



**FRONT LINE**  
**GUATEMALA:**  
**ATTACKS AGAINST HUMAN**  
**RIGHTS DEFENDERS**  
**2000-2005**

## **Front Line Defenders of Human Rights Defenders**

Front Line was founded in Dublin in 2001 with the specific aim of protecting human rights defenders, people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights (UDHR). Front Line aims to address some of the needs identified by defenders themselves, including protection, networking, training and access to the thematic and country mechanisms of the UN and other regional bodies.

Front Line's main focus is on those human rights defenders at risk, either temporarily or permanently, because of their work on behalf of others. Front Line runs a small grants programme to provide for the security needs of defenders. Front Line mobilises campaigning and lobbying on behalf of defenders at immediate risk. In emergency situations Front Line can facilitate temporary relocation.

Front Line conducts research and publishes reports on the situation of human rights defenders in specific countries. The organization also develops resource materials and training packages on behalf of human rights defenders as well as facilitating networking and exchange between defenders in different parts of the world. Front Line projects are generally undertaken in partnership with specific national human rights organizations.

Front Line promotes awareness of the Universal Declaration of Human Rights and is working to ensure that the principles and standards set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (known as the Declaration on Human Rights Defenders) are known, respected and adhered to worldwide.

Front Line has special consultative status with the United Nations Economic and Social Council. Front Line relies entirely on the generous financial support of individuals and organizations to support its work. Front Line has been fortunate that, since its establishment in 2001, it has received funding from a variety of sources and receives donations from individuals.

Front Line is a registered charity (CHY NO 14029) and is independent and impartial.





**FRONT LINE GUATEMALA:  
Attacks against human rights defenders  
2000-2005**

*Front Line*  
and the  
Human Rights Defenders Protection Unit of the  
NATIONAL MOVEMENT FOR HUMAN RIGHTS

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Defenders

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When people ask us why -

Why do we choose to put ourselves at risk along with the defender at risk?  
Why do we continue to work for defenders when it's clear that the situation has not improved?  
Why do we continue our fight even at the expense of our own health?

We reply: because hope does not die.

And then they ask us how we can speak of hope when surrounded by death, threats, intimidation,  
raids and torture.

We reply: because there is another way of seeing attacks against defenders.

You can choose to see the brave struggle of the organization of women who, although not lawyers,  
use the system to remove judges from their position of impunity.

You can see the campesino leader who marches with the organisations for agrarian reform for the  
right to work and the right to land, against centuries of oppression.

You can see the hundreds of new initiatives and bids for democracy and peace behind all the figures  
and cases in our daily work.

Finally, when the daughter of a murdered defender teaches us her father's values in her struggle for  
justice, we realise why and how...

Simply, in Guatemala, hope does not die.

*Claudia Virginia Samayoa*  
August, 2006



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## List of abbreviations

ADIVIMA	Asociación para el Desarrollo de Víctimas de la Violencia Maya Achí (Association for the Integral Development of the Victims of Violence in the Verapaces, Maya Achí)
AGDH	Acuerdo Global sobre Derechos Humanos (Comprehensive Agreement on Human Rights)
CAIG	Coordinadora del Acompañamiento Internacional de Guatemala (Coordinating Body for International Accompaniment in Guatemala)
CALAS	Centro de Acción Legal, Ambiental y Social de Guatemala (Guatemalan Centre for Legal-Environmental and Social Action)
CALDH	Centro para la Acción Legal en Derechos Humanos (Centre for Human Rights Legal Action)
CEH	Comisión para el Esclarecimiento Histórico (Historical Clarification Commission)
CERIGUA	Centro de Reportes Informativos sobre Guatemala (Centre for Informative Reports on Guatemala)
CERJ	Consejo Etnico Rujunel Junam (Rujunel Junam Ethnic Council)
CICIACS	Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (Commission for the Investigation of Illegal Groups and Clandestine Security Organizations)
CIIDH	Centro Internacional de Investigaciones en Derechos Humanos (International Centre for Human Rights Research)
CNOC	Coordinadora Nacional de Organizaciones Campesinas (National Coordinating Body of Campesino Organizations)
CONAVIGUA	Coordinadora Nacional de Viudas de Guatemala (National Widows' Coordinating Committee of Guatemala)
COPREDEH	Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (Presidential Coordinating Committee for the Executive's Human Rights Policy)
CUC	Comité de Unidad Campesina (Committee for Campesino Unity)
DIPROSE	División de Protección de Seguridad (Security Protection Division)
ESCR	Economic, social and cultural rights
FAFG	Fundación de Antropología Forense de Guatemala (Guatemalan Forensic Anthropology Foundation)
FAMDEGUA	Asociación de Familiares de Detenidos Desaparecidos de Guatemala (Association of Family Members of Detained and Disappeared Persons of Guatemala)
FRG	Frente Republicano Guatemalteco (Guatemalan Republican Front)
FTA	Free Trade Agreement
GAM	Fundación Grupo de Apoyo Mutuo (Mutual Support Group)
GANA	Gran Alianza Nacional (Grand National Alliance)
HIJOS	Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio (Sons and daughters for identity and justice against oblivion and silence)
ILO	International Labour Organization
INDE	Instituto Nacional de Electrificación (National Electrification Institute)
MICSP	Movimiento Indígena, Campesino, Sindical y Popular (Indigenous, Campesino, Trade Union and People's Movement)
MINUGUA	Misión de Naciones Unidas para la Verificación de los Acuerdos de Paz en Guatemala (United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala)

MNDH	Movimiento Nacional por los Derechos Humanos (National Movement for Human Rights)
MP	Ministerio Público (Office of the Public Prosecutor)
NGO	Non-governmental organization
OAS	Organization of American States
ODHAG	Oficina de Derechos Humanos del Arzobispado de Guatemala (Human Rights Office of the Archdiocese of Guatemala)
PBI	Peace Brigades International
PDH	Procurador de los Derechos Humanos (Human Rights Procurator)
PNC	Policía Nacional Civil (National Civil Police)
SAAS	Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia de la República (Administrative and Security Affairs Secretariat)
SEDEM	Asociación para el Estudio y la Promoción de la Seguridad en Democracia (Association for the Study and Promotion of Security in a Democracy)
URNG	Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Unity)

## Map of the Republic of Guatemala





## **Acknowledgements**

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## Executive summary and recommendations

Human rights defenders in Guatemala clearly pinpoint the year 2000 as the beginning of the series of attacks which violate the right to defend human rights. In the last six years, the phenomenon and its consequences have developed into a resurgence of the terror experienced during the internal armed conflict (1960-1996).

This analysis clearly reveals a symptom of a broader deterioration of Guatemalan democracy, the human rights situation and the stagnation of the peace process, which shows that the post-war period is relatively violent and complicated. In this context, the report addresses only one of the forms of violence experienced in contemporary Guatemala.

This report is an analysis of the information processed in the first six years of this new phase of restriction of the right to defend human rights, as well as a more in-depth analysis of the differences in the patterns of attacks based on the type of defender attacked.

On the whole, we see that, in the last six years, the number of attacks against defenders has increased, with a particularly drastic increase in 2005, when the number of attacks grew by the equivalent of 84%. A more detailed examination of the attacks based on the sector attacked allows a nuanced view of this quantitative leap. The number of attacks against defenders of civil and political rights has remained approximately the same since 2003 and has a much shorter growth curve. On the other hand, the number of attacks against defenders of economic, social and cultural rights and defenders of indigenous rights increased dramatically in 2005. In the case of defenders of economic, social and cultural rights, the increase was from 32 attacks in 2004 to 99 attacks in 2005. In the case of defenders of indigenous rights, the increase was from 6 attacks in 2004 to 30 in 2005.

Violations of the rights to freedom and security make up the majority of violations against human rights defenders, and they become an obstacle to be overcome on a daily basis by defenders since these types of attacks renew the terror experienced during the internal armed conflict. However, in the last six years, 60 human rights defenders have been killed for defending the right to defend human rights, highlighting how threats can turn to action and how defenders have paid with their lives for the right to defend human rights in a country that is attempting to construct peace.

Another problem faced by human rights defenders is the security of their organizations' installations and information: there were 129 raids against organizations in the six years under review. Furthermore, in 2004 a new mode of attack emerged, which is known as the "criminalisation of the defence of human rights", which consists both of the criminal harassment of those exercising the right to demonstrate and freedom of assembly and encouragement to make criminal accusations against defenders to distract or stop the act of defence being carried out. There were 44 such attacks.

The systematisation of attacks against human rights defenders must include the serious and complex situation faced by judicial officers (*operadores de justicia* - judges, prosecutors, public defenders, and police commissars as agents of the administration of justice). Although there is no single body to monitor the situation faced by judges, magistrates and public prosecutors, it can be deduced from the existing information that the number of threats and killings among this group of defenders is similar to that experienced by other defenders. However, in this field, killings are more frequent among judges and public prosecutors. In the first semester of 2005 alone eight killings of judicial officers were registered, while in the whole year only three were registered against other defenders.

It is worth highlighting that impunity is the common denominator in all attacks against human rights defenders. It is particularly worrying that impunity in respect of multiple attacks against

judicial officers and members of human rights organisations continues, as this generates a climate conducive to the continuation and deterioration of the phenomenon of attacks against human rights defenders.

Therefore, efforts must be concentrated to break the wall of impunity which surrounds the violation of the right to defend human rights in Guatemala. In this spirit, Front Line and the National Movement for Human Rights propose the following recommendations:

### **1. To the Office of the Public Prosecutor**

- a. Strengthen the Unit for Crimes against Human Rights Activists, Judicial Officers, Journalists and Trade Unionists, providing it with material and technical resources to conduct investigations, both in the capital and in the regional departments, in such a way that the current lack of criminal investigation in the majority of cases against defenders can be overcome, thereby achieving the effective administration of justice for the violation of the right to defend human rights.
- b. Establish the links between cases under investigation, analysing the patterns, particularly when the crimes were committed against the same organisation in different years or against organisations which defend similar rights.
- c. Establish the role of the Analysis Unit of the Human Rights Section of the Public Prosecutor's Office in investigating patterns and participation of clandestine security organizations in attacks against human rights defenders. In this way, that unit can come to form an effective part of the criminal investigation procedure which will lead to identifying the perpetrators of 48% of the attacks in which the participation of illegal groups and clandestine security organizations is suspected.
- d. Coordinate field investigations with the Investigation Division of the National Civil Police to ensure that not only office investigations are carried out.
- e. Deal rigorously with administrative complaints against public prosecutors who are using the system to criminalise the function of defending human rights. This is necessary since there is an imbalance between inaction in the investigation of crimes against human rights defenders on the one hand, and the prompt action of public prosecutors in response to accusations for unfounded or exaggerated crimes (terrorism, sedition or similar) against human rights defenders on the other.

### **2. To the Government of Guatemala**

- a. Guarantee the protection of human rights defenders and judicial officers, in accordance with the provisions of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, as well as the Inter-American Declaration on the same subject and commitment number 7 of the Comprehensive Agreement on Human Rights.
- b. Enhance the response mechanisms to structural and temporary conflicts which arise from grave violations of human rights, which human rights defenders promote and defend in accordance with the provisions of the peace accords. In other words, drive the reform of public policies and laws to comply with the commitments undertaken on 29 December 1996.
- c. Promote a policy of protecting human rights defenders and judicial officers, which guarantees the expeditious application, by consensus, of the preventive and precautionary

- measures developed by international bodies.
- d. Establish civil society mechanisms to monitor the Security Protection Division (DIPROSE) and the Protection of Persons Service of the SAAS in the fulfilment of their duties.
  - e. Purge the security forces of persons involved in committing crimes and violations of human rights.

### **3. To Congress**

- a. Adopt the Promotion and Protection of the Defence of Human Rights Act as a national mechanism to enhance the status of human rights defenders. This act would create a protection mechanism to deal with the grave situation of defenders and would oblige State institutions to protect them and sanction public servants who acted against them.
- b. Reform the law on the Protection of Witnesses and Persons Involved in Judicial Proceedings to ensure that the mechanism to protect witnesses, public prosecutors and judicial officers is more dynamic, secure and comprehensive, as it does not currently manage to provide the protection it purports to offer and this sector is severely affected by violence.
- c. Strengthen the institution of the Human Rights Procurator by:
  - i. Increasing the budget of the Office of the Human Rights Procurator
  - ii. Establishing a transparent and participatory process to elect a new Human Rights Procurator in 2007, as the current procedures applied in Congress to elect public servants such as the Ombudsman have been politicised. Magistrates must be elected on the basis of their human rights background, and must have no links to any political parties. Since 2007 is an electoral year in Guatemala, it is necessary to increase the transparency of the process to avoid problems.

### **4. To the international community**

- a. Bring pressure to bear on the Guatemalan authorities to take practical measures to protect and support human rights defenders, including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms adopted on 9 December 1998.
- b. Support human rights defenders in promoting and defending human rights in the country as well as in promoting the 1998 United Nations Declaration on Defenders, the 2001 Inter-American Declaration on Defenders and the 2004 European Union Guidelines on Human Rights Defenders through the following actions:
  - i. Invite and interact with human rights defenders to increase their visibility. Organise public delivery of these instruments for human rights defenders and their organisations.
  - ii. Organise training for the European Union missions and defenders on the implementation of the European Union Human Rights Guidelines.
  - iii. Establish mechanisms between the embassies to deal with human rights defenders at risk.
- c. Strengthen activities oriented towards legal protection of cases of human rights defenders to break impunity in paradigmatic cases.
- d. In cooperation projects negotiated with the organisations, establish a security component which includes the application of an institutional security policy providing not only for material security elements (cameras, metal balconies, alarms) for the organisation, but also

the establishment of comprehensive security plans.

- e. Support the specialised international mechanisms for the protection of human rights defenders so that they continue their monitoring and support in Guatemala (Inter-American Human Rights Commission, Special Representative of the United Nations Secretary-General on Human Rights Defenders, Special Rapporteur on the Independence of Judges and Lawyers and the Office of the United Nations High Commissioner for Human Rights in Guatemala).
- f. Support the work of international civil society organisations which support the activities of human rights defenders in Guatemala.

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## **I. Introduction**

Human rights defenders in Guatemala clearly pinpoint the year 2000 as the beginning of a series of attacks which violate the right to defend human rights. In the last six years the phenomenon and its consequences have developed into a renewal of the terror experienced during the internal armed conflict (1960-1996).

This report is an analysis of the information systematised in the first six years of this phase of restriction of the right to defend human rights, as well as a more in-depth analysis of the differences in the patterns of attacks based on the type of defender attacked.

The report is primarily based on the information systematised and checked by the National Movement for Human Rights and interviews conducted in the illustrative cases identified for this study. This study combines a statistical analysis with case studies to illustrate to the reader the situation of defenders in the Guatemalan post-conflict context.

One of the chapters is an analysis of the situation of judicial officers as human rights defenders. Access to information in this area is much more limited due to the absence of serious systematisation structure and the reluctance of judicial officers to share information with civil society. This means that in order to carry out this analysis, it was necessary to rely on secondary information sources.

Finally, in the midst of the spate of attacks against defenders, the everyday nature of the struggle and the scale of the acts of genocide committed during the internal armed conflict, the capacity for indignation in the face of the murder of defenders in the last six years has been lost in Guatemala. As this report is intended as a homage, there follows a list of those killed in the defence of human rights.



## HUMAN RIGHTS DEFENDERS KILLED 2000-2006<sup>1</sup>

Ana Dolores Hernández	CNOC	Izabal	Campesino	01/08/2000
Andrés Cucul	CNOC	Petén	Campesino	07/11/2000
Aníbal Cabrera	Confederation of Religious of Guatemala	Baja Verapaz	Religious	13/04/2001
Antonio Ixabalám Calí	National Indigenous and Campesino Coordinating Committee	Suchitepéquez	Campesino	04/04/2006
Antonio Najera	CUC	Izabal	Campesino	04/04/2004
Arturo Felipe Molina	CUC	Izabal	Campesino	11/08/2002
Augusto Guzman Cael Chacach	Panabajal Human Rights Commission	Chimaltenango	Justice	07/02/2004
Bárbara Ann Ford	Member of religious order	Guatemala	Truth	05/05/2001
Baudilio Amado Cermeño	Union of the Guatemala Electricity Company	Guatemala	Trade unionist	21/12/2001
Catalino Ramírez Javier	Esquipulas Union of Commercial & Allied Workers	Zacapa	Trade unionist	17/10/2002
Diego Xon Salazar	Mutual Support Group	El Quiché	Truth	05/04/2003
Domingo Us	Association for Justice and Reconciliation	El Quiché	Justice	28/06/2001
Edgar Gustavo Cáceres Guevara	Los Cerritos Community Association	Izabal	Campesino	24/06/2002
Edi López Oliva	CUC	Izabal	Campesino	21/04/2003
Edwín Arresis	Teachers' Union of Guatemala	Guatemala	Trade unionist	22/03/2002
Erasmo Sánchez Lapop	Campesino Development Committee	Suchitepéquez	Campesino	03/11/2002
Erwín Haroldo Ochoa López	National Council for Protected Areas	Izabal	Development	01/02/2000
Erwín Manuel Monroy Guevara	Los Cerritos Community Association	Izabal	Campesino	24/06/2002
Eugenio García	CUC	Izabal	Campesino	09/11/2001
Eusebio Macario	Rujunel Junam Ethnic Council	El Quiché	Justice	27/09/2003
Fernando Rivadeneira	Apostolic Vicariate of Petén	Petén	Campesino	29/07/2004
Florentín Gudiel Ramos	Committee for Housing	Escuintla	Development	20/12/2004
Francisca Dominga	CNOC	Quetzaltenango	Campesino	08/03/2000
Garín Anabella Orellana	Zacapa Community Development Committee	Zacapa	Development	13/12/2005
Gerardo Cano Manuel	Spiritual guide	Baja Verapaz	Mayan priest	02/05/2003
Guillermo Ovalle	Rigoberta Menchú Tum Foundation	Guatemala	Justice	29/04/2003
Harol Rafael Pérez Gallardo	Casa Alianza	Guatemala	Justice	02/09/2005
Hugo Oswaldo Gutiérrez Vanegas	La Pita Committee for Land	Petén	Campesino	05/06/2004
Jesús Estrada	CUC	Izabal	Campesino	16/04/2004
Jonathan Valente Barrios	Richard Solórzano Foundation	Quetzaltenango	Justice	31/01/2006
Jorge Gómez	National Indigenous and Campesino Coordinating Committee	Izabal	Campesino	05/04/2003
Jorge Luis López - Brenda Chantal	Organisation for the Promotion of Integrated Sexuality in Response to Aids	Guatemala	Sexual difference	24/02/2002
José Alfredo Quino	Sololá Regional Coordinating Committee of Cooperatives	Sololá	Development	21/07/2000
José Alvaro Juárez Ramírez	Association of Uprooted People of Petén	Petén	Campesino	08/07/2005
José Anancio Mendoza García	Rujunel Junam Ethnic Council	Zacapa	Truth	25/05/2000
José Ángel Perdomo	Land Negotiation Commission	Guatemala	Justice	27/12/2001
José Benjamín Pérez Gonzales	CUC	Izabal	Campesino	08/03/2002
José Choc Martín	CUC	Zacapa	Campesino	26/03/2002
José Israel López López	Office of the Human Rights Procurator	Guatemala	Justice	11/06/2003
Juan Gabriel Pérez	CNOC	Guatemala	Campesino	08/07/2000
Juan López Velázquez	National Teachers' Association	Quetzaltenango	Governmental	15/03/2005
Juana Trinidad Ramírez de Vega	Vamos Adelante Women's Association	Izabal	Woman	05/02/2002
Julián Leiva Ronquillo	Apostolic Vicariate of Petén	Petén	Campesino	29/07/2004
Julio Armando Vásquez Ramírez	National Council for Protected Areas	Izabal	Development	01/02/2000
Julio Ronaldo Raquéc	General Workers Union of Guatemala	Guatemala	Trade unionist	28/11/2004
Lorenzo Tista López	Spiritual guide	Baja Verapaz	Truth	22/02/2000
Manuel García de la Cruz	CONAVIGUA	El Quiché	Truth	06/09/2000
Manuel Gonzáles	Retalhuleu Committee for Campesino Development	Retalhuleu	Campesino	07/08/2001
Marcos Sical Pérez	Spiritual guide	Baja Verapaz	Mayan priest	16/12/2002
María Elena Mejía	Sololá Regional Coordinating Committee of Cooperatives	Sololá	Development	21/07/2000
María Petzey Coó	National Indigenous and Campesino Coordinating Committee	Suchitepéquez	Campesino	04/04/2006
Mateo Caal	CNOC	Petén	Campesino	07/11/2000
Meregilda Suchité	CALDH human rights observer	Chiquimula	Indigenous rights	02/04/2006
Miguel Ángel Lemus Galicia	Federation of Workers and Campesino Unions	Guatemala	Trade unionist	25/11/2000
Milton Oswaldo Martínez	Free Press Commission	Huehuetenango	Journalist	21/05/2003
Mynor Alegría	Association of Journalists of Guatemala	Izabal	Journalist	05/09/2001
Oswaldo López Díaz	CUC	Izabal	Campesino	27/12/2001
Pascual Méndez López	CNOC	Petén	Campesino	16/03/2000
Pedro Méndez Gutiérrez	Montúfar Association for Integral Development	Izabal	Campesino	01/02/2003
René Augusto Pérez Gutierrez	Lankín II Community Association	Izabal	Campesino	28/06/2002
Santiago Soto	CUC	Izabal	Campesino	01/04/2003
Serbelio Ramos Hernández	CUC	Izabal	Campesino	15/04/2001
Teodoro Gregorio Saloj Panjoj	CUC	Izabal	Campesino	10/10/2000
Víctor Hugo Rivadeneira	Apostolic Vicariate of Petén	Petén	Religious	05/11/2004

<sup>1</sup> In order to honour them in this report, the list includes the names of the 64 defenders assassinated up to July 2006, although the report only analyses events reported up to 2005.



## II. Legal context of the defence of human rights

In Guatemala, the concept of the need to guarantee the defence of human rights as a basic requirement for the construction of democracy and peace is fundamentally related to the conflict and the consequences of counter-insurgent policy. The role played by defenders was recognised in the Comprehensive Agreement on Human Rights signed (AGDH) on 29 March 1994 between the Government of Guatemala and the Guatemalan National Revolutionary Unity (URNG).

Commitment 7 of that agreement on **“safeguards and protection for persons and bodies working for the protection of human rights”** established that:

*“7.1 The parties agree that all acts which may affect the safeguards of individuals or bodies working for the promotion and protection of human rights are to be condemned.*

*7.2 Accordingly, the Government of Guatemala shall take special measures to protect persons or bodies working in the field of human rights. Furthermore, it shall investigate, in a timely and exhaustive manner, any complaints made relating to acts or threats directed at them.*

*7.3 The Government of the Republic of Guatemala reiterates its commitment to effectively safeguarding and protecting the work of individuals and bodies which defend human rights”.*<sup>2</sup>

In the case of Guatemala, the United Nations General Assembly resolution of 1998 which adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms<sup>3</sup> consolidates a nationally recognised guarantee and responsibility.

That commitment was strengthened with the adoption, by the General Assembly of the Organisation of American States (OAS) held in Guatemala in 1999, of the resolution “Human Rights Defenders in the Americas: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas”<sup>4</sup>.

While those resolutions recognise the role of human rights defenders, the risks they run and the obligation of States and multilateral organizations to protect the action of defending human rights, the definition of who is a human rights defender remains vague. In this connection, Ms. Hina Jilani, Special Representative of the United Nations Secretary-General for Human Rights Defenders, in her first report to the United Nations General Assembly, established the need to maintain an open and broad view of who is considered a defender<sup>5</sup>.

However, when preparing a report, it is necessary to start from a minimum definition of who is a human rights defender. To that end, Front Line uses the following definition:

**“A human rights defender is a person who works, non-violently, for any of the rights enshrined in the Universal Declaration of Human Rights.”**<sup>6</sup>

<sup>2</sup> See “The Peace Agreements”. Compilation published by the Presidency of the Republic of Guatemala. March, 1997.

<sup>3</sup> See Resolution No. 53/144 of the UN General Assembly

<sup>4</sup> See Resolution No. 1671 of the OAS General Assembly

<sup>5</sup> See report in A/56/341, of 10 September 2001.

<sup>6</sup> Taken from “Front Line Brazil: Murders, Death Threats and Other Forms of Intimidation of Human Rights Defenders, 1997-2001.”

The Human Rights Defenders Protection Unit of the National Movement for Human Rights has used a similar definition, which includes the defence of any right enshrined in the Constitution of the Republic of Guatemala or any convention or treaty adopted by the UN or the OAS.

### *A. Safeguards for the defence of human rights*

The Guatemalan Constitution guarantees freedom of action, the right to intimacy and privacy<sup>7</sup>, free movement, the right to petition, free access to the courts and judicial authorities, access to archives and State records, the right to demonstrate and freedom of assembly, freedom of association and freedom of expression<sup>8</sup>.

Although the guarantees are established in the Constitution of the Republic, there are various legal and extra-legal restrictions on their exercise. The exercise of the following rights warrants particular attention:

#### **1. The right to demonstrate and freedom of assembly**

Article 33 of the 1985 Constitution of Guatemala recognises the right to freedom of assembly and demonstration, stating “the right to peaceful and unarmed assembly is recognised. The rights to public assembly and demonstration cannot be restricted, diminished or inhibited, and the law shall regulate them with the sole purpose of guaranteeing public order. Religious demonstrations outside temples are permitted and governed by law. Prior notification by the organisers to the public authorities shall be sufficient for the exercise of these rights.”

Article 397 of the Criminal Code, in force since 1973, establishes a penalty of between six months and two years for illegal assemblies and demonstrations. This penalty is commutable under Guatemalan law. This offence fell into disuse from when the new Constitution was adopted in 1985 until a new regulation on the right to assembly and demonstration was enacted in 1995.

At the origin of that regulation was a series of clashes between the student movement and the Government surrounding the protests against the increase in the price of urban transport tickets in 1994. Due to the repression of the student movement during the armed clash and even during the various liberal dictatorships at the turn of the century, the habit of using hoods to cover the faces of students in public demonstrations was established<sup>9</sup>. From 1985 on, even during the democratic transition, the use of hoods began to be seen in other demonstrations. The Government and legislators decided that the use of hoods during demonstrations meant that acts of protest and acts of violence were met with impunity.

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<sup>7</sup> In this right, the case of telephone tapping is controversial, because there is currently a constitutional report which establishes that a criminal investigation is not sufficient cause to establish tapping. Under the Constitution, intimacy and privacy may only be violated with judicial control and in the context of criminal proceedings against the individual. The establishment of a Civil Intelligence Department has recently been approved, which authorises telephone tapping controlled by the Office of the Public Prosecutor in cases of suspected criminal involvement.

<sup>8</sup> In February 2006, the offence of contempt was declared unconstitutional on the grounds that it violates the right established in the Constitution to freedom of expression, which establishes clear compensation procedures in the event that the published facts were false or inaccurate.

<sup>9</sup> The use of hoods was more related to the “Huelga de Dolores” (grievance strike) – a university student tradition which started in 1900 – which takes place during Lent and which culminates in a public demonstration to criticise the Government and complain of the problems which afflict the population.

**Anti-hood Act**

**Article 1.** Persons with their faces covered or who in any other way obviously or deliberately hide their identity in such a way that allows the commission of acts classified as crimes or offences may not participate in any public demonstration held within the city, departmental or municipal boundaries. The use of “hoods”, masks or elements which, in any way manifestly or deliberately, hide the identity of persons in public places, such as participants in public demonstrations or any other individual or collective activity, is prohibited. Artistic or cultural elements which are used exclusively for those purposes are exempt from this prohibition.

**Article 2.** In any public demonstration in which the authorities have ordered a police cordon to protect citizens, buildings or public installations, participants in the demonstration must maintain a distance of at least three metres from the police cordon. In no case shall the police cordon be placed or organised in such a way that it impedes the free passage of persons through streets included in the itinerary of the route to be followed which has been notified by the person in charge of the demonstration to the respective authority.

**Article 3.** When notifying the competent authority of planned demonstrations, the organisers of public demonstrations must inform them of whether they plan to hold a political rally. Failure to inform the competent authority of this matter shall result in a political rally being prevented from taking place, but the demonstration may be held without any restrictions. In the same notification of the organization of a public demonstration, the organiser(s) must clearly state the route the march will follow.

**Article 4.** Any person or persons participating in demonstrations, whether they are part of them or not, who cause damage to State or private property shall be punished in accordance with the criminal laws in force in the country. The organisers of the event shall be jointly responsible.

**Article 5.** In the event of a spontaneous public demonstration or if, by its nature, it has been impossible to notify the competent authorities prior to it being held, the demonstration may be held provided its participants march continuously, without interfering with the free passage of vehicles and persons or settling in any public place. Similarly, political rallies or speeches may not be held in public places. Failure to comply with this provision shall result in the organiser being held responsible in accordance with the provisions of this law.

**Article 5 bis.** Those who violate this law shall be prosecuted and punished in accordance with article 397 of the Criminal Code”.

Congressional decree 41-95, known as the Anti-hood Act, established a series of regulations on the right to demonstrate and freedom of assembly. There is political, but not legal, debate with regard to the legality of the article regulating the use of hoods in demonstrations, as this is a practice which is more than a century old and is considered an acquired right. The regulations are in force and are followed by social organisations and human rights defenders when exercising the right to demonstrate and freedom of assembly. Below are the substantive articles of that law.

Although the regulations on demonstrations and assemblies are not strict, the Criminal Code contains provisions relating to offences criminalised in the 1970s, whose purpose is clearly counter-insurgent, and these are most frequently used to criminalise or defame defenders who take recourse to this type of non-violent strategy. The type of offences which tend to be imputed are: sedition, attempts against the internal security of the nation, terrorism, public intimidation, and aggravated public intimidation<sup>10</sup>.

The majority of these offences do not incur alternative penalties, and imply that a defender accused before a judge of these crimes may be detained in prison for the duration of the investigation, legal debate and penalty. In Guatemala, this process can last an average of three to five years given the slow pace of the criminal justice system.

## **2. The right to free association**

The Constitution of the Republic clearly establishes the right to association in article 34. The fifth commitment of the Comprehensive Agreement on Human Rights establishes the right to free association, in particular the right not to be obliged to form self-defence organisations, a practice which violated human rights during the internal armed conflict.

Although it is not compulsory to register as an organisation to exercise the right to defend human rights in Guatemala, it is compulsory for those organisations which are involved in development and wish to receive public funding or participate in public authorities which define public policy. In 2003, the law on Non-Governmental Organisations for Development<sup>11</sup> was adopted, which obliges the legalisation of non-governmental organisations, their registration with the Ministry of Economy and their control through the Comptroller General's Office, which is the body which controls public funds<sup>12</sup>.

In terms of free association, the Constitution of Guatemala recognises the right to union association and the right of all workers to form and participate in trade unions. There are restrictions on the exercise of the right to demonstrate and strike for unionised workers in State public services and, particularly, those in the National Civil Police and the army<sup>13</sup>.

## **3. The right to access State archives and registers**

Article 30 of the Constitution clearly establishes the public nature of State administration

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<sup>10</sup> See articles 387, 390, 391 and 392 of the Criminal Code

<sup>11</sup> See Decree 2-2003 adopted on 22 January 2003 by the Congress of Guatemala and sanctioned on 18 February of the same year by the President of the Republic.

<sup>12</sup> This last article is being questioned by the Constitutional Court as it is considered unconstitutional that the body responsible for controlling public funds should also control private funds.

<sup>13</sup> See article 206 of the Labour Code and, in particular, Decree 35-96 for more detail on the restrictions on the right to strike and demonstrate for public service employees.

documents and the fact that “*interested parties have the right to obtain, at any time, reports, copies, reproductions and certifications upon request and to view the records they wish to consult, unless these refer to military or diplomatic matters of national security or information submitted by individuals under guarantee of confidentiality.*” Furthermore, article 31 clearly establishes that “*Everybody has the right to know what records relating to themselves are in archives, files or any other form of State register, and the purpose for which that information is kept, as well as the correction, rectification and updating...*”

These two constitutional provisions do not have corresponding domestic legislation regulating access to information, defining State secret or governing the classification and declassification of secret information. Not until 8 December 2005 did the Executive establish, in governmental agreement 645-2005, the “general norms of access to public information in the Executive and its departments”.

That regulation establishes the possibility that any person may accede to information without having to establish status or interest, as well as deformatising the application procedure and establishing that it should be conducted in a timely manner and free of charge.

### *B. Legal initiatives aimed at restricting the defence of human rights*

Broadly speaking, there have been no major legislative efforts to modify the legal framework which assists human rights defenders. In the area of the right to assembly and demonstration, there has been a legislative trend which tends towards toughening existing regulations, which on two occasions has attempted to extend the penalties and restrictions with regard to demonstrations.

The occasions on which attempts were made to restrict the right to demonstration were during periods of tension between defenders and the Government in respect of economic demands and claims. As of June 2006, there are three draft laws being studied by Congress: Bill 2841, presented on 22 April 2003 in the framework of the strike by the National Teachers’ Association, Bill 3232, presented on 13 April 2005 in the framework of the protests against the adoption of the Free Trade Agreement between the United States, Central America and the Dominican Republic, and Bill 3468 presented on 25 May 2006 in the framework of the indigenous and peoples’ uprising against the failure to comply with the commitments of the Agreement on Identity and Rights of Indigenous Peoples, concluded in March of this year.

Bill 2841 aims to double the current penalty for illegal demonstrations, both for the organisers of and the participants in demonstrations and assemblies for which no prior notification has been submitted, which impede free movement of other citizens, burn property, hold individuals, public servants and/or their vehicles against their will, or occupy State buildings, roads and access routes to ports, airports and aerodromes.

Bill 3232 is in the same vein as Bill 2841 and adds that offenders also include those who, although they did not participate in the demonstration, were involved in organising it.

Initiative 3468 sets out new offences such as pollution by burning tyres, worsening of the obstruction of public highways by a crowd, failure to provide assistance, and makes the organisers of the demonstration and those responsible on the organisation’s order committee criminally liable.

The three draft bills have had an initial reading and are pending a report by the commissions charged with reviewing their legal, political and technical adequacy.



Peaceful demonstration on 14 March 2005 against the adoption of the Free Trade Agreement before it was violently broken up by the National Civil Police

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### III. Political context of the defence of human rights in Guatemala

Guatemala is a country in Central America. According to estimates of the National Statistics Institute based on the 2002 Census, there are currently 13,074,965<sup>14</sup> inhabitants. It is a multicultural and multilingual country in which 21 Mayan ethnic groups coexist and which according to the official census figures make up 39% of the population. However, according to Mayan organisations, the indigenous population makes up 60% of the population. Two other indigenous groups also coexist: the Xincas and Garífunas, as well as non-indigenous populations such as mestizos, Afrocaribbeans and others. According to the United Nations Development Programme's 2005 Human Development Report, one of the remaining challenges is to overcome a series of discriminatory and racist practices which impede a clearer vision of Guatemalan diversity, including the diversity between non-indigenous groups.

Guatemala has traditionally been an agricultural exporting country dependant on the coffee and sugar markets. Ownership of the land is concentrated in very few hands; according to the United Nations Development Programme's 2000 National Human Development Report, 3% of farms cover 65% of the land. This results in a situation where 54% of farms cover 4% of the land, which implies that the area of each farm is less than five blocks. In a country in which agriculture remains the principal source of access to capital, 33% of families work as wage-earners on the land<sup>15</sup>.

The 2002 global coffee crisis and the application of a development strategy based on commercial opening-up, the deregulation of the financial and services markets and the application of a macroeconomic policy centred on ensuring inflation control, have had a negative impact on the country's development capacity. In fact, far from improving, development indices have worsened in recent years. According to the 2005 Report of the Situation of Economic, Social and Cultural Rights in Guatemala, poverty increased from 56.2% to 57% between 2000 and 2003, with the greatest increase in extreme poverty, from 15.7% in 2000 to 21.5% to 2003<sup>16</sup>. From the perspective of distribution of income, the Gini Index indicates that between 1989 and 2002 there was also an increase in concentration: the index varied from 0.561 to 0.587<sup>17</sup>.

Guatemala can be explained and summarised in many ways. The information set out above may be outlined in one word which has not yet been said: exclusion. However, in order to understand the context in which human rights defenders in this country operate, it is necessary to explain in greater detail the consequences of exclusion: the internal armed conflict, peace and its effects.

#### *A. The internal armed conflict and the modalities of counter-insurgent control*

The internal armed conflict began symbolically on 13 November 1960, with the uprising of a group of army officials against Government corruption, training action of a group of Cuban militiamen to overthrow the Castro regime in Cuba, and the internal malaise. The uprising was quickly put down, but several of the officials created the first guerrilla force, which adopted the revolutionary ideals of structural changes which had been circulating since previous decades and which had been suppressed by the military intervention promoted by the United States in 1954 against the Government of Jacobo Árbenz Guzmán. The conflict officially ended on 29 December 1996 with

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<sup>14</sup> See data on [www.ine.gob.gt](http://www.ine.gob.gt)

<sup>15</sup> See 2000 National Human Development Report, pages 63-66.

<sup>16</sup> See Report on Situation of Economic, Social and Cultural Rights in Guatemala. Pages 12-15.

<sup>17</sup> See 2003 National Human Development Report. Statistical appendix.

the signature of the Agreement for a Firm and Lasting Peace, which constituted the culmination of ten years of negotiations, and the signing of another ten specific agreements which cover substantive and operative issues of the peace.

According to the Historical Clarification Commission<sup>18</sup>, the exclusive nature of the State meant it was incapable of reaching a social consensus and, therefore, it relinquished the role of mediator between the diverging social and economic interests, which facilitated the confrontation. In the absence of responses, and in the face of increasing social injustice, the protest was understood as political instability, to which, at that time, there were only two responses: repression or a military coup. The Historical Clarification Commission points out that *“Faced with movements proposing economic, political, social or cultural change, the State increasingly resorted to violence and terror in order to maintain social control. Political violence was thus a direct expression of structural violence.”*<sup>19</sup>

The internal armed conflict went beyond the clash between the army and guerrilla groups which had taken up arms. In fact, the promotion of the National Security Doctrine by the United States in Guatemala introduced the concept of the “internal enemy” into the public security forces and intelligence agencies.<sup>20</sup>

The concept of the internal enemy promoted by the National Security Doctrine was applied not only to the members of the guerrilla groups which had taken up arms, but also to all those who might promote what was considered the communist doctrine. By the end of the 1950s, all those who did not support the regime were labelled “communists”. Consequently the effect was that the persecution of the internal enemy became the *raison d’être* of the army and State policy. The State security forces and paramilitary groups, which were close to the same, were responsible for 93% of the human rights violations documented by the Historical Clarification Commission (CEH)<sup>21</sup>. Their victims, those considered to be internal enemies, were workers, professionals, members of religious orders, politicians, campesinos, students and academics. The vast majority were members of the Mayan people<sup>22</sup>. According to the CEH, in Guatemala acts of genocide were committed against the members of five specific ethnic groups in four geographic areas between 1981 and 1983<sup>23</sup>.

In Guatemala a counter-insurgent policy was applied which had two forms during the internal armed conflict: mass violence and selective violence. Mass violence culminated in acts of genocide, also known as scorched-earth policy, whose after-effects are still felt. More worryingly, it is official State policy to deny those events. Furthermore, there was also selective violence, also known as State terrorism, and, in particular, the implementation of a series of intelligence operations aimed at controlling, dismantling and eliminating the internal enemy.

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<sup>18</sup> The Historical Clarification Commission was established pursuant to the Oslo Agreement of 1994, to clarify what occurred during the internal armed conflict, as a commission for truth established by a United Nations body but directed by three commissioners: two Guatemalan (Alfredo Balsells Tojo and Otilia Lux de Cotí) and one international (Dr. Christian Tomuschat). They worked between 1997 and 1999, presenting their final report, entitled “Guatemala Memoria del Silencio” (Guatemala Memory of Silence), on 25 February 1999, even though, under the Commission’s mandate, it could not establish individual responsibility. The complete report is available on [www.pnudguatemala.org](http://www.pnudguatemala.org).

<sup>19</sup> See Guatemala Memory of Silence. Volume V, Numeral 8, page 23.

<sup>20</sup> The National Security Doctrine is an American theoretical body of political and military thinking, drafted principally at the National War College in Washington. In the case of Guatemala, it is known that it was incorporated in overseas defence policy in 1961 when the Kennedy administration decided to “assist in the establishment or strengthening of intelligence and domestic security organizations, in such a way that they are capable of facing the threat of subversion”. For more information see Volume I of Guatemala Memory of Silence. Numerals 347-363.

<sup>21</sup> According to the CEH, 160,000 people were executed in Guatemala and 40,000 were “disappeared”. More than one million Guatemalans were internally displaced or refugees in other countries.

<sup>22</sup> See Volume 5, Numeral 15, page 25.

<sup>23</sup> See Volume 5, Numeral 110, pages 48-49.

The victims of State terrorism were, among others, human rights defenders and social leaders. The Historical Clarification Commission investigated and systematised the counter-insurgent operation manuals, intelligence manuals and military plans, and later contrasted them with the complaints received of human rights violations, and managed to clearly establish how a series of intelligence and psychological operations against the internal enemies was developed, and what the consequences were. Some operations used by the State during the internal armed conflict, which are relevant to the situation today, are described below<sup>24</sup>:

1. Population control operations: these aimed to maintain control of the population. In rural areas, the most successful mechanism was the establishment of the Civil Self-Defence Patrols, which were operated by the military commissioners. In urban areas, control was by means of infiltration of State bodies, civil society organisations and activities, clandestine surveillance through control by neighbourhood block, undercover surveillance, telephone tapping and others.
2. Intelligence operations: these were developed in rural and urban areas. Black lists were drawn up and torture, disappearances and other practices typical of this type of operation were used. One of the intelligence activities used during the 1980s was the release of captured tortured guerrilla members who had not ceded to torture together with those who had ceded and accepted to collaborate with the army, provoking distrust within the guerrilla movement and aiming to demoralise its members.
3. Psychological operations: planned use of propaganda and other activities designed to influence the emotions, attitudes, opinions and/or behaviour of groups of persons. Psychological operations were broadly assisted by the United States and, among the techniques most used were: propaganda, rumours, prisoners displayed publicly, and the threatened use of force.
4. Acts of extreme cruelty: also known as exemplary terror, this was when cruel acts were carried out in view of people to let them know what could happen. In the Guatemalan case these kinds of acts included cannibalism and coprophagy.

The Guatemalan State designed a system of military intelligence in order to promote the operations outlined above, among others. In other words, the Guatemalan intelligence system responded to the design of the national security doctrine which was promoted across Latin America. Guatemalan intelligence was designed not only to collect and interpret information which would help in the counter-insurgent struggle, but it also worked as a driving force of the policy to control the population, society, the State and even the army itself.

Below is a list of some characteristics of Guatemalan intelligence which are “anomalies” for an intelligence organisation and which permit the commission of human rights violations<sup>25</sup>.

- The use of the saying “who’s not with me is against me” as a criterion to define the enemy. This even included people within the army itself.
- The identification of youth, workers, student, trade union, political, commercial, social and charity organisations and their employees as possible sympathisers with the guerrilla groups and, therefore, subject to infiltration. In particular, the campaign plans identified peoples’ organisations within this category.
- The use of unconventional, irregular operations instead of leaving operations to be developed by another body of the army.

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<sup>24</sup> The following description is taken from Volume II of the CEH report, Numerals 774-831.

<sup>25</sup> The following description is taken from Volume II of the CEH report, Numerals 945-1054.

- Illegal intelligence operations were clandestine, in terms of both their planning and their implementation. This made it possible for the criminal and intellectual perpetrator of the act not to be traced back to the State authorities and ensured the impunity of the perpetrators.
- The intelligence used death squads to carry out a series of operations. It also used the mobile military police, the national police and the Treasury Guard.

The Guatemalan military intelligence system was made up of two structures: the army intelligence directorate or section (known by its abbreviations D2, S2 and G2<sup>26</sup>) and the Regional or “Archivo” unit of the Presidential General Staff. Over time, the logistical and operative capacity of the Regional or Archivo became greater than that of the intelligence system because it received greater support from the United States.

According to the Historical Clarification Commission, from 1986 onwards, there was a division in the Intelligence service, leaving military activities to D2 and political intelligence to the Archivo. It is even said that “*The Archivo preferred working against political opponents and human rights activists*”<sup>27</sup>.

The analysis carried out by the Historical Clarification Commission on the operations of the intelligence system has the following introductory sentence: “*While the analysis refers to the past, Intelligence is a system which still exists and which still has many of the characteristics it had during the internal armed conflict*”<sup>28</sup>

### *B. Peace, commitments to change*

The internal armed conflict entered its final stage on 10 January 1994 with the signature of the Framework Agreement for the renewal of the negotiation process between the Government of Guatemala and the National Guatemalan Revolutionary Unit<sup>29</sup>. The first agreement signed was the Comprehensive Agreement on Human Rights on 29 March 1994, which entered into force immediately, and whose text recognised the serious challenges which existed in terms of respect for human rights and international humanitarian law in the context of the conflict. That agreement established the following commitments which were to be complied with immediately:

1. Full observance of human rights and will to ensure their respect.
2. Strengthening of human rights protection authorities: judicial system, Office of the Public Prosecutor and Human Rights Procurator.
3. Commitments against impunity: commitment not to declare an amnesty, to define crimes against humanity and not to allow special privileges to violators of human rights.
4. Commitments to ensure no illegal security groups or clandestine security organisations.
5. Abolition of the obligation to participate in voluntary civil defence committees (Civil Self-Defence Patrols).
6. Elimination of the forced, discriminatory and unjust nature of military conscription.

<sup>26</sup> The army’s intelligence section was known as such until 1983 when it changed its name to directorate. In military jargon, its identification code was D-2 for the national structure assigned to general defence staff, or S-2 in military outposts. Those elements that were assigned to the intelligence functions were referred to as G-2. In common parlance, all persons belonging to an intelligence structure, regardless of their hierarchical status, are known as G-2.

<sup>27</sup> See Volume II, numeral 1079, page 110

<sup>28</sup> See Volume II, numeral 948, page 75

<sup>29</sup> The negotiation process had started in 1986 with the discussions in El Escorial, Spain, led by Danilo Barillas, a civil servant of the first civil Government, whose president was Vinicio Cerezo.

7. Safeguards and protection of persons and organisations which work to protect human rights.
8. Compensation for victims of human rights violations committed during the internal armed conflict.
9. Respect for international humanitarian law.
10. Request verification by the United Nations through the establishment of MINUGUA.

The list of commitments undertaken in 1994 was complied with relatively immediately – in the first two years of validity of the Agreement – in terms of the dismantling of the civil defence committees and the significant reduction in the number of forced recruitments.

The MINUGUA verification verified a clear improvement in respect for human rights and the right to defend human rights in 1996 and following the signature of the Agreement on a Firm and Lasting Peace, which remained relatively stable until 2000.

Following the signature of the Agreement on Human Rights, five more substantive agreements were signed: Agreement on the Resettlement of Populations Uprooted by the Armed Conflict, Agreement on the Establishment of the Historical Clarification Commission of Human Rights Violations and the Acts of Violence which Caused Suffering to the Guatemalan Population, Agreement on the Identity and Rights of Indigenous Peoples, Agreement on Socioeconomic Aspects and Agricultural Situation, and the Agreement on Strengthening of Civilian Power and Functioning of the Army in a Democratic Society.

More than one hundred commitments were undertaken in the framework of the agreements which dealt with the diverse structural problems caused by the internal armed conflict and its consequences. Furthermore, the Historical Clarification Commission issued another series of recommendations, whose observance formed part of the obligations undertaken. Below are some of the commitments worth highlighting because they directly addressed the structures which made the grave human rights violations and the restriction of the right to defend human rights possible<sup>30</sup>:

- a. Establishment of an Advisory Council on Security to assist the Executive in implementing a comprehensive security doctrine, based on the idea that citizen security and State security are inseparable from the full exercise by citizens of their political, economic, social and cultural rights and obligations (Agreement on Strengthening of Civilian Power).
- b. Establishment of a professional National Civil Police under civilian control (Agreement on Strengthening of Civilian Power).
- c. Reform of the Constitution to establish the National Civil Police as the body charged with internal security, army reform and definition of the possibility of a civilian being Minister for Defence (Agreement on Strengthening of Civilian Power).
- d. Formulation of a new military doctrine, taking account of the peace agreements and the results of the Historical Clarification Commission (Agreement on Strengthening of Civilian Power and Recommendations of the Historical Clarification Commission).
- e. Reform of the military education system to include respect for the Constitution, human rights, knowledge of history, identity and the rights of indigenous peoples and the primacy of persons (Agreement on Strengthening of Civilian Power and Recommendations of the Historical Clarification Commission).
- f. Drafting of a new Military Code, based on a new conception of due discipline and obedience (Recommendations of the Historical Clarification Commission).
- g. Dissolution of the Presidential General Staff. (Agreement on the Strengthening of

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<sup>30</sup> These commitments are contained in the Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society and in the chapter of recommendations, Volume V of the CEH report.

- Civilian Power).
- h. Establishment of the Department of Civil Intelligence and Information Analysis within the Ministry of Governance to combat organised crime (Agreement on the Strengthening of Civilian Power).
  - i. Establishment of the Strategic Analysis Secretariat (Agreement on the Strengthening of Civilian Power).
  - j. Drafting of a law on access to information (Recommendation of the Historical Clarification Commission).
  - k. Establishment of a Commission for the Administrative Purging of human rights violators from the security forces (Recommendation of the Historical Clarification Commission).
  - l. Establish a National Compensation Plan (Recommendation of the Historical Clarification Commission).
  - m. Establishment of a National Commission to Search for Persons Disappeared during the Armed Conflict (Recommendation of the Historical Clarification Commission).
  - n. Establishment of legislative measures to protect human rights defenders (Recommendation of the Historical Clarification Commission).
  - o. Indictment and punishment of those responsible for the crimes of genocide, torture and forced disappearances, as well as other crimes which are imprescriptible under the National Reconciliation Act (Recommendation of the Historical Clarification Commission).

Of this list of recommendations related to the security forces and the intelligence system, only the National Civil Police and the Secretariat of Strategic Analysis were established in 1997. Both institutions have met with various limitations which are described in the next section. In the face of strong pressure, the Government initiated the dissolution of the Presidential General Staff in 2003 and concluded that process in January 2004<sup>31</sup>, the National Compensation Programme was established in 2003 and became operational in 2004, the Advisory Council on Security was established in 2004, and legislation on the Directorate of Civil Intelligence was adopted in 2005 without a budget for its operation.

Even without going into a detailed specific analysis of the fulfilment of obligations, it is very clear that there has been little progress in terms of reform of the security and intelligence bodies and services, or putting an end to impunity in the area of serious violations of human rights,. The statement that intelligence operates now as it did during the internal armed conflict rings true even now, in 2006.

### *C. Characteristics of the Guatemalan post-conflict period*

All post-conflict periods are marked by the characteristics of the armed conflict and peace process. Certain patterns of behaviour from the conflict period are repeated in peacetime, in such a way that an appropriate management of the post-conflict period involves paying attention to the past and its consequences, particularly behaviour which is reminiscent of the conflict.

The objectives of reconstruction, democratisation and development of society following a conflict are extremely broad, and it is not the aim of this report to explain them in depth. Broadly speaking,

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<sup>31</sup> Although the Government established the Administrative and Security Affairs Secretariat of the Presidency (SAAS) in 2000, pursuant to the Governmental Agreement, it was not until three years later that the dismantling of the Presidential General Staff was commenced, and only when the Government changed in January 2004 did that Secretariat take charge of the President's security.

it can be stated that the Guatemalan State and society have serious deficiencies in this area. While it is true that great efforts have been made to reconstruct institutions, such as in the areas of the justice system and participation in development and women's rights, the backlog remains very large.

The major setbacks in the area of poverty and distribution of wealth were outlined in the first section of this chapter. Even more worrying are the setbacks in terms of respect for the right to life and the security of ordinary citizens. In 1996, the homicide rate was more than 30 per 100,000 inhabitants, and by 2002 the rate was 32.3 per 100,000 inhabitants<sup>32</sup>. According to the Human Rights Procurator, in a public report presented in March 2006, the homicide rate is now 47 per 100,000 inhabitants<sup>33</sup>. This implies that, since the signature of the peace accords, the homicide rate has increased by 17 percentage points. The number of homicides per day is coming dangerously close to the average number of homicides during the internal armed conflict.

Violence has worsened to such an extent that during the period of this study we have seen a series of violent phenomena, such as the emergence of violent killings of women which, according to the Centre for Human Rights Legal Action<sup>34</sup> and data from deputy Alba Estela Maldonado of the Guatemalan National Revolutionary Unity<sup>35</sup>, amounted to the deaths of 2,700 women from 2000 to 26 June 2006. Some of the killings show signs of torture, sexual abuse and mutilation, which were characteristic traits of the violence committed against women during the internal armed conflict.

There are also violent deaths among children, whether as collateral victims of other acts of violence or as direct targets. Children are being affected by the violence in the same way as during the internal armed conflict. This phenomenon has not yet been sufficiently studied, as it is a relatively recent development.

There is a relatively high number of deaths among adolescents and young adults. This is due to two types of phenomena: conflicts between youth gangs or fights over territory, and social cleansing operations which identify this sector of the population as responsible for crime and violence.

There is still much to study in respect of social cleansing, but the Human Rights Procurator and human rights organisations agree that the following elements exist which indicate the existence of the phenomenon: reports of persons arrested by security forces who are found executed or simply disappear (acts of forced disappearance); the presence of corpses of suspected criminals or gang members with signs of torture which are found in places other than the place of execution; public executions of suspected criminals, gang members or stigmatised persons (transvestites, street sex workers) by groups of hired assassins in the style of the paramilitary groups in the past.

In the context of this phenomenon, since 1994 lynching has been a social expression of collectively "taking the law into one's own hands". However, there is sufficient evidence that the lynchings were initiated as planned acts by ex-civil self-defence patrols or ex-military commissioners for the execution of suspected criminals or, in some cases, of individual enemies of these persons, imitating the execution mechanisms learned during the period of the armed conflict.

The lynchings which occasionally occur in the regions furthest from the urban areas are becoming more generalised throughout Guatemala and express a tiredness in the face of the inaction of the

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<sup>32</sup> See National Human Development Report 2003.

<sup>33</sup> Data taken by Claudia Samayoa from the public presentation of the Report on Social Cleansing by the Human Rights Procurator. The report has not yet been published.

<sup>34</sup> See follow-up report on Compliance by the State of Guatemala with the Recommendations of the United Nations Special Rapporteur on Violence Against Women.

<sup>35</sup> See Information Sheet No. 3 "Overview of Femicide in Guatemala" from the group of the Guatemalan National Revolutionary Unity (URNG).

justice system. The number of lynchings, at present, is not known since there is inadequate coverage of the phenomenon either by the media or State bodies. The last study conducted was by MINUGUA, which reported 480 lynchings between 1996 and 2002<sup>36</sup>.

Another factor of violence, not only through death or acts of intimidation, corruption, extortion or such, is the existence of organised crime and its infiltration in the State to the highest levels. Organised crime is a phenomenon linked to the internal armed conflict and is almost a product derived from the counter-insurgent structure. The criminal organisation that became rich through contraband goods and merchandise, arms and munitions, children and narcotics grew in the shadow of, and under the protection of, the military forces. The power accumulated by the military through the practice of the doctrine of national security soon served to amass personal fortunes and conform to what is known in Guatemala as “hidden power”<sup>37</sup>.

Both the increase in poverty and inequality (a cause of the conflict) and the increase in violence (a consequence of the conflict) are an expression of a failed post-conflict era, in which the guarantee of non-repetition of the past has been broken, and in which impunity, both of those who exclude and those who violate human rights, remains untouchable.

In the ten post-conflict years, there have been four points of inflection in terms of politics which can explain what is happening today and the difficulties through which Guatemalan society is moving:

1. The failure of constitutional reform: the Peace Agreements required a series of constitutional reforms to guarantee the recognition of the multicultural and multilingual State, above all in terms of recognition of indigenous rights; to give constitutional rank to the National Civil Police and restructure the army; and to eliminate constitutional obstacles to fiscal reforms. The constitutional reform was boycotted by political manipulation through the inclusion of more than forty reforms which confused the population, a campaign of fear calling for a no and, most worryingly, inaction in favour of the reform by the Government signatory to the agreements.
2. The refusal by President Alvaro Arzú to accept the Report of the Historical Clarification Commission, as he considered it “written with the left hand”, i.e. by left-wingers. Although he later accepted its content, he maintained his reservation with regard to the Commission’s highlighting of acts of genocide. That reservation has been maintained by successive Governments. This refusal was followed by a campaign to discredit the report, as well as the report of the Catholic Church<sup>38</sup>. This campaign was driven by the army and similar sectors without determined action by the State to counteract it, in addition to poor performance in terms of complying with the recommendations to construct a safeguard of non-repetition.
3. The election of Alfonso Portillo (as President of the Republic) and Elfraín Ríos Montt (who acted as President of the Congress for the period 2000-2004) of the Guatemalan Republican Front (FRG), which not only implied the accession to power of one of the persons accused of genocide, but also the accession of one of a series of persons accused of both human rights violations and of belonging to the hidden power of the

<sup>36</sup> See data in Carlos Mendoza and Edelberto Torres-Rivas, “Lynchings. Barbarity or People’s Justice?”

<sup>37</sup> To understand more about hidden power, a study carried out by WOLA at [http://www.wola.org/guatemala/po\\_completo.pdf](http://www.wola.org/guatemala/po_completo.pdf) is recommended.

<sup>38</sup> The Report of the Project to Recover Historical Memory (Proyecto de Recuperación de la Memoria Histórica, REHMI) “Guatemala Never Again” (Guatemala Nunca Más), which cost Monsignor Juan Gerardi Conedera, its promoter, his life.

country. During the FRG administration, serious setbacks were made to the country's institutions, organised crime reoccupied positions which had been lost with the peace agreements and acts of political and intelligence violence against the opposition which had not previously been witnessed, recommenced.

4. The processes of militarization of security during the administration of Oscar Berger of the Grand National Alliance (GANA), following the failure of the initiative to establish the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS<sup>39</sup>). Despite the fact that during the Berger administration there was a reduction in the number of military personnel to 15,000<sup>40</sup>, this measure was marred by the inclusion of military personnel in the Police, the involvement of the army in police activities and the establishment of a new para-police military body with demobilised personnel to deal with violence. All of these acts were undertaken in the framework of the new hemispheric security policies promoted by the United States, which established a new category of national security enemies: terrorism, drug trafficking, migrants and gangs<sup>41</sup>.

The current situation is, ultimately, serious. Social conflict is common, as a result of both unsatisfied demands and the frustration of unkept promises. The agrarian sector and the teachers' unions have been mobilised since 2004 and 2003, respectively, with regard to structural demands. The State is increasingly restricted in its responses and, similar to the beginning of the conflict, the tendency to respond violently to social demands, both by State and non-State actors, is becoming increasingly frequent.

The following chapters describe one of the symptoms of the Guatemalan post-conflict period: the increasingly serious situation of human rights defenders.

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<sup>39</sup> In the context of the deterioration of the situation of human rights defenders in 2002, the same illegal groups and clandestine security organizations which had been reorganised during the FRG administration were identified as a source of attack. Civil society organizations and the Human Rights Procurator proposed their dismantling in 2003, through the establishment of a United Nations commission with capacity for conducting investigations and private criminal prosecutions. As a result of national and international efforts, on 7 January 2004 its establishment was achieved in the form of an international treaty. The establishment coincided with the change of Government, and it was for the Government of Oscar Berger to promote its adoption by Congress; but the initiative faced strong political and public opposition which, in the end, resulted in a negative constitutional advisory opinion, and the initiative was lost on 7 August 2004.

<sup>40</sup> There are serious doubts with regard to the reduction publicised since in practice, the army did not eliminate all of the posts of retired personnel, a situation which could enable the return to the same volume at any time.

<sup>41</sup> For more information see "Diagnosis of the Situation of Human Rights Defenders in Central America and Panama; Regional Trends". In Report of the Meeting of Central American Human Rights Defenders, page 27.

#### IV. Six years of attacks against human rights defenders

Following the signature of the Comprehensive Agreement on Human Rights in 1994 and the entry of MINUGUA<sup>42</sup> to the country, the situation of human rights defenders clearly improved, so much so that the monitoring and protection mechanisms developed during the internal armed conflict were abandoned by human rights organisations. Violence against defenders remained concentrated against lawyers in cases from the past and some agrarian and union leaders where conflict had been intense.

The signature of the Agreement on a Firm and Lasting Peace meant that the number of cases registered each year by MINUGUA decreased to single figures. Such was the case that the Mission itself stopped reporting on the situation of defenders. When in 2000 attacks once again began to be registered against human rights defenders of various types of organisations and in relation to their calls for justice and truth before General Ríos Montt, President of Congress, or in the face of corruption and the presence of human rights violators or members of organised crime in the Executive, organisations were obliged to resume their systematisation work.

Already in October 2000, the human rights organisations presented their first report to the Inter-American Human Rights Commission in which they systematised 40 registered cases of attacks, which included raids, attempted murders and death threats. At the end of the year, MINUGUA presented a report in which it stated that it had verified 90 attacks against human rights defenders.

On the occasion of the *in loco* visit by Ms. Hina Jilani, Special Representative of the United Nations Secretary-General for Human Rights Defenders, in May 2002, the human rights organisations coordinated themselves to conduct a systematisation of the registers of attacks against human rights defenders. A number of criteria for the compilation were established, which continue to orient general systematisation today:

1. The case had to be reported to the Office of the Human Rights Procurator, the Office of the Public Prosecutor or MINUGUA, and written evidence of the report must be presented.
2. A copy of the file of the reported case must be presented, unless this was endorsed by an organisation which was dealing with the case.
3. The search for information on judges and prosecutors was excluded because systematisation of those cases was already being carried out by the Myrna Mack Foundation since 1999, and trust was placed in that institution. However, the cases of lawyers and defenders linked to human rights cases were systematised<sup>43</sup>.

This national effort made it possible for the first time to have a broader picture of the country and the phenomenon. It also initiated the process to create the Human Rights Defenders Protection Unit which was finally established as an *ad hoc* service of the National Movement for Human Rights in May 2003. The reason a service was established rather than a non-governmental organisation or a link with an organisation was so that the structure would have sufficient scope to be used by any defender or social activist regardless of where he or she was from.

As it is a service, the information from the Unit can be used by any defender to speak of the situation they are experiencing. In this way, it is the defenders rather than the Unit who are the owners of the public information<sup>44</sup>. The Unit's services are coordinated with protection services

<sup>42</sup> United Nations Mission for Guatemala for the Verification of Compliance with the Peace Agreements

<sup>43</sup> Later cases involving prosecutors dealing with the cases of human rights defenders were also systematized.

<sup>44</sup> Information relating to reported incidents and the information contained in the database which was given confidentially is different. In 2005, defenders were asked if they would agree to make public a summary of their case;

provided by other national and international organisations, such as IT protection workshops, risk analysis and accompaniment in the formulation of institutional security policies carried out by the Association for the Study and Promotion of Security in Democracy (SEDEM), support for the request of precautionary measures made by the Centre for Human Rights Legal Action (CALDH) and the Mutual Support Group (GAM), and international accompaniment provided by the Coordinating Body for International Accompaniment of Guatemala (CAIG) and Peace Brigades International (PBI).

In 2003, the systematised information was converted into a database which was used to prepare the report “The Face of Terror” (El Rostro del Terror), which presents an overview of what happened to defenders during the FRG Administration. From September 2003 onwards, a questionnaire was also put into use for the follow up of cases, ensuring that greater emphasis was placed on the formal complaints to the Office of the Public Prosecutor.

The Protection Unit’s work initially depended on verification by local organizations in departments outside the capital, where volunteers recorded the complaint and completed the questionnaire. However, in early 2004, a social worker was employed to provide personalised assistance to defenders - primarily those from smaller organizations which were increasingly under attack.

This not only improved the service provided to defenders, but also made it possible to incorporate more protection mechanisms, since voluntary staff began to concentrate their efforts on other mechanisms, and in that way annual reports on the situation of defenders began to be prepared: “Terror continues” in 2004 and “Terror is expanding” in 2005, and partial reports in 2005 (in April, May, June and October). Likewise, specialised attention for cases aimed at strengthening the performance of the victim before the Public Prosecutor began to be developed to demand criminal investigations and the drafting of thematic reports by type of attack to increase visibility of complex situations (“Criminalisation of Defenders”, April 2006.)

Meeting of women human rights defenders – 2005



Due to the worsening of the situation in 2005, the Protection Unit contracted an additional person to deal with human rights defenders, and also improved and clarified the processes for handling and processing information and protection mechanisms for defenders<sup>45</sup>. In addition, a pilot plan for mental health care for attacked defenders and the team dealing with defenders is being developed.

### *A. Systematisation of the situation of human rights defenders*

Systematisation follows the general criteria developed in 2003. However, variations and

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before then, unless the case had been publicly reported, cases remained confidential.

<sup>45</sup> See Appendix I, information and protection flows handled by the Protection Unit

adjustments have been made over the last few years, and particularly in this report, efforts have been made to adapt to both the changing reality in Guatemala and the strict criteria for monitoring human rights<sup>46</sup>.

It should be noted that the systematisation is of “attacks” and not violations or crimes. The category of human rights violations was not used to characterise what is happening to defenders since, in the majority of cases, the lack of investigation by the Public Prosecutor and the police impedes us from identifying the perpetrator of the acts and, therefore, the violation arises by omission and not by direct action by the State. To avoid pointless arguments with the Government of Guatemala, the use of this category to refer to the phenomenon on an individual basis has been avoided since 2000<sup>47</sup>. Furthermore, not all of the acts against defenders are considered crimes under the current Guatemalan legal order, which is another reason why this category could not be used. This left us with the use of the term “attack”.

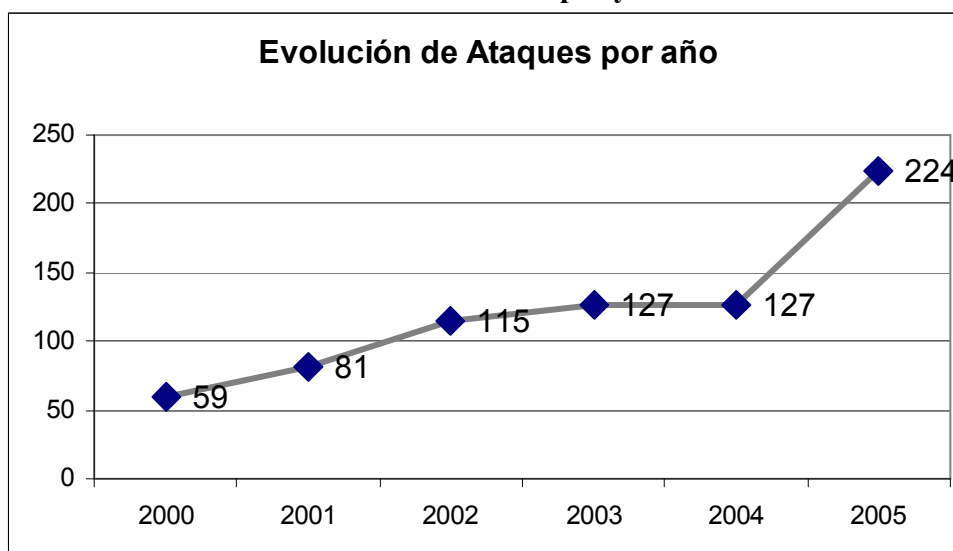
The systematisation used by the Protection Unit uses a series of general categories which have been developed to standardise types in Guatemala. Accordingly, defenders, patterns of attack, the type of crimes defenders are subjected to, the signs of planning of the attacks, and other elements analysed in each attack, have been categorised. The general characteristics of the systematisation used are explained in appendix II.

### *B. General overview of the situation of human rights defenders*

In the last six years, the Human Rights Defenders Protection Unit has registered 733 attacks and, as can be seen from the graph below, they have been on the increase and particularly seriously in 2005.

GRAPH 1

#### Growth in attacks per year



<sup>46</sup> The analysis which appears in this report will not coincide with the Unit’s public reports in terms of numbers. This is because more cases were registered for certain years and, unfortunately, due to a technical error, the 2000 cases were deleted, which we could not contrast due to the size of the information.

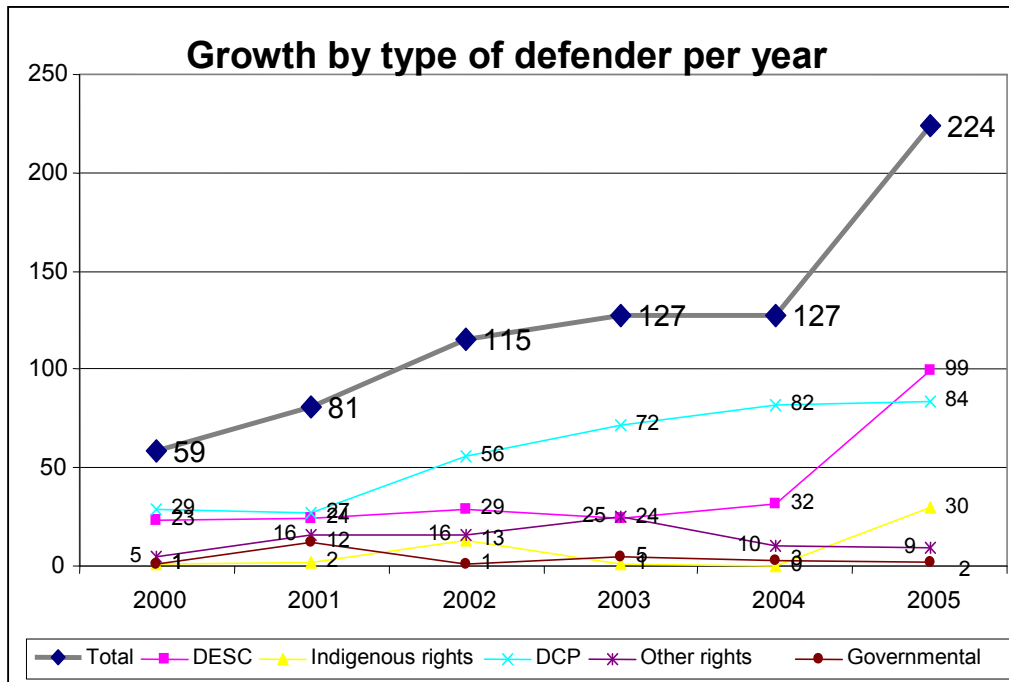
<sup>47</sup> The opposite happens when the human rights organisations refer to the phenomenon in global terms, whereby the inaction of the State converts what happens to human rights defenders into a grave violation of the human right to defend human rights.

Source: Human Rights Defenders Protection Unit (MNDH)

Between 2002 and 2004, the frequency of attacks remained similar, but in 2004 they increased by 84% over the previous year. This quantitative increase has a qualitative explanation, in that attacks against defenders of economic, social and cultural rights and defenders of indigenous rights increased considerably, as shown in the graph below.

This difference in patterns based on the type of activities carried out by the defenders is analysed in greater detail in subsequent chapters, which makes it possible to identify differentiated patterns between the groups which are diluted in the more global overview of attacks.

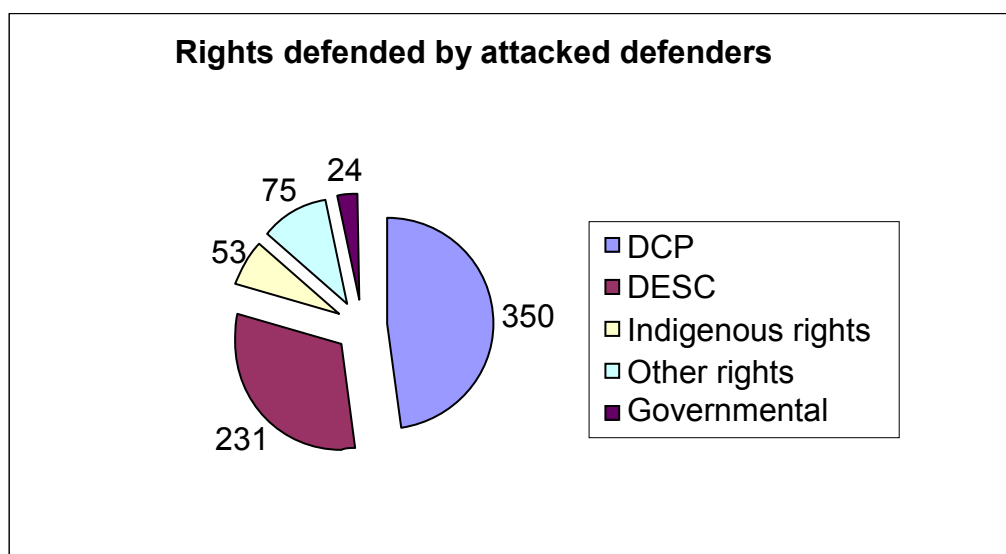
GRAPH 2



Source: Human Rights Defenders Protection Unit (MNDH)

In the last six years, the most attacked sector has been defenders of civil and political rights (DCP), made up of defenders of the right to justice, to truth, journalists, accompanists and members of religious orders, who have been the victims of 48% of the attacks whose numbers have remained more or less constant since 2003. The sector that defends economic, social and cultural rights (DESC) (defenders of the right to a healthy environment, development, campesino and union leaders), which is the victim of 31% of attacks, experienced the increase referred to for 2005. The sector defending indigenous rights (derecho indígena) is the target of 7% of attacks, the majority of which occurred in 2002 and 2005. The total number of attacks by sector can be seen in the graph below.

GRAPH 3



Source: Human Rights Defenders Protection Unit (MNDH)

An overview of the number of attacks per sector is contained in the following table.

TABLE 1  
**Number of attacks by sector**

Accompaniment	12
Campesino	93
Children and young people	15
Development	73
Environmentalist	3
Governmental	24
Indigenous	47
Journalist	68
<b>Justice</b>	<b>125</b>
Mayan priest	6
Member of Parliament	1
Member of religious order	21
Other	31
Sexual difference	13
Trade Unionist	61
<b>Truth</b>	<b>124</b>
Women	16

Source: Human Rights Defenders Protection Unit (MNDH)

As can be observed, the most attacked sectors are those of truth and justice, with 17% of attacks each, followed by campesino leaders, who make up 13% of those attacked.

Another way of viewing the situation is by analysing human rights organisations which have been attacked in the last six years, whether directly or indirectly. In that period, 203 organisations were attacked, the complete list is contained in appendix 3. However, there are organisations which have been attacked on a continuous, systematic and/or intensive basis over the course of those years. Below is a list of organisations which have been intensely attacked.

Table 2  
**Most attacked organisations**

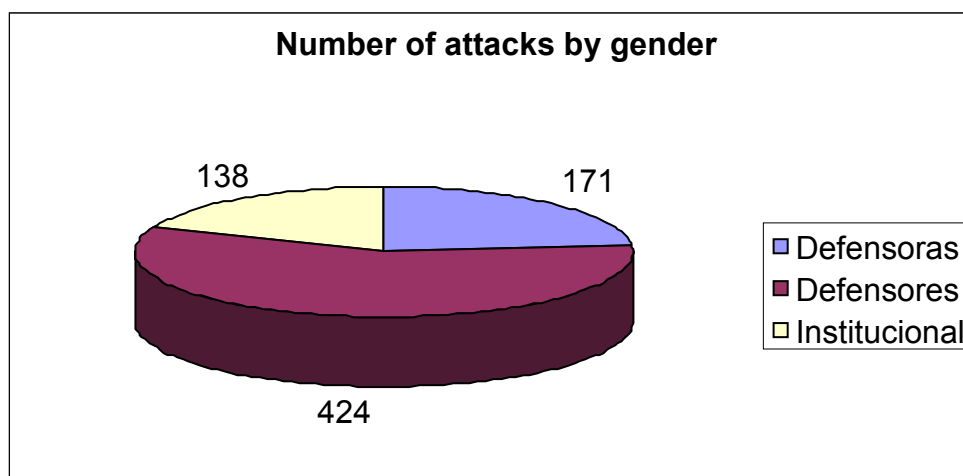
Centre for Human Rights Legal Action	33
Committee for Campesino Unity	26
Rigoberta Menchú Tum Foundation	23
Foundation for Forensic Anthropology of Guatemala	19
Verapacense Union of Campesino Organisations	16
Human Rights Office of the Archdiocese of Guatemala	16
Association for the Development of the Victims of Maya Achi Violence	15
Mutual Support Group	15

Source: Human Rights Defenders Protection Unit (MNDH)

As there is no national register of human rights organisations, it is not possible to establish the percentage of organisations which have been attacked or not. All of the oldest and most well known human rights organisations, whether in civil and political rights or economic, social and cultural rights, have been attacked in the last six years.

In relation to the gender of the attacked defender, it can be noted that the majority of attacks, 58%, are directed against male defenders (“defensores”), while 23% are against women (“defensoras”), and the remaining 19% are directed against organisations and institutions (“institucional”).

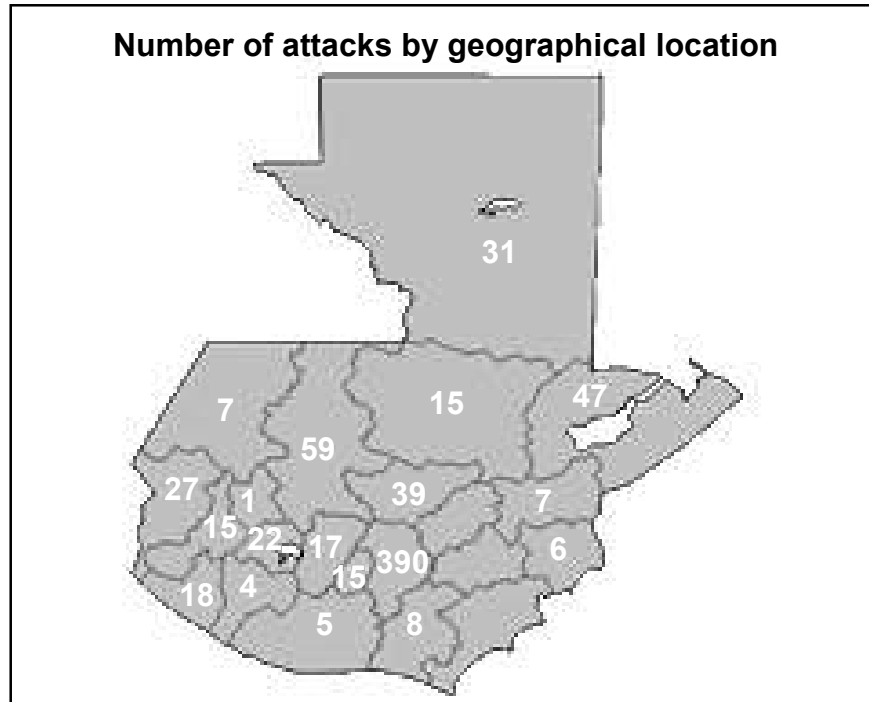
GRAPH 4



Source: Human Rights Defenders Protection Unit (MNDH)

Attacks can also be disaggregated in terms of the location of the type of attack, between the regional departments and the capital. As can be seen from the map below, attacks are primarily carried out in the department of Guatemala, in which 53% of attacks are concentrated.

GRAPH 5

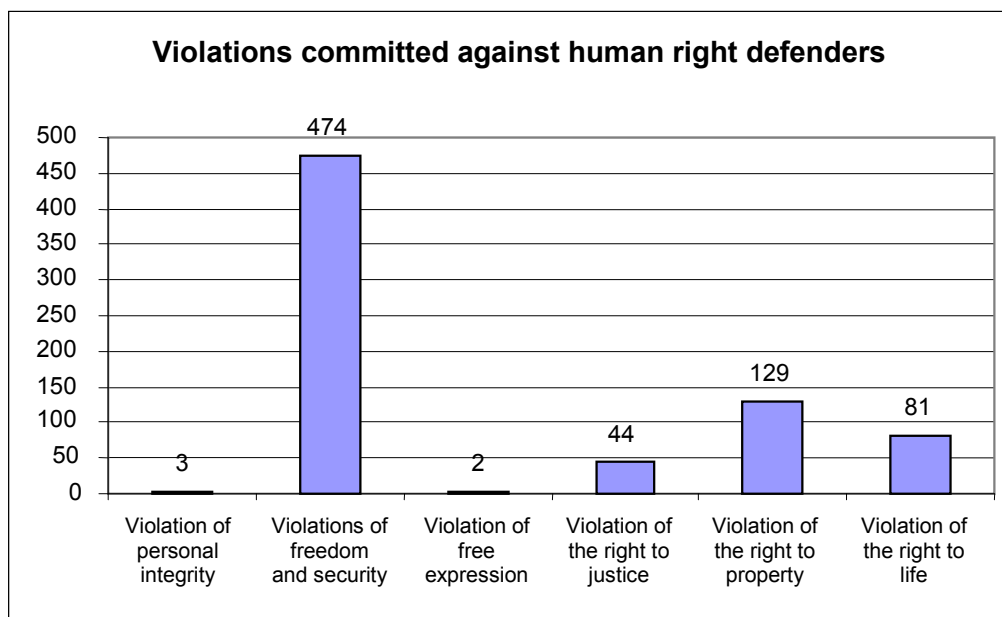


Source: Human Rights Defenders Protection Unit (MNDH)

Other departments with a high frequency of attacks are El Quiché and Baja Verapaz, which are both regions in which the internal armed conflict was particularly severe and where acts of genocide were committed. Furthermore, Izabal and Petén are departments in which the level of organised crime, namely drug trafficking, smuggling and illegal trafficking in wood, is high.

When the types of violations committed against human rights defenders are considered, in the majority of cases as a result of the lack of prompt and effective action by the State, 64% of attacks are violations of freedom and security. However, we have counted 81 violations of the right to life, of which 60 are murders, which accounts for 8% of the attacks.

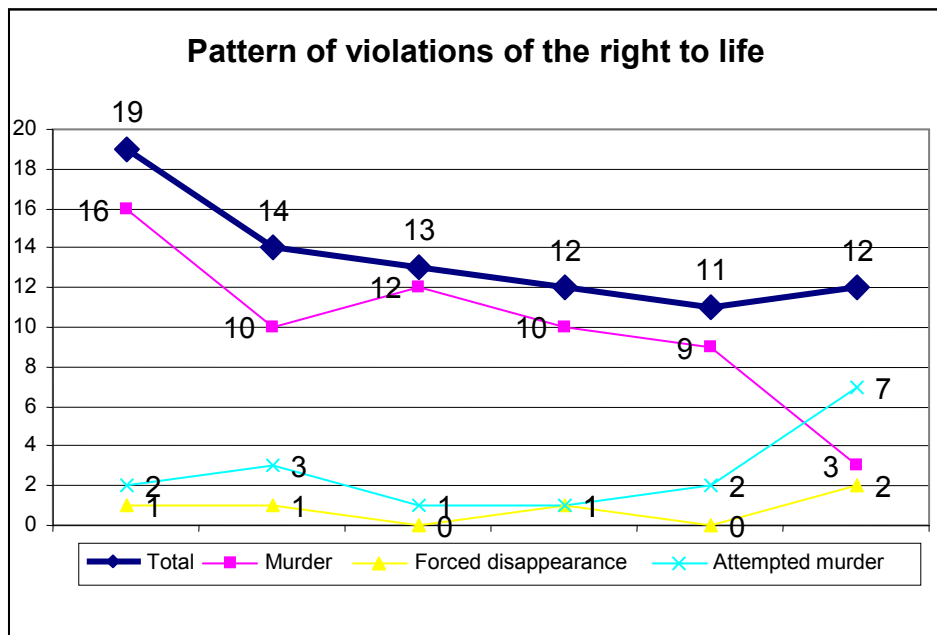
GRAPH 7



Source: Human Rights Defenders Protection Unit (MNDH)

The number of violations of the right to life has varied significantly over the years, with the most violent time being the first years of the register: 2000 and 2001, after which the number of murders of defenders fell significantly. A possible explanation for this phenomenon is national and international monitoring of the phenomenon, such as the operation of the unit in the Office of the Public Prosecutor for crimes against human rights defenders<sup>48</sup>. Another explanation might be the improved preparation of defenders in terms of protection measures, since there has been an increase in attempted murders which, fortunately, were not successful.

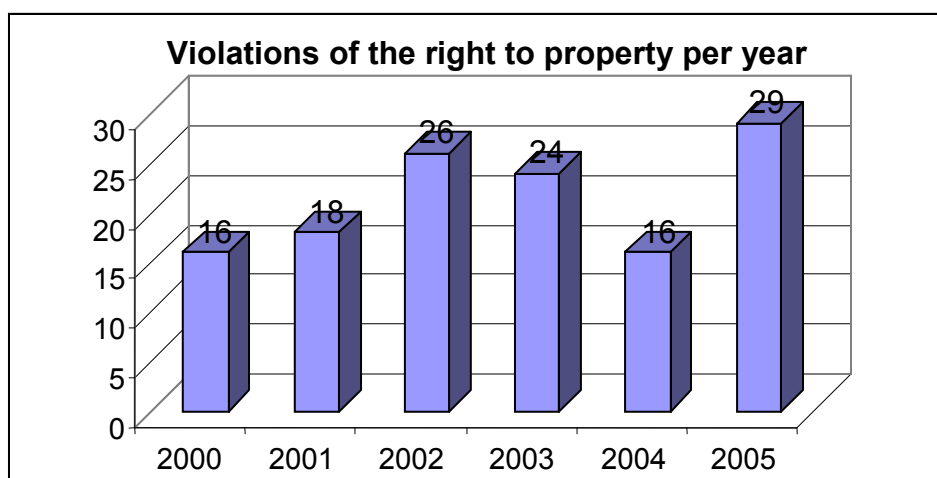
GRAPH 8



Source: Human Rights Defenders Protection Unit (MNDH)

In the last six years, there have been 129 registered violations of the right to property, which consist both of raids with the intent of stealing electronic or physical information, or causing damage to the property of an organisation with the objective of making its work more difficult. The breakdown of these violations by year shows that, in general, they have followed a uniform trend.

GRAPH 9

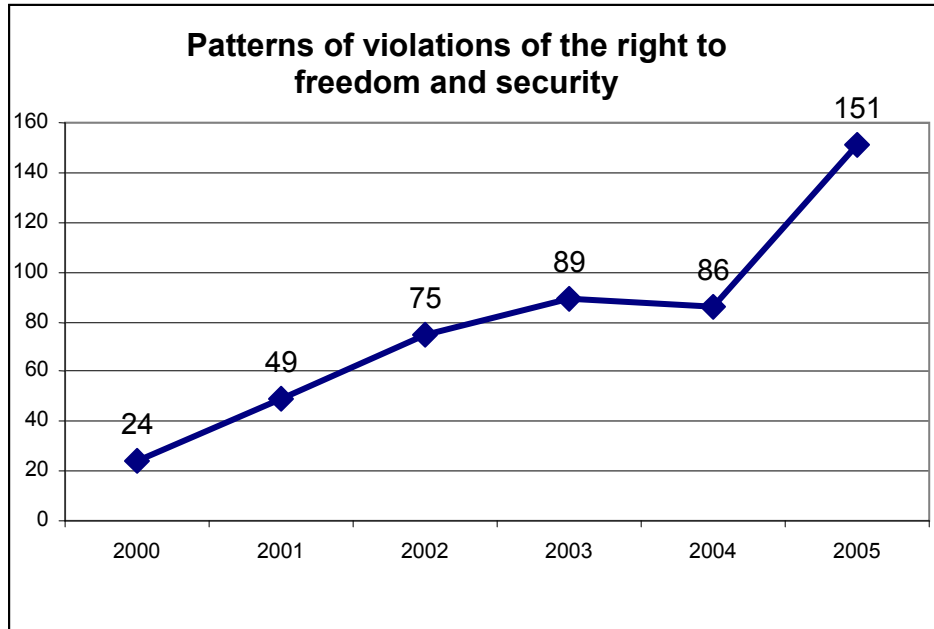


<sup>48</sup> The Special Office for Defenders became operational in 2002 and started to act against murders of defenders. In 2003, it achieved a series of apprehensions and prosecutions of suspected perpetrators of murders of human rights defenders.

Source: Human Rights Defenders Protection Unit (MNDH)

With regard to violations of the right to freedom and security, these follow the general pattern of attacks, and the crimes and offences which come under that violation also follow similar trends. The graph below identifies the general pattern of this type of violation.

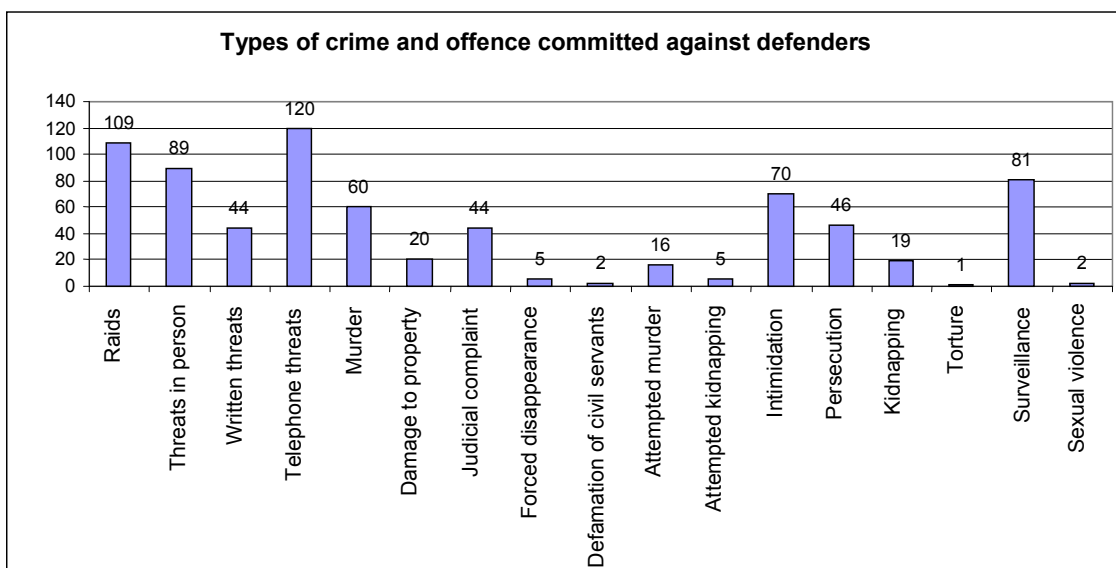
GRAPH 10



Source: Human Rights Defenders Protection Unit (MNDH)

In an analysis of the crimes or types of acts committed against human rights defenders, it can be observed that 16% of the acts are telephone threats, 14% are raids, and 12% are threats made in person. These three acts are the most recurrent in general. It should be pointed out that reports to the police or authorities against defenders, that is acts of criminalisation of defenders, make up 6% of the attacks and occurred between 2004 and 2005.

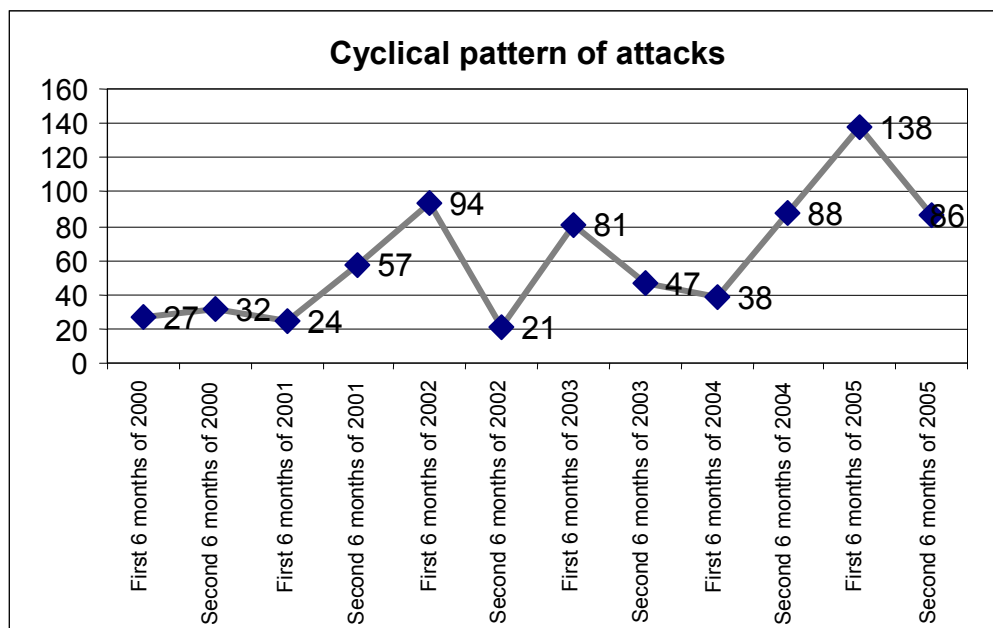
GRAPH 11



Source: Human Rights Defenders Protection Unit (MNDH)

Another way of analysing the attacks against defenders is by analysing the pattern of attacks over time. The annual reports have observed that there is a cyclical pattern to attacks, which may be observed on a monthly basis; but by viewing them on a semester basis it is also possible to observe a cyclical pattern. See the graph below.

GRAPH 12



Source: Human Rights Defenders Protection Unit (MNDH)

As can be observed, there are four clear peaks in attacks, of which two peaks were preceded by 6 month periods of growing violence. Those peaks coincide with decisive moments of confrontation between the human rights and social movement and the Government or the system, which generate a climate conducive to attacks against human rights defenders:

- Peak 1 “*Second 6 months of 2002*”: This second 6 month period occurred at the same time as “Guarogate”<sup>49</sup>, the scandal concerning the amendment of the Alcoholic Beverages Act by some members of Congress. This led human rights organisations to stage a series of protests to demand the indictment of various deputies, foremost General Efraín Ríos Montt. In the context of this clash, the Minister of Governance, Byron Barrientos<sup>50</sup>, announced that the organisations were undertaking a campaign of self-terrorism. On that occasion the announcement by the Ministry of the Interior was followed by a series of attacks. The public demonstrations were deactivated in the light of the impossibility of making progress and the judicial case against the deputies was in the end closed by the various authorities of the system.

<sup>49</sup> This name is related to the expression “Guaro” which, in Guatemala, refers to liquor. Guarogate occurred at the end of July 2000 when, in the framework of a package of fiscal reforms derived from the Fiscal Pact pursuant to the Peace Agreements, an amendment was made to the Alcoholic and Non-Alcoholic Beverages Act. That amendment was made outside the consensus of the Pact, and during public discussions concerning the adoption of the reform it was noticed that the tax table established which was adopted by Congress was not the same one known to and sanctioned by the Executive. On requesting explanations, attempts were made to establish the existence of a review fund which is not part of the Act governing the Legislative.

<sup>50</sup> Mr. Byron Barrientos also entered the Ministry of Governance in the second half of that year, in the face of opposition of human rights groups to his proven participation in the past in one of the attempted coups against President Vinicio Cerezo in 1987, and reports that he had participated as an operative agent in tortures at the beginning of the 1980s in the Guatemalan army.

- Peak 2 “*The Consultative Group and the increased visibility of clandestine groups*”: In January 2002, major pressure began to be exerted to participate as civil society in the meetings of the Consultative Group of the friendly countries. Civil society’s argument was the grave setbacks in the implementation of the obligations of the peace agreements and the situation of human rights defenders. Between January and February, attacks against human rights defenders intensified and became widespread, which led to a dynamic of lobbying the Government for it to acknowledge that the attacks were taking place and that they had similar characteristics to the attacks committed by the clandestine security organisations during the internal armed conflict. That recognition finally came about in May 2002. This peak corresponds to the murder of the accountant of the Rigoberta Menchú Tum Foundation, Guillermo Ovalle de León on 29 April 2002.
- Peak 3 “*The pre-electoral stage and the emergence of CICIACS*”: The first 6 months of 2003 was another time of pressure for defenders since it was a pre-election period during which strong positions were being announced by the human rights movement with regard to the participation of Efraín Ríos Montt as a presidential candidate. In addition, the proposed establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Organisations (CICIACS)<sup>51</sup> was made public. The combination of both factors may have produced a moment of vulnerability which led to a peak in attacks.



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### **Carlos Morales**

Coordinator of the Verapacense Union of Campesino Organisations which suffered 14 attacks in 2005

- Peak 4: “*Confrontation with the economic system*”: In the first semester of 2005 the peak which had been developing since the second semester of 2004 consolidated when the campaign for the establishment of CICIACS was lost and the Indigenous, Campesino, Trade Union and Popular Movement (MICSP) was organised. During this 6 month period, the MICSP organised a series of demonstrations and public actions based on technical studies concerning the opposition to the adoption of the Free Trade Agreement between the United States and Central America and the Dominican Republic, and the adoption of a law of concessions. These protests climaxed in a series of sectoral public demonstrations of opposition to a policy of violent evictions and, violating international standards

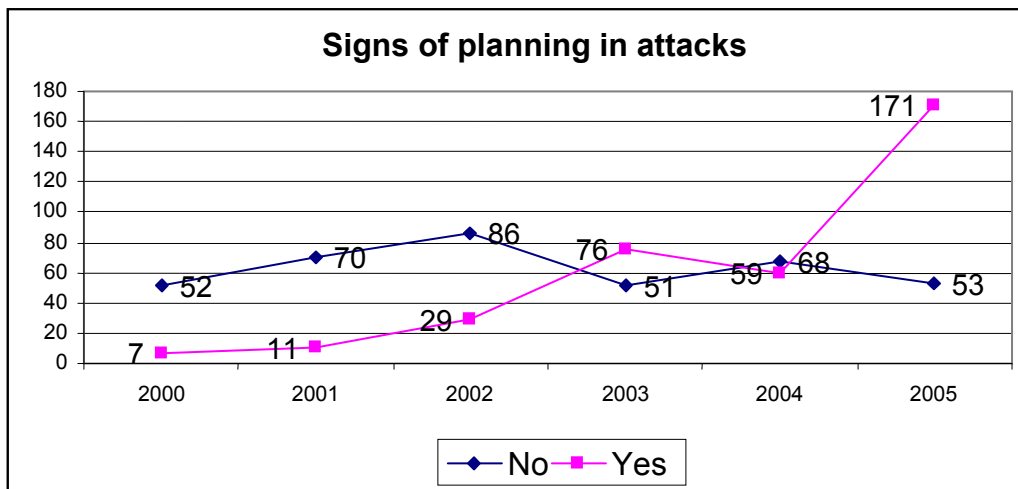
<sup>51</sup> CICIACS was a proposal by civil society and the Human Rights Procurator presented in January 2003 to the Executive and Legislature for the establishment of an international body to investigate illegal bodies and clandestine security apparatuses which, it was assumed, were responsible for the majority of attacks against human rights defenders at the time. The proposal was endorsed by Congress and the Executive signed an agreement with the Human Rights Procurator and civil society in March 2003 to promote CICIACS and request its establishment at the UN and OAS. The UN studied the proposal and conducted the negotiations for its establishment in December of that year.

in that regard, the concessions for the extensive open-pit exploitation of metallic minerals and the opposition to the implementation of a fiscal reform package which violated the spirit of the fiscal pact. In this context, the social organisations involved were attack both in order to obtain information on the way they worked and to damage their operative base to paralyse public activity. In addition, direct action by the State to criminalise social mobilisation was also noted. This peak was particularly violent, in that it involved social sectors which had not suffered attacks in the past in the dynamic of attacks.

Due to the absence of investigations into attacks against human rights defenders, it is very difficult to establish who is responsible for those attacks. During the process of systematisation of attacks, attempts are made to establish, on the basis of the little information that can be gathered at the time of the attack and without an in-depth investigation, whether there are signs of planning that are consistent with the existence of illegal groups and clandestine security organisations in operation. In the first report carried out, it was shown that between 2000 and 2003, the percentage of attacks which showed such signs was 30%. In this new period, which incorporates the analysis of attacks up to 2006, it can be seen that 48% of cases show signs of planning.

With regard to the pattern of attacks which show signs of having been planned, there was a clear increase in the number of such attacks in 2005, which implies that the increase in the number of attacks was not only quantitative but also qualitative, and involved organised and complex structures, such as those known as illegal groups and clandestine security organisations. The graph below shows the pattern of attacks according to signs of planning.

GRAPH 13

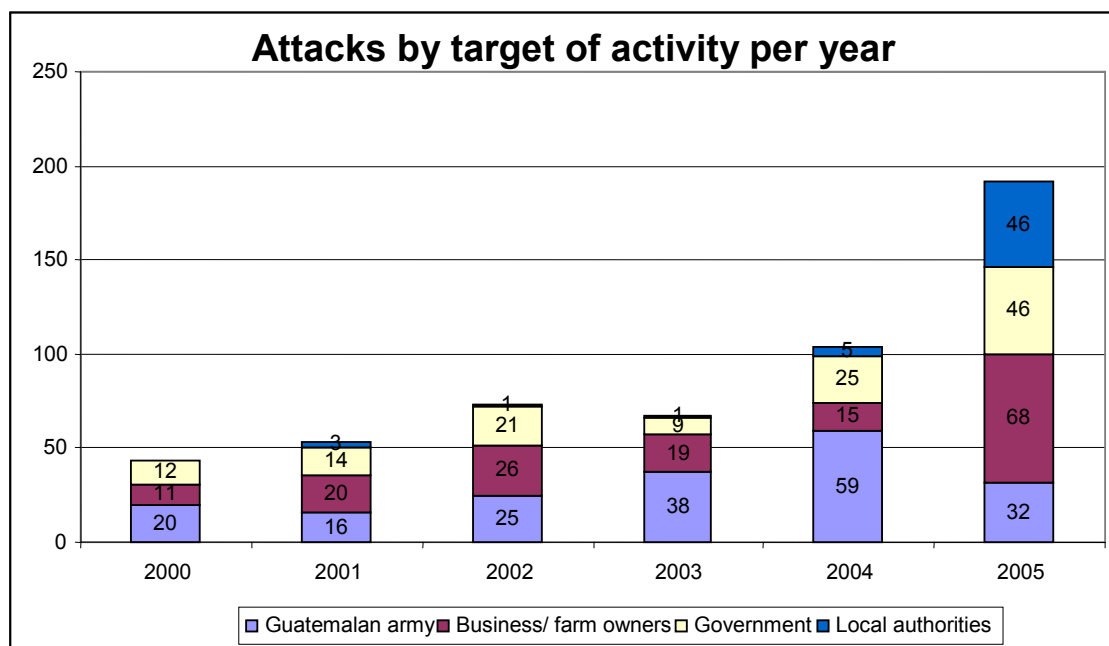


Source: Human Rights Defenders Protection Unit (MNDH)

However, if a cross-analysis is conducted between signs of planning and the type of defender or the activity of the defender, no positive relevant correlation can be found. In other words, the number of attacks is between 45% and 55% for each of the variables, making it of little significance for any particular sector. This implies that all sectors have been the targets of planned attacks and that, at least on the basis of the little information available, there are no signs that one sector in particular is being targeted.

Again with a view to establishing the possible perpetrators or those responsible for the attacks, the systematisation process has included an analysis establishing the purpose of the activity of the defender. This information could provide elements about the reasons motivating the violent response to the defender's operations.

GRAPH 14



Source: Human Rights Defenders Protection Unit (MNDH)

As can be seen, the pattern of attacks varies over the years, and it can be noted that in 2000, 2003 and 2004 the attacks against defenders whose target is the Guatemalan army, that is those who deal with issues of truth of the armed conflict, justice in cases of human rights violations or military restructuring, were mostly the targets of attacks. It is significant that those were the years when the debate on the genocide began and cases were brought before the Spanish justice system and the national courts<sup>52</sup>.

Furthermore, it can be seen that in 2002 and 2005 there was a notable predominance of attacks against defenders involved in both the business sector and the Government. In this case, the situation between 2002 and 2005 is completely different, since in 2002 the business sector was clashing with the Government and in 2005 there was an alliance between both sectors.

With regard to the patterns of attack observed, in accordance with the classification established in 2002 to define the type of attacks, 25% came from local authorities or a specific enemy, which implies that the possibility of investigating is much higher than in other cases. Attacks to dismantle the organisation make up 24% of attacks and 19% are directed at the organisations' operative bases.

<sup>52</sup> In 1999, a lawsuit was brought before the Supreme Court of Spain and was accepted in 2000 against 8 high military and civil commanders responsible for genocide, State terrorism and torture between 1978 and 1985 in Guatemala. In 2000 in Guatemala a case against the high military commander Romeo Lucas García was opened for genocide committed between 1981 and 1982, and the case against Ríos Montt for the same crime between 1982 and 1983 was opened in 2001. In 2003 there was a discussion on the impediments of the diplomatic immunity of Ríos Montt to the advancement of the cases and how this benefited Ríos Montt's presidential candidacy. In 2004, the national justice system was questioned with regard to the lack of progress in the cases against Ríos Montt following the loss of his immunity.

TABLE 3  
**Patterns of attacks against human rights defenders**

Dismantling/ paralysing attack	179
Attack to eliminate leaders	64
Attack on operating base	139
Attack with multiple objectives and symbolic attacks	88
Local authority/ specific enemy attack	181
Attack to obtain information	75
Attack for exploitation	7

Source: Human Rights Defenders Protection Unit (MNDH)

As can be seen, attacks to obtain information and those with multiple objectives – which tend to denote the existence of clandestine security organisations – make up 10% and 12%, respectively.

In the subsequent chapters, there will be a detailed analysis of attacks broken down by sector, investigating more specific explanations. However, the overall situation of impunity in respect of the cases is really incredible.

Of the 733 registered cases, the majority have not been investigated beyond the initial interviews with the attacked defenders. A large number of the attacks are closed<sup>53</sup> because of the impossibility of identifying the perpetrator of the attack. In the last six years, the cases outlined below were not closed, and the results of the proceedings were as follows:

5 murders: 2 convictions, 3 acquittals.

1 raid: proceedings were cut short<sup>54</sup> because of admission of guilt by the accused.

1 threat made in person, which resulted in the perpetrator issuing an apology to the victim.

12 reports to the police dismissed as unfounded.

If the three murders for which proceedings ended in acquittal are not counted, there are 16 cases in which the State acted to positively resolve the situation of the attacked human rights defenders. This means that it acted in 2.18% of cases.

A more detailed analysis is contained in the chapter on impunity in respect of attacks against human rights defenders.

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<sup>53</sup> This means that the investigation into a report is abandoned because the perpetrator of a crime could not be narrowed down to one person. It is synonymous with impunity.

<sup>54</sup> Proceedings are cut short when a person accused of a crime admits guilt and requests that the oral debate does not occur and proceedings are moved directly to establishing a sentence.

## V. The situation of defenders of civil and political rights

The defence of civil and political rights in Guatemala was one the central factors both of resistance to the war and of the struggle for peace during the 1980s and 1990s. The year 1984 saw the emergence of the Mutual Support Group (GAM), a group of relatives of victims of forced disappearances fighting for life and for justice. Prior to GAM's foundation, the human rights movement and those pursuing non-violent means of resisting the war had suffered persecution in the late 1970s and early 1980s. It is now acknowledged to be the leading group in the current human rights movement. It is also important to draw attention to the formation during this period of the Committee of Family Members of Disappeareds, led by a number of people including Miguel Angel Obregón and Ofelia de Obando, respectively the father of the writer Roberto Obregón and mother of the Obando brothers, who were arrested/disappeared during the time of the Carlos Arana Osorio government.<sup>55</sup>

During the 1980s and early 1990s, Guatemalan human rights organisations both at home and in exile learned how to make use of international mechanisms for protecting human rights, with a view to denouncing serious violations carried out within the framework of the counter-insurgency policy referred to above. In 1990, an Independent Expert for Guatemala was appointed to oversee the human rights situation there.

The militancy of the human rights movement led to the establishment, under the terms of the 1985 Political Constitution of the Republic, of the post of Human Rights Procurator, the first of its kind in Latin America. This "Ombudsman" was soon to become the person that spoke up for those with no voice, and began to address the serious situation regarding human rights.

As negotiations on the Peace Accords moved towards their conclusion in 1994, the human rights movement set about finding means of drawing attention to victims of the internal armed struggle both in truth processes and in legal cases. Actions under this heading included:

- the construction of a database of the victims of violence by the International Center for Human Rights Investigations (CIIDH), a member of the National Human Rights Coordinating Committee of Guatemala;
- an inquiry in the form a Recovery of Historical Memory (Recuperación de la Memoria Histórica) carried out by the Archbishop's Human Rights Office (ODHAG);
- the formulation of a proposal by the GAM to compensate victims;
- a search for disappeareds conducted by the Human Rights Procurator, the Association of Family Members of Detained and Disappeared Persons of Guatemala (FAMDEGUA) and the GAM;
- legal proceedings initiated against military commissioners (non-state agents of the armed forces), civil defence patrols and soldiers in the national courts, and against the government on the Inter-American Human Rights Commission.

Some initiatives were successful, and others were not, but they were clear evidence of the decision to focus on clarifying the past. During the early years, the human rights movement was split into

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<sup>55</sup> This group pioneered actions relating to *habeas corpus*, international denunciations, and summons issued to civil servants with a view to establishing the whereabouts of arrested/disappeared persons. It was supported by, and received legal advice from, the office of the Legal Department of the Association of University Students (Asociación de Estudiantes Universitarios, AEU).

two large groups that responded to events in their immediate environment, rather than to the revolutionary movement. The gap between them began to narrow in 1996 when organisers and defenders joined forces to oppose the possibility of an armistice for human rights violators.

This strategic decision receives a detailed examination in the conclusions of the report “Guatemala Nunca Más” (Guatemala Never Again) by the Interdiocese Project to Recover Historical Memory, coordinated by the ODHAG, and the report “Guatemala Memoria del Silencio” (Guatemala Memory of Silence) from the Historical Clarification Commission (CEH). Since 1998, most of the work of civil and political rights organisations has centred on:

- ⇒ cases heard in national and international courts;
- ⇒ clarification of the truth (publication of reports and fresh enquiries);
- ⇒ the exhumations, inhumations and dignification of victims;
- ⇒ compensation for victims;
- ⇒ the search for disappeareds;
- ⇒ legislative and institutional reform (e.g. the police, the army, the intelligence service and access to information) to ensure that it never happens again;
- ⇒ reform of the judicial system with a view to eliminating the culture of impunity.

When the phenomenon of attacks on human rights defenders began to extend beyond judicial officers, the movement found itself undermined by many organisations scaling down their capacity to monitor complaints, and instead focusing more specifically on the monitoring of economic, social and cultural rights. This called for a new approach, and it was against this background that the Human Rights Defenders Protection Unit was established.

By 2002, it had become abundantly clear that violations of civil and political rights not only affected defenders, but were also beginning to occur in situations of generalised social violence. As a result, some organisations, including the GAM, resumed monitoring human rights violations.

In 2003, some women’s organisations founded an observatory examining the murders of women<sup>56</sup>, while others began to set up organisations in the various regional departments to monitor violations of civil and political rights generally.<sup>57</sup> In 2005, the situation in prisons of young people tried by the criminal courts and the phenomenon of torture were also monitored.<sup>58</sup>

In addition to working on an agenda that involved looking at the consequences of the armed conflict and monitoring the civil and political rights situation, the human rights movement has turned its attention towards:

- ⇒ placing the priority issue of human rights among the matters covered by the Peace Agreements consultative group;
- ⇒ the process of selecting the Human Rights Procurator in 2002;
- ⇒ the establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Apparatuses in Guatemala (CICIACS);
- ⇒ support for the Human Rights Procurator in examining National Police records.

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<sup>56</sup> Reference should be made here to the monitoring carried out by the Guatemalan Women's Group (Grupo Guatemalteco de Mujeres), which brought the phenomenon of women’s murders to the nation’s attention. It is now monitored by human rights organisations as well as by women’s groups.

<sup>57</sup> Noteworthy in this context is the work carried out by the National Human Rights Movement (MNDH), supported by (MINUGUA as part of its transition, and by observatories established by CALDH, the Maya Defence Unit, and the Myrna Mack Foundation under the umbrella of the European Union Multiannual Human Rights Project.

<sup>58</sup> The Guatemalan Institute for Comparative Criminal Science has published a number of studies highlighting the situation of vulnerable groups.

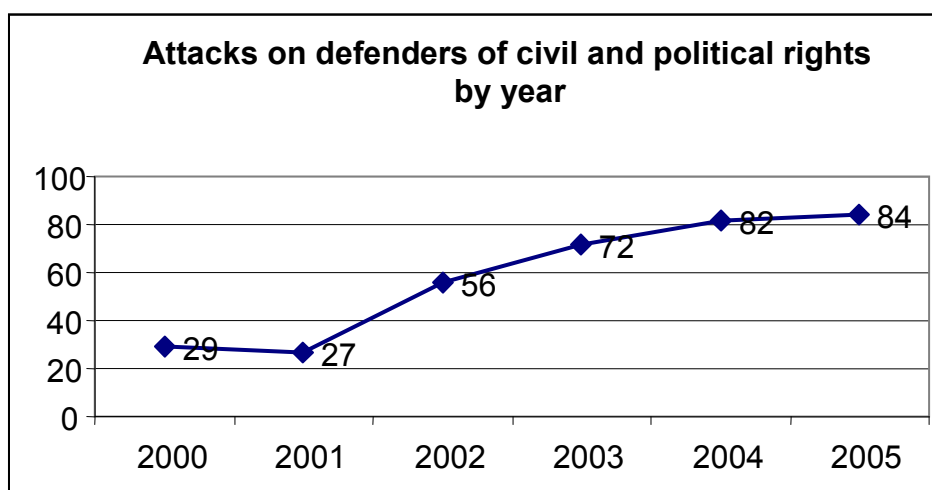
Another factor uniting the human rights movement has been the head-on struggle against corruption and infiltration of the state by organised crime. Here, aware and responsible journalists, mostly in the regional departments, have played a very important role in the filing of complaints. This has placed them in the firing-line of attacks.

Generally speaking, human rights organisations have no broader social base than that, and are constantly being called upon by the bodies defending economic, social and cultural rights.

### *A. Specific characteristics of forms of attacks*

During the last six years, civil and political rights defenders have been the subject of 350 of the 733 attacks registered. This sector includes defenders of the right to justice (but not judicial officers), defenders of the right to truth, members of religious orders who customarily defend civil and political rights linked to the truth, international accompaniers who defend the right to defend human rights, and journalists who defend the right to the free expression of thought. As the graph below shows, attacks on defenders of civil and political rights have followed a regular pattern over time, increasing in number during the first few years and passing through a period of relative stabilisation during the last three years.

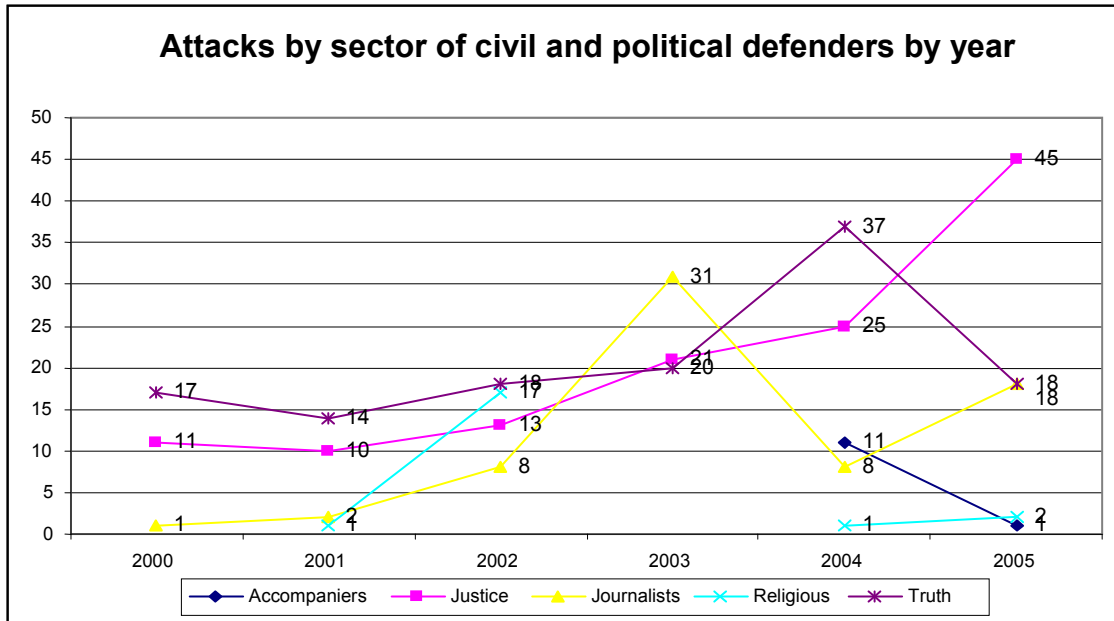
GRAPH 15



Source: Human Rights Defenders Protection Unit (MNDH)

However, variations to this pattern begin to emerge if we examine more closely those sectors in which civil and political rights defenders operate. Here we see that attacks on defenders in the legal sector have risen year on year, while those on members of religious orders and accompaniers have increased at different times. By contrast, the incidence of attacks on journalists was at its highest during election year, which was when their work put them at most risk. Most of the attacks on defenders of the right to truth were related to exhumations, and reached their peak in 2004. The patterns are set out in the graph below.

GRAPH 16



Source: Human Rights Defenders Protection Unit (MNDH)

The distribution of attacks is clearer in the map below, with 67% taking place in the department of Guatemala, which is where harassment is at its worst. The departments with the next highest incidence are Baja Verapaz and El Quiché, the scene of several activities around the search for truth.

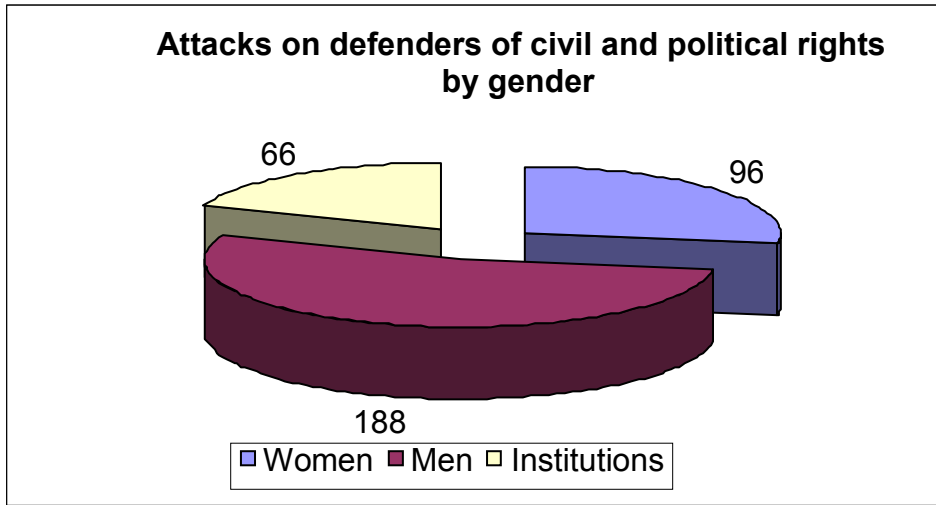
GRAPH 17



Source: Human Rights Defenders Protection Unit (MNDH)

The next graph includes figures on gender differences. Attacks on female defenders stand at 27% compared with 23% generally. Attacks on institutions come to 19%, the same as in the general pattern.

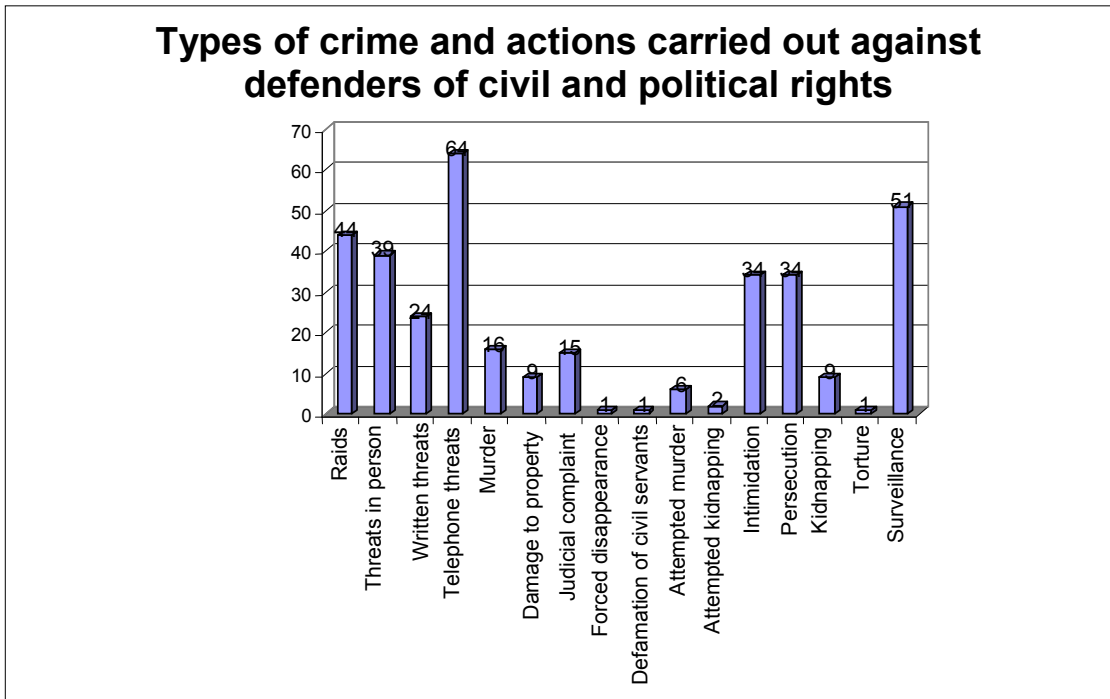
GRAPH 18



Source: Human Rights Defenders Protection Unit (MNDH)

Most attacks on defenders of civil and political rights take the form of threats made over the telephone at 18%, followed by surveillance at 15% and raids at 13%. There have been 16 murders, representing 5% of attacks, over the last six years. In this respect, the pattern of attacks is at variance with the general pattern, where raids are in second place followed by written threats.

GRAPH 19



Source: Human Rights Defenders Protection Unit (MNDH)

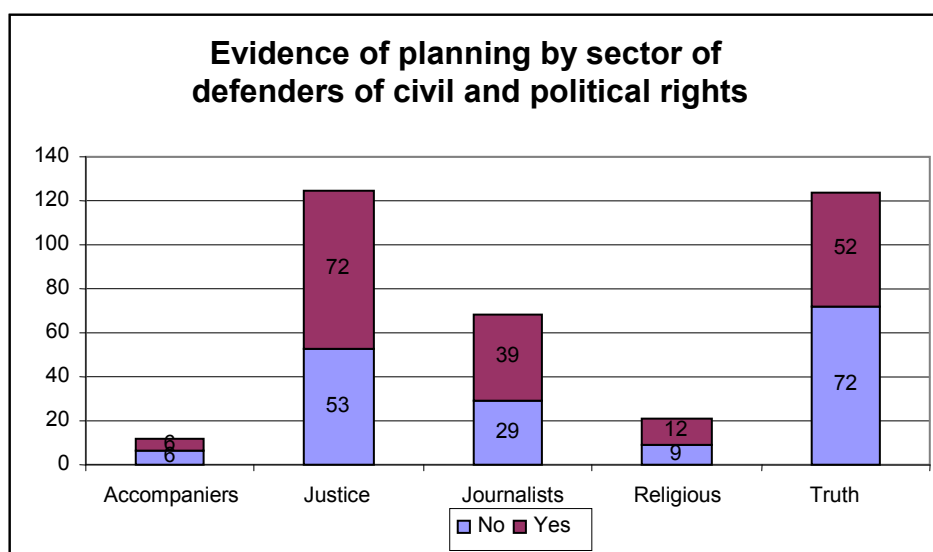
One of the most interesting tendencies observed in 2005 was that of people accused of corruption or abuse of power taking legal action against human rights defenders seeking justice. The most important instance was lodged in Sacapulas, El Quiché, where legal proceedings initiated by the Mayor against defenders were linked to cases that the latter had brought against him. The Mayor

had got into power through the Guatemalan Republican Front (FRG) party, and had been a military commissioner during the internal armed conflict. This enables him to receive support from members of the network of civil defence patrols.<sup>59</sup>

### B. Hypothesis on reasons for the attacks

There is evidence of planning in approximately 52% of attacks on defenders of civil and political rights, that is to say four percentage points above the overall percentage of attacks show signs of planning. However, if we break down the figures for attacks by targeted sector, we see that attacks with signs of planning are most common among those perpetrated against defenders of the right to justice, members of religious orders and journalists. It is noteworthy that the pattern for defenders of the right to truth is the reverse of that experienced by defenders of the right to justice.

GRAPH 20



Source: Human Rights Defenders Protection Unit (MNDH)

A lack of research prevents us from saying any more about evidence of planning, but we estimate that over half of the attacks are carried out by illegal organisations and clandestine security apparatuses.

The patterns of these attacks are different from general patterns. In the case of defenders of civil and political rights, 31% are aimed at breaking up, or paralysing, the organisation, 24% involve attacks on staff, and 15% are attacks with multiple objectives. Significantly, attacks aimed at obtaining information account for only 10% of those carried out against organisations of this type.

TABLE 4

#### Patterns of attacks on defenders of civil and political defenders

Dismantling/ paralysing attack	110
Attack to eliminate leaders	25
Attack on operating base	83
Attack with multiple objectives and symbolic attacks	51
Local authority/ specific enemy attack	45
Attack to obtain information	34
Attack for exploitation	2

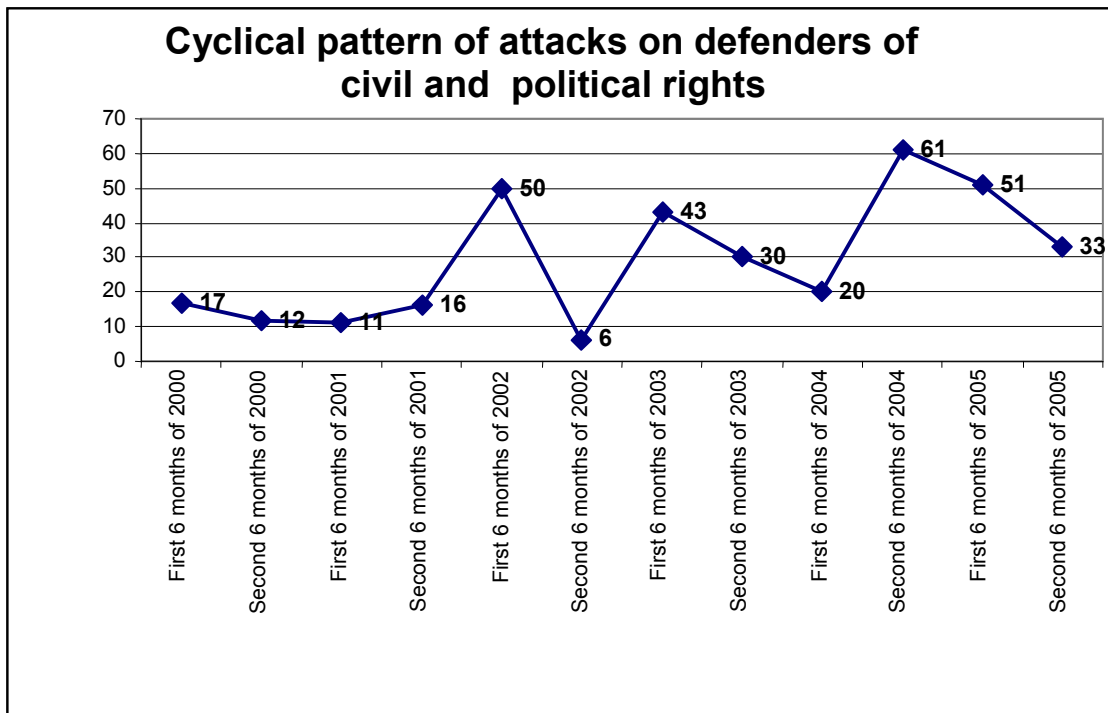
Source: Human Rights Defenders Protection Unit (MNDH)

<sup>59</sup> For further information, see the 'El terror se Expande' (The Terror Spreads) report of 2005, which contains a summary of the cases and the number of people charged. In this particular case, the judge had the charge thrown out for lack of merit. The Mayor is still being sought in connection with charges of corruption.

Possible reasons for civil and political rights organisations coming under attack are directly associated with the work they do. For example, the most important factors surrounding attacks on defenders of the right to justice and truth are their involvement in cases and their desire to bring previous serious violations of human rights before the courts.

In this respect, we can also see from the cyclical pattern of attacks on defenders of civil and political rights that peaks are at variance with the general trend. Although there are four peaks, two of them occurred at different times. One took place in the first six months of 2000, which was when the case against Efraín Ríos Montt was made public, and when a number of legal decisions were being handed down in Spain; the other occasion was in the second half of 2004, when the application to establish the CICIACS was rejected by the Constitutional Court.

GRAPH 21



Source: Human Rights Defenders Protection Unit (MNDH)

If the hypothesis relating to the origin of the attacks is correct, it means that one or more groups of soldiers, and probably civilians too, have been established to break up the human rights movement, and distract it from its strategic objective; in other words, groups that contributed to the spread of the counter-insurgency during the armed conflict have been revived and reconstituted.

*C. Case study: Guatemalan Forensic Anthropology Foundation*



FAFG Director  
Fredy Peccerelli

The Guatemalan Forensic Anthropology Foundation (FAFG) is an autonomous, non-governmental, technical-scientific, not-for-profit institution whose objective is to strengthen the justice system and ensure respect for human rights through research, documentation, dissemination, training and awareness-raising concerning the historic facts of violations of the right to life and of unexplained deaths.

The FAFG publishes expert reports and carries out scientific research based on

forensic and social sciences at national and international level. It was set up in Dr. Clyde Snow in 1992 in response to calls from victims' organisations like the GAM, the National Widows' Coordinating Committee of Guatemala (CONAVIGUA) and the Runujel Junam Ethnic Council (CERJ). Since then, the Foundation has carried out exhumations and inhumations at the request of the victims in cemeteries throughout the country. Exhumations and inhumations are conducted in collaboration with the Office of the Public Prosecutor (MP), which has to authorise such procedures by law.

The first move was made on 21 February 2002 when a letter was received containing death threats to 11 forensic anthropologists who had worked for the FAFG and now worked for various institutions. Of these, only Leonel Estuardo Paíz, José Suasnavar, Fredy Peccerelli and Claudia Rivera still work in their institutions.

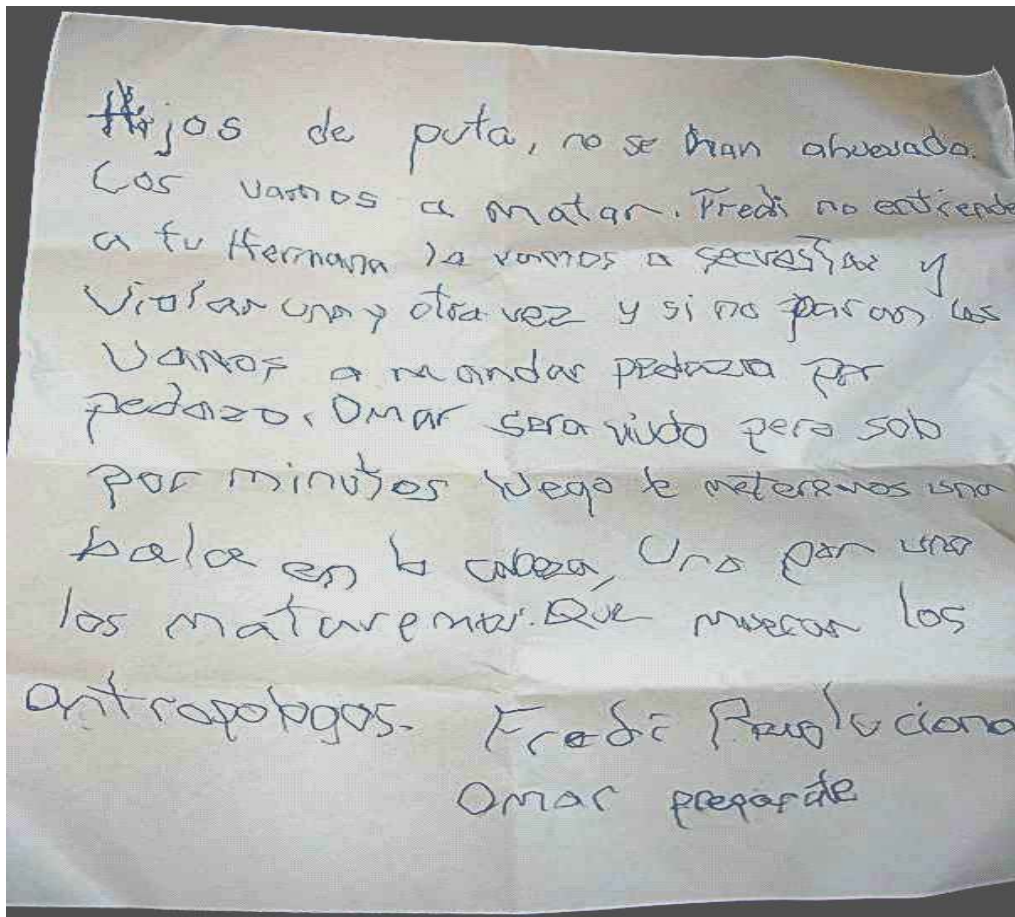
All of the anthropologists immediately received police protection, as did their institutions, but despite the protection in the form of precautionary measures offered by the Inter-American Commission on Human Rights, the investigation into these events came to nothing, and the attacks continued. On 21 April 2002, one of the anthropologists' brothers was assaulted and was linked to previous attacks, an example of various types of intimidation and ways of sending out messages of terror.

On 6 March 2003, the target was Fredy Peccerelli and those close to him, including his sister, Bianka Peccerelli, who was pursued by unknown men. On 12 March, she was threatened by unidentified persons while with Omar Bertoni Girón, another anthropologist at the FAFG. On 3 April, Fredy Peccerelli's house was raided, and documents including his passport and those of his family members, stolen. On 28 April, Omar Girón was stopped in his car, his mobile telephone was stolen, and his assailants threatened to kill him because of his FAFG work, and on 29 May, when Fredy Peccerelli and his brother noticed that Fredy's front door had been struck by a moving car, Fredy decided to leave the country temporarily to pursue his studies.

On 1 August, two female FAFG workers had left the institution for home when a car began to follow them and intimidated them in the course of their journey. When they filed a complaint, the Office of the Public Prosecutor carried out an investigation, and announced that the vehicle belonged to the Presidential General Staff and had been allocated to the President's sister. No political motive was uncovered in the course of the investigation, and the women withdrew the charges.

On 28 August 2005, Fredy Peccerelli's former wife was driving her car when her way was blocked by unknown men who beat her and sent a death threat to Fredy; and lastly, while at home on 8 September, Omar Girón and Bianka Peccerelli, who had been married since 2004, received a written threat warning them and Fredy Peccerelli that "as they hadn't understood the first time, they were certainly going to suffer the circumstances."

Below is a photograph of one of the written threats sent to Fredy Peccerelli and Omar Bertoni Girón. Threats addressed to them continued to be made during the first few months of 2006.



A photograph of one of the written threats sent to Fredy Peccerelli and Omar Bertoni Girón.

According to Fredy Peccerelli, the response of the State of Guatemala has varied, depending on the international pressure it has received in relation to the FAFG case. Fredy says that the attitude of the Interior Ministry (Ministerio de Gobernación) and of the Presidential Coordinating Committee for the Executive's Human Rights Policy (COPREDEH) has been positive, while that of the Office of the Public Prosecutor has been inadequate ever since the threats began. He also thinks that there is no political will for investigations to proceed, and that the few occasions when there has been evidence of a positive attitude towards a case have been solely the result of pressure from embassies and international bodies. The police, too, have placed serious obstacles in the way, but he thinks that this is more to do with a lack of resources and training for officers of the National Civil Police than anything else.

Lastly, Peccerelli says that they have received good support from civil society, and that has been comforting both for him and for the rest of his friends at the FAFG. However, there was no denying the impact of the attacks on their work, as they now had to prioritise security issues when attacks were taking place, while their anthropological and forensic work was relegated to second place. In concrete terms, he had taken over responsibility for security in the Foundation, in addition to carrying out the duties he already has as Executive Director. A lot of time that should have been given over to the Foundation's real work had therefore been lost because of security issues.

Fredy Peccerelli is one of the few defenders who openly acknowledge the consequences of this kind of tension for their personal lives. He reports that all FAFG members have had to change their social lives, and that he rarely sees friends or relatives so as not to place them in danger.

Despite being personally targeted and the fact that there had been no let up in the attacks, Fredy says that he is very fortunate to have received so much support, and points out that he is one of the

few defenders in the country receiving unconditional help from the international community in Guatemala, and particularly from the Embassies of Great Britain and Northern Ireland, the United States of America, Austria and the Netherlands.

#### *D. Case study: HIJOS*



HIJOS demonstrating in memory of disappeareds and demanding justice

Sons and Daughters for Identity and Justice against Forgetting and Silence (HIJOS) was founded in Guatemala on 30 June 1999. Following the model established by an Argentinean organisation, HIJOS is seeking to become a meeting-place for young people who lost their families through state repression during the internal armed conflict, or who, as a result of the conflict, had to flee into exile. The HIJOS remit also embraces young people who share its ideals and struggles even if they are not themselves victims of the conflict.

The institution also aims to dignify victims of the war, preserve historical memory, campaign against impunity, and clarify human rights violations carried out during the armed conflict. It is organised horizontally, and seeks to be self-sustaining. Activities have included plays, art, murals, graffiti, festivals, discussions, art therapy, research into and publication of documents, and training courses.

Surveillance and intimidation of HIJOS began at the time of its first summer festival, which followed exhumations on National Civil Police premises in June 1999. On 4 September 2000, they and the Association of Families of the Detained and Disappeared of Guatemala (FAMDEGUA) were burgled for information on the legal case surrounding the Las Dos Erres massacre, which they were accompanying.

In 2001, HIJOS broadened its activities to include laying charges relating to torture and illegal actions carried out against young people by the National Civil Police. As a result, they were subjected to police harassment. This included intimidatory phone calls to the institution accompanied by funeral music. In 2002, the threats ceased to be aimed at groups, and were instead directed at individual members of the organisation. Two incidents were not reported because of everyone was too frightened. However, after that, HIJOS entered a period of calm.

In 2004, HIJOS joined the Anti-Imperialist Block, and took part in protests against the compulsory evictions of campesinos and the North American Free Trade Agreement (NAFTA). On 30 June they received direct threats from members of the Armed Forces during their march in protest at the Army Day celebrations. This was followed by a series of allegedly criminal offences (e.g. burglaries, theft of members' cars, and the murder of people with the same surnames and of organisation staff) against various members. These acts were now beginning to feel intimidatory.

On 7 January 2005, before the new premises were opened, individuals were observed carrying out surveillance in the vicinity of where the organisation was located, and on 9 January, the building was raided, the intruders making off with computer equipment (loudspeakers and microphones that were used to enable groups to be self-sufficient), office materials, photographic negatives and new

rolls of film, but leaving behind signed cashable cheques.

On 7 May, there was an attempt to kidnap Francisco Sánchez, who had experienced a number of curious accidents the previous year. On one occasion, Sánchez had been filling his car up with petrol when two men approached him and tried to force him into another car, but when he resisted, they ran away. On the other occasion, on 12 May, a number of strange men had been seen near the office, and that night the organisation was raided again. This time the purpose of the raid was more obviously to get hold of information as the intruders took one of the group's two computers, opting for the one that contained the information, despite the fact that it was less up-to-date. This break-in had taken place at the same time as raids on other organisations participating in activities opposed to NAFTA and the Law on Concessions.

On 13 May, several HIJOS members were followed in their car, but when they were cornered, they went straight to the police. Other members of the organisation experienced similar intimidatory acts during the days following the break-in.

HIJOS is one of the most vulnerable human rights organisations in Guatemala. Its consistently expressed public revolutionary positions, its varied, creative and high-profile methods of working, and the youth of its membership have made it a predictable target for those seeking to repress human rights defenders in Guatemala. HIJOS' political positions, which frequently run counter to the views of people with influential interests, deny the organisation the degree of protection one might expect, given the level of public sympathy. Its activities, which often take place at night time and/or away from the office, increase the risks faced by members, and make security measures such as international support very hard to obtain. What is more, the fact that it is an unregistered association for young people, and that the members work on a voluntary basis, mean that it does not have the human, economic and social resources that other organisations have to prevent and fight repression.

Notwithstanding all these negative factors, international pressure has forced the Guatemalan government to provide basic protection measures for as long as the premises are located in the area where the break-ins are taking place. However, the response of the Office of the Public Prosecutor has been characterised by the same level of effectiveness or negligence that has marked similar cases, although the organisation initially had to argue that it was not obliged to register since the Constitution guaranteed freedom of association, peaceful meetings and freedom of expression.

### *E. Case Study: Centre for Human Rights Legal Action*

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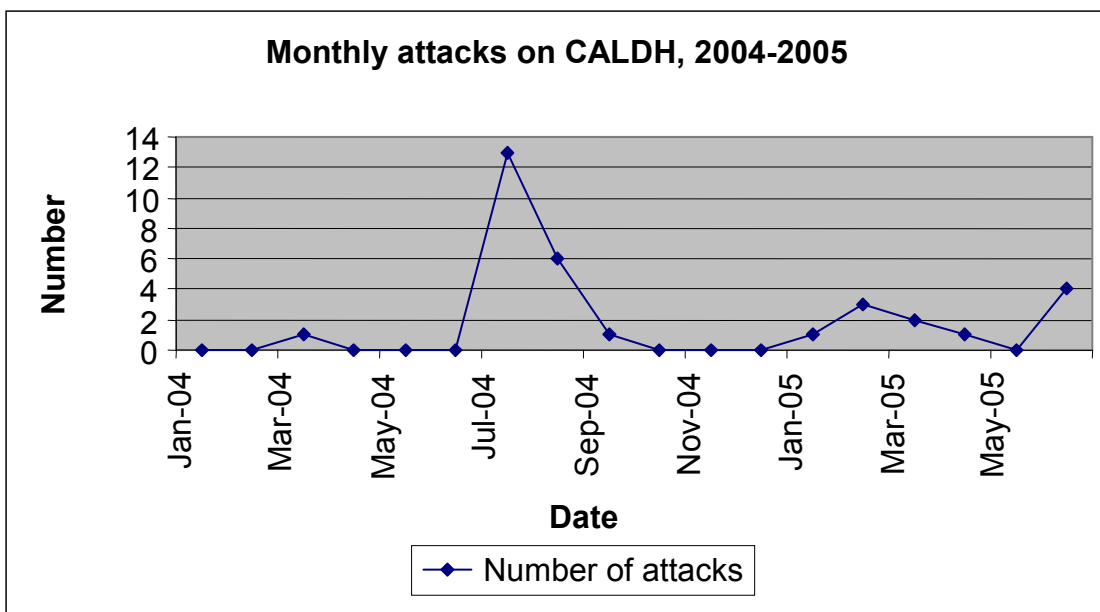
The CALDH office after the raid

The Centre for Human Rights Legal Action (CALDH) has been the target of attacks since 2004. As many as 30 have taken place in the last 18 months, and that is leaving to one side the four attacks in the four years prior to that. CALDH is a very prominent human rights organisation, and is one of the largest in Guatemala.

CALDH operates in many fields including genocide, cases brought before the Inter-American Human Rights Commission and the Inter-American Court of Human Rights, young people (including members of youth gangs (*maras*)) and women. Its former Director currently heads the Presidential Commission on Human

Rights. Despite its forceful role on the national human rights stage, CALDH has not always been the target for multiple attacks. In 2000, for example, there were only three attacks, in 2001 and 2002 there were none at all, and in 2003 only one, but March 2004 saw the beginning of a new pattern of threats including harassment, bomb threats, temporary kidnappings of administrative staff, break-ins of premises and the Director’s home, and robberies. By the end of June 2005, there had been at least 30 incidents (see graph). Of these, 19 occurred within the space of three weeks between 14 July and 9 August 2004.

GRAPH 22



Source: Human Rights Defenders Protection Unit (MNDH)

The range of CALDH’s work, much of it relating to highly charged issues like genocide, the murder of women, and mining means that there is no shortage of reasons for trying to intimidate, or interfere with, its work. However, one has to ask why CALDH has only become the target of frequent attacks since March 2004.

Attacks on CALDH also had a knock-on effect for the Association for Justice and Reconciliation, which was handling the Plan de Sánchez massacre case before the Inter-American Court of Human Rights during the first few months of 2004. Workers living in Sololá in the west of Guatemala were also affected, as were people living in the capital.

The Protection Unit considered a number of reasons for the current pattern of attacks, and attributed the various incidents to several factors, but recent events have led it to the conclusion that most of these attacks could be put down to just one factor: CALDH’s work on seeking justice for the human rights violations carried out during the armed internal conflict.

Paradoxically, CALDH has found obtaining protection measures a gruelling experience. Although the organisation enjoys precautionary measures which have frequently been restated by the Inter-American Court on Human Rights, it was almost impossible during 2004 and the first six months of 2005 to persuade the National Civil Police to post fixed guards at the institution’s main entrance.

However, the organisation received support following visits by a number of Ambassadors, who also observed that the protection provided by civil servants responsible for security had not translated into concrete actions. CALDH's management has managed to establish that the orders were issued at a senior National Civil Police level, but strangely had not been carried out. Eventually, there began to be an irregular police presence around the organisation's premises in mid-2005. The police would usually put in an appearance when there was about to be an international visit, and then disappear.

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## VI. Situation of defenders of economic, social and cultural rights

Guatemala's social movement, or the movement of defenders of economic, social and cultural rights, has a long history. The trade union movement has its origins at the beginning of the 20<sup>th</sup> century, and since then has undergone several cycles of repression. Indeed, during the 1960s and 1970s, the social movement's strength lay in the trade union, *campesino* and student movements, which mounted campaigns in defence of a number of rights, including the minimum wage, employment rights, the right to education and health for all, and the right to organise.

At the end of the 1970s, a stronger *campesino* movement announced itself on the public stage with demands for land and access to loans and the means of production. These movements were harshly repressed and physically attacked by the counter-insurgency at the time of the of armed conflict, but during the 1990s, the trade union and *campesino* movements re-emerged with demands for higher wages, and formed part of the social dynamic that bolstered the peace process.

By the time the Peace Accords were signed, the trade union movement had split into three large centres linked by coordination agreements that enabled them to take part in the tripartite conferences that determined the minimum wage and negotiated other employment issues. Studies published by the International Labour Organization (ILO) report that the right to strike in Guatemala has been weakened, and that the percentage of the economically active population in trade union membership has not risen for the last ten years.

The *campesino* movement is divided into currents that disagree about the best way of addressing the serious situation of people who have no access to land, but these are united by a shared understanding of what is actually happening. Unlike the trade union movement, the *campesino* movement is expanding and broad-based, and its capacity for mobilisation is also growing.

Elsewhere, towards the end of the 1990s and particularly during the first few years of the 21<sup>st</sup> century, more and more development organisations and research bodies have focused on monitoring public expenditure and investment, and have criticised the absence of political will to promote economic, social and cultural rights. In other words, the capacity to make demands has been growing. This capacity has also been complemented by responsible and technically sustained involvement in issues such as the Fiscal Pact and on the Development Councils where the national budget is debated in terms of both income and expenditure.

Although much effort is expended on developing a wide range of rights, the social movement is still not recognised as a defender of economic, social and cultural rights because it does not use the conventional and extra-conventional mechanisms at its disposal.

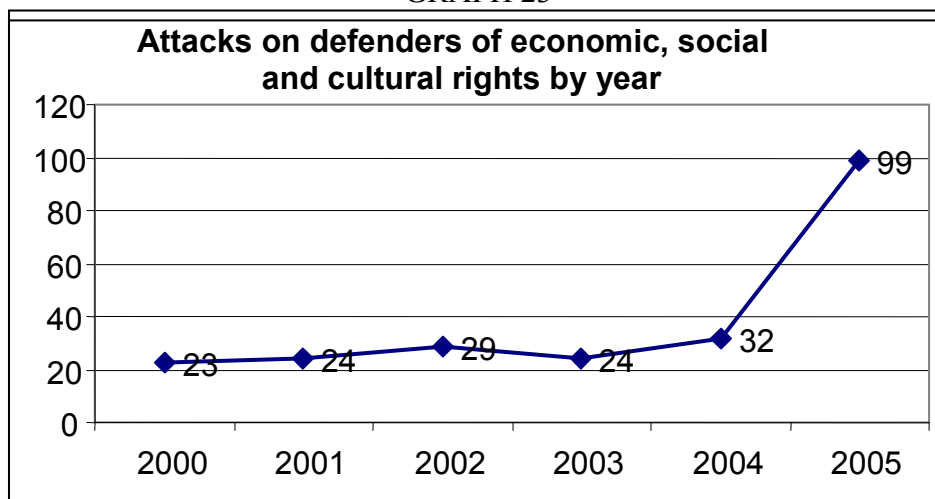
At the time of writing, the social movement's agenda consists of the following campaigns:

- ⇒ a demand that attention is centred on the situation concerning land (a land and rural development policy, a halt to forced evictions, and compliance with human rights on labour in the countryside);
- ⇒ a focus on the absence of food safety;
- ⇒ a demand that laws providing NAFTA-related compensation are implemented;
- ⇒ opposition to concessions that run counter to the interests of the people, and particularly in relation to mining concessions;
- ⇒ renewed compliance with the whole of the Fiscal Pact, and particularly prosecution for tax evasion and the elimination of tax exemptions;
- ⇒ an increase in the minimum wage and reform of the Labour Code;
- ⇒ opposition to policies for privatising education, health and social security.

### A. Specific characteristics of forms of attack

Defenders of economic, social and cultural rights were attacked on 231 occasions between 2000 and 2005. The incidence of these attacks remained steady during the first five years, with an average of 26 a year but, as the graph below demonstrates, the pattern changed abruptly in 2005 when there were 99 cases.

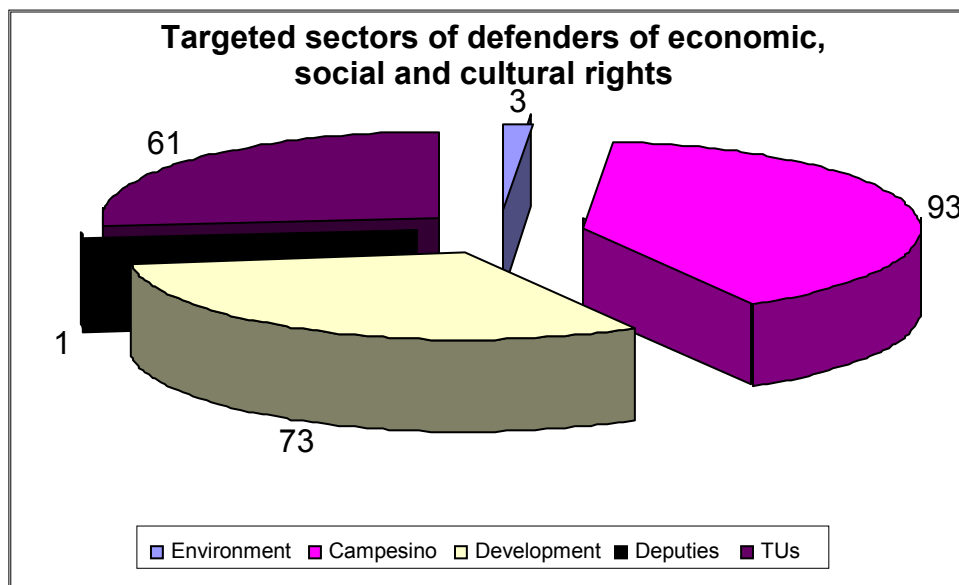
GRAPH 23



Source: Human Rights Defenders Protection Unit (MNDH)

These figures show that attacks on all sectors followed the same trend. Of the individual sectors of defenders of economic, social and cultural rights, the group most targeted was the leadership of the campesino movement with 40% of attacks, followed by development organisations and defenders with 32%, and the trade union leadership with 24%.

GRAPH 24



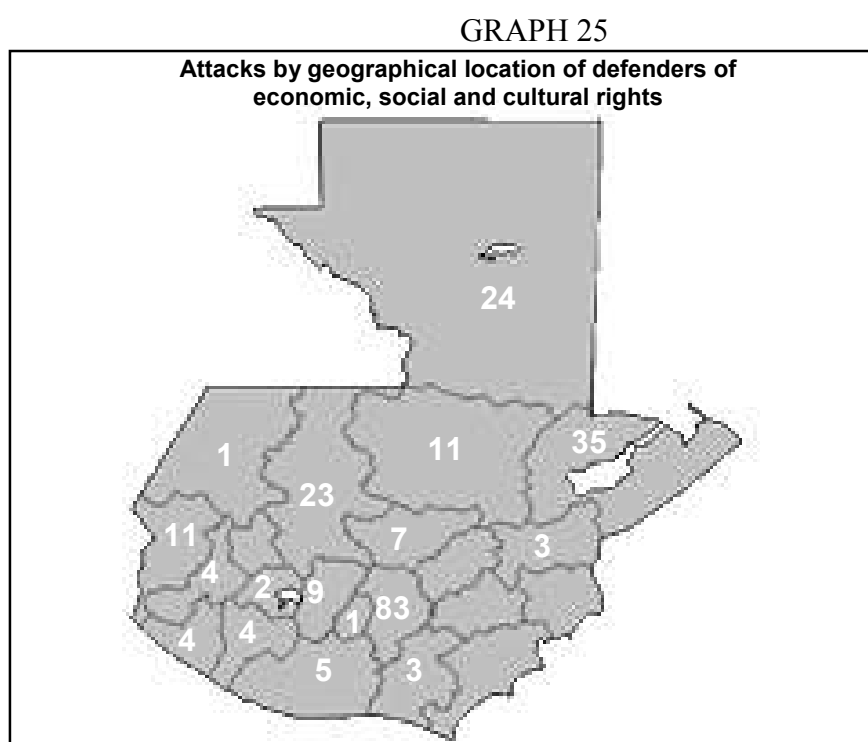
Source: Human Rights Defenders Protection Unit (MNDH)

A special mention must be made about defenders of a healthy environment, as their sector is targeted for many more attacks than are reported. Unfortunately, the specific situation in which

defenders of a healthy environment operate prevents them from filing complaints with the Office of the Public Prosecutor, and even the Human Rights Procurator<sup>60</sup>, because the complaints do not meet the criteria for being entered on our register. This has led to defenders putting together their own registers.

The Guatemalan Centre for Legal-Environmental and Social Action (CALAS) logged 36 cases between 2001 and 2005. A comprehensive analysis of its systematised information for the period 1989-2005<sup>61</sup> reveals that 36% of cases involved attacks on the non-governmental sector of defenders, and another 36% affected the government sector. This represents a much higher incidence of attacks on defenders in the government sector than in the sectors being examined here.<sup>62</sup>

The map below shows that the incidence of attacks is very uneven, with only 36% occurring in the department of Guatemala, and the remainder taking place elsewhere in the country. The departments where most attacks take place are Izabal (15%), Petén (10%) and El Quiché (10%). The first two of these are important because it is here that the colonisation of land is in competition with drug smuggling and other illegal trafficking.



Source: Human Rights Defenders Protection Unit (MNDH)

In gender terms, only 12% of female defenders of economic, social and cultural rights are attacked, that is to say 11% below the overall average. By contrast, 16% of such organisations are targeted,

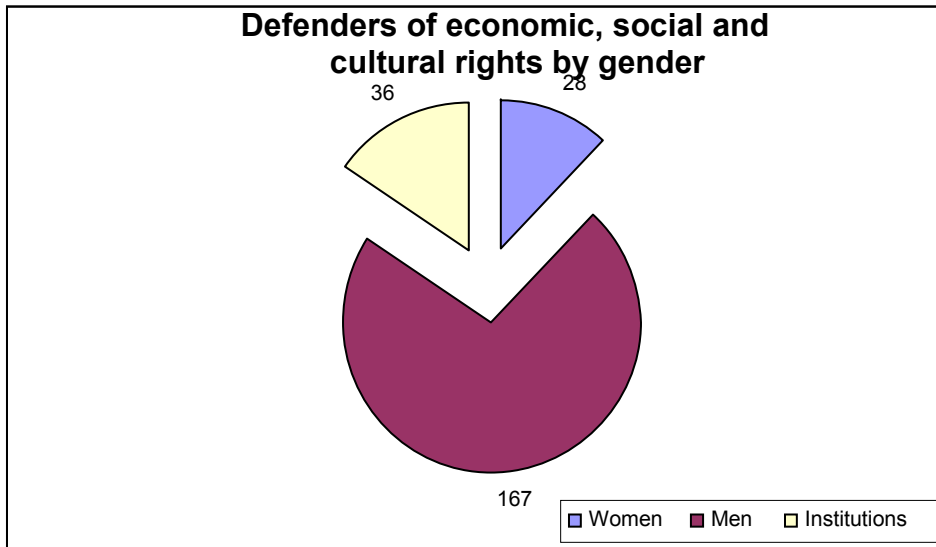
<sup>60</sup> They usually receive threats to kill particular individuals who belong to networks involved in trafficking wood, animals and protected species. If a defender accuses the person concerned, the latter is informed as it is normal legal procedure to notify the accused of the charge. This stirs up feelings of revenge that typically result in someone being killed.

<sup>61</sup> The CALAS statistical analysis covers a total of 50 cases. Of these, eight took place between 1989 and 1995, and another six between 1996 and 2000. This means that its percentages are valid for the period 2001-2005, which is the closest to the period under review in this report.

<sup>62</sup> The information that we have obtained is in the form of a preliminary draft of the 2<sup>nd</sup> Report on Violations of the Human Rights of Environmentalists, Environmental Activists and Public-Sector Workers involved in the Management of the Environment and Natural Resources (II Informe sobre Violaciones de los Derechos Humanos de Ambientalistas, Activistas Ambientales y Trabajadores Públicos de Gestión Ambiental y Naturales de Guatemala).

only three percentage points below the average. This suggests that most attacks on defenders of economic, social and cultural rights are aimed at individuals.

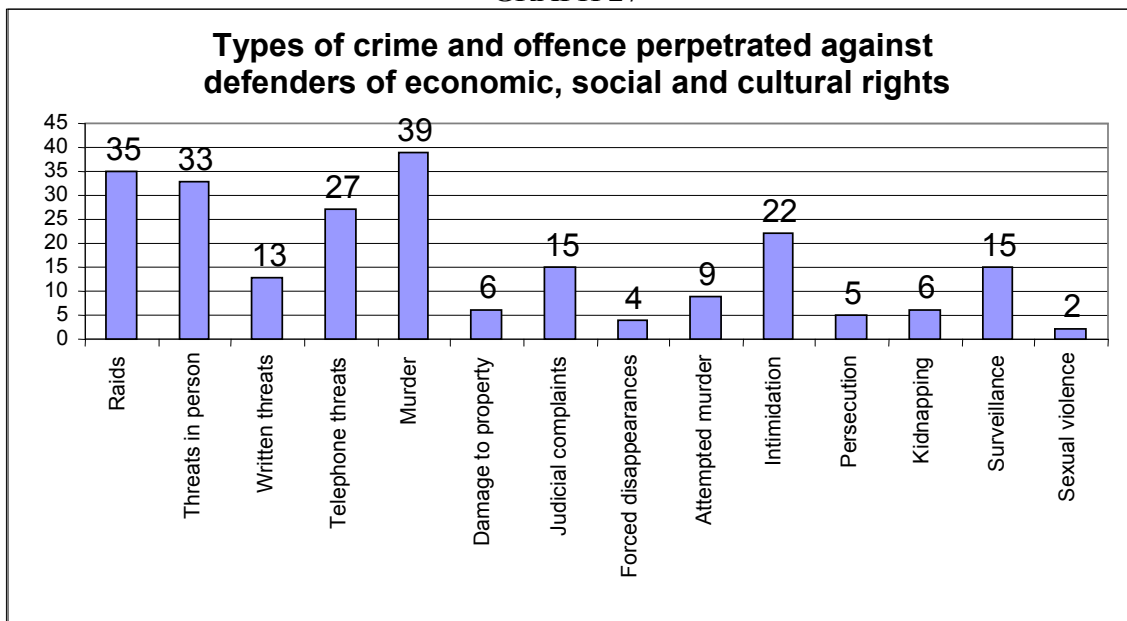
GRAPH 26



Source: Human Rights Defenders Protection Unit (MNDH)

If we look at the different kinds of attack perpetrated on defenders of economic, social and cultural rights, it is important to note that the trend in this sector is quite different from the normal trend, with murders (17%) followed by raids (15%) and personal threats (14%).

GRAPH 27



Source: Human Rights Defenders Protection Unit (MNDH)

The fact that murder is the most frequent type of crime committed against the sector is a matter of very serious concern: the worst violence is linked to agricultural disputes, and 74% of them have been carried out against members of the *campesino* leadership.

### B. Hypothesis on reasons for the attacks

We find it easier to hypothesise about attacks on defenders of economic, social and cultural rights because assaults on local leaders in the *campesino* and trade union sectors are clearly associated with the trend towards violent responses to disputes.

Examination of the numerical incidence of the attacks, as we can see from the table below, shows that 41% relate to specific targets, that is to say an increase of 16 percentage points above the overall trend. Most attacks are carried out on staff (16%) or relate to the removal of leaders (14%).

TABLE 5  
Patterns of attacks on defenders of economic, social and cultural rights

Dismantling/ paralysing attack	25
Attack to eliminate leaders	33
Attack on operating base	37
Attack with multiple objectives and symbolic attacks	17
Local authority/ specific enemy attack	94
Attack to obtain information	23
Attack for exploitation	2

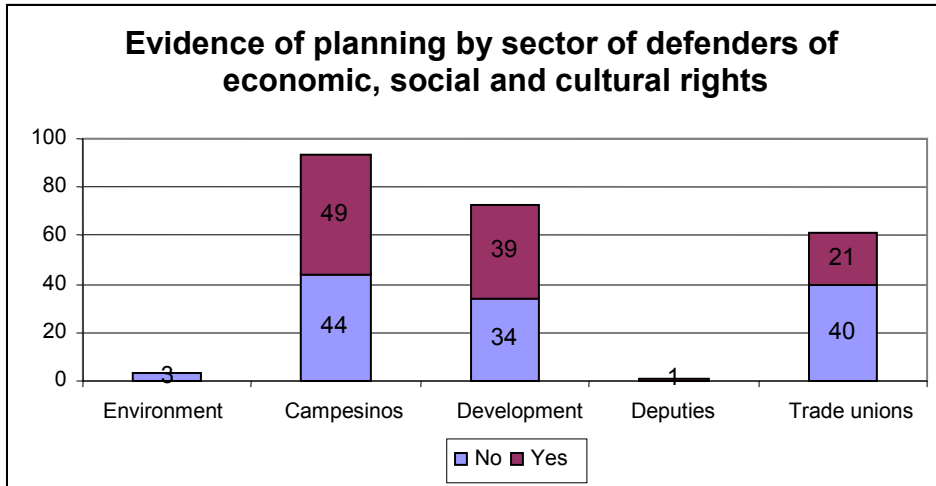
Source: Human Rights Defenders Protection Unit (MNDH)

The high incidence of attacks designed to break up an organisation (11%) and of those aimed at obtaining information (10%) and with multiple objectives (7%) reflects the fact that these are the operations most typically carried out by clandestine security gangs. 47% of attacks aimed at breaking up organisations were committed against trade unionists, as were 37% of actions with multiple objectives, and 56% of break-ins aimed at obtaining information were carried out against development organisations.

Despite the numerous attacks that seem to relate to specific disputes, it is noteworthy that many display evidence of planning. This means that even when the issues being addressed relate to economic power, the employment of illegal gangs and hired assassins that use intelligence officers' mechanisms remain part of the *modus operandi*. In particular, a large number of multiple accusations have been levelled at groups of hired thugs "of eastern-looking appearance".<sup>63</sup> As the graph below shows, 48% of attacks showed evidence of planning, and this was particularly true of assaults on the *campesino* leadership and the development sector.

<sup>63</sup> In Guatemala, the phrase 'eastern-looking appearance' ('apariencia oriental') is used of people born in the east of the country: they are usually of Ladino descent or, because they retain many Spanish characteristics, of more recent *mestizo* parentage.

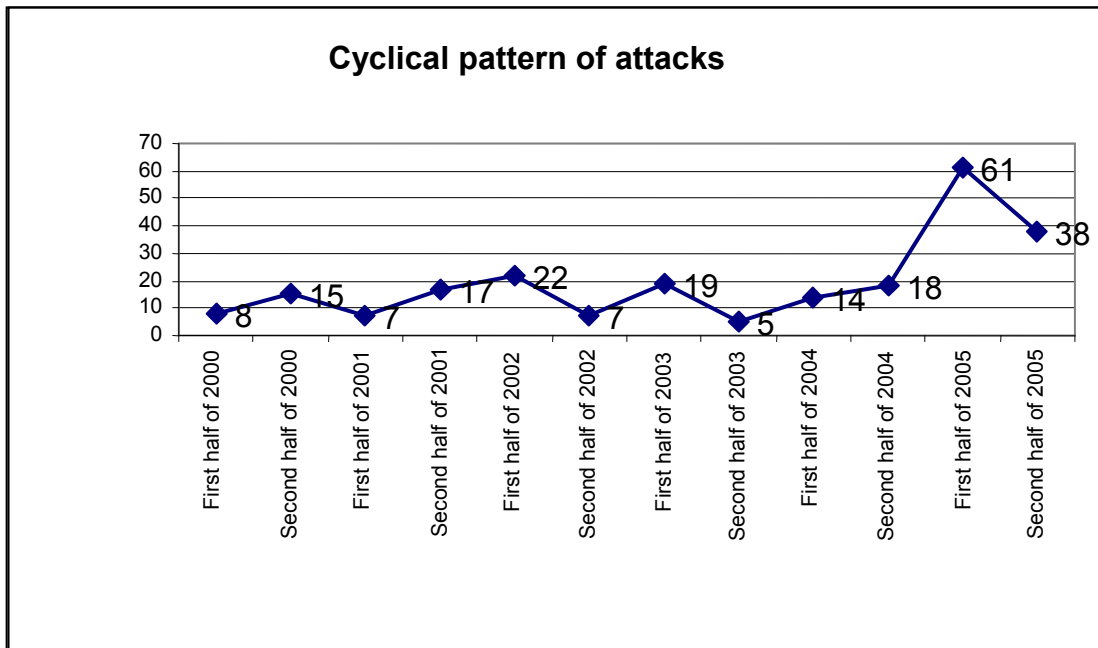
GRAPH 28



Source: Human Rights Defenders Protection Unit (MNDH)

As the next graph shows, the cyclical pattern of attacks on defenders of economic, social and cultural rights has remained similar to the general pattern of attacks on all defenders.

GRAPH 29



Source: Human Rights Defenders Protection Unit (MNDH)

### *C. Case Study: National Coordinating Body of Campesino Organisations and the 2005 protests*

EC

NOC



the Free Trade Treaty, 14 March 2005

The National Coordinating Body of Campesino Organisations (CNOCA) was founded in 1992. It brings together a number of indigenous and campesino organisations that mainly operate in the defence of rural workers' rights and land ownership. However, its work is not confined to agricultural issues, but also addresses matters related to condemnations of the repression that took place during the internal armed conflict, sex equality, interculturalism and environmental protection.

The Protection Unit has logged ten attacks on this organisation since 2000. Of these, six were murders, and all took place in 2000: Juan Gabriel Pérez in Guatemala on 8 July; Ana Dolores Hernández on 1 August in los Amates, Izabal; Andrés Cucul and Mateo Caal on 7 November in Flores, Petén; and, Pascual Méndez López on 16 March in La Democracia and Francisca Dominga on 8 March in Colotenango, both in the department of Huehuetenango.

On 19 March 2003, Daniel Pascual, the then Coordinator, was followed by a pick-up, and the next day, near the Committee for Campesino Unity (CUC) offices, he was approached by two unknown men who told him they were looking for the "gentleman of the house". With that, one of them drew a 9mm pistol, pointed it at his head, and stole his briefcase.

On 5 March 2004, when the tension triggered by the rural disputes in Petén was at its height, the premises in Flores, the department's main town, were broken into. The intruders made off with materials. Threatening telephone calls had been made to the office only days before.

On 8 May 2005, the premises in the capital were also raided, the intruders forcing eight internal doors using special tools, and removing 14 of the organisation's computers, a laptop, a television set, a video recorder, a digital camera and 1500 Guatemalan quetzales (GTQ 1500). The incident might have passed for vandalism but for the fact that it was the first of a series of warning raids on the premises of organisations involved in demonstrations against NAFTA, the Free Trade Treaty and the Law of Concessions. The work of these bodies was coordinated by the Indigenous, Campesino, Trade Union and Popular Movement (MICSP), whose offices were located on CNOCA premises.

And then, on 10 May, the Guatemalan Institute of Comparative Criminal Science Studies (ICCPG), which is very close to the CNOCA and had lent its premises to enable the campesino organisation to operate in an emergency, also had a warning break-in despite the fact that it had adopted precautionary measures.

Investigations into what happened at the CNOCA have come to nothing. The break-in prompted a much larger number of inquiries than had all previous events, but the identities of those responsible have yet to be established. Indeed, the policeman assigned to the case refused to state, notwithstanding the scope of the damage, that the break-in constituted a serious crime.

### *A. Case Study: Communities affected by the construction of the Chixoy hydroelectric plant*



Juan de Dios García and Carlos Chen Osorio,  
Representatives of the Coordinating Committee of  
Communities Affected by the Building of  
Chixoy Dam and of ADIVIMA

The Coordinating Committee of Communities Affected by the Construction of Chixoy Hydroelectric Plant (Coordinadora de Comunidades Afectadas por la Construcción de la Hidroeléctrica de Chixoy) was founded in 2004 for the purposes of initiating a new round of lobbying, and negotiating with the Guatemalan government on failure to comply with undertakings made in relation to the dam's construction. Some of the Committee's more prominent leaders are also members of the Association for the Integral Development of the Victims of Violence in the Verapaces, Maya-Achi (ADIVIMA), a body that monitors the promotion and protection of human rights, and mainly operates in the municipality of Rabinal in Baja Verapaz.

After the period of the armed conflict, the National Electrification Institute (INDE) began to show considerable interest in acquiring land belonging to communities on the banks of the River Negro as it had plans to build a hydroelectric plant at Chixoy, but the people living on the land were not prepared to sell. It was not until after the Guatemalan army's third massacre of the people living there that the survivors agreed to sell, and the reservoir was constructed. The dam has affected 23 communities in three of the country's departments.

Initial negotiations with the government in 1998 had culminated in an agreement to fulfil each of the undertakings made during the 1980s, but the talks did not include all the communities, and they were never concluded.

On 7 September 2004, in protest against the failure to comply with the conditions of sale agreed with the National Electrification Institute, the Committee carried out a peaceful occupation of the entrance to Chixoy hydroelectric plant which, according to the land registers, was still in the name of the communities. The Human Rights Procurator responded by setting up negotiations to which the Coordinating Committee nominated delegates who were coincidentally members of ADIVIMA, but on 8 September, the INDE accused the signatories to the agreement of terrorism. On 20 January 2005, the Office of the Public Prosecutor issued warrants for the arrest of Carlos Chen Osorio, Juan de Dios García Xajil, Antonio Vasquez Xitumul, Domingo Sic Rafael, Félix Alonzo Raymundo, Julio Santiago, Santiago Hernández and Víctor Lem for the following offences: making threats and causing damage to, and carrying out attacks on, a public service; activities against the internal security of the government; activities against the internal security of the nation; terrorism; coercion; and sedition. On 28 December of the same year, the Public Prosecutor's Office (Fiscalía) and the INDE, which had become a joint party to the state prosecution, formalised charges during the investigation. They then sought to open the case, but withdrew the charges of terrorism, coercion and sedition. The chief evidence against the defendants under this general charge was the fact that they had signed the minutes of the mediation carried out by the Human Rights Procurator.

In an interview given by Carlos Chen and Juan de Dios García, both men described how they had had little backing from national organisations, or else it had arrived very late in the day, and that they had received more support from international organisations such as Front Line and Amnesty

International. The Inter-American Commission of Human Rights is also following their case, and believes its intervention has proved very positive as it can ensure that the due guarantees of the legal process are not breached.

The various government institutions that have been involved in the case prefer not to offer any opinion until the trial is over, except to express a positive view on the role played by the Human Rights Procurator in seeking to resolve the dispute by participating as a mediator and monitoring the trial.

They say they have tried to approach the trial calmly so as not to alarm their families, but the seriousness of the charges laid against them has made them extremely worried. This situation has also brought with it an economic crisis that few of them can afford, despite the fact that the organisation has agreed to bear the legal costs. For many of them, the obligation to go and sign at the Office of the Justice of the Peace during the trial is costing them a lot of money. Some of the accused are also losing two whole days' work travelling to the nearest Justice's Office. This not only fails to take any account of additional expenditure incurred on travel and accommodation, but also causes them to lose the two days' wages. For people living in such precarious economic circumstances as these, it means they are not able to feed their families.

For ADIVIMA, this has resulted not only in a massive financial outlay, but also in the loss of many working hours because of the amount of human resources and time invested in monitoring the trial

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## VII. Situation of defenders of the rights of indigenous peoples

Guatemala is a multi-cultural country in which the Maya, Xinca and Garifuna peoples live alongside the Ladino (non-indigenous) population and other *mestizo* ethnic groups. The first three have suffered racism and discrimination, and this has in turn led to their exclusion from Guatemala's processes of development management.

The most serious instance of racism in Guatemala consisted of the acts of genocide carried out against members of the Maya people during the internal armed conflict. The objective of the genocide was to put down a revival of the Maya movement, which had begun to make its presence felt in the 1960s with its work on having Mayan languages protected and affirming their ethnicity.

However, neither genocide nor centuries of racism have succeeded in crushing the Mayan identity, and in 1989 the Maya movement re-entered the public arena within the framework of the Inter-continental Campaign of 500 years of Indigenous, Popular and Black Resistance (Campaña Intercontinental de los 500 años de Resistencia Indígena, Popular y Negra). The Maya movement was consolidated in 1992, and began to align itself in opposition to the government with a series of proposals, including approval of ILO Convention No 169 leading to an end to racism.

In 1995, approval was given to the Agreement on the Identity and Rights of Indigenous Peoples (Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas). This was a key objective for the Maya, Xinca and Garifuna peoples in state reform, particularly with regard to educational reform, due regard for temples and sacred places, the participation of indigenous peoples, respect for indigenous lands, legislative reform, and the fight against discrimination.

The momentum for making demands and engaging in dialogue was undermined by the government's lack of political will to carry out the reforms needed to guarantee state reform. In 1999, work was started on a constitutional reform that sought a way of incorporating the vision of a multi-cultural state that recognised languages and customary law (*derecho consuetudinario*), but a popular consultation exercise on this reform came out against the proposed changes.

Between 2000 and 2003, the Maya and indigenous movements in Guatemala went through a period of internal reflection during which they digested the lessons they had learned while seeking to reform the state in accordance with the rules contained in the Peace Accords.

However, although fluctuations in policy hurt the movement at national level, it managed to consolidate at local level, generating an increasing awareness of identity among indigenous peoples. Groups that had spent the 1980s just defending individual rights increasingly saw themselves as participants in a collective struggle for the right to be considered equal in a country that deemed them to be second-class citizens.

Since the 1980s, the Maya movement in Guatemala has shown itself to be very adroit at operating at national and international level. At international level, the movement is part of the campaign for the Declaration on the Rights of Indigenous Peoples, and is a member of the Permanent Forum for Indigenous Peoples, the Indigenous Fund and other bodies that seek to advance the cause of the rights of indigenous and native peoples throughout the world.

Accordingly, at the end of 2003, in response to the failure of the Peace Accords objectives and delays in implementing the Agreement on the Identity and Rights of Indigenous Peoples – the latter is seen as being the least implemented of all the agreements – the Maya movement put together a

new alliance of objectives of its various sectors with a view to mounting a fresh campaign. During this phase, the fight against discrimination transformed into a central axis of the movement's work. In 2004, Rodolfo Stavenhagen, the UN Special Rapporteur for indigenous peoples, visited Guatemala to look at the national situation, and confirmed that there was serious racism in the country.

The Maya and indigenous movements have no single agenda of objectives, but the various groups have agreed to give support to the following struggles:

- ⇒ the struggle against discrimination and racism, and particularly in support of the charge of genocide;
- ⇒ the struggle for spaces in which they can participate politically at all levels;
- ⇒ a demand for the right to use their languages (there are currently 22 officially recognised languages);
- ⇒ a demand for the right to be consulted on development policies (application of ILO Convention No 169);
- ⇒ a demand for bilingual and inter-cultural reform, with particular emphasis on access to education on issues ranging from Maya cosmovision to language;
- ⇒ a demand for Maya customary law to be applied, and for it to be consistent with justice (nobody can be tried twice);
- ⇒ a demand for the National Compensation Programme to be applied;
- ⇒ a demand for the common ownership of land to be respected;
- ⇒ a demand for indigenous spirituality to be respected.

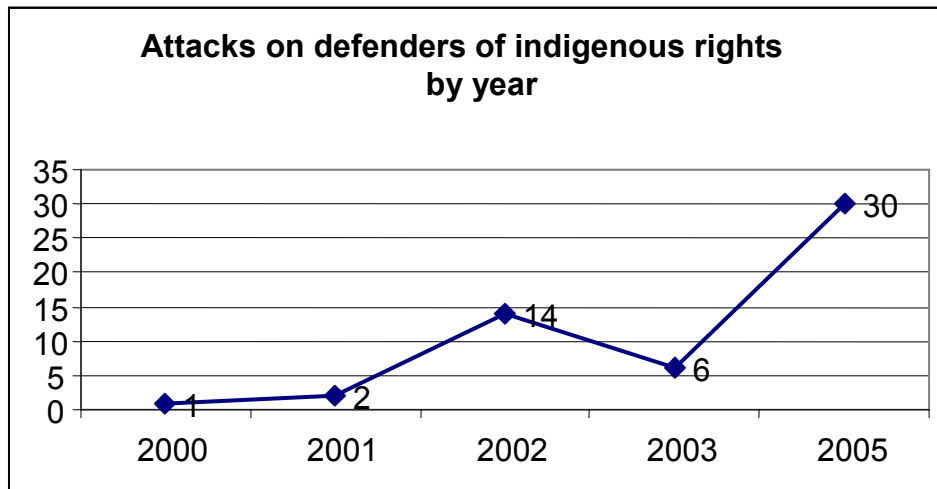
### *A. Specific characteristics of forms of attacks*

Defenders of the rights of indigenous peoples have been attacked on 53 occasions in the last six years. However, it is important to note in this context that many indigenous defenders have been attacked not for defending a collective right, but for defending individual rights linked, among other things, to land, truth and justice.

In this section, we shall analyse what happens to defenders who defend the collective rights of indigenous people. The most noteworthy of the 53 cases logged with the Protection Unit are the six attacks on Mayan priests for performing their religious duties (an element of the defence of human rights in Guatemala), nine attacks relating to the defence of indigenous peoples to be consulted, and 17 linked to the right of indigenous women to participate.

There have been two peaks in the number of attacks, in 2002 and 2005. 2002 was marked by a series of attacks on indigenous organisations working on issues of discrimination and of Mayan spiritual guides and priests, and in 2005, disagreement centred on participation and the right to consultation.

GRAPH 30



Source: Human Rights Defenders Protection Unit (MNDH)

The attacks here are geographically distributed in a different way from other sectors. 36% of the attacks occurred in El Quiché, one of the Departments with the highest concentrations of indigenous people.

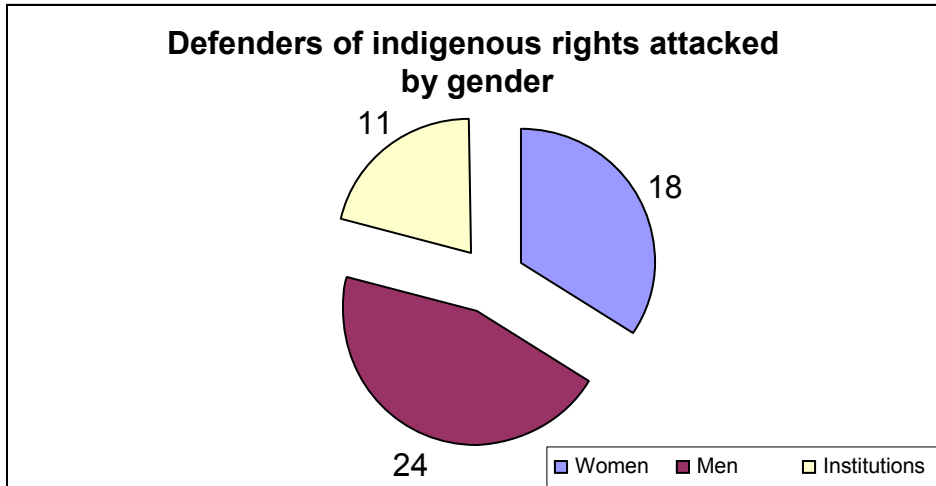
GRAPH 31



Source: Human Rights Defenders Protection Unit (MNDH)

Women accounted for an above-average 34% of those attacked, and attacks on indigenous organisations came to 21%, slightly above average (see graph below).

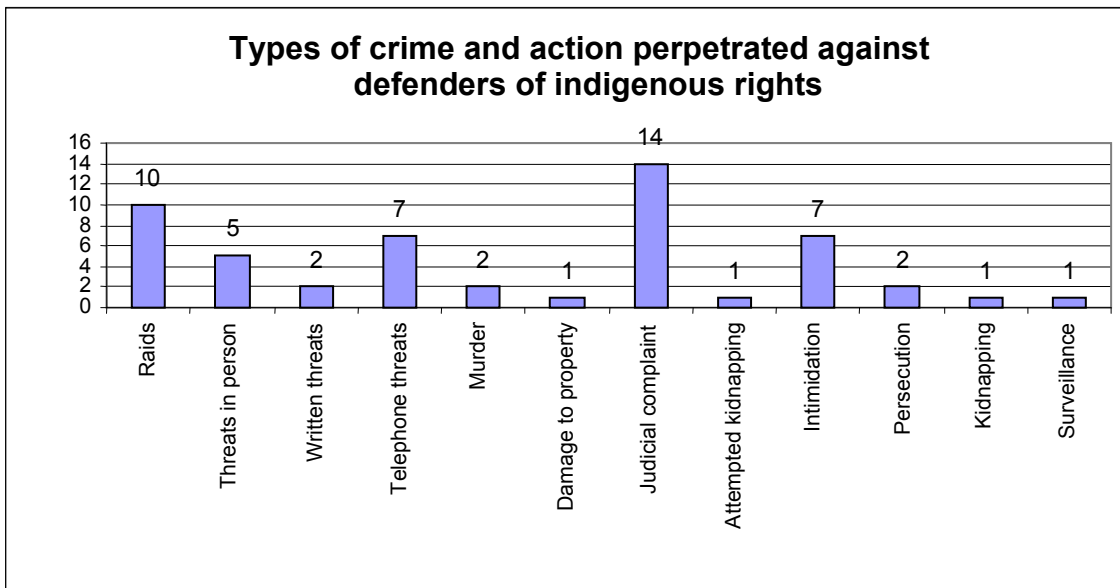
GRAPH 31



Source: Human Rights Defenders Protection Unit (MNDH)

As for the types of attack perpetrated on defenders of indigenous rights, the following graph shows that 26% took the form of open charges against indigenous leaders; raids of indigenous organisations at 19% came second, in line with the tendency encountered elsewhere with regard to the second type of attack.

GRAPH 32



Source: Human Rights Defenders Protection Unit (MNDH)

*B. Hypothesis on reasons for the attacks*

There is no single reason other than underlying racism for the attacks on defenders of the rights of indigenous peoples. As the following table shows, 55% of attacks come into the category of specific enemies and local government, a repeat of the pattern characterising attacks on *campesino* leadership. An explanation of this phenomenon would require an investigation of individual cases. No such investigations have taken place during the last few years.

**TABLE 6**  
**Figures of attacks on defenders of indigenous rights**

Dismantling/ paralysing attack	13
Attack on operating base	1
Attack with multiple objectives and symbolic attacks	4
Local authority/ specific enemy attack	29
Attack to obtain information	5
Attack for exploitation	1

Source: Human Rights Defenders Protection Unit (MNDH)

Cases in 2002 included attacks on indigenous organisations that were jointly conducting inquiries into, making accusations about, discrimination. Some consideration might have been given to a more specific motive, but the attacks eventually stopped and there have been none since. During this cycle of violence, two Mayan spiritual guides were murdered, and three Mayan leaders with close connections to indigenous organisations also lost their lives. These outrages will themselves be explained in cases below. As this report will show, they provide a rich source of information explaining local disputes.

The cases that occurred in 2005 will also be explained. They are both marked by hypotheses that begin to make sense of what happened in Sololá and Nebaj. What is abundantly clear is a growing tendency in the overall situation of human rights defenders for defenders of indigenous rights to be placed in greater danger unless they receive support and protection.

### *C. Case Study: The killing of spiritual guides and indigenous leaders*



Maya ceremony

On the night of 2 May 2003, a spiritual guide, Achi Gerardo Cano Manuel, was performing a Maya ceremony on Chi Flores Hill in Rabinal, Baja Verapaz, when a man appeared from nowhere wearing a camouflage suit and his face painted, and shot him dead. On 16 December 2002, another Achi spiritual guide by the name of Marco Sical López from Salamá, Baja Verapaz was murdered in his home in front of his wife by two armed men. And then on 5 April 2003, the body of Diego Xon Salazar, a Quiché spiritual guide and member of the GAM was found three days after he had been kidnapped in Chichicastenango, El Quiché.

These three bloody incidents, together with other attacks on spiritual guides and memories of the torture and murder on 6 September 2000 of Manuel García de la Cruz, an indigenous leader on the National Widows' Coordinating Committee of Guatemala (CONAVIGUA), prompted Mayan organisations to demand a speedy and effective response from the Office of the Public Prosecutor to actions apparently designed to persecute spiritual guides.

The four cases were taken up by the Special Prosecutor's Office for Defenders and indigenous organisations, and resulted in formal charges being laid. The Special Prosecutor's Office linked the case of Gerardo Cano Manuel to three people, one of them a policeman, and presented the hypothesis that there had been a problem between the spiritual guide and the accused over an irrigation project that they shared. On this occasion, the Office was unable to prove any link

between the defendants and the murder as they had not been able to see the hired gunmen. The case is shrouded in impunity and mystery: why was Gerardo Cano Manuel killed during a Maya ceremony, and who did it?

In the case of Marco Sical López, the Office of the Public Prosecutor charged two people who had been identified as the killers by the spiritual guide's wife. The motive for the crime, according to the Office of the Public Prosecutor, was theft of a water pump by the alleged murderers and the fact that the spiritual guide had established their responsibility through dreams. During the trial, the accused were able to establish that they had not been in Salamá on the day of the murder, and they were set free.

Diego Xon had filed a complaint about death threats over a land dispute from a cousin who had been in the civil defence patrols. These complaints had been lodged with the Justice of the Peace, but the Court did not act on them. Diego Xon's family had reported what had happened on the day of his disappearance, his children having witnessed their father being kidnapped by men dressed as soldiers, but no attempt was made by the Justice or the police to find him. The Office of the Public Prosecutor managed to establish that Diego's cousin had been involved in the kidnap and the murder, and he was duly sentenced, but no one investigated the involvement of the men dressed as soldiers.

Manuel García de la Cruz was tortured before being murdered, and his eyes and tongue were then torn out and his stomach cut open. The message was crystal clear: Manuel García had collaborated with CONAVIGUA on exhumations, and his murder was a way of putting a stop to them. The outrage occurred just as the new wave of attacks against defenders was getting under way. When the Office of the Public Prosecutor intervened, it was able to establish where the indigenous leader had been tortured and murdered, but stated that the motive for the crime had not been political, but rather concerned a land dispute. However, the Office failed to explain why he had been tortured. On the basis of the evidence at its disposal, the Office of the Public Prosecutor took a member of the García family back to court together with owners of the land where the torture and the murder were thought to have taken place, but laid charges without clearly establishing each of the defendants' individual responsibility. The family and the witnesses received threats, and decided to withdraw from the case, thereby allowing the accused to go free.

Of all the cases of murdered spiritual guides and indigenous leaders, only one has resulted in a conviction. Although, on this occasion, the motive for the murder was a personal matter, the government's inaction and the possible involvement of government agents in the murder turned this crime into a violation of human rights.

#### D. Case Study: The persecution of the indigenous Mayoress of Sololá



Dominga Vásquez  
speaking in the office of the

The office of the indigenous Mayor of Sololá is a building marked by traditional Mayan authority. It receives petitions from Maya communities, promotes local development, and performs consultative and organisational activities in Mayan cosmovision. The Mayor's Office is part of the National Front against Mining, whose meetings are attended by all local governments in the Department. It has the task of keeping the people informed on matters relating to mining.

Dominga Vásquez acted as Sololá's indigenous Mayoress during 2004. Marcelino Cumatz and Pedro Saloj from the Oxlajuj Aq'ad'dal

Council, who were working in the indigenous Mayor's Office during this time, decided to support a consultation exercise within the community regarding an application that was received in December that year from the Montana mining company to pull down a footbridge they had built over the Inter-American Highway to enable a very large cylinder to pass through. The people of Soloná decided against the idea, and Mayoress Vásquez transmitted their decision. This meant that the convoy transporting the cylinder, which was needed for the San Miguel Ixtahuacán mining project in San Marcos, was stuck in Sololá. The whole process was covered by Alfonso Guárquez, a member of the Centre for Informative Reports on Guatemala (CERIGUA), in his role as a reporter.

On 12 January 2005, an 800-strong combined force of policemen and soldiers mobilised to pull the footbridge down in order to allow the cylinder to proceed, but as soon as they realised what was happening, the people came out into the street in the village of Los Encuentros to demonstrate their opposition. The security forces then attacked the demonstrators, killing a campesino by the name of Raúl Castro Bocel. At his funeral afterwards, the enraged population set fire to a patrol car belonging to the National Civil Police.

On 12 January 2005, the Departmental Governor charged Marcelino Cumatz, Pedro Saloj Poj, Alfonso Guárquez, Carlos Humberto Guárquez and Dominga Vásquez with responsibility for the events in Los Encuentros. The Governor's formal charge, which was backed up by the Prosecutor's Office, related to acts of coercion, threats, sedition, membership of illegal armed gangs, and the illegal importation of arms. The accused were threatened with summary arrest, but it was never confirmed that the instruction was ever given. However, in separate legal proceedings, the authorities accused the indigenous Mayoress of setting fire to the police patrol car. The orders to arrest her were never carried out, and the case is still on file, neither having reached the stage of a formal charge before a judge nor been dismissed. The possibility of the case being pursued remains a constant threat.

On 6 January, Dominga Vásquez, who headed a movement opposed to the mining licences, also received a death threat by telephone. She was told in the Kaqchiquel language that she would have to put up with "the consequences of leading the demonstration on 3 December" and blocking the path of the cylinder to be used in extraction. "Why get mad with the government and stop the cylinder getting through?" She asked the caller to identify himself, and told him she would find out sooner or later who he was.

On 25 March, she was threatened again together with Carlos and Alfonso Guárquez. On that occasion, unknown persons torched a vehicle belonging to the Fundamaya organisation that was being driven by Carlos Guárquez, and they left five leaflets containing a message: "If you keep having these fantasies about society, you'll get what's coming to you, Mr Carlos Humberto Guárquez. Tomorrow is your last day. Your time is up, Mrs Dominga Vásquez and your alleged husband, Alfonso Guárquez."

Not one of the threats or cases of intimidation concerning defenders was investigated by the Prosecutor's Office, which of course was the very body that was trying the people who had been threatened.

There were two other organisations involved in this case. One was the CERIGUA news agency with a network of correspondents in the interior of the country, and a record of participation with social organisations that has enabled it to find out about, and report on, the needs of the organised

population. The agency currently has 15 offices which are equipped with the latest technology, and provide their communities with news of interest to them. It also has local grass-roots contacts in local organisations that the agency itself has trained. Alfonso Guárquez works as a reporter for Cerigua in Sololá, and keeps in touch with communities about all matters that the people need to know about. The other organisation, Fundamaya, works on development programmes with the indigenous population, and is part of the National Front against Mining, a body that raises awareness about the damage that mining will cause in the Department by coordinating activities with the indigenous Mayor's Office of Sololá. Carlos Humberto Guárquez is one of its leaders, and is also the Sololá area coordinator for the defence of indigenous people, and a Fundamaya representative on the National Front against Mining.

#### *D. Case Study: Indigenous women's right to participate and the consequences of defending that right*



Members of the El Quiché Women's Organisations' Coordinating Committee with the Public Prosecutor at the trial of those accused of robbing their organisation.

The El Quiché Women's Organisations' Coordinating Committee (Coordinadora de Organizaciones de Mujeres de El Quiché) works in a number of the Department's municipalities. It is an organisation of Maya-Kiche women fighting to defend the right to participate in the development of indigenous women.

The Committee carries out most of its work in Nebaj in the north of the department, where, for example, small loans may be obtained from local women's banks.

During the second half of 2004, the leaders of the Association for the Comprehensive Development of Ixil Women in the Village of La Pista, Nebaj (Asociación de Desarrollo Integral de Mujeres Ixiles de la Aldea La Pista Nebaj), a member of the El Quiché Committee, were attacked while carrying money that had been collected for the organisation's small loans fund. After a complaint was filed, the Office of the Public Prosecutor investigated the matter, and proved that the attack had been the work of an illegal gang led by the Mayor of Nebaj, Virgilio Jerónimo Bernal Guzmán. The women on the Coordinating Committee decided to continue the case against the Mayor, and the trial went on. Their decision reflected a more profound struggle in Nebaj to wrest municipal government from the hands of a criminal network, and ensure that it serves the interests of the people.

Juana Bacá, one of the organisation's workers, has been threatened repeatedly since steps were first taken to bring the case to court and have the guilty punished. On 10 February 2005, she was followed by a man in the park in Santa Cruz, the main town of the Department, threatened, and then offered money to withdraw the case against the Mayor of Nebaj. Then, on 3 March, while at home in Nebaj, two men came and told her that she should go to the bank because the President of the Association was waiting there so that they could make off with the money, and if she didn't do so, they would kill her. At the bank, they told her that someone had asked to withdraw what was left in the account. One month later, she awoke to find her house daubed with large letters saying that she was going to die, and signed "X3 and MS13". On 22 April, unknown persons arrived at her house in a vehicle and opened fire. As they made off, they fired a few more shots around the building.

However, the attacks on Juana Bacá did not stop there. When Bernal's trial opened on 21

September 2005, the Mayor filed a judicial accusation against her and six other people, all members of other social and indigenous organisations in Nebaj, of illegal possession of local government documents, and the illegal detention of the Municipal Secretary and the Judge. He made this accusation following a demonstration in Nebaj against him that was attended by the six other people charged. However, although Ms. Bacá was not present at the demonstration, she was charged in reprisal for taking part as a co-complainant in the case involving him in the attack on the women's organisation.

A week after the Mayor accused Juana Bacá, Miguel Cobo Raymundo, who was a Women's Coordinating Committee witness in the case naming the Mayor in the attack, and who subsequently withdrew from the case, surprisingly turned on her, accusing her of coercion and repeatedly attempting to persuade him to give evidence against the Mayor. He also said she had told him that she was looking for witnesses to come forward.

Another member of the organisation, Aura Lolita Chávez Ixquic, was subjected to various forms of intimidation around the time that Juana Bacá had been assaulted. On 17 February 2005, the Nebaj Municipality ambulance had tried to run her over while she was walking along a street in the town, and on 22 April, she was followed by unknown men in a vehicle in Santa Cruz del Quiché, and was later followed again by thugs as she left a meeting.

Finally, in May, one day after the public hearing of the case when the Mayor was found guilty of being a member of the band of assailants, sympathisers mounted a demonstration in support of him, during which they shouted that if people did not stop harassing him, they would not be responsible for what they did, and that they were going to seek an eviction notice within 30 days as the Mayor was a good man. The demonstrators made it abundantly clear that they were going to take action.

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## VIII. Situation of defenders of women's rights

The Guatemalan women's movement is more energetic than other national movements, most of which are dominated by trade unions. Throughout its history, it has oscillated between a range of currents and influences, but it is undoubtedly moving steadily forward.

The internal armed conflict took no pity on women. Their bodies were yet another battlefield of the war. Counter-insurgents had silenced the voices of many women including Rogelia Cruz<sup>64</sup>, Alaíde Foppa<sup>65</sup>, Irma Flaquer<sup>66</sup> and Adelina Caal<sup>67</sup>, and during the war had treated them with ignominious violence as a way of demonstrating their power. Sexual violence, including rape, was viewed as the spoils of war during the massacres that were carried out the length and breadth of the country. Women's bodies were yet one more arena where the war could be fought.

In 1985, during the so-called democratic transition, the women's movement re-grouped and embarked on a campaign to conquer political and public spaces, and achieve legislative reforms and the right to be. Against a backdrop of scant commitment from the Congress, and even less from the Executive, women looked to go beyond political slogans to achieve their aims, including peace.

Although the undertaking in respect of women contained in the Peace Accords had been restricted to the establishment of a National Women's Forum for discussing forms of participation, the Forum in fact transformed into a national, mobilising, uniting force. And it was out of the Forum that there emerged a national women's policy, which in turn produced an agenda of work that was taken up by the Presidential Secretariat for Women. It also functioned as a space for the work of the Urban and Rural Development Councils, where women have been able to consolidate their chosen public policies.

Over the last few years, the Forum has made progress on a number of changes to discriminatory legislation on criminal and civil issues, although some are still pending. It has managed, for example, to highlight violence within the family and increase the penalty for sexual violence, but little headway has been made on tightening up the classification of sexual harassment.

Although women now enjoy better levels of participation, they do not yet have equal access to elected and decision-making posts. A measure of the social resistance to these changes has been the increase in the number of women being murdered. This, according to some analysts and female investigators, constitutes femicide.

According to the Centre for Legal Action on Human Rights, as many as 1227 women were registered as murdered between 2002 and 2004, but investigations into only seven of these have led to a conviction.<sup>68</sup> A report published by Guatemalan National Revolutionary Unity (URNG), states that no fewer than 427 women were murdered in August 2005.<sup>69</sup> Some members of the women's

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<sup>64</sup> Rogelia Cruz had been a university student and a former Miss Guatemala. During the 1960s, she was tortured, raped and murdered, allegedly for belonging to a revolutionary organisation.

<sup>65</sup> Alaíde Foppa was a feminist poet and writer who denounced social injustice. She disappeared during the time of the government of Lucas García. Several of her children were members of a revolutionary organisation.

<sup>66</sup> Irma Flaquer was a journalist and columnist who used her newspaper investigative articles to criticise the régime's acts of repression. She was kidnapped and disappeared in unclear circumstances.

<sup>67</sup> Adelina Caal ('Mamá Maquín'), an indigenous Q'eqchi campesino leader, was murdered while heading a demonstration on 29 May 1978 outside the Mayor's Office in Panzós, Alta Verapaz; it was put down after the army and police fired shots into it.

<sup>68</sup> See CALDH, 'Asesinatos de mujeres: expresión del femicidio en Guatemala' (Murders of women: an articulation of femicide in Guatemala).

<sup>69</sup> See URNG, 'Femicidio en Guatemala; crímenes contra la humanidad' (Femicide in Guatemala; crimes

movement argue that the situation has been brought about by femicide, others that it is caused by violence within the family and deterioration in social conditions, but however the situation is characterised, the women's movement has unified work on halting the violence perpetrated against women in Guatemala.

The women's movement also has links with other movements such as those that focus on human rights and economic, social and cultural rights, but has maintained its autonomy and its particular vision. Generally speaking, tension has arisen from the failure by other movements to adopt an awareness of gender and to crush gender discrimination.

By using conventional and extra-conventional mechanisms, women have managed to persuade both the UN Special Rapporteur on violence against women and the Special Representative of the Inter-American Human Rights Commission for women to visit Guatemala and place the country on their agendas.

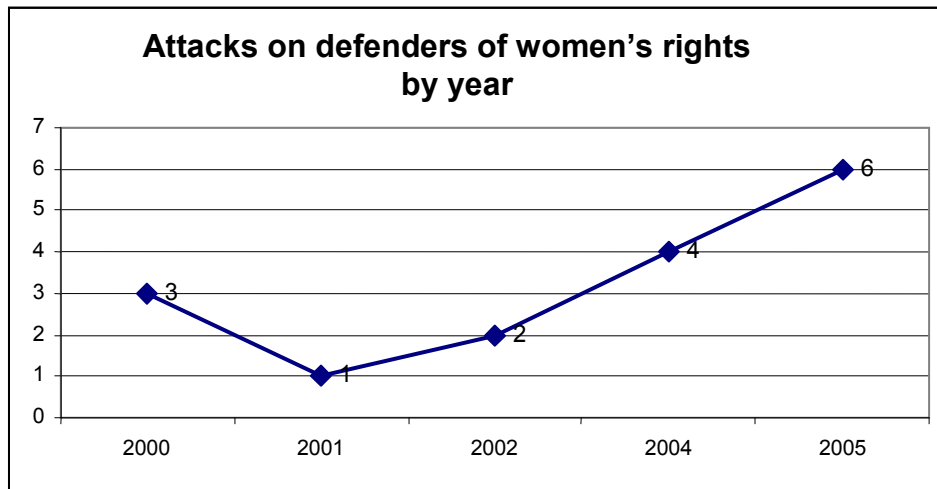
Women's agenda items include:

- ⇒ a "No more violence against women" campaign;
- ⇒ implementation of the national policy for the promotion and development of women, and of a broad-based proposal to give backing to initiatives designed to implement the Fiscal Pact;
- ⇒ implementation of the proposal to classify sexual harassment as a crime;
- ⇒ implementation of legislation covering quotas;
- ⇒ more robust procedures for dealing with violence within the family;
- ⇒ criticism of, and a focus on, the situation of women working in private houses and in the *maquila* sector.

#### *A. Specific characteristics of forms of attacks*

Only 16 attacks against women defending women's rights have been registered in the last 16 years although, as the graph below shows, the last year has seen an increase in the incidence of attacks in the sector. This has enabled us to identify the existence of a sub-register of threats and acts of intimidation of members of the families of murdered women, and of organisations that work directly with victims.

GRAPH 33



Source: Human Rights Defenders Protection Unit (MNDH)

In geographical terms, 56% of attacks have taken place in the capital. The Department with the next highest incidence is Petén, where most attacks have been perpetrated against the Association of Ixquic Women.

GRAPH 33

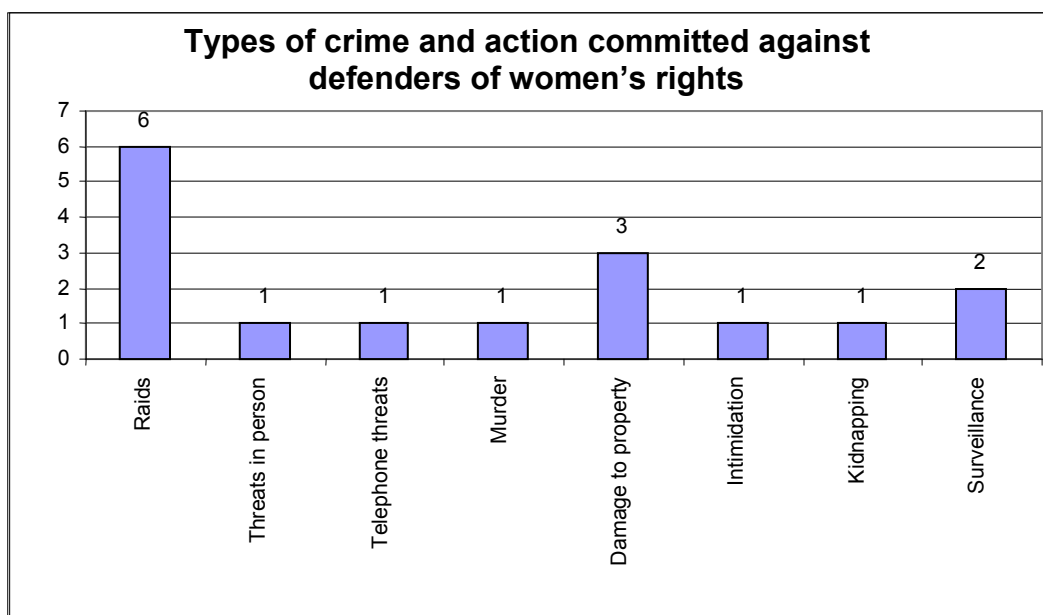


Source: Human Rights Defenders Protection Unit (MNDH)

Further analysis of these attacks reveals that 62% were carried against women's organisations. This suggests that they have been specifically aimed at the work of defenders.

As to the types of crime committed against defenders, the graph below shows that 37% took the form of raids, while the second most common involved damage to property (19%), itself a form of raid.

GRAPH 35



Source: Human Rights Defenders Protection Unit (MNDH)

### *B. Hypothesis on reasons for the attacks*

As we saw in the last section, a significant number of attacks were carried out on organisations during 2004-2005. It is worth noting that a number of women's organisations and leaders of the women's movement were involved at the time in a campaign around "No más Ríos de Sangre" (No more rivers of blood) put forward by the We Women collective. This urged people not to vote for General Efraín Ríos Montt, and evoked the memory of those who had been murdered under him. In the course of the campaign, they were subjected to several acts of intimidation that were not reported despite the fact that they appeared to be in line with this increase in the number of attacks. Figures for the incidence of attacks against defenders of women's rights (see table below) reflect a perception that they were designed to hinder activities and obtain information about them.

**TABLE 7**  
**Figures of the incidence of attacks on defenders of women's rights**

Attack to eliminate leaders	3
Attack on operating base	5
Attack with multiple objectives and symbolic attacks	2
Attack to obtain information	5
Attack for exploitation	1

Source: Human Rights Defenders Protection Unit (MNDH)

As many as 62% of these acts show signs of planning, and figures for targeted organisations and defenders show that what they have in common is their pursuit of the defence of rights, including those relating to sexual violence and femicide, to the extent of having them determined by a court of law.

The two cases described below are important insofar as they demonstrate the sort of thing that can happen to defenders of women's rights, and the fact that nothing is made public.

### C. Case Study: *The Association of Ixquic Women*

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Members and workers at the Association of Ixquic Women

The Association of Ixquic Women (Asociación de Mujeres Ixquic) is a not-for-profit women's organisation that seeks to improve the level of participation in civic and political affairs of women in Petén. It has joined forces with the Women's Forum on the need to press forward with the work that has already begun. Its activities include literacy programmes, the regularisation of migrants, advice to victims of violence to women, women's access to justice, political influence, and participation in the Development Councils.

The work of the Association of Ixquic Women initially got under way when members began to be involved in training schemes for women, and when their trainees started making accusations in court in cases concerning violence within the family, sexual violence and rape. The Association decided to accompany the mothers and/or the victims to the courts, and in this way became legal experts for the very simple reason that they had to. In addition to finding legal advice in support of cases, they began to publicise the attacks, and particularly cases of teachers sexually harassing girls at school. In the absence of any action by the legal system, the women in the Association hired lawyers and prosecutors who helped them to argue administrative measures before judges who had been blocking implementation of the law.

By mid-2005, the cases were beginning to go very well, and a judge was even removed from his post. In addition to the usual threats from angry husbands and irate defendants, there were intimidatory acts carried out against various members of the organisation, but the threats were ignored until 31 October 2005, when their office was broken into. On this occasion, files associated with the campaign were examined and a camera was stolen.

They assumed that the break-in was connected to other threats they had received in relation to a divorce case they were handling, but on 7 November their office was raided again. This time, administrative files were examined, and there was evidence that the minute book had also been scrutinised. For a few days either side of the raid, several of the Association's workers and members were the object of surveillance and threats over the phone.

On 10 November, there was yet another break-in. On this occasion, the intruders caused damage, destroying the carpets and stealing the television set. The fact that files were also examined showed quite clearly that the raid had not been a simple burglary.

The Prosecutor's Office failed to carry out any serious investigation into the break-in, and when questioned, said that it could not explain what had happened because people did not seek revenge over legal cases like that in Petén, and break-ins were carried out differently too. Following considerable international pressure, the trial was transferred to the Crimes against Human Rights Activists Unit, but little progress has been made.

Attacks on the Association have continued throughout 2006, but despite being very frightened, members have reiterated their decision to carry on supporting the cases. They are very aware that by

challenging the legal system in Petén they were challenging drug-trafficking interests and related activities, but they are equally aware that women's rights are more important.

They currently enjoy police protection. This is very irregular, and has not prevented new acts of intimidation.

#### *D. Case Study: Rosa Franco*



Rosa Franco

16-year-old María Isabel Véliz Franco was murdered in Guatemala City on 16 or 17 December 2001. She had been raped and tortured. Her mother, Rosa Franco, at once embarked on a prolonged campaign for justice, and ran up against a system that treated her daughter not as a victim, but as the person who had been responsible for what happened. She decided to continue her law studies, and herself carried out the investigation needed to track down her daughter's murderers.

After investigating long and hard, she was able to find out who the murderers were, and their links with groups protecting them, and this prompted a series of threats against her in 2004. Thanks to her single-mindedness, she was able to have her daughter's murder included as one of the key cases in Amnesty International's "Stop Violence against Women" campaign that were officially presented in Guatemala City in June 2005.

It was a particularly hard month for Rosa Franco. Her house was under continuous surveillance on 7, 9, 11, 14, 21 and 22 June, and her children were followed, and one day, a blue Mazda with tinted windows but no licence plates was parked outside the house all morning. The men in the car were armed, and looked like bodyguards.

After this period of surveillance, there were a few sporadic incidents that frightened her. Occasionally, for example, she caught sight of the men who had carried out the surveillance earlier in the month. The threats gave her great cause for concern because she realised that her other children were in danger as well. International criticism has still failed to make any impact on her daughter's case.

She now has police protection by her front door. She has also produced an identikit picture of one of the people involved in the surveillance, and has asked the Office of the Public Prosecutor to cooperate, but the investigation has made no headway, and now that the Office has been restructured, there is no longer any lawyer on the case to take the matter forward.

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## IX. General situation of judicial officers

Judicial independence is an axiom of the rule of law, and a catalyst for the defence and validity of human rights. This chapter will show how real power in Guatemala is undermining this principle by engaging in unremitting attacks (assaults, intimidation, and sometimes murder) on judges, prosecutors and magistrates. This well-worn policy is wracked by intrigue, and has weakened the administration of justice and fostered a culture of exemptions.

This chapter will also adopt a different approach from that employed hitherto in this report insofar as the information does not come from primary but from secondary sources. For the most part, it is not possible to speak about the situation of defenders of human rights without acknowledging the size of the phenomenon of threats, intimidation, attacks and executions carried out on judicial officers and witnesses.

The approach will accordingly make use of information going back to before 2000. There has been no let up for judicial officers since the signing of the peace, and efforts to implement undertakings made under the terms of agreements have failed to prevent actions that corrode the freedom needed by judges to reach their decisions.

The crimes committed against judicial officers are of particular importance for defenders of human rights because they reflect the strength and weakness of the rule of law guaranteeing the conditions in which they can do their job.

This chapter is in three sections. The first contains data set out in a study “Events that affect judicial independence and the administration of the law in Guatemala: threats, intimidation and attacks on judges, prosecutors and magistrates” (Hechos que afectan la independencia judicial y la administración de justicia en Guatemala: amenazas, intimidaciones y atentados contra jueces, fiscales y abogados) produced by the Myrna Mack Foundation in August 1999. The second section summarises how UN extra-conventional mechanisms in relation to cases of judicial officers in Guatemala are being monitored as part of the United Nations Commission on Human Rights country-by-country mandate. The third section presents data on crimes carried out against judicial officers, and taken from the Human Rights Procurator’s report for 2005.

### *A. Monitoring of threats, intimidation and attacks on judges, public prosecutors and lawyers, 1996-1999*

The Myrna Mack Foundation published a report containing lists of threats, acts of intimidation and attacks on judges, prosecutors and lawyers in August 1999. The information contained in this report, which seeks to systematise the phenomenon and explain how widespread it is, is backed up by a news media monitoring exercise carried out by the Centre for Information Gathering, Analysis and Measurement of the Impact of the News Media (Centro de Recopilación, Análisis y Medición del Impacto Noticioso, CREAN). Three communications media were monitored for information: radio, the press and television. The exercise involved putting together a catalogue of references in these three news media to threats, acts of intimidation and attacks on judicial officers during the period from 1 September 1996 to 30 June 1999.

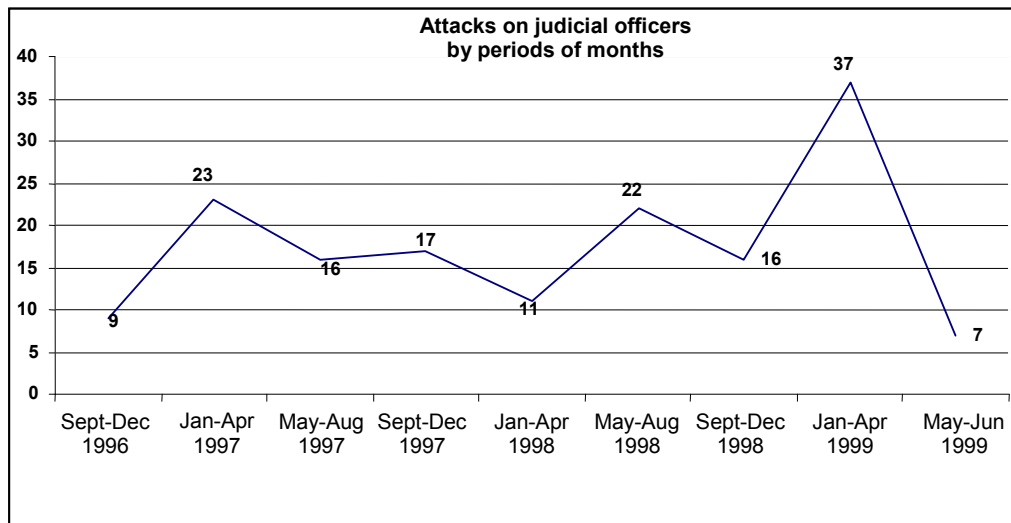
The monitoring covered the period from the year when the Peace Accords were negotiated and signed to the final months of the government headed by Álvaro Arzú, who himself signed the

Accord for a Firm and Lasting Peace. Seven newspapers, four radio stations and three television news programmes, all with national coverage, were monitored. The overall data derived from the exercise are set out below.

**1. Attacks on judicial officers**

The data used for the purposes of this study are taken from figures produced by a CREAN monitoring exercise carried out between September 1996 and June 1999. This highlights the vulnerability of the 158 cases levelled against judges, prosecutors and magistrates, and includes the murder of 11 judicial officers and witnesses. The graph below sets out the overall results.

GRAPH 36



Source: Myrna Mack Foundation

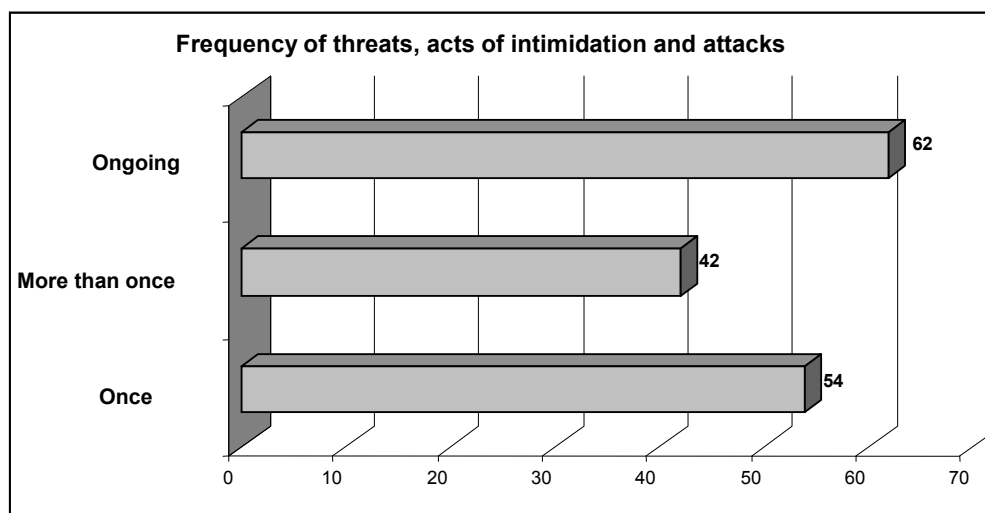
During 1997 and 1998, that is to say the two years leading up to the signing of the Peace Accords, there were 65% attacks on judicial officers. This was also the period when the Commission for the Strengthening of Justice was established to draw up recommendations for addressing weaknesses in the system.

The figures reflect the degree to which judicial institutionality had been eroded by traditional bodies hostile to the country’s move to democracy. The attacks reached their peak (28% of the total) in the first few months of the last year of the government that signed the Peace Accords, a time when the electoral campaign was in full swing.

**2. Frequency of the attacks**

Crimes committed against judicial officers account for 39% of cases, most of them (27%) being carried out more than once.

GRAPH 37



Source: Myrna Mack Foundation

### 3. Victims of attacks

The table below is a list of the posts of people attacked. The information is broken down by job within the country's legal system.

**TABLE 8**  
**Judicial officers attacked**  
 September 1996-June 1999<sup>70</sup>

Types of victim	Frequency	%
Prosecutors	47	30
Magistrates	10	6
Judges	30	19
Legal assistants	8	5
Lawyers	13	8
Other	50	32
<b>Total</b>	<b>158</b>	<b>100</b>

Source: Myrna Mack Foundation

### 4. Reasons for the attacks

The next table sets out the reasons for the threats and attacks against judicial officers derived from the news monitoring exercise. The reasons were defined by involvement in actions linked to civil servants in the security sector. The incidence of ordinary crime is also included for the sake of completeness.

<sup>70</sup> Source: Centre for Information Gathering, Analysis and Measurement of the Impact of the News Media. Interviews and survey conducted by the Myrna Mack Foundation, June 1999.

**TABLE 9**  
**Reasons for attacks on judicial officers**  
September 1996-June 1999

Reasons	Frequency	%
Relating to the police, soldiers and former members of civil defence patrols	53	34
Crime	59	37
Performance of duties	16	10
Not known	30	19
<b>Total</b>	<b>158</b>	<b>100</b>

Source: Myrna Mack Foundation

## 5. Types of attack

The third issue that came within the remit of the monitoring exercise was a review of the range of attacks perpetrated against judicial officers (see graph below).

**TABLE 10**  
**Types of attack on judicial officers**  
September 1996-June 1999

Types of attack	Frequency	%
Threats	103	65
Attempted murder	19	12
Murder	11	7
Harassment, surveillance and other forms of victimisation	17	11
Raids and/or theft of files and evidence	4	2.5
Absence of institutional support	4	2.5
<b>Total</b>	<b>158</b>	<b>100</b>

Source: Myrna Mack Foundation

## 6. Analysis of outcomes

An examination of the figures contained in Table 12 reveals that prosecutors are most frequently attacked (30% of the total). This explains some of the difficulty of taking legal action and the slowness with which investigations are carried out.

Magistrates and judges account for a quarter of the attacks, and legal assistants (*auxiliares de justicia*) 5%. The 158 cases registered by the monitoring exercise between September 1996 and June 1999, a time referred to as the “post-conflict period”, show how often judicial officers were targeted. They also demonstrate that political discourse on eradicating the causes of the conflict, including legal reform aimed at promoting the rule of law guaranteeing justice and opposed to any failure to punish serious human rights violations, was far removed from the reality described here.

Table 13, which contains a list of the reasons for attacks on judicial officers, shows that 34% are linked to the police, the army, former members of the civil defence patrols and security personnel, while 37% involve crime. This category includes organised crime, which is well equipped to carry out systematic attacks on judicial officers. Members of these gangs specialise in kidnapping, bank

robbery, drug trafficking, customs fraud, money laundering and smuggling, to mention only the most common examples. The gangs are made up of members of the state security service.

During the first few months of 1999, the United Nations Verification Mission in Guatemala (MINUGUA) produced a report that explicitly sets out the symbiosis between crime and illegal security groups. The report notes that the activities of illegal security groups and clandestine apparatuses that continue to exist in various parts of the country are hard to distinguish from organised crime, and goes on to say that they function thanks to the tolerance and direct or indirect participation of state employees, and operate over a wide area. The MINUGUA survey succeeded in establishing the existence of organised hit squads and of close cooperation with clandestine security personnel. This practice of operating on the margins of the law stood in the way of the Mission conducting an in-depth investigation of these groups and gangs involved in crime. It is important to recognise their existence and organising ability, and the links that they establish with one another in order to take advantage of the precarious situation facing judicial officers when they are involved in cases of this type.

Table 14 reviews the types of attack carried out on judicial officers: threats are the most common (103 cases, 65% of all attacks), followed by attacks, harassment and surveillance (23%). Sadly, the period was also marked by the murder of 11 judicial officers: four judges, three prosecutors and one lawyer.<sup>71</sup>

### *B. Judicial officers and the UN Commission on Human Rights*

This section sets out information relating to the situation of judicial officers, and includes figures taken from reports produced by UN Rapporteurs and Special Representatives in Guatemala, and from specific reports presented by pro-justice organisations, which themselves draw on information supplied by the Office of the Public Prosecutor.

This corpus of references covers the entire period from 2000 to 2004. A uniform presentation on the situation of judicial officers between 1996 and 2005 would have required comparative systematised information. There is also no evidence of the continuity of the media monitoring of the safety of magistrates, except for information provided by the Myrna Mack Foundation in the form of a report for the UN Special Rapporteur covering the five months from May to September 2001. The absence of information for the period 2000-2004 is therefore made good by the inclusion of data from United Nations Rapporteurs and Special Representatives, who in turn had based these reports on figures gathered on missions to Guatemala.

#### **1. First visit by Param Coomaraswamy**

The UN Special Rapporteur on the Independence of Judges and Lawyers, Param Coomaraswamy, came to Guatemala in response to Resolution 1999/31 of the UN Commission on Human Rights (56<sup>th</sup> period of sessions). The Rapporteur's visit led to a fact-finding mission that took place between 16 and 19 August 1999.

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<sup>71</sup> Taken from Annexe I of the List of threats and acts of intimidation against magistrates, judges and legal assistants. A study of factors affecting judicial independence (Listado de Amenazas e Intimidaciones en Contra de Magistrados, Jueces y Auxiliares Fiscales. Estudio sobre Hechos que Afectan la Independencia Judicial), Myrna Mack Foundation, 1999.

The Special Rapporteur's work had its antecedents in two other Recommendations, Nos 1994/41 and 1997/23, which extended his mandate for a further three years. These state that the Special Rapporteur must investigate all accusations brought to his attention, and report on his conclusions and recommendations. During the period of his mandate, the Rapporteur was told of complaints relating to the intimidation and harassment of lawyers, judges and prosecutors.

At the end of his mission, Mr Coomaraswamy produced a general report, and it is from here that information is taken relating to threats, harassment and intimidation, and to five cases of threats made to judges and prosecutors. In exceptional cases, these individuals were provided with protection. The Rapporteur's report describes the vulnerable situation of judges and magistrates, and particularly that of judges working in the interior of the country. This served to highlight the serious threat to judicial independence represented by the state of insecurity during August 1999.

## **2. Second visit by Param Coomaraswamy**

Mr Coomaraswamy led a follow-up mission to Guatemala from 10 to 12 May 2001. The aim of his second trip was to assess how well the recommendations in the report following his first visit had been complied with.

In the course of this mission, the Special Rapporteur organised meetings attended by a wide range of people associated with the administration of justice: they included civil servants, and members of the Constitutional Court, the Supreme Court of Justice and the Council of Judicial Career. He also met members of the Association of Judges, the College of Lawyers and the National Commission for Monitoring and Supporting the Strengthening of Justice.

The report that Mr Coomaraswamy produced on his second visit states that he heard complaints from magistrates in the Supreme Court of Justice relating to harassment, intimidation, threats and attacks against judicial officers, and referred to 33 cases of threats to judges during 2000, 66% of them being made to justices of the peace. At the time of his visit in 2001, there had already been 24 threats from people on trial. Mr Coomaraswamy also reported that the Supreme Court had established a committee made up of judges and magistrates to study the matter, make recommendations and propose substantive measures, and that he had learned about the mechanism used within the legal system to look after judges and magistrates who have received threats.

In addition, the follow-up report unearthed information produced in 2001 by Carlos Álvarez-Lobos Villatoro, who had only recently been appointed President of the Supreme Court of Justice: the courts, he said, now had evidence of 60 judges receiving threats. At a meeting with the Association of Judges, he was told that judges accounted for 40% of threats made to staff employed in administration of the law, and was handed a list of ten recent cases in which judges had been the victims of violence or threats.

Lastly, Mr Coomaraswamy was informed of the precarious situation facing many justices of the peace; examples included the justice based in Senahú, Alta Verapaz. These justices frequently work 365 days a year, and with no holidays as there is no one to replace them. Moreover, they are often unable to take their families with them, even though they are obliged to live in the municipality to which they have been posted. This isolation and marginalisation, within the judiciary as well as outside, means that justices of the peace are constantly being subjected to threats and intimidation.

### 3. Monitoring between 2001 and 2004

The Myrna Mack Foundation presented Param Coomaraswamy with a report based on the monitoring exercise of the country's various news media. The study covered the period from May to September 2001, and identified 33 judicial officers (seven judges, three prosecutors, eight lawyers and 15 witnesses or expert witnesses) who had been the object of threats, intimidation and attacks: of these, four were murdered, and 21 were the victims of constant harassment during the period under examination.

The Foundation also drew up a report on the operation of the Special Prosecutor's Office for Crimes Committed against Judicial Officers, a body set up following recommendations by the Special Rapporteur. The report refers to 469<sup>72</sup> instances of threats, intimidations, attacks and harassment against judicial officers during 2001-2005. This figure is clear evidence that the phenomenon is growing, and that the objective is self-evidently to obstruct justice and spread the culture of impunity. The data contained throughout this report support that view. Filed complaints are currently running at an annual average of 94.

#### *C. The current situation of judicial officers*

This section sets out data contained in the Human Rights Procurator's report for 2005.

#### 1. Background

The information presented by the Human Rights Procurator covers the period from January to May 2005, and is based on figures generated by the Prosecutor's Office. During this time, there were 56 registered attacks on judicial officers: of these, 52 were carried out against staff in the Prosecutor's Office, three against Prosecutors' Offices and one against a worker in the Criminal Public Defence Institute.

The monitoring exercise described in the preceding section found that most attacks were carried out against prosecutors, but here, judges are the victims of three quarters of attacks. A breakdown of the information relating to attacks on the Prosecutor's Office reveals that a significant number of attacks were carried out on justices of the peace (44%), while judges who hear cases in Courts of First Instance were subject to 18%. The following table provides details of the posts held by targeted judicial officers. Although unwilling to calculate the number of attacks, the Office of the Public Prosecutor has itself been seriously affected by the phenomenon: examples include the Special Cases Prosecutor, Erick Moisés Gálvez Miss, who was shot dead by armed men in Chiquimula: Gálvez Miss, "like the other prosecutors in his department, was handling cases that were either complicated or connected with sensitive issues like drug-trafficking, murder and certain other crimes".

The report also states that judicial officers who cooperate with the Prosecutor's Office are constantly being threatened.

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<sup>72</sup> Figures based on complaints filed with the Special Prosecutor's Office for Crimes Committed against Judicial Officers.

**TABLE 11**  
**Targeted judicial officers**  
 January-May 2005

Types of victim	Frequency	%
Prosecutors	3	5.36
Magistrates	2	3.57
Judges	45	80.35
Legal assistants	5	8.92
Lawyers		
Other	1	1.79
<b>Total</b>	<b>56</b>	<b>100</b>

Source: Human Rights Procurator's Office

## 2. Departments in which attacks take place

The highest single number of attacks (21% of the total) take place in the metropolitan area. Suchitepéquez and Quetzaltenango each have 11%, and San Marcos and Zacapa 7% and 5% respectively. Prosecutors were also attacked in Huehuetenango and Chiquimula, and the Criminal Public Defence Institute Coordinator was attacked in Quetzaltenango.

GRAPH 38



Source: Human Rights Procurator's Office

Judicial officers working in the interior of the country face particular obstacles in defending themselves from attacks because their low level of protection leaves them vulnerable to the powerful forces ranged against them. The figures illustrate the insecurity felt throughout the country, and this has heightened the need for judges and prosecutors to enjoy better protection. This constant harassment has led to senior officials in the Supreme Court of Justice and the Office of the Public Prosecutor seeking financial support from the Executive for the establishment of a

Prosecutor's Office Security Service: of the GTQ 30m requested, a total of GTQ 19m has been allocated.

The vulnerability and lack of security experienced by judicial officers in the interior of the country, and particularly those working on very serious crimes, are accentuated by drug-trafficking and criminal activity designed to maintain the culture of impunity. They are even attacked at their workplaces: one example is the Court of Justice (Tribunal de Sentencia) in Chiquimula, on whose premises there appear to have been attempts at poisoning.

### 3. Types of attack

It is important to bear in mind that attacks on judicial officers registered in the first five months of 2005 took place during a period when attacks on the majority of human rights defenders were at their height. Threats (58% of cases) continue to be the most common form of attempt to affect judicial independence.

The murders of judicial officers are the most serious features, and the fact that the practice is clearly on the increase is a matter for serious concern. Victims of crimes committed during the first five months of the year include:

- 4 March: Carlos Marroquín, Legal Assistant at the Anti-Corruption Prosecutor's Office – murdered;
- 21 March: José Antonio Cruz Hernández, Justice of the Peace in San Pedro Ayampuc, department of Guatemala – murdered;
- 5 April: Fritzman Grajeda Robles, Public Attorney in Coatepeque, Quetzaltenango – murdered;
- 25 April: José Bautista, Serious Crimes Judge in Chiquimula, San Pedro Sacatepéquez, San Marcos – murdered;
- 27 April: José Antonio Meléndez Sandoval, Prosecutor in Malacatán, San Marcos – shot and left with serious face injuries;
- Monday 16 May: Erick Moisés Gálvez Miss, Prosecutor in the Office of the Public Prosecutor in Chiquimula – murdered;
- 20 June: Julio César Barrios Mazariegos, Second Clerk at the Justice of the Peace's Office in Villa Nueva, department of Guatemala – killed.

In addition, two prosecuting counsel were murdered, and attempts were made on the lives of a judge and an official in the Office of the Public Prosecutor, a legal assistant and a prosecuting counsel.

**TABLE 12**  
**Types of attack on judicial officers**  
January-May 2005

Type of attack	Frequency	%
Threats	33	58.92
Attempted murder	2	3.57
Murder	7	12.51
Harassment and surveillance	13	23.21
Raids and/or theft of files or evidence	1	1.79
Absence of institutional support	0	0
<b>Total</b>	<b>56</b>	<b>100.00</b>

Source: Human Rights Procurator's Office

The Vice-President of the Inter-American Human Rights Commission, Susana Villarán, visited Guatemala in 2005, and expressed concern about the difficulty in boosting the work of judicial officers, as this had led to public loss of confidence in what they did. Ms Villarán took the view that the situation was impacting on democratic institutionalism, and that it was therefore important to strengthen institutional support for, and the formation of, human rights through the adoption of a coordinated security policy covering the various players involved in administering the country's legal system.

### **The independence of judges and magistrates in the 62<sup>nd</sup> period of sessions**

The current Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, drew up a report that he presented at the 62<sup>nd</sup> period of sessions of the Commission of Human Rights. It noted 31 attacks on judicial officers, including eight murders. Mr Despouy has remained in touch with the Guatemalan government over these cases, and has emphasised his concern about the high incidence of murders of judicial officers. He also pointed out that the government has not replied to a Letter of Allegation sent at the end of 2005, and called for information about these crimes. On receiving the information, the Special Rapporteur noted the absence of substantial progress in investigating attacks on judicial officers.

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## X. Impunity in cases of human rights defenders

The situation outlined above prompted a number of responses at national and international level from institutions and bodies charged with monitoring the rights of human rights defenders. A summary of these responses is set out below.

### 1. The State of Guatemala

The response of the State of Guatemala during the first two years of the period under review was vague and inconsistent. This changed when it was acknowledged in April 2002 that some of the attacks tallied with the pattern of activity of clandestine groups during the armed internal conflict. Since then, the various government institutions tasked with protecting defenders, and of investigating and prosecuting those responsible for the attacks, have reacted as follows:

- Office of the Public Prosecutor: the Office established the Special Prosecutor's Office for Crimes Committed against Judicial Officers (Fiscalía Especial de Operadores de Justicia) in 2001, and in 2002, set up a new Special Prosecutor's Office for activists and organisations defending and promoting human rights and indigenous organisations. This Office initially employed one prosecutor and two legal assistants, but it was strengthened in 2003 to a staff of up to 60 people altogether including legal assistants, investigators and specialists. The same year also saw the establishment of Special Prosecutor's Offices for campesinos, trade unionists and journalists, and in 2005, they were turned into government agencies within the Unit for Crimes Committed against Human Rights Activists, Judicial Officers, Journalists and Trade Unionists, which was itself attached to the Human Rights Procurator's Office. It was intended that this Unit would deal with any crime committed in any part of the country, but in practice it only handles those committed in the capital against defenders.
- National Civil Police: the National Civil Police have responsibility for providing fixed-guard security personnel outside private homes and offices, and perimeter security, in the case of defenders, when requested by the prosecutor handling the case, or by the Presidential Commission on Human Rights through the allocation of precautionary measures. This service provided by the Security Protection Division (DIPROSE) is fairly irregular, and in some cases like the CALDH attack, it ignores the victims.
- The Commission for the Safety of Judges and Magistrates: this Commission, which was set up in 2002, and is attached to the Supreme Court of Justice, has its own budget for hiring security services, and acts as the protection unit for any judges and magistrates who require it.
- The Human Rights Procurator's Office: although this Office's mandate is to provide protection, it is itself the target for attacks. It has been issuing precautionary measures on behalf of human rights defenders since 2004 as a way of giving them protection. In December 2005, it published a report entitled "Human Rights Defenders in Guatemala" (Los Defensores de Derechos Humanos en Guatemala), in which it assessed the situation during the first six months of the year. The report relies mainly on data produced by the MNDH Protection Unit, the Safety

Commission and the Office of the Public Prosecutor. For 2006, the Human Rights Procurator has proposed publishing a report using internal data that would make it possible to make a comparison with data produced by other sources.

- The Presidential Coordinating Committee for the Executive's Human Rights Policy (COPREDEH): in 2004, the Committee set up a Human Rights Defenders' Unit, which in turn proposed a human rights defenders' policy together with a programme of protection mechanisms that have yet to be implemented.

## 2. International bodies

Three international mechanisms have carried out careful, specialised monitoring of the situation in Guatemala: the UN Secretary-General's Special Representative on Human Rights Defenders, the Special Rapporteur on the Independence of Judges and Lawyers of the Commission on Human Rights, and the Inter-American Human Rights Commission.

The Special Representative on Human Rights Defenders paid an *in loco* visit in May 2002, and issued three specific recommendations for Guatemala which are still in force. They are:

- the implementation of public policies recognising the legitimacy of the work carried out by human rights defenders and social leaders;
- the establishment of effective security measures using all necessary means and involving the defenders themselves;
- the investigation, trial and sentencing of those responsible.

After publishing her reports, the Special Representative recommended the establishment of the CICIACS.

In her 13 December 2004 report, the Special Representative also said she had sent 16 reports to the Guatemalan government concerning 31 human rights defenders who had been attacked, and had only received one reply. She said in an overall analysis in her report that there was an across-the-board absence of information about attackers because of the government's failure to investigate.<sup>73</sup>

In the fifth annual report dated 7 September 2005, the Special Representative, Ms Hina Jilani, presented a review of the role of human rights defenders in building peace, and used Guatemala as a case study. The review acknowledged defenders' work and the intimidation that they face.<sup>74</sup>

In her report of 23 March 2006, the Special Representative referred to 16 communications that had been sent to the Guatemalan government, in some cases in collaboration with other Special Rapporteurs, and to the replies that she had received. She was grateful for the replies and recognised the work that had gone into them, but said she was still concerned about both the failure of the investigations to come up with any result, and the impunity surrounding the threats, intimidation and raids carried out against defenders of human rights.<sup>75</sup>

The Special Rapporteur on the Independence of Judges and Lawyers visited Guatemala in 1999

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<sup>73</sup> See E/CN.4/2005/101.

<sup>74</sup> See A/60/339.

<sup>75</sup> See E/CN.4/2006/95/Add.1

and, in view of the seriousness of the situation, returned in 2001 to monitor his recommendations. While he was there, he issued a large number of recommendations aimed at cleaning up the legal and administrative system, and implementing the recommendations of the Commission for the Strengthening of Justice.

On the subject of giving immediate support to lawyers, prosecutors, judges and magistrates, the Special Rapporteur has sent communications to the Guatemalan government, in some cases in conjunction with other Rapporteurs. On this occasion, the government replied, but in his final report, the Rapporteur says that he concerned by the high number (20) of murders he has been told about, and by the frequency at which they occur.<sup>76</sup>

The Inter-American Human Rights Commission also responded on the situation of human rights defenders. Where the Commission believes that people's lives are at risk, he has asked for precautionary measures to be issued in the form of protection and investigation into what had happened. The level of protection measures provided by the government is quite irregular: they are typically carried out for the first few days, and only spasmodically thereafter. No investigations have been carried out in any cases where precautionary measures have been issued.

After the *in loco* visit, the Inter-American Human Rights Commission published the Fifth Report on the Situation of Human Rights in Guatemala. In the chapter on personal integrity, the Commission analyses the situation of human rights defenders, and sets out recommendations relating to<sup>77</sup>:

- the adoption of additional measures that recognise and acknowledge the value of the work of human rights defenders and social leaders, and which are aimed at members of the security forces;
- guaranteed access to the means of adequate protection;
- the investigation and trial of perpetrators;
- the establishment of special units in the Police and the Office of the Public Prosecutor for dealing with the phenomenon.

The Special Unit was set up in 2002 following these recommendations. The Special Rapporteur for Guatemala and the Human Rights Defenders' Unit, which was established in 2002, have visited the country every year to monitor the situation and assess implementation of precautionary measures, but very little progress has been made.

As the general section made clear, attacks on defenders of human rights enjoy almost total impunity, with only 2.18% of cases solved. Few of the recommendations proposed by international bodies have been complied with, and the paltry efforts of national institutions have borne little fruit.

Clearly, taking all the measures and recommendations together, the Unit for Crimes Committed against Human Rights Activists, Judicial Officers, Journalists and Trade Unionists has most responsibility for campaigning against the impunity that pervades the phenomenon described above.

The Unit has stated that it will address those cases of "human rights activists, judicial officers, trade unionists and journalists who, because of their jobs, are subjected to attacks that impede or annul what they do".<sup>78</sup> Within this remit, it will also handle crimes committed against defenders' work.

<sup>76</sup> See E/CN.4/2006/52/Add.1.

<sup>77</sup> See CIDH, Fifth Report on the Situation of Human Rights en Guatemala.

<sup>78</sup> Definition provided by Alba Elizabeth Gudiel (Unit for Crimes Committed against Human Rights Activists, Judicial officers, Journalists and Trade Unionists) in an interview she gave in March 2006.

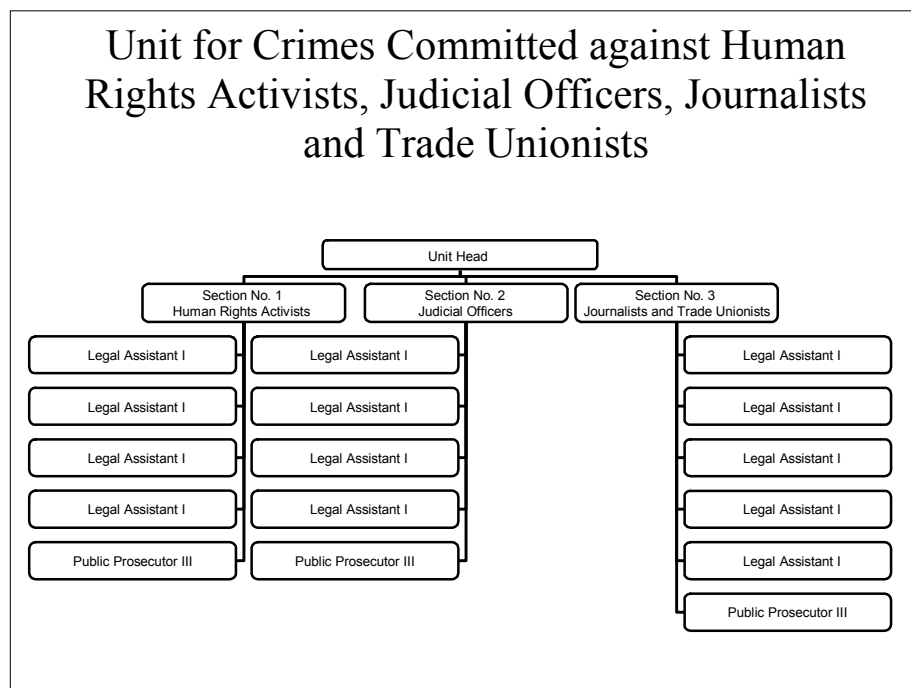
This definition was an improvement: in previous years, the Special Prosecutor's Office had had no clear criterion for getting involved in cases, and could not examine a range of cases, including those relating to discrimination.

In the absence of a national register of human rights activists and journalists, the case has to be made by the person reporting the crime. By contrast, in cases involving judicial officers and trade unionists, the Prosecutor's Office consults with the Supreme Court of Justice, the Office of the Public Prosecutor, the Criminal Public Defence Institute and the Ministry of Labour before proceeding to an investigation.

Because of the lack of resources, the Unit does not handle cases all over the country, but only those that occur in the department of Guatemala where, as we have seen, 53% of attacks take place, and extremely serious crimes in other departments. However, in practice, when a defender who has been attacked does not file the complaint with the Unit but, in line with normal procedure, does so through the Police or the Victim Support Unit (OAV), the complaint often fails to get as far as the Unit.

The organigram below shows that the Unit has more staff allocated to the section covering journalists and trade unionists, despite the fact that these workers are not among the most frequently attacked. This may be because the agency has concentrated its efforts on prosecuting pirate radio stations, including so-called "community stations". It casts some doubt on the function of a Prosecutor's Office of this type.

GRAPH 39



The Unit for Crimes Committed against Human Rights Activists, Judicial Officers, Journalists and Trade Unionists has been operating since late 2005, but it will make little impact if it does not address the issues that have been bedevilling criminal investigations into attacks on defenders. In its September 2005 report, the Myrna Mack Foundation sets out a list of the Unit's weaknesses<sup>79</sup>:

1. the absence of a policy for laying criminal charges against the whole of the Office of the

<sup>79</sup> See Myrna Mack Foundation, 'The government's response to attacks on human rights defenders in Guatemala' (Respuesta estatal frente a los ataques contra defensores de derechos humanos en Guatemala).

- Public Prosecutor;
2. uncertainty over its area of competence: it is still unclear what kinds of crime the Unit will investigate; the Foundation argues that not enough effort is put into investigating less serious offences such as threats;
  3. geographical coverage: it must be made clear where the Unit will conduct investigations and how it will deal with land disputes;
  4. in investigations:
    - a. no investigating hypotheses are constructed in these cases;
    - b. investigation itself is specialised;
    - c. personnel are not trained;
    - d. there is little scope for expert scientific examinations;
  5. criminal charges are poorly drafted and pursued.

Defenders interviewed in the preparation of this report complained not only about these shortcomings, but also that they had given the Office of the Public Prosecutor information, but had heard nothing more. In most cases, what normally happens is that information is officially requested but not used: when there is a break-in, for example, fingerprints are compared with those of workers' fingerprints, but unidentified prints cannot be compared with those of all Guatemalans because the service does not operate on a nationwide basis. It follows that scientific investigation contributes little to identifying the guilty parties unless lines of inquiry are followed up off-site.

Three situations are described below. They are seen as emblematic of how Prosecutor's Offices operate in cases involving human rights defenders.

#### *A. Case study: Guillermo Ovalle de León, killed 29 April 2002*

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On the morning of 29 April 2002, a surveillance unit consisting of personnel in a car and a motorcycle was on duty on the corner by the entrance to the offices of the Rigoberta Menchú Tum Foundation, CALDH and other human rights organisations. The unit was spotted by several people. At midday, Guillermo Ovalle de León, the father of two young daughters under the age of five and the Foundation's accountant, went out to a cafeteria to have lunch. The cafeteria was full of workers from the various organisations whose offices are located nearby.

As Guillermo went into the cafeteria, calls were being made to the Rigoberta Menchú Tum Foundation offices, but all that could be heard was funeral music. A few minutes later, three armed men walked into the cafeteria and ordered the staff and customers to go into another room, but kept Guillermo to one side. What happened then is unclear, but it appears that the owner of the cafeteria fired on the intruders, and there was a shoot-out in which Guillermo was killed by a shot to the shoulder.

The alleged attackers ran off to a waiting taxi, but by chance, some journalists were standing in the street nearby taking photos of them. Half a minute later, a police motorcycle identified as belonging to the Criminal Investigation Service (SIC) was out looking for the "assailants", even though the fire brigade, normally the first to arrive, had not yet been called. The existence of photos of the murderers led to an anonymous tip-off to the Office of the Public Prosecutor about where two of the

killers were. They turned out to be a drug-trafficker from the north of the city and a *coyote* who smuggled people into the United States.

With that, the investigation lost impetus. This blocked the hypothesis of a political motive, which was in turn transformed into an armed robbery (of GTQ 300) that had gone wrong. Shortly afterwards, the Office of the Public Prosecutor detained a taxi-driver who had helped the attackers to escape, and who also supplied information about a contact that they had spoken to about the attack. The taxi-driver was subsequently arrested as an accomplice and for murder during the uprising in Zone 18 in 2003, when Obdulio Villanueva, who had been accused of murdering Bishop Juan Gerardi, was also killed.

In the view of Eduardo de León, the Director of the Rigoberta Menchú Tum Foundation, the government's role in clearing up the murder of Guillermo Ovalle was utterly disastrous. The investigation was inadequate, and the performance of the Office of the Public Prosecutor downright negligent insofar as it had announced from the outset that it was just a case of armed robbery that had nothing to do with politics.

The Foundation therefore decided to conduct its own investigation, and took the results to the Office of the Public Prosecutor. Sadly, the Office made no use of them. With that, the Foundation found its hands tied because the court did not allow it to be a plaintiff in the case since there had been no breach of human rights.

Another factor that made it difficult to prove what had happened was the absence of a witness protection scheme. The Foundation's Director argued that the Office of the Public Prosecutor's Witness Protection Unit left witnesses with no protection whatsoever, not even offering them the protection they needed in order to give evidence. However, far from improving witnesses' safety, the Attorney-General (Fiscal General) told the diplomatic corps in Guatemala that the attacks had not been political in any way. International protection was thus denied them despite repeated interventions by the Foundation.

Moreover, although aspects of the case pointed to the involvement of more people in the attack, the Office of the Public Prosecutor basically failed to ask any questions about exactly who had committed the crimes, and restricted its inquiries to the material damage. In the end, Billy René Barrios and Eber Leonel López Gómez were tried for the murder of Guillermo Ovalle, and sentenced to 29 and 14 years' imprisonment respectively.

It is worth noting in passing that the current Director of the Guatemalan prison service has recently charged Billy René Barrios with organising kidnappings from prison.<sup>80</sup> This confirms a suspicion that Guillermo Ovalle had not been murdered in the course of a casual raid on a cafeteria, but that it had been carefully planned to look like an everyday crime of the type committed by a clandestine hit squad.

Eduardo de León also believes that the outrages were a direct attack on the work of the organisation, and says that this has been affected in two ways. Firstly, the need to spend time on, and involve staff in, safety and protection issues, and secondly the feeling that they are living in a climate of insecurity which affects their personal lives. They feel abandoned and unprotected by the state, which, instead of offering them security, obstructs efforts to establish the truth so that the guilty can be brought to justice.

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Reported in 'Prensa Libre' on Wednesday 13 April 2006 (page 12).

*B. Case study: Eloyda Mejía Samayoa, death threats made in person on 18 February 2004*



Eloyda Mejía Samayoa

One of the last things that the Alfonso Portillo government did in 2003 was to grant over 100 new metal prospecting licences, and to broaden the terms of existing mining exploitation licences. The latter included the one by the nickel mining company operating in El Estor, Izabal, and the Association of Friends of Lake Izabal had been mounting awareness-raising campaigns with a view to persuading the people to oppose any extension of mining activity because of the impact it would have on the lake.

Eloyda Mejía Samayoa, who is the Association's President and Legal Representative, began receiving threats in the early part of February 2004 through people she already knew. Then, at a public event organised by the Association on 18 February in the presence of the manager of the mine and the Mayor of El Estor, both of whom backed extension of the project, some people arrived and publicly threatened Eloyda Mejía, saying that "her head will roll." Later on, Eloyda saw these individuals in the company of the manager.

She accused these individuals and the manager of making these threats before the Special Prosecutor's Office for Defenders, and the case was reported in the news media. For six months, the cases hovered in a limbo between Guatemala City and Puerto Barrios, but finally in early 2005, the Puerto Barrios Prosecutor's Office identified the attackers and conducted a mediation exercise, in which Eloyda availed herself of a system enabling her to cut straight to sentencing. At that point, the accused apologised for threatening her.

At least this threat against Eloyda Mejía Samayoa prompted the Office of the Public Prosecutor to intervene, but the environment in which she and her Association work is still extremely dangerous.

*C. Case study: Orlando Blanco Lapola, sent death threats by telephone in January and February 2004*



Orlando Blanco

Orlando Blanco Lapola is Coordinator of the International Centre for Human Rights Research in Guatemala (CIIDH). The Center's aims are to implement recommendations from the Historical Clarification Commission, support the human rights agenda, and mount actions demanding economic, social and cultural rights, particularly with regard to monitoring public spending.

At 6.20pm on 16 January 2004, Orlando Blanco received a call on his mobile from telephone number 2200375, and heard a man's voice say "You keep serving up this rubbish you son of a bitch, and you're going to die!". On 30 January, he had another call on his mobile at 6.05pm from number 2545776, and this time a man's voice said "Where are you, you fat son of a bitch? You're going to die!", and three minutes later he had a call from 2545161. When he picked up, there was no one there. Then, at 5.19pm on 2 February 2006, he had yet another call on the same mobile

telephone from number 2545862, and somebody said “You’re going to die, son of a bitch!”

The threats were taken very seriously. Orlando Blanco was an important leader of the Coalition of CICIACS and the Collective of Social Organisations. Urgent national and international action was undertaken immediately, and complaints were filed with the Special Prosecutor’s Office for Defenders.

Because of Orlando’s earlier experiences of investigations into threats and break-ins, it was decided to carry out a private investigation. From this, it emerged that the numbers from which the calls had been made were public telephones close to both the National Civil Police’s Professional Responsibility Office (ORP) and the CIIDH offices. The investigation was placed in the hands of the Office of the Public Prosecutor.

Following a series of demonstrations by the social movement supported by the Collective of Social Organisations against forced evictions and legal reform that ran counter to agreements in the Fiscal Pact, the Office of the Public Prosecutor embarked on an investigation with a view to proving that Orlando Blanco was an attention-seeker and had made the calls himself. This exercise coincided with a public campaign aimed at defaming him.

When the Human Rights Procurator’s Office requested Orlando Blanco close the case in mid-2005, he asked for a note to be included to clarify that the closure was because it was still not possible to say who had made the threats.

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## **XI.**

### **Recommendations for the protection of human rights defenders**

The situation of human rights defenders in Guatemala has been getting steadily worse during the last few years despite action taken on their behalf by defenders as a group, by the international community and by a handful of civil servants.

The impunity that surrounds attacks on human rights defenders, particularly the murders of judicial officers, is creating a climate in which the situation will not get any better, and may even deteriorate. For this reason, efforts must be concentrated on dismantling the wall of impunity that encircles the violation of the right to defend human rights in Guatemala.

Front Line and the National Human Rights Movement propose the following recommendations:

#### **1. To the Office of the Public Prosecutor:**

- a. To strengthen the Unit for Crimes Committed against Human Rights Activists, Judicial Officers, Journalists and Trade Unionists, by giving it the material and technical resources it needs to carry out investigations both inside and outside the capital, thereby addressing the current situation in which most cases involving defenders are not criminally investigated, and also ensure that the law is administered effectively when the right to defend human rights is violated.
- b. To establish links between cases by analysing patterns, particularly when attacks have been carried out on a given organisation over several different years, or on organisations that defend similar rights.
- c. To establish the role that the Analysis Unit (Unidad de Análisis) of the Human Rights Procurator's Office plays in investigating patterns and the involvement of clandestine security staff in attacks on human rights defenders; in this way, the Unit could become an effective partner in a criminal investigation process that hears 48% of the attacks thought to involve illegal groups and clandestine security apparatuses.
- d. To coordinate field investigations, together with the National Civil Police's Criminal Investigation Division so that not all investigations are office-based.
- e. To process with rigour administrative complaints brought against prosecutors who are using the system to criminalise the work of defending human rights; this has become necessary because of an imbalance between inaction in the investigation of crimes against human rights defenders, and prompt action by prosecutors when charges of unfounded or exaggerated offences (e.g. terrorism and sedition) are laid against human rights defenders.

#### **2. To the Guatemalan government**

- a. To guarantee the protection of human rights defenders and judicial officers under the terms of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, the inter-American declaration on the same subject, and undertaking No 7 of the Global Peace Accord for Human Rights.
- b. To implement mechanisms for responding to the structural and conjectural disputes that flow from serious violations of the human rights promoted and defended by

human rights under the terms of the Peace Accords, that is to say the implementation of reforms to public policies and laws that will ensure compliance with the undertakings made on 29 December 1996.

- c. To implement a policy for protecting human rights defenders and judicial officers that will guarantee consensual, dynamic application of precautionary and provisional measures published by international bodies.
- d. To establish mechanisms for monitoring, on behalf of civil society, how the Security Protection Division (DIPROSE) and the personal protection service of the Administrative and Security Affairs Secretariat(SAAS) perform their duties.
- e. To rid the security forces of people involved in criminal activity and the violation of human rights.

### **3. To the Congress of the Republic**

- a. To approve the law establishing the Forensic Science Institute with a view to ensuring that criminal investigation is professionalised, employs technical procedures, and operates independently. In this way, it will be possible to guarantee that evidence is not distorted or lost by the networks of impunity undermining procedures in the National Civil Police, the Office of the Public Prosecutor and the Prosecutor's Office.
- b. To approve the Human Rights Defenders Promotion and Protection Bill as a national mechanism for giving human rights defenders their dignity. This law could also develop a mechanism of protecting defenders from the serious situation they find themselves in, and would force government institutions to provide protection and punish civil servants who contravened them.
- c. To reform the Witnesses and Trial Participants Protection Bill in such a way, given that it does not provide the protection that it claims to do and the sector is seriously affected by violence, that the protection programme for witnesses, prosecutors and judicial officers becomes more dynamic, secure and comprehensive.
- d. To strengthen the institution of the Human Rights Procurator by:
  - i. increasing the budget of the Human Rights Procurator's Office;
  - ii. laying down a transparent, participative process for electing a new Human Rights Procurator, given that the current process for electing public officials (e.g. the Ombudsman) which goes through the Congress of the Republic has been politicised. The "Magistrate of Conscience" should be elected on the basis of her/his views on human rights, and must not have understandings with political parties. 2007 is election year in Guatemala, and it is therefore necessary to make the process more transparent in order to avoid future problems.

### **4. To the international community**

- a. To pressure the Guatemalan government into taking practical measures to protect and support human rights defenders: these would include drawing up an action plan for implementing the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (adopted 9 December 1998).
- b. To support human rights defenders in promoting and defending human rights in

Guatemala, and to promote the United Nations Declaration on Human Rights Defenders, the inter-American declaration on defenders of 2001, and the European Union Guidelines on Human Rights Defenders of 2004 by carrying out the following actions:

- i. inviting, and inter-acting with, human rights defenders in order to increase their visibility; and organising ceremonies at which these instruments are publicly handed over to human rights defenders and their organisations;
  - ii. organising information sessions for EU missions and defenders on implementation of the European Union Guidelines on Human Rights Defenders.
  - iii. setting up mechanisms linking Embassies so that human rights defenders in danger can be supported.
- c. To strengthen activities aimed at providing legal support in cases involving human rights defenders in such a way as to eliminate impunity in paradigmatic cases.
- d. To determine, in cooperation projects negotiated with organisations, a space for security that embraces application of an institutional safety policy that not only provides for an organisation's equipment (e.g. cameras, metal balconies and alarms) but also establishes comprehensive safety plans.
- e. To support specific international mechanisms for protecting human rights defenders (the Inter-American Human Rights Commission, the UN Secretary-General's Special Representative on Human Rights Defenders, the Special Rapporteur on the Independence of Judges and Lawyers of the Commission on Human Rights, and the Office of the United Nations High Commissioner for Human Rights in Guatemala) so that defenders can continue their monitoring and support work in Guatemala.
- f. To back the work of the organisations of international civil society that support the activity of human rights defenders in Guatemala.

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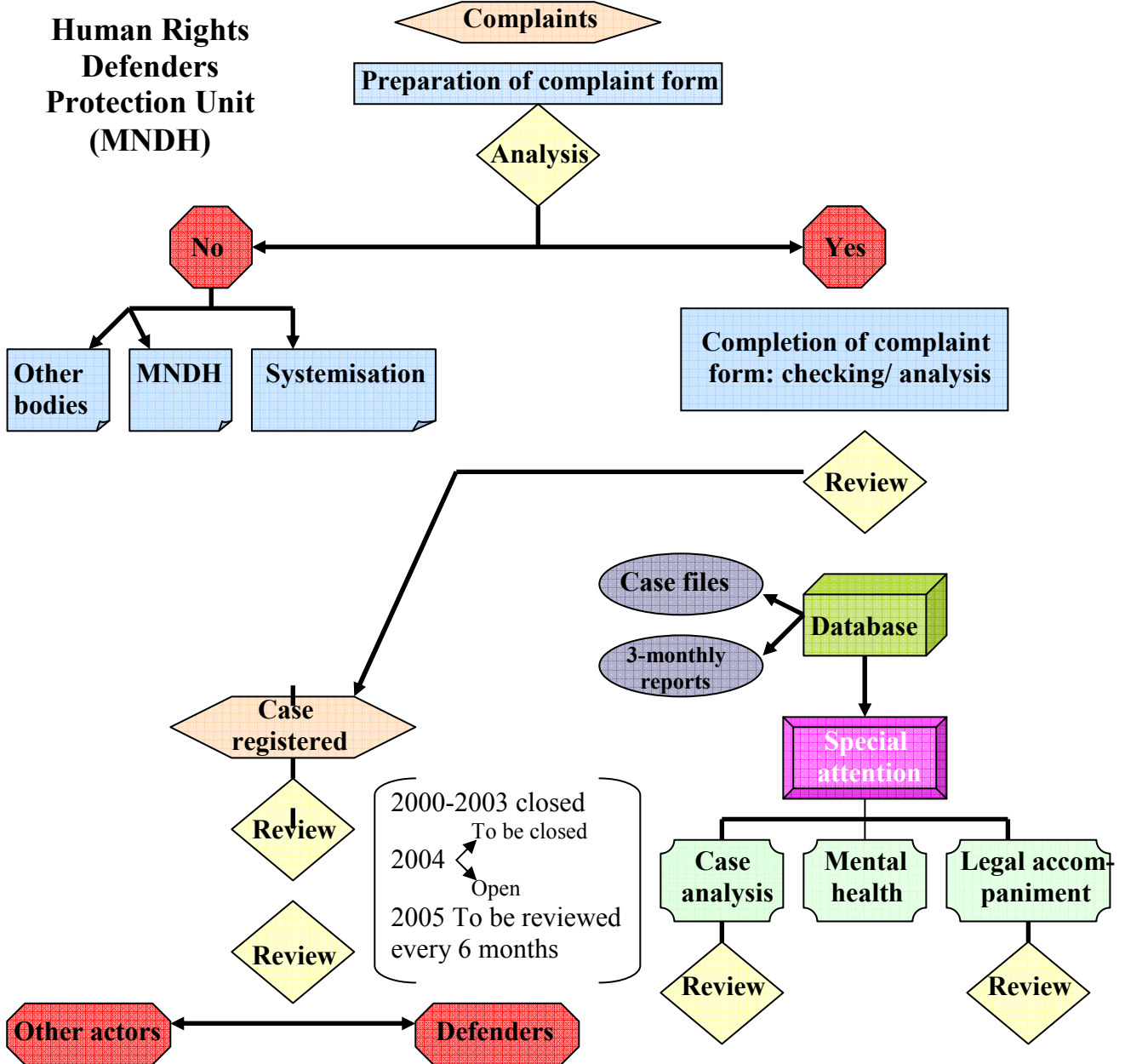
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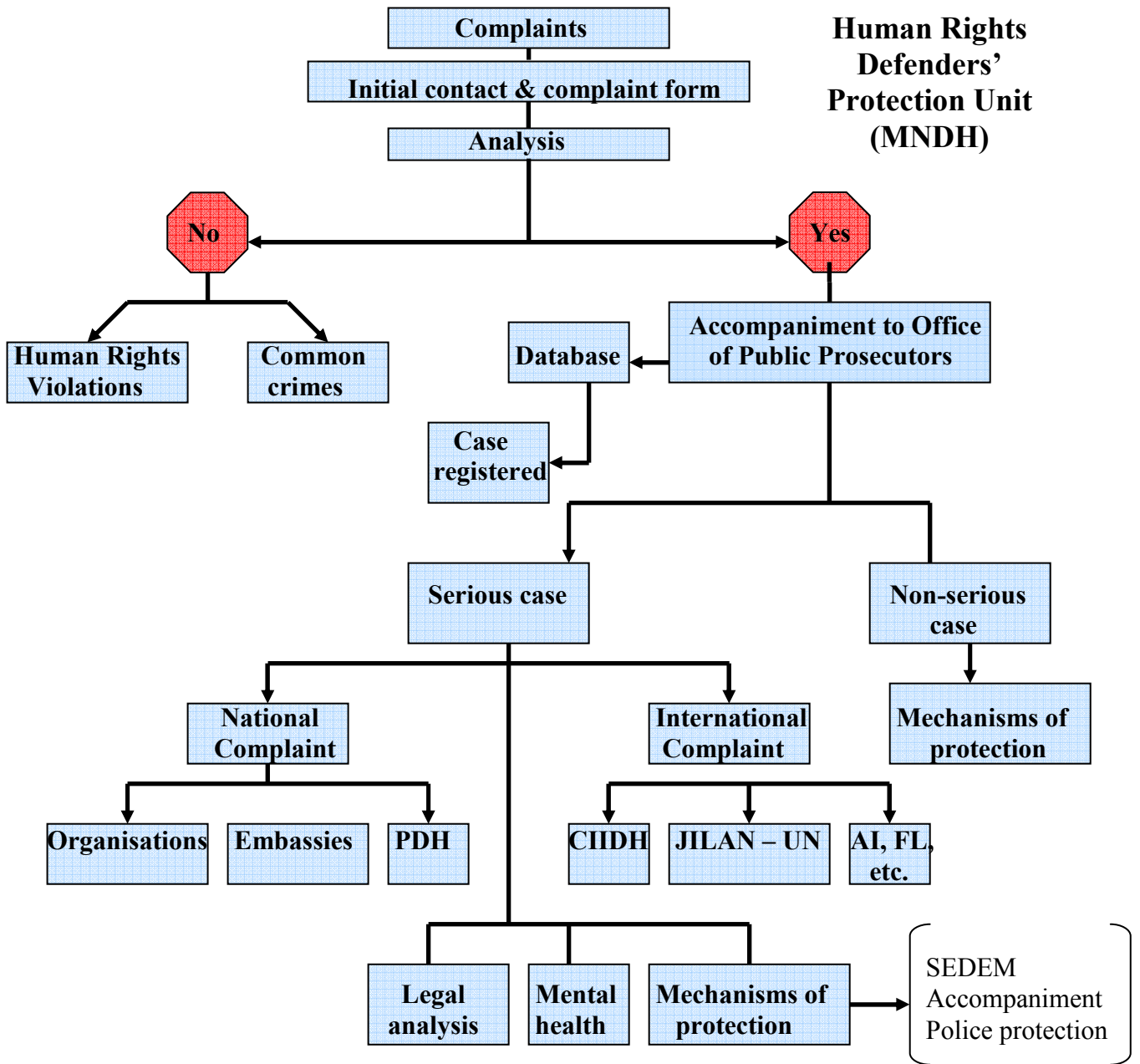
### XIII. Appendices

#### APPENDIX 1 Information processing organigram



January 2006

Organigram of the processing of protection work



January 2006

## APPENDIX 2

### Characteristics of the systematisation of attacks on human rights defenders

#### 1. Types of defender

Although the category of human rights defender incorporates any person or organisation that promotes or defends one or more rights, there is still resistance in Guatemala to being seen as a defender of human rights. It may therefore be surprising to find that this system of classification includes categories such as *campesinos*, development, journalists and trade unionists, despite the fact that their activity is clearly that of human rights defenders.

The table below sets out the types of defender included on the database:

TABLE 1  
Types of defender

Accompaniers	NA
Campesinos	Children and youth rights defenders
Development	Other
Sexual difference	Journalists
Government	Religious
Indigenous rights defenders	Maya priests
Law	Trade unionists
Women	Truth

For a clearer understanding of how the categories are determined, brief definitions of these categories are set out below:

- a. **Campesinos:** members of the Management Committee of an organisation fighting for the right to own, have access to, or regularise the situation regarding, land. They are also deemed to be defenders if they are members of regional or national coordinating committees of campesino organisations.
- b. **Development:** members of Executives of local development organisations, and of organisations whose objectives include the promotion of development and/or protection of the environment and of their employees.
- c. **Sexual difference:** organisations together with their employees and active members that defend the right to sexual difference and promote the right to health; transvestites and male and female sex workers who play active roles in promoting protection against Aids are also considered to be human rights defenders.
- d. **Government:** government organisations (and their employees) that aim to promote and defend human rights. This definition also covers staff employed by the Human Rights Procurator's Office, the Presidential Commission on Human Rights and the Special Human Rights Procurator's Office, all of which, because of government weakness, have become enemies of elements of power in the interior of the country.
- e. **Indigenous peoples:** leaders of organisations that campaign for the defence and promotion of indigenous rights, organisations deemed to be indigenous organisations and their employees, and indigenous leaders engaged in defending

- and promoting indigenous rights.
- f. **Law:** organisations (and their employees) whose work consists of reforming the legal and security system, or whose activities are designed to bring human rights violators to justice and to eliminate impunity. The latter part of this definition also incorporates organisations which, for example, because attacks are clearly linked to their actions around the search for justice, carry out development activities associated with development and the promotion and defence of human rights.
  - g. **Women:** organisations, their employees and/or members that promote and defend women's rights.
  - h. **Children and young people:** organisations and their employees that defend and promote the rights of children and young people.
  - i. **Other:** people whose activities do not fall into any of the previous categories because they concentrate on defending very specific human rights (e.g. those of consumers), but whose numbers are small; this category also includes human rights defenders who campaign in the areas of individual corruption and of academics who come under attack.
  - j. **Journalists:** people whose work as journalists embraces the origins of human rights, who investigate human rights issues and write about spaces for freedom of expression being closed down, and whose coverage of the corruption and human rights violations by civil servants has become a defence of human rights.
  - k. **Religious:** members of religious orders whose pastoral activities include campaigning for their parishioners' human rights (e.g. priests who accompany *campesinos*), and who become promoters and defenders of human rights.
  - l. **Maya priests:** the exclusiveness and racism of the Guatemalan state has resulted in the exercise of Maya spirituality being morally condemned by society; Maya guides are also taken to court for allegedly seizing land when using sacred places located on private property. The exercise of Maya spirituality is deemed to be an act of defending the human right to practise one's religion.
  - m. **Trade unionists:** trade union leaders and members who work for trade union coordination.
  - n. **Truth:** people, organisations and their employees, and leaders of local organisations that focus their activity on promotion and investigation around issues of truth and historical memory of the armed internal conflict: they include those who leaked the report of the Historical Clarification Commission, victims who struggle to receive compensation, and people who work on exhumations. This category is different from the more general one of Law as the defenders included under this heading did not see themselves as defenders of justice.

Although these definitions make no mention of the situation of unorganised human rights defenders, some of these also see themselves as defenders.

## 2. Aim of the activity

This section describes who/what are individually or institutionally affected by the activities of human rights defenders, and establishes a possible line of investigation into who are ultimately responsible for the attacks, rather than those who actually carry them out. The following table sets out categories defined as foci of activity.

TABLE 2  
**Focus of defenders' activities**

Race discrimination	Other
Guatemalan army	Journalism
Entrepreneurs and farm owners	National Civil Police
Government	Local police
Clandestine gangs	Ríos Montt
Various investigations	Human rights violations

The “Other” category includes situations where the focus of activity consists of individual people or specific groups or issues such as children, the environment and transvestites. Human rights violations occur when the activities are so varied that they involve all kinds of players in the field of violations, and it is not possible to identify a single group.

### **3. Types of violation of human rights**

Attacks on human rights defenders fall into six broad categories:

- \* violations of the right to live;
- \* violations of the right to personal integrity;
- \* violations of the right to freedom and security;
- \* violations of the right to private property;
- \* violations of the right to free expression of thought;
- \* violations of the right to justice.

This categorisation incorporates the classification of violations carried out by MINUGUA for the verification process. These broad types of violation are in turn divided into crimes committed against human rights defenders, and which become human rights violations because of government action or inaction. Judicial complaints, surveillance and persecution and forms of intimidation that do not constitute crimes are excluded.

The following table sets out actions/crimes by type of human rights violation.

TABLE 3  
Types of action/crime by violation

Violation	Crimes and sub-types of violation
Right to life	Murder
	Attempted murder
	Forced disappearance
Right to personal integrity	Torture
	Rape
Right to freedom and security	Kidnapping
	Attempted kidnapping
	Written threats
	Telephone threats
	Threats in person
	Surveillance
	Persecution
	Intimidation
Right to property	Raids
	Damage to property
Right to free expression	Defamation of civil servants
	Judicial complaint
Right to justice	Judicial complaint

Although most categories are self-explanatory, a few may be open to misinterpretation, and some of the differences therefore call for clarification.

**Threats in person** are different from **intimidation** in the sense that the former concern what the assailant and the victim say to one another, and where the first person shows unambiguously that s/he is going to kill either the other person or the person that the latter works for. In the case of **intimidation**, the assailant is not identified, and by making gestures or brandishing weapons, makes it clear that the victim is going to be killed. The high incidence of mobile telephone theft that accompanies other forms of threat means that it, too, is deemed to be an intimidatory act.

**Raids** and **damage to property** are marked by another difference: a **raid** involves unknown persons making a forced entry into an organisation's premises to examine or remove useful physical or electronic material; **damage to property** occurs when, for example, the intruders torched the organisation's premises, or to premises that have nothing to do with the break-in.

**Judicial complaints** may be filed as a result of two human rights violations: the first concerns free expression and a charge of defamation; the second involves complaints filed against defenders demanding implementation of the law, but who find themselves accused by their opponent.

#### 4. Evidence of planning and personnel

When analysing patterns with a view to establishing the existence of active illegal groups and clandestine apparatuses, it is important to find evidence of the existence of an

intelligence operation conducted in counter-insurgency style. This analysis assumes that some attacks are carried out by gangs trained or led by serving or retired soldiers with training in intelligence.

Here is a brief description of what to look for when analysing attacks:

1. **Prior surveillance:** when there is evidence of there having been surveillance locally during the days and/or hours prior to the attack; this form of surveillance may be carried out by local or unknown people.
2. **Previous warnings:** when hours, days or weeks before the attack, somebody receives threats or is subjected to less serious attacks.
3. **On-the-spot surveillance:** when it is possible to establish that there are people in the vicinity during the attack, ensuring that the assailants can escape or that the attack is effective.
4. **Several vehicles:** when more than one vehicle is used in the attack; this implies the involvement of a more complex infrastructure (e.g. means of communication and cover for more than one vehicle).
5. **Subsequent surveillance:** when there is clear evidence of surveillance just as the trial of the assailants is getting under way, and investigations are being conducted privately, or by the police or the Human Rights Procurator's Office.
6. **Impetus lost in subsequent investigations:** when there is evidence that someone (e.g. an employee of the National Civil Police or the Office of the Public Prosecutor, or an unknown person) is doing something to disturb the scene of the crime, confuse witnesses or lose evidence.
7. **Threats made to witnesses:** when witnesses to a crime are threatened by people who do not want them to provide information that could lead to the assailants being identified.

## 5. Patterns

Evidence over the years has shown that not all attacks are the same: that they do not proceed from the same source, but fall into a series of patterns. These patterns were identified in March 2003 when cases were being reviewed in the light of experience, and with a view to being classified. The typology is far from perfect, but it reflects a wish to group attacks against the following criteria:

- a) **Attacks on staff:** when attacks are carried out on employees (usually administrative and technical personnel) of human rights organisations. The aim of such attacks is to bring an organisation's work to a halt and remove the support of its leader. In other words, they do not attack the leader her/himself, but the staff, and this triggers a large number of situations that s/he has to resolve, and which will hinder her/his public and political work. Examples: the murder of Guillermo Ovalle, the Rigoberta Menchú Tum Foundation accountant, on 29 April 2002, and the kidnapping and torture of Domingo Yaxón, a messenger for CONAVIGUA on 3 May of the same year.
- b) **Attacks with multiple objectives and symbolic attacks:** when an attack is carried out on a defender or organisation whose political and coordination activities are normally linked to more than three different sectors of the human rights community, or to society as a whole. In this way, the attack not only meets the need to silence or hurt the defender or organisation, but also sends out a warning to the various sectors. These attacks are hard to investigate because

the victim is unable to identify who carried out the attack. Example: the kidnapping, intimidation and torture of José Rubén Zamora, the Editor of *El Periódico* and his family on 26 June 2003; this was seen as an outrage by journalists, the human rights sector and the political parties that had supported Zamora.

- c) **Attacks designed to break up or paralyse the organisation:** when defenders or organisations are systematically attacked in an attempt to force them to drop an investigation or complaint, or give up the campaign altogether. These attacks are marked by their brutality and by the development of mechanisms of terror. Classic examples of this kind of attack are the five break-ins over 16 months at the Centre for Studies, Information and Basis for Social Action (CEIBAS) and, during the same period, a series of threats, attempted kidnappings, attacks and messages that ultimately forced the Centre to close down.
- d) **Attacks by local government officials/specific enemies:** when an attack can be traced back to the Mayor, former military commissioners, former members of civil defence patrols, or the armed thugs of a particular farm owner. In these circumstances, the attack can be investigated because these are not national-level operators, but rather local ones that have banded together to try and silence a defender or an organisation.
- e) **Attacks aimed at obtaining information:** when the attack succeeds in obtaining information necessary for intelligence on the organisation or on the organisations' beneficiaries. Most break-ins come under this heading.
- f) **Attacks designed to remove a leader:** when an attack is carried out on one of the organisation's leaders. The aim is to cancel out the threat that this person represents to the relevant interests.
- g) **Attacks that take advantage of circumstances:** when the attack takes place against a backdrop of a wave of attacks on human rights defenders, or of ungovernability at national level. This makes it possible for the motive to be misinterpreted. Attacks of this sort usually have personal motives, but they all benefit from the opportunity offered by government inaction and all-pervading impunity. Example: the murder of Diego Xon in Chichicastenango on 5 April 2003. This was presented as a matter of settling old scores, but was actually interpreted as an attack on a human rights defender. The murder was carried out with help from government bodies.

## APPENDIX 3

## List of organisations attacked and number of attacks

“Diálogo” (Huehuetenango cable television)	2
“Where are the children?” Association (Asociación Dónde están los Niños y las Niñas)	6
Academy of Mayan Languages (Academia de Lenguas Mayas)	6
Alliance against Impunity (Alianza contra la Impunidad)	3
Alliance for Young People’s Humanitarian Development (Alianza para el Desarrollo Juvenil Humanitario)	2
Amnesty International	2
Anan Ixim Women’s Association (Asociación de Mujeres Anan Ixim)	1
Apostolic Vicariate of Petén (Vicariato Apostólico de Petén)	3
Archbishop’s Human Rights Office (Oficina de Derechos Humanos del Arzobispado de Guatemala)	16
Association for Education and Development (Asociación para la Educación y el Desarrollo)	2
Association for Justice and Reconciliation (Asociación por la Justicia y la Reconciliación)	6
Association for the Development of the Ceiba Community (Asociación para el Desarrollo de la Comunidad Ceiba)	1
<b>Association for the Integral Development of the Victims of Violence in the Verapaces, Maya-Achi (Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces Maya Achi)</b>	<b>15</b>
Association for the Promotion and Development of the Community (Asociación para la Promoción y el Desarrollo de la Comunidad)	4
Association for the Purchase of Land, and for the Regulation of Landholding and Land Ownership (Asociación Pro-Adquisición y Regulación de la Tenencia y Posesión de la Tierra)	12
Association of Family Members of Detained and Disappeared Persons of Guatemala (Asociación Familiares de Detenidos Desaparecidos de Guatemala)	4
Association of Friends of Izabal Lake (Asociación Amigos del Lago de Izabal)	1
Association of Journalists of Guatemala (Asociación de Periodistas de Guatemala)	2
Association of Law Students (Asociación de Estudiantes de Derecho)	1
Association of Liberated Lesbians (Asociación de Lesbianas Liberadas, LESBIRADAS)	2
Association of Parents and Children for Reconciliation (Asociación de Padres e Hijos para la Reconciliación)	2
Association of Sports Journalists (Asociación de Cronistas Deportivos)	6
Association of University Students (Asociación de Estudiantes Universitarios)	2
Association of Uprooted People of Petén (Asociación de Desarraigados del Petén)	3
Augustinian Lutheran Church of Guatemala	9
Austrian Accompaniment Project and International Accompaniment Coordinating Committee	1
Bishop of Quetzaltenango’s Pastoral Office for Land (Pastoral de la Tierra Obispado de Quetzaltenango)	3
Bishop of San Marcos’ Pastoral Office for Land (Pastoral de la Tierra del Obispado de San Marcos)	5
Canadian Association for the Study of International Development (Centro Canadiense de Estudios y Cooperación Internacional)	1

Casa Alianza	8
Catholic Church	7
Central American Development Association (Asociación del Desarrollo para América Central)	1
Central American Evangelical Center for Pastoral Studies (Centro Evangélico de Estudios Pastorales de Centro América)	1
Centre for Folklore Studies (Centro de Estudios Folklóricos)	6
Centre for Forensic Anthropology and Applied Sciences (Centro de Antropología Forense y Ciencias Aplicadas)	3
<b>Centre for Human Rights Legal Action (Centro para la Acción Legal en Derechos Humanos, CALDH)</b>	<b>33</b>
Centre for Informatative Reports on Guatemala (Centro de Reportes Informativos sobre Guatemala)	11
Centre for Information Gathering, Analysis and Measurement of the Impact of the News Media (Centro de Recopilación de Información y Análisis del Impacto Noticioso)	1
Centre for Popular Education (Centro de Educación Popular de Guatemala)	1
Centre for Training in Popular Education (Centro de Formación en Educación Popular)	1
Chichicastenango Commercial Union (Sindicato a favor del Comercio Chichicastenango)	1
Chichicastenango Commercial Workers' Union (Sindicato de Trabajadores de Comercio de Chichicastenango)	1
Chichicastenango Municipal Trade Union (Sindicato de la Municipalidad de Chichicastenango)	1
Chinautla Municipal Workers' Union (Sindicato de Trabajadores de la Municipalidad de Chinautla)	3
Citizens' Movement for Justice and Democracy (Movimiento Ciudadano por la Justicia y la Democracia)	1
Civic Front for Democracy (Frente Cívico por la Democracia)	6
Civil Aeronautical Trade Union (Sindicato de Aeronáutica Civil)	2
Civil-Political Convergence of Women (Convergencia Cívico Política de Mujeres)	1
Coffee Industry Trade Union (Sindicato de la Industria del Café)	2
Colomba Committee for Land (Comité ProTierras de Colomba)	1
Committee for Campesino Development (Comité de Desarrollo Campesino)	1
<b>Committee for Campesino Unity (Comité de Unidad Campesina)</b>	<b>26</b>
Committee for Housing (Comité de Pro Vivienda)	2
Community Training and Development (Capacitación y Desarrollo Comunitario)	1
Congress of the Republic (Deputy) (Congreso de la República, Diputado)	2
Coordinating Committee for Demanding Economic, Social and Cultural Rights (Coordinadora por la Exigibilidad de Derechos Económicos, Sociales y Culturales)	2
Cunén Association for Integrated Development (Asociación de Desarrollo Integral Campesina Cunén)	
Coordinating Committee of Integrated Development Associations (Coordinadora de Asociaciones de Desarrollo Integral)	2
Coordinating Committee of NGOs and Cooperatives (Coordinación de ONGs y Cooperativas)	4
Coordinating Committee of Organisations of the Mayan People (Coordinadora de Organizaciones del Pueblo Maya)	2
Council of Development Institutions (Consejo de Instituciones de Desarrollo)	1
Crédito Hipotecario Nacional Workers' Union (Sindicato de Trabajadores del	8

Crédito Hipotecario Nacional)	
Department of El Quiché Coordinating Committee for Disadvantaged Women (Coordinadora de Mujeres de Base del Departamento del Quiché)	10
Departmental Consultative Follow-up Conference on the Peace Accords (Mesa Departamental de Concertación Seguimiento AP)	1
Dioceses of San Marcos (Diócesis de San Marcos)	1
Ecology Foundation (Fundación para la Ecología)	1
El Periódico (newspaper)	3
El Tumbador Workers' Movement (Movimiento de Trabajadores del Tumbador)	2
Electricity and Power Workers' Union (Sindicato de Trabajadores de Luz y Fuerza)	1
Environment Team (Equipo Medio Ambiente)	4
Esquipulas Union of Commercial and Allied Workers (Sindicato de Trabajadores Comerciales y Similares de Esquipulas)	2
Events for Charity (Eventos por Caridad)	1
Family Members and Friends against Crime and Kidnapping (Familiares y Amigos contra la Delincuencia y el Secuestro)	2
Federation of Campesino and Popular Organisations (Federación de Organizaciones Campesinos y Populares)	1
Federation of White-Collar Bank Workers (Federación de Sindicatos de Empleados Bancarios)	1
Federation of Workers and Campesino Unions (Federación de Sindicatos de Obreros y Campesinos)	5
Finca María Lourdes Workers' Union (Sindicato de Trabajadores de la Finca María Lourdes)	2
Forestry Incentives Project (Proyecto de Incentivos Forestales)	2
Free Press Commission of the Association of Journalists (Comisión de Libertad de Prensa de la APG)	1
Front for Emerging Markets in Guatemala (Frente de Emergencia de Mercados de Guatemala)	1
Front of Guatemalan Settlers (Frente de Pobladores de Guatemala)	2
Fundamaya	2
General Workers' Union of Guatemala (Central General de Trabajadores de Guatemala)	9
Grass-roots Centre for Research and Investigation (Centro de Estudios e Investigaciones para la Base Social)	10
Group of Anguished Mothers (Agrupación Madres Angustiadas)	1
Guatemala Electricity Company (Empresa Eléctrica de Guatemala)	1
Guatemalan Association for the Development of Social Sciences (Asociación para el Avance de las Ciencias Sociales de Guatemala)	8
Guatemalan Association of Stallholders in Fairs (Asociación de Comerciantes de Ferias de Guatemala)	1
Guatemalan Centre for Environmental and Social Legal Action (Centro de Acción Legal Ambiental y Social de Guatemala)	4
Guatemalan Collective of Gays and Lesbians (Colectivo Gay Lésbico de Guatemala)	1
Guatemalan Coordinating Committee of the Mayan Peoples (Coordinadora de los Pueblos Mayas de Guatemala)	1
Guatemalan Education Workers' Union (Sindicato de Trabajadores de la Educación de Guatemala)	2
<b>Guatemalan Forensic Anthropology Foundation (Fundación de Antropología Forense)</b>	<b>20</b>
Guatemalan Institute of Comparative Criminal Science Studies (Instituto de Estudios	3

Comparados en Ciencias Penales de Guatemala, ICCPG)	
Guatemalan Lutheran Federation (Federación Luterana Guatemalteca)	1
Guatemalan National Front of Market Stallholders and the Informal Market (Frente Nacional de Vendedores de Mercados y Economía Informal de Guatemala)	1
Guatemalan National Human Rights Coordinating Committee (Coordinadora Nacional de Derechos Humanos de Guatemala)	2
Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca)	3
Guatemalan National Squatters' Coordinating Committee (Coordinadora Nacional de Asentamientos de Guatemala)	1
Guatemalan National Widows' Coordinating Committee (Coordinadora Nacional de Viudas de Guatemala)	5
Guatemalan Trade Union Unity Confederation (Confederación de Unidad Sindical de Guatemala)	1
Guatemalan Transport Workers' Union (Sindicato de Transportistas Fleteros de Guatemala)	2
Guatemalan Workers' Union (Unidad Sindical de los Trabajadores de Guatemala)	2
Health Workers' Union (Sindicato de Trabajadores de la Salud)	1
<b>Human Rights Procurator's Office (Procuraduría de los Derechos Humanos)</b>	<b>22</b>
Human Rights Research Centre (Centro de Investigación de Derechos Humanos)	1
Doctors' Union of the Guatemalan Social Security Institute (Sindicato de médicos del IGSS)	1
Impact of the News Media and Latest News, Huehuetenango (Noticiero Impacto y Últimas Noticias, Huehuetenango)	1
Independent international accompanier	2
Independent journalist	15
Independent lawyer	2
Indigenous Defence Unit of Sololá (Defensoría Indígena de Sololá)	1
Indigenous Defence Unit of Wajxaquib Noj (Defensoría Indígena Wajxaquib Noj)	1
Indigenous Defence Unit (Defensoría Indígena)	1
Indigenous Mayor's Office, Sololá	8
Indigenous Women's Defence Unit (Defensoría de la Mujer Indígena)	1
International Centre for Human Rights Investigations	10
International Human Rights Research Centre (Centro Internacional de Estudios por Derechos Humanos)	1
International Peace Brigades	8
Intervida	1
Ixqik Women's Association (Asociación de Mujeres Ixqik)	3
Izabal Banana Workers' Union (Sindicato de Trabajadores Bananeros de Izabal)	4
José Luis de León Library (Biblioteca José Luis de León)	1
Juventud Rebelde (Cuban daily youth newspaper)	1
Katoki Cooperative (Cooperativa Katokí)	1
Kemana'oj Development Association (Asociación de Desarrollo Kemana'oj)	1
La Cuerda Feminist Association (Asociación Feminista La Cuerda)	1
La Hora (daily newspaper)	1
La Pita Committee for Land (Comité Protierra la Pita)	1
Land Negotiation Commission (Comisión Negociadora de Tierras)	1
Lankin II Community Association (Asociación de la Comunidad Lankin II)	1
Los Cerritos Community Association (Asociación de la Comunidad de los Cerritos)	2
Majawil Quej (Nuevo Amanecer) Mayan Coordination Committee (Coordinadora Maya Majawil Quej, Nuevo Amanecer)	1

Mama Maquín	1
Managing Director of Radio Sonora (Director General de Radio Sonora)	1
Manuel Colom Argueta Foundation (Fundación Manuel Colom Argueta)	1
Mayan Defence Unit (Defensoría Maya)	4
Mayor of Ixtahuacán, Huehuetenango	1
Mesodiálogo	1
Migrant Support Centre (Centro de Atención al Migrante)	2
Monte Cristo Katoki Cooperative Project (Proyecto Monte Cristo de la Cooperativa Katoki)	3
Montúfar Association for Integral Development (Asociación de Desarrollo Integral de Montúfar)	2
Mutual Support Group (Grupo de Apoyo Mutuo)	15
Myrna Mack Foundation (Fundación Myrna Mack)	6
National Assembly of Teachers, Unity of Trade Union and Popular Power (Asamblea Nacional del Magisterio, Unidad de Acción Sindical y Popular)	2
National Committee of Campesino Organisations (Coordinadora Nacional de Organizaciones Campesinas)	9
National Council for Protected Areas (Consejo Nacional de Áreas Protegidas)	2
National Indigenous and Campesino Coordinating Committee (Coordinadora Nacional Indígena y Campesina)	6
National Maya Education Council (Consejo Nacional de Educación Maya)	1
National Teachers' Association (Asociación del Magisterio Nacional)	2
Network In Solidarity for Guatemala	1
No Violence against Women Project (Red de No Violencia Contra la Mujer)	1
Nuestro Diario (newspaper)	3
Office of the Public Prosecutor (Ministerio Público)	2
Organisation for the Promotion of Integrated Sexuality in Response to Aids (Organización de Apoyo a un Sexualidad Integrada frente al SIDA)	8
Organised Community Alliance of Human Rights (Alianza Comunitaria Organizada de Derechos Humanos)	1
Oxlajuj Ajpop	4
Panabajal Human Rights Commission (Comisión de Derechos Humanos de Aldea Panabajal)	5
Pastoral Office for Land (Oficina Pastoral de la Tierra)	1
Peace and Justice Services in Guatemala (Servicios Paz y Justicia de Guatemala)	3
Peace Jam	1
Positive People Association (Asociación Gente Positiva)	1
Prensa Libre (newspaper)	1
Presidential Commission on Human Rights (Comisión Presidencial de Derechos Humanos)	4
Psychology Studies and Training (Estudios y Capacitación Psicológica)	1
Radio Amatique	3
Radio Universidad	10
Retalhuleu Committee for Campesino Development (Comité de Desarrollo Campesino de Retalhuleu)	1
Rights in Action (Derechos en Acción)	1
<b>Rigoberta Menchú Tum Foundation (Fundación Rigoberta Menchú Tum)</b>	<b>22</b>
Runujel Junam Ethnic Council (Consejo Étnico Runujel Junam, CERJ)	6
Sacapulas Civic Front For Dignity (Frente Cívico por la Dignidad de Sacapulas)	8
Sami Project in Guatemala (Proyecto Sami en Guatemala)	3
Santa María Tzejá Community Cooperative (Cooperativa de la Comunidad de Santa	1

María Tzejá)	
Santa Rosa Human Rights Movement (Movimiento Derechos Humanos de Santa Rosa)	1
Santiago Development Project (Proyecto de Desarrollo Santiago)	1
Saqb'e	1
Self-employed Workers linked to the Government Workers' Union (Trabajadores Independientes ligados a la Unidad de Trabajadores Estatales)	1
Services for the Study and Promotion of Safety in Democracy (Servicios para el Estudio y Promoción de la Seguridad en Democracia)	6
Social Movement for Children and Youth (Movimiento Social de la Niñez y la Juventud)	1
Sololá Regional Coordinating Committee of Cooperatives (Coordinadora Regional de Cooperativas de Sololá)	2
Sons and Daughters for Identity and Justice against Oblivion and Silence (Hijos e Hijas por la Identidad y la Justicia Contra el Olvido y el Silencio)	12
Strategic Alliance for Human Rights (Alianza Estratégica por los Derechos Humanos)	3
Teachers' Union of Guatemala (Sindicato de Maestros de Guatemala)	3
Trade Union and Popular Action Union (Unidad de Acción Sindical y Popular)	2
Tzampoj Village Development and Human Rights Association (Asociación de Desarrollo y Derechos Humanos de Aldea Tzampoj)	7
Union of Rural Workers (Central de Trabajadores del Campo)	4
United Colonies Front (Frente de Colonias Unidas)	1
United Nations Verification Mission in Guatemala	1
Vamos Adelante Women's Association (Asociación Mujer Vamos Adelante)	3
<b>Verapaz Union of Campesino Organisations (Unión Verapacense de Organizaciones Campesinas)</b>	16
Without an organisation	22
Women in solidarity (Mujeres en Solidaridad)	2
Women's Organisation Coordinating Committee, National Women's Office (Coordinadora de Organización de Mujeres, Oficina Nacional de la Mujer)	1
Women's Sector (Sector de Mujeres)	1

The Human Rights Defenders Protection Unit of the National Human Rights Movement was established to monitor, accompany and protect defenders in all sectors, whether or not they belong to the country's social movement or human rights organisations. The framework for our action is enshrined in the 1998 Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders, the 2001 Inter-American Declaration on Human Rights Defenders and the Section 7 of the Global Peace Accord for Human Rights.

The Unit was formally established in 2003, although the movement had been collecting information with the MNDH since 2000. It provides a service through a mixture of volunteers and employed staff, and by coordinating specialist services provided by organisations in the National Human Rights Movement.

The Unit is funded by international bodies on a cooperative basis.