestine groups, which during the previous administration consolidated their hold over the Guatemalan state, continue to challenge and undermine the rule of law. Members of civil society seeking to expose the alliance between organized crime and the state and those working against impunity continue to be subjected to intimidation and attacks.

In April 2005, the Public Prosecutor's Office announced the creation of a new *Sección de Fiscalía de Derechos Humanos*, Human Rights Office, to investigate crimes committed by

³⁹ *Situación de los defensores de derechos humanos*, Informe del 2004, Unidad de Protección de Defensores / Movimiento Nacional de Derechos Humanos

⁴⁰ *Coalición de Derechos Humanos contra las Estructuras Clandestinas*, Human Rights Coalition Against Clandestine Structures, press release '*Las estructuras clandestinas funcionan con total impunidad*, Clandestine structures function with total impunity', 25 February 2005.

⁴¹ See Amnesty International press release AI Index AMR 34/007/2005 (Public) 21 January 2005.

⁴² *Situación de los defensores de derechos humanos*, Informe del 2004, Unidad de Protección de Defensores / Movimiento Nacional de Derechos Humanos, pages 6 and 7.

⁴³ EFE News Agency, 7 August 2004, "*Gobierno insistirá crear comisión investigar grupos clandestinos*". Also, Amnesty International press release 7 August 2004 (AI Index AMR 34/015/2004).

members of illegal clandestine groups and attacks against human rights defenders. The new Office will merge and supersede three existing *Fiscalías Especiales*, Special Offices, for human rights defenders, journalists & trade unionists and administrators of justice. Although the mandate, resourcing and jurisdiction remain very ambiguous, it could be considered a positive development if the new Office is independent, effective and contributes to reducing attacks on human rights defenders, bringing those responsible to justice and investigating past and present human rights violations. However, Amnesty International notes that dedicated Offices within Public Prosecutor's Office for the protection of human rights defenders and investigation of crimes committed against them have existed for some time and have had a limited impact in reducing attacks against human rights defenders or bringing those responsible members of clandestine groups to justice. The Government should measure progress not by the creation of new Offices but by delivering concrete results in the fight against impunity and the protection of human rights and those who defend human rights.

The Impact on Human Rights of Trade Policies

Amnesty International is concerned about the implications for human rights of the Free Trade Agreement with the United States of America, the Dominican Republic and other Central American Nations (CAFTA) ratified by the Guatemalan legislature. Whereas Amnesty International takes no position in the debate over the economic or political benefits or disadvantages of CAFTA, the organisation is concerned over the possible deterioration to human rights standards as a result its implementation.

Of particular concern is the potential for the implementation of CAFTA to result in retrogression in the realisation of the right to the highest attainable standard of physical and mental health.

The right to health is established in article 93 of the constitution of Guatemala, where it is recognised as a fundamental right of every human being without discrimination. Article 94 establishes the obligation of the state to be vigilant in the interest of health; and article 95 defines health as public good to be conserved by all⁴⁴. In addition, as a state party to the International Covenant of Economic, Social and Cultural Rights (ICESCR), Guatemala “recognize[s] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”⁴⁵. This includes a commitment not only to take concrete steps towards achieving progressively the full realisation of the right to health but also immediate minimum core obligations. The UN Committee on Economic, Social and Cultural Rights, which monitors the ICESCR, has established that minimum core obligations include access to essential medicines⁴⁶.

⁴⁴ Constitution of Guatemala available at <http://www.leyesdeguatemala.com/verDoc.php?codigo=CONS001&url=cons001/cons001.php>

⁴⁵ International Covenant on Economic, Social and Cultural Rights, Article 12.

<http://www.ohchr.org/english/law/cescr.htm>

⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment 14, paragraph 43, E/C.12/2000/4,

By prohibiting for five years the use of test data necessary to approve new medicines and by extending the patent period, it is widely considered that the implementation of CAFTA will introduce restrictions to the production of generic medicines. Amnesty International believes that the State of Guatemala could be in violation of article 12 of the ICESCR if the implementation of CAFTA results in a reduction in access to essential medicines for the Guatemalan population.

Amnesty International considers that the intellectual property regime created by CAFTA, as implemented through restrictions on test data and extended patent protection, excludes important public health exceptions to international patent protection rules. The Doha Declaration on TRIPS (Trade-Related Aspects of Intellectual Property Rights), established that “the [TRIPS] Agreement can and should be interpreted and implemented in a manner supportive of [World Trade Organisation] members' right to protect public health and, in particular, to promote access to medicines for all”⁴⁷. The implementation of CAFTA, which contains no such exception, may limit access to essential and affordable medicines for many Guatemalans.

Writing in relation to the draft text of the Free Trade Agreement between Peru and the USA, Paul Hunt, the UN Special Rapporteur on the right to the highest attainable standard of health, noted that provisions of the agreement to extend patent protection “undermine[d] the consensus reached at the WTO on the need to balance the protection of intellectual property and the protection of public health”⁴⁸. The Special Rapporteur further noted that “if these provisions were introduced and implemented, they would significantly impede access to affordable essential medicines for some individuals and groups, including antiretroviral for people living with HIV/AIDS”⁴⁹. The provisions referred to by the Special Rapporteur are identical in substance to those contained in CAFTA, already ratified by Guatemala. In addition the UN Committee on the Rights of The Child in June 2004 warned the Government of El Salvador, another signatory to CAFTA, of the “potential negative impact of international trade-related intellectual property agreements on the access to affordable medicines”⁵⁰.

([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)); List of essential medicines administered by the World Health Organisation (WHO), available at <http://www.who.int/medicines/organization/par/edl/eml.shtml>

⁴⁷ Ministerial Conference of the World Trade Organisation, Doha, 20 November 2001

http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

⁴⁸ Report submitted by the Special Rapporteur on Right of everyone to the highest attainable standard of physical and mental health, Paul Hunt, *Mission to Peru*, E/CN.4/2005/51/Add.3 (paragraph 48), 4 February 2005. <http://www.ohchr.org/english/bodies/chr/docs/61chr/E.CN.4.2005.51.Add.3.pdf>

⁴⁹ Ibid.

⁵⁰ UN Committee on the Rights of the Child, Concluding Observations El Salvador, CRC/C/15/Add.232, 4 June 2004.

Amnesty International is concerned about recent developments related to generic medicines within the context of CAFTA⁵¹. In August 2004, the World Health Organisation (WHO) publicly recognised Guatemala's efforts to facilitate access to medicines via decree 34-2004 of the Congress of Guatemala. The WHO noted that the decree reconciled the right to health with the agreement on TRIPS and public health⁵². However, *acuerdo gubernativo*, government agreement 3-2005 once again introduced limitations to access to generic medicines previously withdrawn by decree 34-2004. These limitations were made permanent by the *Ley de Propiedad Industrial*, Law of Industrial Property, approved on 9 March 2005.

Recommendations

Amnesty International urges the Guatemalan Government to give serious consideration to the concerns raised in this Memorandum, and to ensure that action is taken for the full realisation of human rights and the rule of law in Guatemala. To combat the wave of killings of women in Guatemala Amnesty International recommends the Government of Guatemala:

- Ensure all ministers, police officers, prosecutors and officials of the judicial system address the issue of killing of women in Guatemala as a serious matter of law and human rights; in relation to the victims of killings they should speak with respect and treat their surviving relatives with due care and attention by refraining from making statements which dismiss or discredit the seriousness of the crime of murder or imply that women victims are deserving of their fate or are in any way to blame for their fate;
- Express publicly its concern at the killing of women and its abhorrence of the frequently brutal circumstances in which killings occur. State that those responsible will be arrested and prosecuted in conformity with due process and human rights protection;
- Take immediate steps to fully resource and expedite criminal investigations into killings of women; modernise and reform forensic services in accordance with international best practice; investigations into crimes against women should draw on international standards applicable to the forensic investigation of such crimes; and establish a detailed national database of killings of women.

With regard to human rights violations committed within the context of agrarian disputes, Amnesty International recommends the Government of Guatemala:

⁵¹ Amnesty International press release 8 March 2005 (AI Index AMR 34/010/2005).

⁵² United Nations in Guatemala, *OPS/OMS apoya la iniciativa de ley propuesta por el Gobierno para derogar el Decreto 9-2003 y asegurar el acceso a medicamentos esenciales*, 13 August 2004, (http://www.onu.org.gt/ver_noticias.asp?idnoticia=40)

- Ensure that no evictions take place outside the rule of law or without due process, and take adequate steps to protect the rural population from forced evictions carried out by other actors.
- Ensure that any evictions carried out are done so in accordance with national and international human rights law, in particular, with obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights, as interpreted by the UN Committee on Economic, Social and Cultural Rights⁵³.
- Fully and impartially investigate human rights violations that have occurred during past evictions, including the legality of eviction orders themselves.
- In accordance with the Peace Accords of 1996, urge the Congress of Guatemala to pass, without further delay, a law that provides the legal framework necessary for the Land Registry to be established, ensuring that its legally binding character remains intact.

With regard to protecting human rights defenders and dismantling clandestine groups, Amnesty International recommends the Government of Guatemala:

- Ensure effective and independent mechanisms to investigate and bring to justice members of clandestine illegal groups believed to be responsible for human rights violations against human rights defenders;
- Present a clear and measurable timetable and strategy for strengthening existing institutions and judicial system, including the offices of the Guatemalan Human Rights Ombudsman;
- Present a plan for the implementation of the principles of the UN Declaration on Human Rights Defenders and the recommendations of the Special representative of the UN secretary general on the situation of human rights defenders.

⁵³ UN Committee on Economic, Social and Cultural Rights, General Comment number 7, *The Right to adequate housing (article 11.1 of the Covenant): forced evictions*, 20 May 1997, E/1998/22, annex IV, in particular paragraph 15: “Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument)

In regard to the potential impact of trade policies on human rights, Amnesty International recommends:

- Ensure that and future implementation of the Central America Free Trade Agreement is consistent with the international obligations of the Guatemalan government under international human rights laws, in particular its obligations to respect, protect and fulfil the right to health.
- Conduct an assessment of the impact on human rights of steps needed to implement CAFTA. In particular reference to the right to health, the government should ensure that any implementation of CAFTA does not result in any reduction in the access to essential medicines for Guatemalan population.