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INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee ahead of its examination of Guatemala's third periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant). The document highlights Amnesty International's concerns in Guatemala in relation to a number of questions on the Committee's list of issues to be taken up in connection with its consideration of the state report.¹ Further details on these concerns can be found in the Amnesty International publications referred to in the text; and in particular in the reports enclosed with this briefing:

- *Guatemala: Open Letter from Amnesty International to Guatemalan Presidential Candidates for the September 2011 Elections*, AI Index: AMR 34/007/2011, 16 August 2011. <http://www.amnesty.org/en/library/info/AMR34/007/2011/en>
- *Guatemala: Police involvement in killings in Guatemala*, AI Index: AMR 34/010/2009, 15 December 2009 <http://www.amnesty.org/en/library/info/AMR34/010/2009/en>

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ART. 2)

Cases of enforced disappearances, torture and other serious human rights violations committed during the internal armed conflict (Question 2)

Since the submission of the second periodic report in 2000, there has been some progress in bringing those suspected of responsibility for human rights violations committed during the internal armed conflict (1960-1996) to trial. The progress that has been achieved has occurred in the past two years, after decades of little political will on the part of the state to investigate and prosecute human rights violations committed during the internal armed conflict. One positive development was the Congress of Guatemala's vote to be bound by the Rome Statute of the International Criminal Court in January 2012; once the country's instrument of accession has been deposited Guatemala will become a party to the treaty..

The last two years have seen the Public Prosecutor's Office achieve convictions in four cases of human rights violations committed during the internal armed conflict, while other cases are still ongoing. Cases which have resulted in convictions include three trials for enforced disappearances in which six former members of the security forces were convicted for the disappearances of 15 victims. A particularly positive development, as noted in the state's replies to the list of issues, resulting from one case, was the Constitutional Court's recognition that the crime of enforced disappearance is of a continuous and permanent character (finding against the arguments of inapplicability of retroactivity and applicability of the statute of limitations, which had been argued). In addition, subsequent to the submission of the state party's replies to the list of issues, in August 2011 a judge in Guatemala City sentenced four former soldiers from an elite army unit to more than 6,000 years in prison for their role in a 1982 massacre in Dos Erres village in the north of the country – in which more than 250 men, women and children were killed.

The Dos Erres case and three cases of enforced disappearance, which have resulted in convictions, and other ongoing cases, are a positive step. However, in line with chain of command principles, superiors who knew or should have known that subordinates committed enforced disappearances must also be brought to trial and not go unpunished; and much remains to be done to achieve justice for the hundreds of thousands of victims of human rights violations.

The United Nations backed Commission for Historical Clarification, which reported in 1999², estimated that over 200,000 people were killed or “disappeared” during the internal armed conflict including in more than 600 massacres, mainly in rural and indigenous communities; and it reached the “fundamental conclusion that genocide was committed”.³

A case currently proceeding through the courts is that of three retired generals who were charged in 2011 with planning and overseeing genocide, organized sexual violence and the forced transfers of populations between 1982 and 1983. In January 2012, a Guatemalan court ordered former head of state retired General Efraín Ríos Montt to join the three other former generals as a suspect. It is of concern that subsequent to the court’s decision the newly sworn-in President publicly denied that genocide ever occurred in Guatemala, instead of leading the way in recognising the horrors of the past, and setting the tone for justice, truth and reparation.⁴

One of the obstacles to progress is the lack of political will on the part of the executive branch: the Guatemalan army has failed to cooperate with the investigations into human rights violations that are ongoing. It has systematically refused to fully comply with a judicial order to release a number of specific documents relating to military operations conducted in the early 1980s. The army released some documents, ‘*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*’. This last document, ‘*Plan Sofia*’, was made available in 2009 anonymously to the complainants in a case against former high-ranking officers presented in Spain. The document has been incorporated into the evidence of that case, and subsequently incorporated into the evidence of a case in Guatemala against retired generals for genocide and other charges (see below). The incorporation of ‘*Plan Sofia*’ was a result of the efforts of civil society groups with the collaboration of the Public Prosecutor’s Office, and lacked any cooperation from the army.

In addition to its refusal to release military and operational plans specifically ordered by a judge, the Guatemalan army has also held back information that could constitute important evidence in other ongoing investigations, and to clarifying many aspects of the internal armed conflict.

President Álvaro Colom announced in February 2008 that he would declassify and make public military archives relating to the internal armed conflict.⁵ More than a year later, a Presidential Decree (64-2009) was issued which mandated the creation of the Presidential Commission on the Declassification of Military Archives relating to the period 1960-1996 to recommend how to implement the President’s decision. The Commission presented its report to the President in December 2010, recommending the declassification of some 11,700 documents, a partial declassification of some 600 documents, and for 55 documents to remain classified. Neither the report itself nor the criteria the Commission used for

declassification has been made public. Of grave concern is the notorious absence amongst the documents examined by the Commission of documents from the 1980-1985 period. According to media reports the army did not give the Commission access to the documents from that period.⁶ It is during the 1980-1985 period that the vast majority of human rights violations committed during the internal armed conflict occurred.

In July 2011, the army implemented the Presidential Commission's recommendations and made available the documents, which are accessible by visiting the offices of the Guatemalan army's Joint Chiefs of Staff in Guatemala City. In addition to lacking the 1980-1985 period, civil society groups have noted that the documents have not been made available online, indexed, summarised nor systematised in any way.⁷

The refusal to make public documents relating to the period from 1980-1985 is not new. The Commission for Historical Clarification was also denied access to military archives from that period.⁸ The continued lack of cooperation from the army means that ongoing and future cases continue to lack vital information that could see, for example, the remains of those forcibly disappeared located and/or the holding to account of those responsible for widespread human rights violation during the internal armed conflict.

Another potential obstacle is the possible introduction of amnesty for serious human rights violations committed during the internal armed conflict. On 4 November 2011, a retired army officer accused of genocide submitted a constitutional appeal which asserted that Article 8 of the 1996 National Reconciliation Law was unconstitutional. Article 8 of that Law states that there is no extinction of criminal responsibility for the crimes of genocide, torture, enforced disappearance and other crimes for which there is no applicability of the statute of limitations, committed during the internal armed conflict.⁹ Therefore, by requesting the repeal of Article 8 of the National Reconciliation Law, the appellant is, in effect, requesting that there be an amnesty for genocide, torture, enforced disappearance and other crimes. The Constitutional Court is currently considering the petition. Anything but a categorical refusal of the petition from the Court would gravely endanger Guatemala's progress ensuring justice for victims of human rights violation committed during the internal armed conflict.

Despite years of efforts by victims' relatives and human rights groups, the creation of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance has still not been approved. A bill (No. 3590) was presented in 2007, but Congress has failed to pass this into law and there has been no further progress in establishing the National Commission which would begin to tackle the estimated 45,000 cases of enforced disappearance which took place in the years of the internal armed conflict. Guatemala has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance – though it signed the Convention in 2007.

Amnesty International calls on the Guatemalan government to:

- ensure that those suspected of responsibility for genocide, crimes against humanity and other serious human rights violations are held to account.
- grant immediate and unrestricted access to all documents and other materials that can provide information and evidence for investigations into human rights violations committed during the internal armed conflict.

- establish the National Commission to Search for Victims of Enforced and Other Forms of Disappearance and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, making the declarations under articles 31 and 32 of the Convention.
- deposit the instrument of accession to the Rome Statute of the International Criminal Court and enact legislation implementing the Statute into domestic law.

EQUALITY BETWEEN MEN AND WOMEN, VIOLENCE AGAINST WOMEN AND THE PRINCIPLE OF NON-DISCRIMINATION (ARTS. 3, 6, 7 AND 26)

Violence against women (Question 3)

Amnesty International remains deeply concerned at the levels of violence against women in Guatemala.¹⁰ In 2011, according to the Ministry of the Interior figures, 631 women were killed. In the last 10 years some 5,700 women have been killed. Some estimates put the conviction rate for all crimes at less than one per cent¹¹; as such, very few cases of homicide are likely to have resulted in convictions. Female victims often suffer exceptional brutality before being killed, including rape, mutilation and dismemberment. The way in which the authorities respond to the case often evidences discrimination.

The passing of laws, such as the Law Against Femicide and Other Forms of Violence, and the creation of new plans and bodies such as CONAPREVI¹² and PLANOSI¹³, and the creation of new centres to support women victims of violence (such as the CAIMUS¹⁴), mentioned in the state party's replies to the list of issues, are all steps in the right direction. The repeal of criminal offences which were plainly discriminatory (such as former articles 176 and 177 of the criminal code which included the provision that it was only a criminal offence to have sexual relations with a minor as long as the victim was considered "honest" (*una mujer honesta*) are also positive steps. Yet these measures, and others previously taken, such as the 2006 establishment of the Commission to Address Femicide in Guatemala¹⁵ and the associated Plan to Address Femicide, have yet to result in a reduction in the levels of violence against women.

Between 2005 and 2009 the UN Committee on the Elimination of Discrimination against Women¹⁶, the Committee against Torture¹⁷ and the Special Rapporteur on violence against women, its causes and consequences¹⁸ all identified a variety of measures needed in areas of investigation, prosecutorial process, and coordination amongst state bodies in order to improve the authorities' response to acts of violence against women. However, many of their recommendations have yet to be implemented by the authorities. Areas such as evidence collection, forensics, and other aspects of the investigation that have a direct bearing on the prosecution of cases of homicides of women should be targeted for resources and training. The treatment of victims, in particular the tendency to blame the victim, needs to be addressed with comprehensive gender-sensitive training for law enforcement personnel, the judiciary and health-service providers, backed up by effective mechanisms of accountability. Particular attention needs to be paid to policies aimed at improving the level of coordination between the various state bodies that have a role in collecting information on, and coordinating policies relevant to, violence against women.

Amnesty International calls on the Guatemalan government to:

- ensure that sufficient resources and training are made available to the relevant authorities focussing on improving the investigation and prosecution of cases of violence against women.
- devise and implement a plan of action to prevent violence against women and to combat gender stereotypes.
- ensure that efforts are made to improve the coordination between state bodies collecting information on, and coordinating policies relevant to, violence against women.
- ensure that sufficient resources and training are made available to the relevant authorities to improve the treatment of victims of violence against women and their relatives – including effective mechanisms of accountability for law enforcement officials from all branches of government.

RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, AND COMBATING IMPUNITY (ARTS. 2, 6 AND 7)

The death penalty (Question 7)

By the end of 2011, 13 prisoners remained on death row. No executions have taken place since 2000.

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 of Guatemala proposed legislation which would allow executions to be resumed. On both those occasions the then-President vetoed the proposed legislation.

Amnesty International calls on Guatemala to:

- ratify the Second Optional Protocol to the Covenant.
- accede to the Protocol to the American Convention on Human Rights to abolish the death penalty.

Accountability of members of the security forces (Question 8)

The situation of public security remains a deep and pressing concern for most Guatemalans. According to Ministry of Interior figures, homicides totalled more than 6,300 in 2011. According to the United Nations Office on Drugs and Crime (UNODC), there were 41 homicides per 100,000 inhabitants in 2010.¹⁹ Both figures were at similar levels to previous years, while convictions remain low. In this context the behaviour of the security forces is an important consideration, in particular, that members of the security forces respect human rights, do not take the law into their own hands and respect the rule of law.

The conclusions of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in his 2007 report²⁰ and the 2009 follow-up report²¹ point towards a systemic problem of police killings – including extrajudicial executions and killings of suspected gang members and others suspected of being involved in criminality, in which the involvement or acquiescence of the security forces is alleged – which remains of grave concern today.

Sometimes referred to as '*limpieza social*' or 'social cleansing', these types of killings, in which the involvement or acquiescence of the security forces is alleged, continue to be reported. Many of the reported killings share similar characteristics. The victims themselves tend to be young, suspected of involvement in criminal activity or suspected of involvement in a gang or '*mara*'. The killings themselves also tend to show common denominators in the method of killing, type of injuries and restraint used on the victim. Few perpetrators have ever been held to account for these killings, and these crimes are usually neither investigated nor prosecuted.

Since the UN Special Rapporteur's reports, there has been an investigation into extrajudicial executions which has resulted in prosecutions and extraditions requests. The UN-supported International Commission against Impunity in Guatemala and the Public Prosecutor's Office have presented a case against some 18 individuals, including the former Minister of the Interior, the Director of National Police and other high ranking officials.²² The central allegation against them is their involvement in extrajudicial executions of prisoners. The extrajudicial executions are reported to have taken place within El Pavón prison during an operation to regain control of the prison by the authorities in 2006, and in 2005 when escapee prisoners from El Infiernito prison were recaptured and executed rather than being returned to custody. These investigations are a step in the right direction towards holding those responsible for extrajudicial executions to account.

However, Guatemala also needs to show progress in investigating all other allegations of past and present extrajudicial executions. In the above mentioned case Amnesty International has also called on Spain, Austria and Switzerland to support such efforts by assisting in the investigations of those connected with the case resident in their territories. The prosecutions of former high-ranking officials are evidence that the Guatemalan authorities are able to conduct investigations and secure prosecutions. In order to comply with international standards and its obligations under the Covenant, Guatemala needs to ensure that the same commitment applies to all allegations of extrajudicial executions.

Amnesty International calls on the Guatemalan government to:

- ensure that prompt, impartial and effective investigations are carried out into all allegations of extrajudicial executions, and killings in which the acquiescence or involvement of members of the security forces may be suspected.
- ensure that investigations into allegations of extrajudicial executions and killings in which the acquiescence or involvement of members of the security forces may be suspected conform to the standards set out in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- ensure cooperation with foreign courts – including cooperation with regards to investigations and prosecutions in third countries for suspected extrajudicial executions that

have occurred in Guatemala.

HUMAN RIGHTS DEFENDERS (ARTS. 9, 21 AND 22)

The protection of human rights defenders (Question 23)

Those defending human rights, including journalists and trade unionists, continue to be threatened, harassed and attacked, by those seeking to dissuade them from their work. In 2011 local organizations documented 402 cases of attacks and intimidation against human rights defenders, whose work ranges from the protection of human rights of forcibly evicted indigenous communities to the investigation of human rights violations committed during the internal armed conflict.²³ A typical case was that of four staff members of the Guatemalan Forensic Anthropology Foundation (FAFG), an NGO which provides forensic expertise for investigations into enforced disappearances and massacres dating from the internal armed conflict, and other crimes.²⁴ In February 2011 the four staff members received death threats just after four former members of the army were convicted of the Dos Erres massacre (see above, question 2). The director of FAFG, received a hand written note which read: "Fundacion de Antropologia hijos de puta. Nos pagaran lentamente, cada uno de los 6050 años por ustedes los nuestros sufriran, ahora si no solo los vigilaremos los dejaremos como a los demas regados". ("Sons of a bitch. You will pay us slowly, for each of the 6050 years that our people are going to suffer because of you, now we won't simply watch you, we will leave you battered like the rest.") The note also mentioned other staff members who gave evidence at the trial. The note went on to state "cuando menos sientan moriran. Revolucionarios...su ADN no servira de nada. Sus familias pagaran ustedes seguiran". ("When you least expect it you will die. Revolutionaries your DNA will be of no use. Your families will pay you will follow suit).

Some cases were brought against perpetrators of acts of intimidation and attacks against human rights defenders, including in the case of Norma Cruz.²⁵ A human rights defender focusing on preventing and investigating violence against women, Norma Cruz received 56 threats between 2009 and 2010. In July 2011 an individual was found guilty of some of the threats and given a suspended sentence of three years and a fine.

However, much remains to be done in order to hold to account those who threaten and attack human rights defenders. Most cases are not investigated; and in those cases the authorities are acting on the quality of investigations and prosecutions needs to improve – in particular in areas such as evidence collection and with regard to threats that occur outside the capital and in rural areas.

In many instances state protection of human rights defenders who had been subjected to threats and/or acts of intimidation, was achieved only after the intervention of national and/or international human rights organisations. The lack of a structured process for the identification and protection of human rights defenders at risk contributes to the difficulty in obtaining direct, efficient and timely protection.

Another problem is the provision of security itself. In many instances the authorities provide police accompaniment or security for a building (e.g. the home of a human rights defender).

Human rights defenders, particularly from the rural worker and trade union backgrounds, often turn down protection because of the frequent expectation that the protected individual will provide food and accommodation for the police personnel assigned to them, and their inability to provide that for the police personnel.

The process of seeking to resolve these practical issues may be helped by the state's adoption of a more comprehensive and integrated approach to protecting human rights defenders. The proposal for a *Programme of Measures for Prevention and Protection of Human Rights Defenders and Other Vulnerable Groups* (referred to at paragraph 187 of the state's replies to the list of issues) has yet to be approved. A previous draft of the proposal was widely consulted with civil society. It aimed to provide effective measures for the protection of human rights defenders. It proposed to do this by standardising, improving, strengthening and contributing to the prevention and protection measures that already exist. The current proposal has not been shared with civil society organisations.

A further positive advance could be to strengthen the *Unit for the Analysis of Attacks against Human Rights Defenders*, which is a team working in the Ministry of the Interior. The Unit has played a supporting role in efforts to improve the situation for human rights defenders, functioning as a space for coordination between state agencies and civil society organisations. However, the legal basis for the Unit's existence has consistently been an issue of concern. For example, it was suspended for a period in 2009 and in January 2012, after another short period in limbo, a Ministerial decision was made to renew the Unit. Civil society organisations have called for the Unit to be a permanent resource for improving protection of human rights defenders.

Amnesty International calls on the Guatemalan government to:

- send a clear signal that human rights defenders have a right to carry out their activities without unfair restrictions or fear of reprisals.
- ensure that human rights defenders are able to carry out their activities without any unfair restrictions or fear of reprisals, in accordance with their rights under the Covenant and the UN Declaration on Human Rights Defenders.
- ensure the public distribution of the current draft of the *Programme of Measures for Prevention and Protection of Human Rights Defenders and Other Vulnerable Groups*.
- ensure that *Unit for the Analysis of Attacks against Human Rights Defenders* is permanently established and adequately resourced.

DUE PROCESS AND INDIGENOUS PEOPLES (ARTS. 14 AND 27) / RIGHTS OF INDIGENOUS PEOPLES (ART. 27)

Access to justice, security of land tenure and forced evictions of indigenous peoples (Questions 19, also Question 24)

Security of tenure for rural communities, the majority of Mayan ethnicity, remains an issue of grave concern. As Amnesty International has documented, indigenous peoples in rural areas

are particularly vulnerable in the context of land disputes and subsequent forced evictions²⁶; and their human rights under Article 27 as well as other provisions of the Covenant, including Article 17 of the Covenant, continue to be regularly violated by the state. Hundreds of families are affected every year, totalling thousands of people left homeless and without recourse to adequate shelter. In January 2012 the Representative of the UN High Commission for Human Rights in Guatemala noted that during the 2008-2012 period 114 forced evictions had been registered.²⁷

Disputes over land are common and often arise between rural communities and large landowners. These disputes often occur because of a divergence over who owns a particular piece of land, or because of a dispute over employment terms and conditions in cases where the workers are *mozos colonos* or tenant farmers, who live on the farm they are working.

The policy and legal framework which the state applies has the effect of prioritising the interests of large landowners, and siding with them over the human rights of rural workers. In cases where the issue of the ownership is central, a complaint for usurpation is normally submitted by the large landowner to the Public Prosecutor's Office. Judges and prosecutors rarely conduct a thorough examination of the facts. There is little evidence that anything other than a cursory inspection of documents is carried out, with few or no efforts to examine the often legitimate questions around geo-positioning, measurement, boundaries and extension which are raised by the community. In cases of disputes, which are centred on the employment terms and conditions, although prosecutors and judges can, under Guatemalan law, seek to investigate and address those issues prior to issuing an eviction order, the evidence is that they rarely do so.

The practice of prosecutors and judges underpins a system weighted in favour of large landowners. However, the wider legal framework also contributes to a near impossible uphill struggle for rural communities for security of land tenure. One example is the use of the law of supplementary titling (*titulación supletoria*). Dating back to 1880, the law enables ownership of land via a series of administrative steps without having to prove continued occupation of the land. Using the law of supplementary titles, an individual interested in acquiring a certain area of land has to report the area as vacant to the appropriate authority. The claim goes through a series of steps which are supposed to check whether the land is really vacant. Indigenous communities who rely on customary law and have lived on land for generations without formal legal title are often not aware of a claim on their land, and therefore particularly vulnerable.

To date the state's response to land disputes has failed to respect the due process rights of indigenous communities prior to the issuing of an eviction order. However, a recent positive step has been the issuing of guidelines to prosecutors (*Instrucción General 07-2011*) in August 2011. These guidelines, issued by the Attorney General, remind prosecutors that they have an obligation to determine proprietary rights, ascertain dimensions and limits of the property in question and examine competing claims over a property, amongst other elements, prior to requesting an eviction order. In addition, the guidelines remind prosecutors that they can request of the judge the resolution of pre-judicial issues prior to the requesting of an eviction order. If these guidelines are properly implemented by prosecutors, they could, in addition with other legal reforms (such as reforming the definition of usurpation in the criminal code)²⁸ and policy reforms (such as improving protection for labour rights of rural

workers)²⁹, contribute to a resolution of land disputes in a manner which complies with national and international human rights standards.

Evictions which have been justified on the perceived criminality of the community are a worrying new development. For example, the community of Nueva Esperanza, in the northern department of El Petén, was forcibly evicted in August 2011 fleeing to Mexico.³⁰ The Ministry of the Interior explained that the forced eviction had taken place because it was considered that the community was supporting or collaborating with narco-traffickers (“*porque se considera que estaban aportando o colaborando con el narcotráfico*”).³¹ The eviction, which left 300 community members, including 100 children, homeless, was not preceded by any criminal convictions, which in any case, would not justify under Guatemalan law 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. Amnesty International is gravely concerned at such developments in the current context of the precarious public security situation in Guatemala.

Amnesty International calls on the Guatemalan government to:

- end the policy of using forced evictions in order to resolve disputes over land.
- enact legal reforms necessary to guarantee that the rights of due process of all parties to a land dispute are respected.
- establish a moratorium on forced evictions until such deficiencies are addressed and reforms are implemented.

Free, prior and informed consent of rural communities of indigenous peoples in the context of industrial development projects (Question 24)

Indigenous people's rights continue to be violated in the context of development projects and extractive industries projects which are undertaken without consultation and without obtaining the free, prior and informed consent (FPIC) of affected communities.

The current process, based on the 1997 Mining Law, is inadequate and has rarely resulted in a genuine process of consultation and consent. The 1997 Mining Law establishes the need for an environmental impact study to be carried out by the entity wishing to initiate mining or construct the development project. The environmental impact study is supposed to include “public participation” which can be “interviews, surveys, workshops, assemblies and/or work meetings”.³² The Guatemalan Constitutional Court, the country's highest court, has noted that this “public participation” plays an accessory role that does not take into account cultural, social or economic factors.³³ The environmental impact study is then filed with the Ministry of the Environment and Natural Resources, and available to the public for a period of 20 working days in a Ministry's office in Guatemala City. During that period the public can make comments on the study.

This process does not amount to consultation and, in the words of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, “is far from complying with international standards”.³⁴

Despite the current legal and regulatory framework falling well below international standards

in relation to the free, prior and informed consent of indigenous peoples, it continues to be relied on by the state. The failings of the state continue to be relied on by companies, in particular mining companies, who prefer the lower national standard to international human rights standards, contrary to the UN Guiding Principles on Business and Human Rights.³⁵ An example of this has been a prospective mine in San Rafael las Flores, in the department of Santa Rosa. The company, Minera San Rafael S.A., a subsidiary of Canadian company Tahoe Resources Inc., already in possession of an exploration licence, applied for an exploitation licence in 2011. Research conducted by Amnesty International in the local area indicated that residents had not been consulted prior to the issuing of the exploration licence, nor the exploitation licence, and did not have access to the associated environmental impact study. The study itself, 800 pages long, was open to comments for the requisite 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 organised opposition to the mine, community members and activists were unaware of the study's existence and unable to comment.

The state party's replies to the list of issues refer to the *Preliminary Proposal for the Regulation of the Process for Consultation of Indigenous Peoples*, presented in February 2011. In March, the UN Special Rapporteur on the rights of indigenous peoples wrote to the government of Guatemala.³⁶ He noted that the proposal could be a useful instrument but called for a number of changes, and also for the proposal itself to be consulted on with indigenous peoples. Organisations of indigenous peoples have argued that the current proposal excludes their own community organisation structures and decision making processes, and has not been adequately consulted on. Consequently, they expressed their reluctance to accept the current proposal.³⁷

Amnesty International calls on the Guatemalan government to:

- ensure that indigenous peoples' communities are consulted about development projects, extractive industries projects and other activities which could affect them with the aim of obtaining their free, prior and informed consent in accordance with international standards.
- ensure proper consultations with organisations of indigenous peoples about the *Proposal for the Regulation of the Process of Consultation of Indigenous Peoples* and that it conforms to international standards.

ENDNOTES

¹ See *List of issues to be taken up in connection with the consideration of the third periodic report of Guatemala (CCPR/C/GTM/3)*, UN Doc. CCPR/C/GTM/Q/3, 28 December 2010, <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-GTM-Q3.doc>.

² Letter dated 23 April 1999 from the Secretary-General addressed to the President of the Assembly, Report of the Commission for Historical Clarification, *Memory of Silence*, 27 April 1999, A/53/928 (annex).

³ Ibid. Page 28, paragraph 124.

⁴ “En Guatemala no hubo genocidio” El Periodico, 27 January 2012, <http://elperiodico.com.gt/es/20120127/pais/207115/>.

⁵ ‘Álvaro Colom ofrece abrir archivos militares’, Prensa Libre, 26 February 2008.

⁶ ‘Archivos militares de los años 80-85 no aparecen’, El Periodico, 14 December 2010.

⁷ Letter to the President of Guatemala from Impunity Watch, CEJIL, Plataforma Holandesa contra la Impunidad, Washington Office on Latin America, NISGUA and Project Counselling Service, 19 July 2011.

⁸ Guatemala Memoria del Silencio. Tomo XII, Comisión para el Esclarecimiento Histórico. UNOPS, 1999.

⁹ Art 8. La extinción de la responsabilidad penal a que se refiere esta ley, no será aplicable a los delitos de genocidio, tortura y desaparición forzada, así como aquellos delitos que sean imprescriptibles o que no admitan la extinción de responsabilidad penal, de conformidad con el derecho interno o los tratados internacionales ratificados por Guatemala.

¹⁰ *Guatemala: No protection, no justice: killings of women (an update)*, AI Index: AMR 34/019/2006, 17 July 2006 <http://www.amnesty.org/en/library/info/AMR34/019/2006/en>; *Guatemala: No protection, no justice: killings of women in Guatemala*, AI Index: AMR 34/017/2005, 8 June 2005 <http://www.amnesty.org/en/library/info/AMR34/017/2005/en>.

¹¹ Comisión Internacional Contra la Impunidad en Guatemala, Informe Tercer Año de Labores Resumen Ejecutivo. Page 1, footnote 1 (based on 2009 figures), http://cicig.org/uploads/documents/tercer_anio_de_labores.pdf.

¹² Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y Contra las Mujeres.

¹³ Plan Nacional de Prevención y Erradicación de la Violencia Familiar y contra la Mujer.

¹⁴ Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia

¹⁵ Comisión para el Abordaje del Femicidio en Guatemala

¹⁶ 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.

¹⁷ Conclusions and recommendations of the Committee against Torture, Guatemala, CAT/C/GTM/CO/4, 25 July 2006, paragraph 16.

¹⁸ 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.

¹⁹ United Nations Office on Drugs and Crime, Global Study on Homicide 2011, page 107, http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf.

²⁰ 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.

²¹ 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.

²² 'Former Guatemalan officials must face trial over extrajudicial executions', Amnesty International press release, 14 October 2010, <http://www.amnesty.org/en/news-and-updates/former-guatemalan-officials-must-face-trial-over-extrajudicial-executions-2010-10-1>

²³ Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala – UDEFEGUA - press release "2011: EL AÑO MÁS VIOLENTO CONTRA DEFENSORES Y DEFESORAS DE DERECHOS HUMANOS", 6 January 2012, <http://nisgua.blogspot.com/2012/01/2011-el-ano-mas-violento-contra.html>.

²⁴ Amnesty International, Urgent Action 243/11, EXPERTS WHO TESTIFIED AT TRIAL THREATENED 11 August 2011, <http://www.amnesty.org/en/library/info/AMR34/008/2011/en>.

²⁵ Amnesty International, Urgent Action 258/09, WOMAN THREATENED FOR DEFENDING RAPE VICTIM, AI Index: AMR 34/012/2009, 25 September 2009, <http://www.amnesty.org/en/library/info/AMR34/012/2009/en>.

²⁶ Amnesty International, *Guatemala: Land in injustice?*, AI Index: AMR 34/003/2006, 28 March 2006, <http://www.amnesty.org/en/library/info/AMR34/003/2006>.

²⁷ 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, http://www.ohchr.org.gt/documentos/ponencias/Discurso_Foro_Acceso_tierra_y_desalojos%2813en12%29.pdf.

²⁸ Ibid. Page 10.

²⁹ Ibid. Page 47

³⁰ Amnesty International, Urgent Action, 340/11, EVICTED COMMUNITY AT RISK, AI Index: AMR 41/074/2011, 22 November 2011, <http://www.amnesty.org/en/library/info/AMR41/074/2011/en>.

³¹ 'Sacan a 300 del Lacandón', Prensa Libre, 26 August 2011, citing the then Minister of the Interior Carlos Menocal.

³² Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Observations on the situation of the rights of the indigenous people of Guatemala with relation to the extraction projects, and other types of projects, in their traditional territories, A/HRC/18/35/Add.3, 7 June 2011 (report only available in Spanish).

Paragraph 22 reads: "La Ley de Minería no requiere específicamente que los pueblos indígenas sean consultados antes de la aprobación de licencias de exploración o explotación de proyectos mineros. El Reglamento de Evaluación, Control y Seguimiento Ambiental, que determina el procedimiento para la aprobación de los estudios de impacto social y ambiental requeridos por la Ley de Minería antes del otorgamiento de las licencias de explotación minera²², exige que se garantice la participación de las comunidades afectadas a través de 'entrevistas, encuestas, talleres, asambleas y/o reuniones de trabajo'²³. No obstante, este mecanismo se encuentran lejos de cumplir con las normas internacionales. Como ha señalado acertadamente la Corte Constitucional, 'el componente de la *participación pública* juega en este contexto un papel accesorio [...] sin tomar en cuenta factores de índole cultural, social o económica' ²⁴."

Citing, [22] Ley de Minería, art. 20.; [23] Reglamento de Evaluación, Control y Seguimiento Ambiental, Acuerdo Gubernativo 431-2007 y sus reformas, art. 74.; [24] Expediente 3878-2007, Considerando IV, inc. h (énfasis en el original).

³³ Ibid.

³⁴ Ibid.

³⁵ 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.

³⁶ Letter from UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya to Mr. Ricardo Cajas Mejía Director Ejecutivo Consejo de Organizaciones Mayas de Guatemala, 1 March 2011.

³⁷ 'Indígenas rechazan reglamento de consultas sobre minería', Prensa Libre, 14 March 2011; and 'Campesinos rechazan reglamento a consultas', Prensa Libre, 24 March 2011.