

Guatemala

Amnesty International Submission to the UN Universal Periodic Review

Second session of the UPR Working Group, 5-9 May 2008

Key Words: impunity, violence against women, land disputes, public security, human rights defenders

In this submission Amnesty International provides information under sections B, C and D:

- Under section B, Amnesty International raises concern over shortcomings in Guatemalan legislation relating to impunity, violence against women, the International Criminal Court, human rights in the context of disputes over land, and the role of international human rights principles in Guatemalan jurisprudence.
- In section C, we describe concerns relating to violence against women, human rights violations in the context of public security, disputes over land, the failure to challenge impunity, and the safety and security of human rights defenders.
- In section D, Amnesty International makes a number of recommendations in the areas of concern listed.

B. Normative and institutional framework.

Impunity

1. Amnesty International is deeply concerned at the 12 December 2007 judgment of Guatemala's Constitutional Court relating to the case of former officers, including two former heads of State, accused of genocide, crimes against humanity, torture and enforced disappearances, who have extradition requests issued against them by Spain.¹ Upholding an appeal lodged by two former officers, who had been ordered detained by the lower courts pending their extradition, the Constitutional Court based its decision on what Amnesty International considers to be erroneous statements concerning the scope of the Spanish courts' jurisdiction to carry out investigations into breaches of international law committed in Guatemala. The Constitutional Court denies Spain's jurisdiction to investigate and prosecute crimes under international law committed in Guatemala, based - among other reasons - on the assertion that the Genocide Convention does not provide for universal jurisdiction, as argued by the Spanish investigating judge and because an investigation in Spain on these crimes would collide with proceedings already taking place in Guatemala. The Court also seemed to imply that some of the crimes were of a political nature (and as such possibly covered by the 1996 amnesty law).² Amnesty International believes the Constitutional Court's ruling to be yet another example of the endemic impunity for grave violations of human rights in Guatemala.³
2. Cases of crimes against humanity and genocide currently lodged with the Public Prosecutor's Office in Guatemala City have encountered many obstacles, including the government's refusal to release 25-year old military documents that allegedly prove the command responsibility of former officers accused of crimes under international law.⁴ The Ministry of Defence is opposing the release of these documents on the grounds that it would constitute a risk to national security under Article 30 of the Constitution and Ministerial Agreement 06-2005 (*Acuerdo Ministerial del Ministerio de Defensa No. 06-2005*). This Agreement fails to comply with international standards,⁵ including by allowing the Ministry of Defence to deny access to documents without having to provide legitimate reasons for the denial. The Inter-American Court of Human Rights, in the case of Myrna Mack Chang vs. Guatemala, noting the use of Article 30 of the Constitution, has already ruled that "*in cases of human rights violations, the State authorities cannot resort to mechanisms such as [...] national security, to refuse to supply the information required by the judicial or administrative authorities [...]*".⁵ *In cases of human rights violations, [...]*

¹ Expediente 3380-2007, 12 December 2007, Constitucional Court of Guatemala

² *Ley de Reconciliación Nacional, Decreto No. 145-96*, December 18 1996

³ Amnesty International Public Statement, *Guatemala: Inconsistent ruling by the Constitutional Court rejects extraditions sought by Spain*, 21 December 2007, AI Index: AMR 34/026/2007.

⁴ These documents include the *Plan Victoria 82* and *Plan Operativo Sofia*, alleged to detail military operations which resulted in massacres, many recounted in the UN-sponsored Commission for Historical Clarification (CEH). The documents were requested by the prosecution in cases against former President General José Efraín Ríos Montt (1982-83) and other former high ranking officials.

⁵ Such as the UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 8 February 2005.

resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the 'clandestinity of the executive branch and to perpetuate impunity'.⁶

Violence against women

3. While there has been some progress in repealing gender-based discriminatory legislation, such as the suspension of Article 200 of the Criminal Code which allowed a rapist to avoid prosecution if he married his victim, other discriminatory statutes remain on the books. Article 180 of the Criminal Code, which stipulates that it is an offence to have sexual relations with a minor if the woman is "honest" ("*una mujer honesta*"), remains in force. In addition, local women's organizations have called for the reform of Article 106 of the Criminal Code, which stipulates that the forgiveness of the victim will remove the criminal responsibility of the guilty party. There are reports that Article 106 has been used to pressure female victims of rape and sexual assault into forgiving their victims. The "Framework Law on Violence Against Women" may offer an opportunity to strengthen the national legal framework for combating violence against women. The law was presented in October 2007 and received the approval of Commission on Women's Issues in the Guatemalan Congress; however, it has not yet been passed.

Legislation relating to human rights in the context of land disputes⁷

4. Conflicts over land between rural communities (mostly indigenous) and owners (mostly Ladino or European descent) remain a critical issue in Guatemala. Fuelling these disputes and the human rights violations that result from these is a legal framework stacked against rural communities, including The Law of Supplementary Titling (*Ley de Titulación Supletoria*) which allows for the acquisition of uninhabited land. Although there are supposed to be a number of safeguards in place, in practice the law is used to claim ownership of land on which indigenous communities may have resided for centuries without having a legal title. In addition, Articles 260 and 264 of the Labour Code establish poor protection mechanisms for rural workers and often lead to disputes by allowing farm owners to avoid paying the mandatory supplements to the minimum wage. When agrarian disputes occur as a consequence, the authorities resort to using the definition of the crime of "usurpation" (an attempt to usurp legal title to land) to evict communities who may have resided and worked in a particular area their entire lives.

The International Criminal Court

5. Guatemala has not adhered to the Rome Statute of the International Criminal Court. Amnesty International views the International Criminal Court as a positive step for the protection of human rights and, along with other national and international organizations, has requested that Guatemala promptly accede to the Rome Statute.

C. Promotion and protection of human rights in Guatemala.

Impunity

6. In 1999 the UN-sponsored Commission for Historical Clarification (CEH), set up to investigate and document human rights violations committed during the internal armed conflict, wrote "*In the CEH's opinion, the sum of violent actions perpetrated by the state against the Maya-Ixil population during 1980-1983 leads to the conclusion that acts of genocide were committed. These were inspired by a strategic determination that was also of a genocidal character, because one of the objectives of the counter-insurgent military campaign was the partial destruction of the victim group, which, it was thought, would lead to the defeat of the enemy*".⁸ In spite of these findings, the authorities have failed to bring those responsible for these crimes to justice. The 12 December 2007 ruling of the Constitutional Court (see above) dealt a damaging blow to the fight against impunity. Although the ruling called on the authorities to prosecute those responsible, the cases of crimes against humanity have made no substantial progress over the last eight years. According to obligations under both the Convention on the Prevention of Genocide and national legislation, the Public Prosecutor's Office should have initiated investigations into cases of alleged genocide in 1980-83.⁹ However, it was not until 2000 and 2001 that it initiated investigations, after receiving complaints from surviving victims. In the past eight years the cases have not passed the initial preparatory stage: the Public Prosecutor's Office has been unable or unwilling to

⁶ Inter-American Court of Human Rights, Case of Myrna Mack Chang v. Guatemala, Judgment of November 25, 2003 (Merits, Reparations and Costs), par. 180 & 181.

⁷ Amnesty International, *Guatemala: Land of injustice?*, AI Index: AMR 34/003/2006

⁸ *Comisión de Esclarecimiento Histórico, "Guatemala: Memoria del Silencio"*, Oficina de Servicios para Proyectos de las Naciones Unidas, capítulo II, tomo III, página 358, 1999 (unofficial AI translation).

⁹ Convention on the Prevention and Punishment of the Crime of Genocide, ratified by Guatemala on 13 January 1950. Amnesty International AI Index: AMR 34/001/2008

take the investigatory process forward in a sufficiently rigorous and legally coherent manner. During the eight year investigation by the Public Prosecutor's Office there have been reports of a lack of understanding of how to investigate and document international crimes, constant rotation of lead prosecutors, errors in the collection of witness statements, significant delays in requesting court orders for the release of Ministry of Defence documents, and failure to attend court hearings on the release of documents. The eight year investigation by the Public Prosecutor's Office has not led to charges being made against any individuals suspected of involvement in the alleged genocide that took place in Guatemala in 1982. An additional consequence of the inaction and lack of political will on the part of the Public Prosecutor's Office has been the burden on civil society organizations to collect testimonies often at high costs and at great personal risk. These organizations do not enjoy the protection of a State agency and have reported threats and attacks as a result of their work on these cases.¹⁰

7. Alongside its findings on genocide, the CEH also presented findings that an estimated 200,000 people were disappeared or killed during the internal armed conflict.¹¹ There have been no significant results to report in terms of locating the disappeared. A proposal for the establishment of a commission for locating the disappeared, received by Congress in January 2007, is still being considered.¹²

Public security

8. The public security situation in Guatemala has become a cause for serious concern. Police records indicate that a total of 5,781 people were killed in 2007, 5,885 in 2006, 5,338 in 2005 and 4,346 in 2004. These figures show an average of 42 killings per 100,000 inhabitants over the four year period.¹³ Actual convictions for killings have remained extremely low. In November 2007, the then Vice-President of Guatemala reported to Amnesty International that approximately one per cent of killings resulted in a successful prosecution (obtaining a conviction).¹⁴ According to the UN Special Rapporteur on extra-judicial, summary or arbitrary executions "[t]he implication is obvious and disturbing: Guatemala is a good place to commit murder, because you will almost certainly get away with it".¹⁵ In this context of increasing insecurity combined with a failure by the state to undertake efficient and effective investigation and prosecution, more violence has filled the vacuum: agents of the security forces have been accused of carrying out extra-judicial executions and torture. Reports from local organizations and international bodies contain credible allegations that members of the security forces are implicated in cases of torture and extra-judicial executions of those deemed socially undesirable.¹⁶ The victims, including minors, tend to be members or alleged members of street gangs (known as *maras*). Sometimes referred to as "social cleansing", these killings should be immediately and thoroughly investigated by the authorities, although this has not taken place to date.

Violence against women

9. Within the general context of violence outlined above, killings of women have become an issue of particular concern. According to police records, the number of women killed in 2007 was 599, in 2006 it was 581, in 2005 665, and in 2004 the number was 527.¹⁷ Amnesty International has repeatedly raised its concern over these killings, as have many national organizations and international bodies including the UN.¹⁸ The bodies of many female victims show signs of sexual violence, torture and exceptional brutality, including mutilation. As outlined above, convictions in general remain low as the Public Prosecutor's

¹⁰ See Amnesty International Urgent Action 32/07, 8 February 2007, AMR 34/005/2007.

¹¹ Op cit, *Comisión de Esclarecimiento Histórico*, tomo V, page 43.

¹² *Comisión de Búsqueda de Personas Víctimas de Desaparición Forzada y Otras Formas de Desaparición*, Iniciativa de ley 3590, available at <http://www.congreso.gob.gt/archivos/iniciativas/registro3590.pdf>

¹³ Figures drawn from various communications from the Guatemalan Ministry of the Interior (*Ministerio de Gobernación*) to Amnesty International. Killings per 100,000 based on an estimated population of 12,700,000 as stated in the *UNDP Human Development Report 2007/2008*, page 245, but does not take into account any variations of the estimated population between 2004-2007.

¹⁴ Meeting with Amnesty International, London, 15 October 2007.

¹⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to Guatemala, 19 February 2007, A/HRC/4/20/Add.2, paragraph 42.

¹⁶ Op cit & Committee Against Torture, *Conclusions and recommendations: Guatemala*, 24 July 2006, CAT/C/GTM/CO/4; CALDH, ICCPG & SEDEM, *Las Ejecuciones Extrajudiciales de Jóvenes Estigmatizados: Dimensión jurídica, social y humana del fenómeno y responsabilidad del Estado de Guatemala sobre la mal llamada "limpieza social"*, May 2007

¹⁷ Op cit (footnote 13).

¹⁸ See Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala, 2 June 2006, CEDAW/C/GUA/CO/6; Report of the Special Rapporteur on Violence against women, its causes and consequences, Mission to Guatemala, 10 February 2005, E/CN.4/2005/72/Add.3

Office fails in its duty to effectively investigate and bring to justice those responsible. Moreover, in cases of killings of women, there is an additional element of gender-based discrimination: Amnesty International has collected evidence of a gender bias in the initial investigatory stage, such as dismissing victims because of their attire or status, and focussing on the sexual history of the victim.¹⁹ In one case the prosecutor documented the length of the skirt of the victim, in another, the prosecutor allegedly remarked that the pierced belly button of the victim meant that she was 'a nobody'.²⁰ Relatives complain about having to prove that their family member was "respectable" or that she had not been involved in any crime before the authorities would take their complaint seriously.

Human rights in the context of land disputes

10. Ministry of the Interior records indicate that in 2007 49 forced evictions took place in rural areas, following on from 29 evictions in 2006, 22 evictions in 2005, and 36 evictions in 2004.²¹ Amnesty International remains deeply concerned at the way land disputes, between indigenous and poor communities and wealthy landowners, are resolved. Rural communities face a justice system, including the police, Public Prosecutor's Office and judges, which is in practice fundamentally weighted in favour of the landowners. There appears to be an attitude of abdication of responsibility by state authorities as far as labour rights or land tenure of peasants and rural workers are concerned, contrasted by a prompt and effective response in defence of landowners. The lack of labour protection becomes a lack of security of tenure for many rural workers, whose homes are tied to their employment by wealthy landowners. The lack of legal redress for rural workers is exacerbated by the lack of due diligence on the part of the Public Prosecutor's Office and judicial authorities to investigate disputes; eviction orders are often authorized after a superficial consideration of the facts. When forced evictions are carried out they normally include the destruction of the property and crops of the evictees and other forms of excessive force on the part of the police. The actions by the State fall short of international standards for forced evictions as outlined in the *Committee of Economic, Social and Cultural Rights General Comment 7*, in particular, the provision of legal remedies, legal aid, genuine consultation and the provision of alternative adequate housing and resettlement.²²

Human rights defenders

11. Human rights defenders continue to be subjected to intimidation, including threats, attacks, break-ins and acts of surveillance. According to local organizations, in 2007 there were 195 incidents against human rights defenders, 278 in 2006, and 224 in 2005. The poor quality of investigations by the authorities and the lack of successful prosecutions continue to reinforce the impunity with which clandestine groups and others operate to target human rights defenders.²³ In addition, a worrying trend to increasingly target human rights defenders focussing on economic, social and cultural rights or campaigning on environmental issues has been evident over recent years.²⁴

D. Achievements, best practice, challenges and constraints.

Achievements

12. Amnesty International considers the approval, in August 2007, of the International Commission Against Impunity in Guatemala (CICIG) a positive step towards beginning the fight against impunity. The CICIG, which commenced operations in January 2008, will hopefully contribute to ending the stranglehold clandestine groups have on Guatemala. In addition, some improvements have been initiated by the Ministry of the Interior in the last six months of 2008: these include the creation of an office for the analysis of attacks against human rights defenders within the Ministry itself. Amnesty International hopes that these positive contributions are maintained in the future. In December 2007, it was announced that

¹⁹ See Amnesty International, *Guatemala: No protection, no justice: killings of women (an update)*, 18 July 2006, AI Index: AMR 34/019/2006, and Amnesty International, *Guatemala: No protection, no justice: killings of women*, 9 June 2005, AI Index: AMR 34/017/2005

²⁰ Op cit. (AI Index: AMR 34/017/2005, page 21) & Guatemala: Claudina Velasquez, AI Index: AMR 34/036/2006, 6 December 2006.

²¹ Op cit (footnote 13) and reports of local organizations. 2004 figure is for first 11 months.

²² *General Comment No. 7: The right to adequate housing: forced evictions*, Committee on Economic, Social and Cultural Rights [1997], para 16.

²³ The term clandestine groups has been used to 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 armed forces. Ex-military personnel, some of whom have been implicated in past human rights abuses, are also widely suspected of belonging to such groups.

²⁴ See Amnesty International, *Persecution and resistance: The experience of human rights defenders in Guatemala and Honduras*, August 2007, AI Index: AMR 02/001/2007.

the National Institute of Forensic Sciences would begin operations. Known as INACIF, the Institute will hopefully improve the quality of the forensic aspects of criminal investigations, and also provide better coordination for the disparate state agencies currently involved in criminal investigation and prosecution.

Recommendations to the Government of Guatemala

Impunity

13. Ensure that it is the policy and priority of the State of Guatemala that all cases of human rights violations committed during the internal armed conflict which ended in 1996 are investigated and prosecuted either in Guatemala or abroad without further delay and in accordance with international standards for fair trial.
14. Ensure that military documents relevant to cases of human rights violations committed during the internal armed conflict are released to domestic and foreign courts that request them.
15. Ensure significant efforts are made to locate those disappeared during the internal armed conflict, including and beginning with the approval of the Commission for Locating the Disappeared.
16. Ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

Public security

17. Ensure effective and independent investigations into all reports of torture and extrajudicial executions by members of the security forces, including of minors.
18. Address the investigative and prosecutorial deficiencies in the administration of justice by setting out a timetable for the full implementation of all outstanding recommendations by the UN, in particular by the Special Rapporteur on the independence of judges and lawyers, in his 2001 report.
19. Ensure the appropriate funding of the National Institute of Forensic Sciences (*Instituto Nacional de Ciencias Forenses*, INACIF) in order to strengthen forensic evidence on gender related killings.

Human rights violations in the context of land disputes

20. Create a mechanism for the peaceful resolution of disputes over land and place a moratorium on forced evictions until such a mechanism is in place.
21. Ensure that excessive force is not used during forced evictions, and that proper training relating to evictions is provided to the police (using for example, the UN Basic principles on the use of force and firearms by law enforcement officials).
22. Suspend the Law of Supplementary Titles, modify articles of the Labour Code relating to labour entitlements, and modify articles of the criminal code relating to usurpation.

Violence against women

23. Ensure all police officers, prosecutors and officials of the judicial system investigate and prosecute efficiently the killings of women in Guatemala; they should speak with respect and treat the relatives of the victims with due care and attention and refrain 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.
24. Present and support a legislative agenda which seeks to eliminate discriminatory provisions and improve protection and respect for the rights of women.

Human rights defenders

25. Ensure that human rights defenders are free to carry out their activities without any restrictions or fear of reprisals, as set out in the 1999 UN Declaration on the Rights and Responsibilities of Individuals, Groups and Institutions to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.
26. Ensure that reports of killings, threats, attacks and acts of intimidation against human rights defenders are thoroughly and promptly investigated and those responsible brought to justice.

Appendix: Amnesty International documents for further reference

- Annual report entries on Guatemala, 2005-2007
- *Guatemala: land of injustice?*, AMR 34/003/2006
- *Guatemala, no protection, no justice: killings of women in Guatemala*, AMR 34/017/2005
- *Guatemala, no protection, no justice: killings of women (update)*, AMR 34/019/2006
- *Guatemala: Inconsistent ruling by the Constitutional Court rejects extraditions sought by Spain*, AMR 34/026/2007
- *Guatemala: Caludina Velasquez*, AMR 34/036/2006