



GUATEMALA

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012

FOLLOW UP TO THE PREVIOUS REVIEW

During the first Universal Periodic Review of Guatemala in 2008, reviewing states made recommendations on the ratification of international instruments;¹ institutional and human rights infrastructure;² co-operation with human rights mechanisms;³ Indigenous Peoples;⁴ discrimination;⁵ the death penalty;⁶ violence against women;⁷ LGBT rights;⁸ torture,⁹ extrajudicial executions and enforced disappearances;¹⁰ human rights defenders;¹¹ the administration of justice, security and the rule of law;¹² and impunity.¹³ Guatemala did not expressly accept the specific recommendations, but welcomed them and said that it fully concurred with the concerns reflected therein.¹⁴ Guatemala also noted that it would need to strengthen its actions in areas such as ratification of international instruments, strengthening of the legislative framework and human rights infrastructure, and the administration of justice and rule of law; combating discrimination and obtaining equality for Indigenous Peoples; ensuring the right to life, liberty and security; to freedom of expression, opinion and participation; and to economic, social and cultural rights.

Some progress has been made with respect to the issues raised in the first UPR. However, serious human rights violations against women, human rights defenders, Indigenous Peoples and those demanding justice for crimes of the past continue to blight Guatemala's human rights record, as outlined below.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

IMPUNITY FOR CRIMES OF THE PAST

Amnesty International welcomes Guatemala's deposit of its instrument of accession to the Rome Statute of the International Criminal Court on 2 April 2012 and hopes that it will move quickly to bring domestic legislation in line with its commitments under the Rome Statute.

Despite sustained efforts by relatives of the victims and human rights groups to establish a commission to investigate the estimated 45,000 cases of enforced disappearances from the internal armed conflict (1960-1996), the creation of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance has still not been approved. Bill No. 3590 was presented in 2007, but Congress has yet to pass this into law. Guatemala has also still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2007.

INDIGENOUS RIGHTS

Indigenous Peoples in rural areas are particularly vulnerable in the context of land disputes and forced evictions.¹⁵ The policy and legal framework applied by the authorities prioritize the interests of large landowners over the human rights of rural workers. When disputes arise, investigations are cursory at best, and the affected communities are frequently charged with usurpation and evicted, even though they often have a legitimate claim to the land. One positive development occurred in August 2011; the Attorney General issued guidelines to prosecutors to bring eviction procedures into line with national and international human rights standards.¹⁶ These guidelines provide a useful structure towards safeguarding human rights in the context of land disputes if they are properly implemented and accompanied by other legal and policy reforms.¹⁷

Indigenous Peoples' human rights are also frequently violated in the context of extractive industries and large infrastructure projects. The process currently used to obtain the free, prior and informed consent of affected Indigenous communities is based on environmental impact studies which are largely technical in nature and mostly inaccessible for the affected Indigenous communities. This kind of process is not suitable for the purpose of consulting with Indigenous groups and has rarely resulted in a genuine process of consultation and consent.¹⁸ However, despite the current framework falling well below international standards for free, prior and informed consent, including the UN Guiding Principles on Business and Human Rights, it continues to be relied on by companies, who prefer to use lower national standards over international human rights standards.¹⁹

VIOLENCE AGAINST WOMEN

Amnesty welcomes the adoption of Congressional Act No. 9-2009 on Sexual Violence, Exploitation and Trafficking in Persons. The Act repeals articles 176 and 177 of the Criminal Code which stipulated that it was only a criminal offence to have sexual relations with a minor when the victim was considered "honest" (*una mujer honesta*). However, despite this new legislation, and other laws and state bodies set up to tackle gender-based violence, the overall levels of violence against women remain exceedingly high and those responsible for these crimes continue to enjoy impunity.

HUMAN RIGHTS DEFENDERS

The human rights framework for the protection of human rights defenders is not adequate: there is no structured process for the identification and protection of human rights defenders at risk, which makes it difficult for them to obtain effective and timely protection.

In 2005, the Presidential Commission for the Coordination of Executive Policy on Human Rights (*La Comisión Presidencial coordinadora de la Política del Ejecutivo en materia de Derechos Humanos*, COPREDEH) the state body for the promotion and protection of human rights, put forward a proposal to improve the protection programme for human rights defenders and other vulnerable groups. The proposal was consulted and agreed with civil society organisations, but has yet to be adopted. A second COPREDEH proposal was reportedly under discussion in 2011; however, civil society has not been consulted on this. At the time of writing, neither proposal has resulted in the establishment of the programme.

THE DEATH PENALTY

The death penalty is retained in law as punishment for aggravated murder, murder, terrorism offences resulting in death, kidnapping not resulting in death and other offences resulting in death. While no executions have taken place since 2000, at the end of 2011 13 prisoners remained on death row. No new death sentences were recorded in 2011. In 2005, the Inter American Court of Human Rights ruled in two cases that the absence of a clemency process in Guatemala is in violation of the American Convention of Human Rights.²⁰

The death penalty is regularly referred to by political actors as a mechanism for dealing with the public security crisis. During the recent election campaign of 2011, many presidential candidates made a commitment to restart executions, including the eventual winner. During 2008 and 2010, the Congress proposed legislation which would allow executions to be resumed. On both those occasions the then-President vetoed the proposed legislation.

THE HUMAN RIGHTS SITUATION ON THE GROUND

IMPUNITY FOR CRIMES OF THE PAST

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

The army has consistently failed to co-operate with investigations into human rights violations and has also refused to release documents relating to military operations conducted during the internal armed conflict. In 2010, a Presidential Commission, tasked with looking into the declassification of military archives relating to the conflict, recommended the declassification of over 11,000 documents. The army subsequently released the documents in question. However,

documents relating to 1980-1985 -- the period in which the vast majority of human rights violations occurred -- were not released.²¹ The declassified documents have not been indexed, summarized or systematized and are only accessible by visiting in person the offices of the army's Joint Chiefs of Staff in Guatemala City.²² The Presidential Commission's report on the declassification has never been made public, nor have the criteria used in determining which documents should be declassified.

The army has also refused to fully comply with a judicial order to release specific documents relating to military operations in the early 1980s.²³ This means that information which would enable survivors and victims' relatives to discover the truth about what happened, and to bring to justice those accountable for serious human rights violations, remains out of reach.

The past two years have seen some progress in bringing to trial those suspected of responsibility for past human rights violations. For example, after decades of little political will, in 2011 four former soldiers were sentenced for their role in a 1982 massacre of more than 250 men, women and children in Dos Erres village in the north of the country. In March 2012, another former soldier was also sentenced for his part in these killings.

However, despite the welcome progress in this and a handful of other cases, much remains to be done to achieve justice, including advancing cases against those with command responsibility for serious human rights violations.

Three retired generals were charged in 2011 with planning and overseeing the genocide, organized sexual violence and the forced transfers of populations in 1982-1983,²⁴ and in January 2012, former head of state, retired General Efraín Ríos Montt, was also officially linked to the case as a suspect. Amnesty International is concerned, however, that following the court's decision to name Ríos Montt as a suspect, newly sworn-in President Otto Pérez Molina publicly denied that genocide had ever occurred in Guatemala, instead of acknowledging the crimes of the past and setting the tone for justice, truth and reparation.²⁵

PUBLIC SECURITY

Public security is a serious concern in Guatemala with government figures for homicides totalling more than 6,300 in 2011.²⁶ According to the United Nations Office on Drugs and Crime, there were 41 homicides per 100,000 inhabitants in 2010.²⁷ Both figures were at similar levels to previous years, while convictions remain low. Police killings are a systemic problem and include extrajudicial executions and killings of suspected gang members and others suspected of being involved in criminality.²⁸

One recent criminal investigation into extrajudicial executions has resulted in prosecutions and extradition requests against 18 former officials. Such requests for extradition and/or prosecutions in third countries for crimes committed in Guatemala are pending for the former Minister of the Interior, the Director of National Police and the Deputy Director for Investigations, who currently reside in Spain, Switzerland and Austria, respectively. Other high ranking officials are also being either prosecuted or sought for their alleged involvement in extrajudicial executions of prisoners.²⁹ These investigations are a step in the right direction.

EVICION OF INDIGENOUS PEOPLES

Hundreds of Indigenous families are forcibly evicted every year, leaving thousands of people homeless. In January 2012, the Representative of the UN High Commission for Human Rights in Guatemala noted that between 2008 and 2012 local NGOs registered a total of 114 forced evictions.³⁰ The destruction of the homes and property of evicted communities is commonplace and amounts to cruel, inhuman or degrading treatment or punishment.³¹

In August 2011, the community of Nueva Esperanza, in the department of El Petén, was forcibly evicted and the residents fled to Mexico.³² The then Minister of the Interior explained that the forced eviction had taken place because it was believed that the community was supporting or collaborating with narco-traffickers.³³ The eviction, which left 300 community members with 100 children homeless, was not preceded by any criminal convictions, which under Guatemalan law would not justify the forced eviction of an entire community. It appears that the forced eviction of the Nueva Esperanza community was an extra-legal collective punishment for perceived criminality.

The shortcomings of the current legal and regulatory framework in relation to guaranteeing the free, prior and informed consent of Indigenous Peoples are exemplified in the case of a prospective mining project in San Rafael las Flores, in the department of Santa Rosa. In 2011, Minera San Rafael S.A., a subsidiary of Canadian company Tahoe Resources Inc., which already had an exploration licence, applied for an exploitation licence. Research conducted by Amnesty International in the local area indicated that the residents were not consulted prior to the issuing of the exploration licence (or the earlier exploitation licence request) and did not have access to the associated environmental impact study. The study itself, totalling some 2000 pages and 18 annexes, was open for comments for the mandated 20 day period in the office of the Ministry of the Environment in the capital city. The company has acknowledged that the study received no comments. Although there is organized opposition to the mining project, community members and activists were unaware of the study's existence and therefore unable to comment.

VIOLENCE AGAINST WOMEN

Amnesty International is deeply concerned at the levels of violence against women in Guatemala.³⁴ According to government figures, 631 women were killed in 2011 alone, bringing the total number of female victims to 5,700 in the last 10 years.³⁵ Some estimates put the conviction rate for such crimes at less than one per cent.³⁶ Female victims often suffer extreme brutality before being killed. The way in which the authorities respond to such killings often indicates discrimination against women.

A number of UN bodies have made recommendations on combating violence against women in Guatemala; however, many of these have still to be implemented.³⁷ Areas such as evidence collection, forensics, and other aspects of the investigation into such crimes remain weak.

HUMAN RIGHTS DEFENDERS

Human rights defenders, including journalists and trade unionists, face threats, harassment and attacks. In 2011, local organizations documented over 400 cases of attacks and intimidation against human rights defenders.³⁸ Some cases were brought against the alleged perpetrators of acts of intimidation and attacks; however, most of the cases were not investigated, and often the investigations are not thorough enough.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Guatemala:

Impunity for crimes of the past:

- To ensure complete and unrestricted access to all military archives for victims and their families to information that could help to bring perpetrators of human rights violations to justice or to locate victims of enforced disappearance;
- To approve the establishment of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance, ensuring it has adequate resources to carry out its work effectively;
- To ensure that prompt, impartial and effective investigations are carried out into all allegations of extrajudicial executions, war crimes, enforced disappearances, torture and ill-treatment, sexual violence and other human rights violations committed during the internal armed conflict, and to bring those responsible to justice;
- To establish a co-ordinated state policy to ensure the commitment of all branches of government to investigate and prosecute extrajudicial executions, war crimes, enforced disappearances, torture and ill-treatment, sexual violence, and other human rights violations committed during the internal armed conflict, and to guarantee remedy and reparation for the victims and their relatives;
- To ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Indigenous Peoples:

- To establish a moratorium on forced evictions and to implement law and policy reforms to ensure due process for rural communities under threat of eviction;

- To ensure that free and informed consent is obtained prior to the commencement of extractive industry activities or large infrastructure projects, which are likely to have an impact on Indigenous communities, in accordance with international standards.

Violence against women:

- To ensure that efforts to improve the investigation, prosecution and prevention of violence against women are adequately resourced;
- To improve the co-ordination between state bodies tasked with collecting information on and co-ordinating policies relevant to violence against women;
- To provide sufficient resources and gender-sensitive training to the law enforcement personnel, the judiciary and health-service providers to improve the treatment of victims of violence against women and their relatives;
- To ensure effective mechanisms of accountability for law enforcement officials from all branches of government in cases of violence against women.

Human rights defenders:

- To ensure that human rights defenders are able to carry out their activities without unfair restrictions or fear of reprisals, as guaranteed in the UN Declaration on Human Rights Defenders;
- To improve the quality of investigations and prosecutions of cases involving threat and harassment of human rights defenders, in particular in areas such as evidence collection and when threats occur outside the capital and in rural areas;
- To ensure that the Programme of Measures for Prevention and Protection of Human Rights Defenders and Other Vulnerable Groups is approved after prior consultation with civil society groups.

Public security:

- To ensure that prompt, impartial and effective investigations are carried out into all allegations of past and present extrajudicial executions and killings in which the acquiescence or involvement of members of the security forces may be suspected, in line with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- To ensure that members of the security forces respect human rights and the rule of law.

The death penalty:

- To establish an official moratorium on executions; commute all death sentences to terms of imprisonment; and abolish the death penalty for all crimes.

¹ Report of the Working Group on the Universal Periodic Review on Guatemala, 29 May 2008 (A/HRC/8/38) recommendation 89.1 (Mexico, Portugal, Canada, the Netherlands, France, Italy, Mexico, South Africa and Brazil).

² A/HRC/8/38, recommendations 89.2 (Algeria), 89.3 (Switzerland), 89.4 (Mexico) and 89.24 (Netherlands).

³ A/HRC/8/38, recommendations 89.5 (Chile) and 89.7 (Slovenia).

⁴ A/HRC/8/38, recommendations 89.12 (Canada, Denmark), 89.13 (Switzerland) and 89.37 (Jordan).

⁵ A/HRC/8/38, recommendations 89.8 (United Kingdom), 89.9 (Mexico), 89.10 (South Africa) and 89.11 (Switzerland).

⁶ A/HRC/8/38, recommendation 89.14 (Italy, United Kingdom).

⁷ A/HRC/8/38, recommendations 89.15 (Canada, Slovenia) and 89.16 (Switzerland).

⁸ A/HRC/8/38, recommendations 89.16 (Switzerland), 89.35 (Slovenia) and 89.36 (Czech Republic).

⁹ A/HRC/8/38, recommendations 89.27 (Australia) and 89.28 (Canada).

¹⁰ A/HRC/8/38, recommendations 89.27 (Australia) and 89.28 (Canada).

¹¹ A/HRC/8/38, recommendations 89.19 (Portugal), 89.20 (Switzerland), 89.21 (Norway, Canada), 89.22 (Australia, Ireland), 89.23 (United Kingdom), 89.30 (USA), 89.36 (Czech Republic) and 89.18 (Ukraine).

¹² A/HRC/8/38, recommendations 89.22 (Ireland), 89.23 (United Kingdom), 89.25 (Japan), 89.26 (Japan), 89.27 (Australia), 89.28 (Canada), 89.29 (Austria), 89.30 (USA), 89.31 (Switzerland), 89.32 (Japan), 89.33 (USA), 89.34 (Cuba), 89.35 (Slovenia) and 89.36 (Czech Republic).

- ¹³ A/HRC/8/38, recommendations 89.22 (Ireland), 89.23 (United Kingdom), 89.29 (Austria), 89.30 (USA), 89.31 (Switzerland), 89.32 (Japan), 89.33 (USA), 89.34 (Cuba), 89.35 (Slovenia) and 89.36 (Czech Republic).
- ¹⁴ UN Document A/HRC/8/52, paragraph 68o.
- ¹⁵ Amnesty International, *Guatemala: Land in injustice?* (Index: AMR 34/003/2006) 28 March 2006, available at: <http://www.amnesty.org/en/library/info/AMR34/003/2006> (accessed 10 April 2012).
- ¹⁶ *Instrucción General 07-2011, 31 de agosto 2011.*
- ¹⁷ Such reforms should include amending the definition of usurpation in the criminal code, and improving protection for the labour rights of rural workers.
- ¹⁸ The 1997 Mining Law directs that the environmental impact study (EIS) is filed with the Ministry of the Environment and Natural Resources, and made available to the public to make comments for a period of 20 working days in a Ministry's office in Guatemala City. In practice the EIS is inaccessible to affected communities both geographically and linguistically, since travel to the capital is often prohibitively expensive for members of rural communities and the EIS is written in Spanish and not in Indigenous languages, and is extremely technical in nature.
- ¹⁹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011.
- ²⁰ Caso Fermín Ramírez Vs. Guatemala Sentencia de 20 de junio de 2005 (Fondo, Reparaciones y Costas); Caso Raxcacó Reyes Vs. Guatemala Sentencia de 15 de septiembre de 2005 (Fondo, Reparaciones y Costas).
- ²¹ "Archivos militares de los años 80-85 no aparecen", *El Periodico*, 14 December 2010.
- ²² "En Guatemala no hubo genocidio", *El Periodico*, 27 January 2012, available at: <http://elperiodico.com.gt/es/20120127/pais/207115/> (accessed 10 April 2012).
- ²³ The army released "Plan Victoria 82" and eight pages of "Firmeza 83", but has refused to make available "Operación Ixil", the remaining pages of "Firmeza 83" and "Plan Sofia" (although "Plan Sofia" was made available in 2009 anonymously to the complainants in a case against former high-ranking officers presented in Spain).
- ²⁴ Former head of state retired General Oscar Mejía Victores; former Chief of Staff retired General Héctor López Fuentes; and former Director of Intelligence retired General José Mauricio Rodríguez Sánchez
- ²⁵ "En Guatemala no hubo genocidio", *El Periodico*, 27 January 2012, available at: <http://elperiodico.com.gt/es/20120127/pais/207115/> (accessed 10 April 2012).
- ²⁶ According to Guatemalan Ministry of Interior figures.
- ²⁷ United Nations Office on Drugs and Crime, Global Study on Homicide 2011, page 107, available at: http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf (accessed 10 April 2012).
- ²⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to Guatemala (21-25 August 2006), A/HRC/4/20/Add.2, 19 February 2007; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Follow-up to country recommendations – Guatemala, A/HRC/11/2/Add.7, 4 May 2009.
- ²⁹ "Former Guatemalan officials must face trial over extrajudicial executions", Amnesty International press release, 14 October 2010, available at: <http://www.amnesty.org/en/news-and-updates/former-guatemalan-officials-must-face-trial-over-extrajudicial-executions-2010-10-1> (accessed 10 April 2012).
- ³⁰ Speech of Alberto Brunori, Representative of the UN High Commissioner for Human Rights in Guatemala, "Access to land and evictions: Lessons from the Polochic case", 13 January 2012. Citing Plataforma Agraria, available at: http://www.ohchr.org.gt/documentos/ponencias/Discurso_Foro_Acceso_tierra_y_desalojos%2813en12%29.pdf (accessed 10 April 2012).
- ³¹ Committee Against Torture, Decision Complaint N° 161/2000 (Hajrizi Dzemajl *et al*), 2 December 2002, CAT/C/29/D/161/2000, paragraph 9.2. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Guatemala on 5 January 1990.
- ³² *EVICTED COMMUNITY AT RISK* Amnesty International Urgent Action 340/11 (Index: AMR 41/074/2011) 22 November 2011, available at: <http://www.amnesty.org/en/library/info/AMR41/074/2011/en> (accessed 10 April 2012).
- ³³ 'Sacan a 300 del Lacandón', *Prensa Libre*, 26 August 2011, citing the then Minister of the Interior Carlos Menocal ("porque se considera que estaban aportando o colaborando con el narcotráfico").
- ³⁴ *Guatemala: No protection, no justice: killings of women (an update)*, (Index: AMR 34/019/2006) 17 July 2006, available at: <http://www.amnesty.org/en/library/info/AMR34/019/2006/en> (accessed 10 April 2012); *Guatemala: No protection, no justice: killings of women in Guatemala*, (Index: AMR 34/017/2005) 8 June 2005, available at: <http://www.amnesty.org/en/library/info/AMR34/017/2005/en> (accessed 10 April 2012).
- ³⁵ According to Guatemalan Ministry of Interior figures.
- ³⁶ Comisión Internacional Contra la Impunidad en Guatemala, Informe Tercer Año de Labores Resumen Ejecutivo, page 1, footnote 1 (based on 2009 figures), available at: http://cicig.org/uploads/documents/tercer_anio_de_labores.pdf (accessed 10 April 2012).
- ³⁷ Concluding observations of the Committee on the Elimination of Discrimination against Women, Guatemala, CEDAW/C/GUA/CO/7, 10 February 2009; and CEDAW/C/GUA/CO/6, 2 June 2006; Conclusions and recommendations of the Committee against Torture, Guatemala, CAT/C/GTM/CO/4, 25 July 2006, paragraph 16; Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to Guatemala, E/CN.4/2005/72/Add.3, 10 February 2005.

³⁸ Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala (UDEFEHUA): Yo soy - Informe sobre situación de Defensoras y Defensores de Derechos Humanos Enero a Diciembre de 2011.