

**PERSPECTIVE SERIES**

**HUMAN RIGHTS IN GUATEMALA  
SINCE THE SIGNING OF THE PEACE ACCORDS**

**[PS/GTM/00.001]**

**APRIL 2000**

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WASHINGTON, D.C. 20536**

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**Research for this paper was completed 15 October 1998**

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## I. Introduction

Almost two years after the signing of peace accords ending a 36-year civil war, the human rights situation in Guatemala remained ambiguous and precarious despite major achievements in demobilizing the armed forces—both government and insurgent—that caused an estimated 200,000 deaths and disappearances during the war, and forced more than a million persons to flee their homes.

On the one hand, President Alvaro Arzú Irigoyen, who began his term of office with a purge of military officers and a commitment to achieve peace, has taken important steps to dismantle key elements of the military's network of terror. At its peak, that network consisted of almost a million men in arms, and, according to a report published by the Archdiocesan Human Rights Office, was responsible for the vast majority of the killings.<sup>1</sup> The military commissioners and civil patrols have been phased out, the Mobile Military Police disbanded, and the army cut back by one-third. At the same time, the guerrillas have disarmed and have converted their insurgency into a democratic political party that is preparing to take part in free elections.

Despite these important achievements, human rights continue to be violated with impunity. Human rights workers, journalists, union organizers, indigenous rights activists, street children, homosexuals, and women, among others, continue to face death threats and physical violence, including murder. Though much of this lingering violence has been dismissed as “common crime,” and though it has in fact occurred in the midst of a crime wave, there is little that is ordinary about many of these crimes. Death threats, for instance, are not a normal element of common crime. Nor are execution-style murders.

No one suspects the central government of involvement in these crimes. Active-duty members of the security forces are no longer implicated in most cases. There are, however, frequent indicators of the involvement of former members of the state counterinsurgency network. That is hardly surprising. Though the system of military commissioners and civil patrols in the countryside has been formally disbanded, many former members remain armed. While the army has repossessed the outmoded rifles it distributed to civil patrollers, it cannot legally confiscate the more modern guns it encouraged the patrollers to purchase on their own account.<sup>2</sup>

In the cities, members of disbanded government death squads retain not only their training and weapons, but their readiness to kill in cold blood. In the context of economic hardship, some have become criminals on their own account, engaging in kidnapping for ransom,

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<sup>1</sup> Hegstron, Edward. “Church finds higher toll of victims in Guatemala war,” *Miami Herald*, 24 April 1998.

<sup>2</sup> Kobrak, Paul, sociologist working for Catholic Relief Services in Guatemala. Telephone interview (11 June 1998).

drug trafficking, and auto theft. Others have hired themselves out as private security guards, or even as killers-for-hire. Still others are engaging in “social cleansing” operations against groups that are widely perceived as undesirable by the population at large, such as street children and homosexuals. In all of these cases, they continue to leave many of the telltale calling cards they left behind when they were hunting “subversives.”<sup>3</sup>

Though government agents are not in most cases directly responsible for this pattern of criminality, the government is in all cases indirectly responsible. As specified in international human rights treaties ratified by Guatemala, governments are not only held accountable for direct infringements on human rights, but for failure to enforce the rule of law. According to the United Nations Verification Mission in Guatemala (MINUGUA):

Responsibility for such executions is attributable to various groups, in some of which agents of the State participate either directly or indirectly. Nevertheless, a common denominator has been the passivity or total inaction of the institutions charged with administering justice in investigating and punishing these occurrences.<sup>4</sup>

The difficulty in getting the government to uphold the rule of law in the present has a lot to do with impunity for past actions. The official government truth commission charged with reporting on atrocities committed during the war is explicitly barred from naming the individuals who were responsible. That silence leaves individuals and nongovernmental organizations who wish to pursue justice in the courts severely exposed. It is commonplace for plaintiffs, witnesses, and prosecuting attorneys to be subjected to death threats—and in many cases wounded or killed—in an effort to obstruct justice. The upshot is that although some former civil patrollers have been sentenced to long prison terms for past atrocities, none of the high-ranking military officers who set the policies and gave the orders has yet been imprisoned.

The human rights record of the Arzú administration itself has been uneven. For all the progress made in demobilizing sections of the armed forces, President Arzú has yet to dismantle the Presidential General Staff (*Estado Mayor Presidencial*, EMP), as called for by the peace accords.<sup>5</sup> Since this was the military unit whose intelligence wing oversaw the operations of death squads, and given fresh reports of clandestine operations by that unit, its continued

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<sup>3</sup>MINUGUA notes that, without speculating “on the possible participation of state agents,” the “cases of ‘social cleansing’ have impunity as a common denominator.” *Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala*, 15 June 1998, ¶ 78.

<sup>4</sup>*Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 125.

<sup>5</sup>Amnesty International. “Guatemala,” *Amnesty International Annual Report 1998* (London: 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

existence is cause for concern. Arzú has also allowed members of the demobilized Mobile Military Police to join the new National Civilian Police without proper training and screening for human rights abuses. He has also organized an advertising boycott of publications whose editorial content has been critical of his administration.

In June 1997, Arzú nominated Francisco Villagrán Kramer for a seat on the Inter-American Commission on Human Rights of the Organization of American States. That action drew strong criticism from human rights organizations, who pointed out that Villagrán had served as vice-president under General Romeo Lucas García (1978-82), whose death squads, according to Human Rights Watch, “eliminated an entire generation of political and grassroots leaders.” Villagrán later formed a political alliance with another murderous general, Efraín Ríos Montt, whose scorched-earth policies led to massacres of indigenous villages in the countryside. That alliance has persisted, as Villagrán has sought to repeal the constitutional provision (Article 186) that prohibits anyone who took power through a coup—like Ríos Montt—from later running for president. The OAS did not elect Villagrán to the Commission.<sup>6</sup>

The complexity of the human rights situation in Guatemala is reflected in human rights reports. In his 1997 report, Human Rights Ombudsman (*Procurador de Derechos Humanos*) Julio Eduardo Arango Escobar, who owes his appointment to Congress, not the presidency, documented 134 illegal killings, 209 abuses of authority, 77 death threats, and 11 violations of freedom of expression. There were nine reports of forceful disappearance, most involving the acquiescence of the state. A large percentage of the complaints were filed against state security forces and corrupt public officials.<sup>7</sup>

Looking back on 1997 in its 1998 *Annual Report*, Amnesty International stated that:

There were continued reports of torture, “disappearances” and extrajudicial executions by members of the security forces and armed groups reportedly backed by the government. Few of those responsible for past human rights violations were brought to justice; most continued to benefit from impunity. People from many sectors of Guatemalan society, including human rights defenders, continued to be threatened and harassed.<sup>8</sup>

Freedom House drew similar conclusions in its 1997-1998 report on *Freedom in the World*:

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<sup>6</sup>Human Rights Watch. *Human Rights Watch World Report 1998* (New York: December 1997), p. 119; “Guatemala: Constitutional reforms reach discussion,” *Inforpress Centroamericana*, 1 May 1998.

<sup>7</sup>“Guatemala: Human Rights Ombudsman Presents Report on Violations,” FBIS-LAT-98-034, from *Prensa Libre*, 30 January 1998, p. 3.

<sup>8</sup>“Guatemala,” *Amnesty International Annual Report 1998* (London: Amnesty International, 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

The constitution guarantees religious freedom and the right to organize political parties, civic organizations and labor unions. However, political and civic expression is severely restricted by a climate of violence, lawlessness and military repression. Political violence, including murders, disappearances, bombings and death threats, decreased in 1997, but violent crime continued unabated. Politicians, student organizations, street children, peasant groups, labor unions, Indian organizations, refugees returning from Mexico, human rights groups and the media are all still at risk.<sup>9</sup>

The State Department, while crediting President Arzú with many improvements, offered a similar interpretation in its *Country Reports* for 1997:

The significant improvement in the overall human rights situation under the Arzu administration continued. In contrast to past years, there was a marked decline in new cases of human rights abuses, but problems remain in some areas. Positive political developments and the reduction of the size of the security forces, stemming from successful implementation of the Peace Accords, were major factors in these changes. Nevertheless, members of the security forces were implicated in some extrajudicial killings and mistreated suspects and detainees. MINUGUA and other human rights monitors accused the EMP of serious human rights abuses, including at least one forced disappearance. Prison conditions remain harsh. Arbitrary arrest and detention, and lengthy pretrial detention, remain problems. Efforts to reform the police and judiciary continued in an attempt to eliminate the climate of impunity, and the Government initiated some prosecutions of human rights abusers. The failure to resolve past serious human rights abuses remains a major problem. With judges and other law enforcement officials subject to intimidation and corruption, the inefficient judicial system is often unable to ensure fair trials and due process. Elements of the security forces infringed on citizens' privacy rights. Discrimination and violence against women persisted, as did societal abuse of children and discrimination against the disabled and indigenous people. Lynchings and mob attacks continued, and the Government was unable to prosecute the perpetrators.<sup>10</sup>

In its Eighth Report on Human Rights, covering the period from July 1, 1997 through March 31, 1998, the United Nations Verification Mission in Guatemala (MINUGUA) noted a “reduction in presumed violations of the rights to personal freedom, legal due process, and freedom of association,” but also “an increase in reports of violations of the rights to life, to physical security and integrity, and to the right to move around freely or to live wherever one

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<sup>9</sup>Freedom House, *Freedom in the World—1997-1998* (New York: Freedom House, 1998), p. 262.

<sup>10</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998) p. 527.

wants.” The Mission singled out the increase in threats to the right to life, and the resurgence of cases of forced disappearance, as being “serious” and “disturbing.”<sup>11</sup>

## II. The Economic Context

One of the principal sources of conflict in Guatemala, besides racial discrimination, has been the extreme gap between rich and poor, which closely parallels the racial divide. A prime objective of the Peace Accords has been to narrow that gap. Yet the government’s own planning department (SEGEPLAN) reports that the gap continues to grow. In the 1980s, the poorest 10% of the population received 2.4% of the national income, and the richest 10% received 41%. By the second half of the 1990s, the poorest 10% were receiving less than 2% of national income, and the richest 10% had increased their share to 44%. A large part of the problem is that salaries have not kept pace with inflation. Real wages are now less than half what they were in 1990.<sup>12</sup> That is in turn due in large measure to government policies that effectively discourage labor organizing, as described later in the section on labor unions. Nonunionized workers also suffer from minimum wages that are inadequate to meet the basic needs of an average family by the government’s own calculations, and that are widely disregarded in practice. As a result of all these factors, Guatemala has by far the highest incidence of extreme poverty (35%) in Central America, according to the UNDP’s *1997 Report on Human Development*.<sup>13</sup>

The distribution of poverty is highly correlated with ethnicity. The predominantly indigenous departments of El Quiché and Huehuetenango in mountainous northern Guatemala have poverty rates of 92% and 90%, respectively. At the other end of the spectrum, the mostly non-indigenous Department of Guatemala (Guatemala City) has a poverty rate of 64%. In 1988, annual per capita income in the Department of Guatemala was almost 29 times the per capita income in El Quiché.<sup>14</sup>

Another factor contributing to high rates of poverty is severe underemployment. Though nominal unemployment rates have been among the lowest in Latin America, they are not very useful indicators in an economy with a small formal sector. In 1996, only 27.4% of the economically active population was working in the formal sector of the economy. The rest was relegated to the informal sector, where low productivity and incomes result in poverty. The fact

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<sup>11</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 15, 17, 34.

<sup>12</sup>“Macroeconomic Gains Elude Majority,” *Cerigua Weekly Briefs* (Guatemala City: No. 3, 15 January 1998), p. 3.

<sup>13</sup>“Guatemala First in Region in Poverty,” *Cerigua Weekly Briefs* (Guatemala City: No. 24, 19 June 1997), p. 1.

<sup>14</sup>Tierney, Nancy Leigh. *Robbed of Humanity: Lives of Guatemalan Street Children* (St. Paul, MN: Pangaea, 1997), p. 5.



that the GDP could be produced with about 60% of the economically active population means that the equivalent rate of unemployment stands at about 40%.<sup>15</sup>

The political power of the country's wealthy elite has enabled it to resist taxation, and thereby plague Guatemala with one of the lowest rates of taxation in Latin America, limiting the revenues available to the government to invest in social programs such as education and health care. In the public health system, for instance, low rates of vaccination coverage jeopardize the future health of much of the population.<sup>16</sup>

To provide the resources needed to modernize the country, and provide a socioeconomic base for political stability, the Peace Accords call for at least a 50% increase in the tax rate by the year 2000, using the 1995 rate of 7.6% of GDP as a base. The 1997 level—9.1%—exceeded that year's target (8.6%), but the government has set a 1998 target of 9.7%, short of the 10% that is stipulated in the Agreement.<sup>17</sup>

The outlook for meeting the year 2000 target of 11.4% is growing increasingly dim. In March 1998, after widespread protests, President Arzú had Congress repeal the newly-enacted Single Property Tax (IUSI), which would have made the country's wealthy land barons shoulder a fairer share of the tax burden.<sup>18</sup> In mid-1999, the commercial and agricultural enterprise tax will become deductible from income tax, further undermining efforts to raise tax revenues. Were this to happen, according to MINUGUA, "it would pose a serious threat to the financial sustainability of the Peace Agreements."<sup>19</sup>

### **III. Demobilization of Security Forces and Guerrillas**

As might be expected in a country where the army long held unchallenged power, implementation of elements of the peace accords that deal with internal security has been uneven. Congress has yet to pass a promised constitutional amendment limiting the military to external defense. Meanwhile, responding to high crime rates and a shortage of trained police, the government has partially reinserted the army into domestic police affairs. In 1997, President Arzú

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<sup>15</sup>"El empleo," *Guatemala: Los contrastes del desarrollo humano* (United Nations, 1998), from <http://www.onu.org.gt/contrastes/>.

<sup>16</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), NEED NO. of REPORT 4 February 1998, ¶ 45.

<sup>17</sup>"Guatemala: Minister Provides 1997 Tax Collection Figures," FBIS-LAT-98-040, from *Siglo Veintiuno* (Guatemala City: 7 February 1998), NEED EMAIL ADDRESS; UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 4 February 1998, ¶ 37.

<sup>18</sup>"Guatemala: Article Says Arzú's Credibility Diminished With Tax Repeal," FBIS-LAT-98-073, from *Crónica*, (Guatemala City: 6-12 March 1998), p. 13-15.

<sup>19</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 4 February 1998, ¶ 37.

announced the reopening of interior military outposts that had been closed with the cessation of hostilities. Soldiers with assault weapons have been patrolling in large groups in Guatemala City and in rural areas, typically accompanied by a single policeman to provide a cover of legitimacy. MINUGUA reports that there is no indication that such patrols have reduced crime, and that on the contrary they have themselves engaged in human rights violations.<sup>20</sup> The principal coalition of indigenous groups—Coordinating Group of Organizations of the Mayan People of Guatemala (*Coordinadora de Organizaciones del Pueblo Maya de Guatemala*, COPMAGUA)—has objected to the reintroduction of the military in domestic affairs, pointing to its bloody history of dealing with indigenous communities.<sup>21</sup>

Under the accords, all “clandestine security machinery” is to be disbanded. The covert branch of the Presidential General Staff (*Estado Mayor Presidencial*, EMP)—formerly known as *Archivos*—was formally dissolved by President Ramiro de León Carpio in 1993. A year later, however, then-EMP head General Otto Pérez Molina told Human Rights Watch that only the operational arm had been closed down, and that the intelligence arm continued to function. The EMP’s secret Anti-Kidnapping Commando Group (*Comando Anti-Secuestros*) is widely believed to be the reincarnation of the operational arm. The Anti-Kidnapping Commando Group’s forced disappearance of Juan José Cabrera, alias “Mincho,” following the guerrillas’ abduction of an elderly wealthy woman in 1996, signaled a persistence of old patterns. Mincho was apparently murdered while captive. Both the government and the guerrillas withheld information on the Mincho case from the public, until MINUGUA issued a statement confirming it on May 20, 1997.

On September 11, 1997, fifteen heavily armed men carrying communications gear and wearing ski masks broke into the home of Ricardo Figueroa Delgado, a suspect in the kidnapping of a Danish businessman, then carried him away in a vehicle without license plates. The army then prohibited MINUGUA from inspecting one of its installations, in brazen violation of the agreement with the United Nations. Shortly thereafter, a similar team made another raid, leading to the release of the businessman. Almost a year later, Figueroa remains missing.<sup>22</sup> This and

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<sup>20</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 8. One of the combined patrols apparently shot to death 17-year-old José Ramiro Vásquez Benítez in the hamlet of El Astillero, Santa Rosa, on October 31, 1997, wounded Ramiro Antonio Alinán (16), and severely beat Felipe Nery Alinán Galindo (16). *Suplemento al octavo informe*, ¶ 14-15.

<sup>21</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 10; Byrne, Hugh. *The First Nine Months of the Guatemalan Peace Process: High Expectations and Daunting Challenges* (Washington, DC: Washington Office on Latin America, September 1997), p. 8.

<sup>22</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 35-37; Supplement to Eighth Report, ¶ 59.

several cases of torture of prisoners by the Anti-Kidnapping Commando Group in 1997 led MINUGUA to criticize the EMP for “broadly exceeding its duties and following procedures contrary to the law and the rule of law, to the detriment of an effective policy of citizen security.”<sup>23</sup> Rather than discipline the EMP for violations of law and the peace accords, President Arzú promoted EMP director Gen. Marco Tulio Espinoza to Chief of Staff, the second highest position in the armed forces.<sup>24</sup>

Congress dismantled the network of military commissioners on November 22, 1995. A year later, on November 28, 1996, it repealed the decree creating the civil patrols (Voluntary Civil Defense Committees, CVDCs), and the patrols were formally demobilized upon signing of the peace accord the following month.<sup>25</sup> In June 1997 MINUGUA reported that

There have been isolated cases where former CVDC members, claiming to be protected by their relationship with members of the armed forces, have continued to put undue pressure on civilian authorities or on the population.<sup>26</sup>

More recently, in its July 1998 report, MINUGUA noted the role of former civil patrollers in the growing number of lynchings taking place in rural areas. In its examination of 120 lynchings that resulted in 100 murders over a two-year period, the mission found that two-thirds were over alleged crimes against property, in which the value of the property was in most cases negligible. It noted that most lynchings occur in communities where the civil patrols had been prominent and powerful, and that in some cases former patrollers have been directly implicated. It also observed that the lynchings have been falsely described as conforming to traditional Mayan forms of justice, a characterization vigorously denied by indigenous organizations.<sup>27</sup>

MINUGUA reports the reappearance of death squads in the Petén. In the first quarter of 1998, three groups of eight well-trained, heavily armed men wearing dark clothes and ski masks, savagely murdered ten inhabitants of La Libertad. The executions began after the group circulated a list of alleged delinquents who were “condemned to death.” Those named who did not flee were systematically tortured and killed, and their mutilated cadavers dumped in front of the homes of other persons on the list. In one case, the murderers left behind a note that read

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<sup>23</sup>Human Rights Watch. *Human Rights Watch World Report 1998* (New York: 1997), p. 116-117.

<sup>24</sup>Byrne, Hugh. *The First Nine Months of the Guatemalan Peace Process: High Expectations and Daunting Challenge* (Washington, DC: Washington Office on Latin America, September 1997), p. 10.

<sup>25</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 30 June 1997, ¶ 47.

<sup>26</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 30 June 1997, ¶ 48.

<sup>27</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 22-24.

“We’re sorry, but we have to do this because it’s our job to clean communities.” Among the members of this self-described “social cleansing” group are former military commissioners and former civil patrol leaders. The bodies of this group’s victims—which it describes as thieves and marijuana smokers—have appeared primarily in areas where the army has intensified patrols.<sup>28</sup>

Such incidents caused Amnesty International to conclude:

The government maintained that both institutions [civil patrols and military commissioners] had been disbanded, but former agents of both organizations continued to be named as perpetrators of ongoing abuses.<sup>29</sup>

Despite lingering abuses by former military commissioners and civil patrollers, courts have begun to convict members of both groups for the murder of civilians:

- In November 1997, a court sentenced former civil patrol member Juan Acabal Patzán to 30 years for six murders, including the July 3, 1993 killing of editor and former presidential candidate Jorge Carpio Nicolle. Karen Fisher, representing the Alliance Against Impunity and the Carpio family, protested that the sentencing of one man was not enough. Twenty-five others accused of involvement in the killing, including the mastermind, and six other civil patrol members who have yet to be tried, remain at large.<sup>30</sup>
- In early February 1998, the Sacatepéquez Court of Appeals extended the sentence of former military commissioner Armando Tucubal Morales to 30 years for the 1994 slaying of evangelical pastor and human rights activist Pascual Serech. He had previously been sentenced in September 1997 to 20 years by the Chimaltenango Sentencing Court.<sup>31</sup>
- Later that month, the Sentencing Court of Huehuetenango sentenced former civil patrollers José, Alfonso, Santiago and Pascual López; Augusto Sánchez, Luis Velásquez, Marino Pérez, Pascual Gómez, Luis Díaz and Juan Díaz García, to ten years apiece for the 1993 murder of Juan Chanay Pablo, a member of the Campesino Unity Committee (CUC) killed while taking part in a demonstration demanding dissolution of the civil patrols.<sup>32</sup>

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<sup>28</sup>Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), 15 June 1998, ¶ 84-87.

<sup>29</sup>“Guatemala,” *Amnesty International Annual Report 1998* (London: Amnesty International, 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

<sup>30</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 529; Guatemala Human Rights Commission/USA. “Former patrol officer sentenced in Carpio case,” *Guatemala Human Rights Update* (Washington, DC: No. 22, 5 December 1997).

<sup>31</sup>U.S. Department of State, “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 529; Guatemala Human Rights Commission/USA. “Former patrol officer sentenced in Serech case,” *Guatemala Human Rights Update* (Washington, DC: 6 February 1998).

<sup>32</sup>Guatemala Human Rights Commission/USA. “Former PAC members sentenced for death of CUC demonstrator,” *Guatemala Human Rights Update* (Washington, DC: No. 4, 20 February 1998).

- In June 1998, the Court of El Quiché sentenced former civil patrollers Rubén Cruz López and Baltazar Raymundo Santiago to thirty years in prison for the 1990 abduction and murder of Nicolás Pacheco León, Miguel Cruz Velasco, and Gaspar Santiago in Chajul, El Quiché.<sup>33</sup>

Yet, as suggested by the slim progress to date in the Carpio case, impunity continues to be a problem. To date, the few convictions still have not touched those in authority who gave the orders. In its July 1998 report, MINUGUA stated that “the army maintained a generally uncooperative attitude in clarifying the responsibilities of higher-ranking officers in actions that violate human rights.” That has meant that “official investigations are limited to the responsibility of those who carried out the actions, often of lower rank, which is why there are no verdicts effectively holding responsible those who may have planned the actions.”<sup>34</sup> In many cases, even low-ranking but egregious human rights violators are being acquitted as witnesses, prosecutors, and judges are intimidated.

- On May 19, 1997, a court acquitted former military commissioner Cándido Noriega Estrada of 35 murder charges and 8 rape charges stemming from three occasions in 1982 when he led soldiers through the indigenous community of Toluché, Quiché, fingering supposed guerrilla sympathizers. During the trial, the mostly indigenous prosecution witnesses were subjected to threats and intimidation. They were also unable to communicate effectively, because they did not speak Spanish, and the translation into Spanish was flawed.<sup>35</sup> There nonetheless remains some hope for justice, since the public outcry following the acquittal led to suspension of the presiding judge, and to a successful motion for a new trial.<sup>36</sup>
- On July 31, 1997, a judge sentenced Carlos Venancio Escobar Fernández, formerly deputy director of the National Police 5th precinct in Guatemala City, to 30 years for the November 1994 police murder of university student Mario Alioto López Sánchez. Then-Interior Minister Danilo Parinello Blanco, Vice Minister Mario Mérida González, and National Police Director Salvador Figueroa each received ten years. But the judgments in their cases were overturned on appeal, and they were released in October over protests from the Archdiocesan Office on Human Rights (ODHA) and the Public Ministry (MP).<sup>37</sup> The appeals court also reduced charges against Escobar from first degree murder to unintentional homicide, and reduced his sentence to 10 years. A second policeman previously sentenced to 10 years was absolved.<sup>38</sup> Underscoring the

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<sup>33</sup>Guatemala Human Rights Commission/USA. “Ex-PAC officers sentenced for assassination,” *Guatemala Human Rights Update* (Washington, DC: No. 12-13, 26 June 1998).

<sup>34</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 63.

<sup>35</sup>Human Rights Watch. *Human Rights Watch World Report 1998* (New York: December 1997), p. 117-118.

<sup>36</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 528.

<sup>37</sup>Human Rights Watch. *Human Rights Watch World Report 1998* (New York: 1997), p. 117; Guatemala Human Rights Commission/USA “Officials sentenced in Alioto López Sánchez case are released,” *Guatemala Human Rights Update* (Washington, DC: No. 20, 7 November 1997).

<sup>38</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 528.

pressures faced by the judges, two of the judges who originally found the high-ranking officials guilty reported that they had subsequently received death threats.<sup>39</sup>

With such limited consequences for homicidal behavior, and with military officers virtually untouchable, the patterns of abuse persist. On March 18, 1997, Oscar Mejía Sánchez, an army captain, put a gun to the heads of Guillermo Tzum Zapeta, 14, and Ferenk Urizar Méndez, 19, in Santa Cruz del Quiché. Tzum Zapeta's mother called the National Police, which sent six agents who declined to detain the officer. That same day Urizar Méndez was found dead, shot in the head. The officer was then detained and charged, but merely placed under house arrest, and allowed to remain on active duty. Captain Mejía Sánchez, it turned out, was with the S-2 branch of the elite *kaibil* special forces, working for G-2 (military intelligence). The *kaibiles* had been responsible for massacres of entire villages during the war, and G-2 had been in charge of identifying persons to be killed as alleged "subversives." Presumably because of these associations, the victim's mother decided not to press charges, and the case was dropped.<sup>40</sup>

In some other respects, there has been progress. All 2,959 former URNG guerrillas have been demobilized and resettled.<sup>41</sup> Human rights groups had feared that the Law of National Reconciliation passed in December 1996 would be used to grant amnesty to members of the security forces and the guerrillas that had engaged in gross violations of human rights. As pointed out in the Andrew Reding paper, *Democracy and Human Rights in Guatemala*<sup>42</sup>, the law did not provide amnesty for crimes that violated international human rights treaties, such as the American Convention on Human Rights, ratified by Guatemala. To date, judges have held firm to the letter of the law, denying every request for amnesty made by defendants in human rights cases. No member of the military has been granted amnesty, and though guerrillas have been excused from charges of subversion, they have not been excused for human rights violations such as the murder of civilians.<sup>43</sup>

Nevertheless, in the continuing climate of impunity, Freedom House cautions that the security forces are the primary violators of human rights:

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<sup>39</sup> Amnesty International. "Guatemala," *Amnesty International Annual Report 1998* (London: 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

<sup>40</sup> *Suplemento al séptimo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), September 1997, ¶ 11-12.

<sup>41</sup> Byrne, Hugh. *The First Nine Months of the Guatemalan Peace Process: High Expectations and Daunting Challenges* (Washington, DC: Washington Office on Latin America, September 1997), p. 5; Guatemala Human Rights Commission/USA. "Last former URNG combatants settled," *Guatemala Human Rights Update* (Washington, DC: No. 8, 17 April 1998).

<sup>42</sup> Reding, Andrew. *Democracy and Human Rights in Guatemala*, World Policy Papers Series (New York: World Policy Institute, April 1997), p. 1-2.

<sup>43</sup> Human Rights Watch. *Human Rights Watch World Report 1998* (New York: 1997), p. 118.

The principal human rights offenders are the military, especially its intelligence unit; the police, until 1997 under military authority; a network of killers-for-hire linked to the armed forces, right-wing political groups and vigilante “social cleansing” groups.<sup>44</sup>

Underscoring the continuing dangers is the case of Edgar Estuardo Motta González. Motta had previously been the victim of a police assault in February 1995. His testimony that three members of the National Police (PN) had kidnapped and shot him and a friend, and left them to die (the friend died), resulted in death penalties for the officers in question. Following the conviction, however, unknown assailants presumably associated with the police shot and killed him in front of his home on October 8, 1997.<sup>45</sup>

#### **IV. The New National Civilian Police**

The peace accords provided for creation of a new police force—the *Policía Nacional Civil* (National Civilian Police, PNC)—free of military influence and of human rights violators. Yet the new police law passed by Congress in February 1997 did not bar former members of the security forces who violated human rights from joining the PNC.<sup>46</sup>

To ensure the “fitness of those selected to serve as professional police,” the Civil-Military Accord provided for a new police academy to prepare recruits and reeducate members of the existing but discredited National Police and Treasury Police (*Guardia de Hacienda*). The government has chosen to interpret this provision loosely, by transferring almost all of the present police to the PNC. That means over half of the new force will be drawn from police forces with a reputation for corruption and violence. According to the Washington Office on Latin America,

International experts familiar with the current Guatemalan National Police (PN) report it to be one of the most poorly prepared and corrupt in the region. Both the police and the Treasury Guard have an extremely low educational level, and the majority have received no specific training. Given the historical absence of any real selection procedure, many current members originally obtained their positions through influence or even purchased their positions. Members of the police, besides turning to graft and corruption to supplement their meager official salaries, have long been expected to give regular kickbacks to their superiors. As every report of the UN Human Rights Verification Mission (MINUGUA) has documented, members of the National Police are heavily involved in crime,

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<sup>44</sup>Freedom House. *Freedom in the World—1997-1998* (New York: 1998), p. 262.

<sup>45</sup>U.S. Department of State, “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 528.

<sup>46</sup>Amnesty International. “Guatemala,” *Amnesty International Annual Report 1998* (London: 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

extortion, and illegal police procedures. These are the people who are now to form not just the core, but the majority of the “new” Guatemalan National Civilian Police.<sup>47</sup>

In the same vein, MINUGUA reports that

The very low professional, educational and organizational level of the former National Police, its loss of public prestige and the high incidence of corruption in its ranks make it clear that the public security forces must be overhauled and corrupt and unprofessional elements removed.<sup>48</sup>

Yet the government has failed to properly screen PNC recruits to ensure that former human rights violators are not being rehired. The Civil-Military Accord allows former members of the armed forces to join the new police force only if they go through the same selection and training process as new recruits. To circumvent this provision, the government “laundered” at least 180 former members of the disbanded Mobile Military Police by reassigning them to the Treasury Guard, so that they could pretend to have come from a civilian police agency, and be eligible for an inside track with an abbreviated course. Not surprisingly, more than a dozen police with records of serious human rights violations have thus been admitted to the academy.<sup>49</sup> Compounding the problem was the fact that those who went through retraining received only an average of two to eight hours’ instruction on human rights and the judicial process.<sup>50</sup>

There have been similar problems with the selection of new recruits. Unable to get enough qualified applicants to fill all the training slots, the government accepted applicants who failed the entry examination, and others who came with “recommendations” from political figures. According to the Washington Office on Latin America, “almost half of those finally admitted were not subjected to any exam, nor was there any review of previous disciplinary complaints or criminal records.”<sup>51</sup> MINUGUA also reports instances of corruption in the

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<sup>47</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 3.

<sup>48</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 4 February 1998, ¶ 60.

<sup>49</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 6; UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 30 June 1997, ¶ 46; Human Rights Watch. *Human Rights Watch World Report 1998* (New York: December 1997), p. 117; *Suplemento al Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 169-170.

<sup>50</sup>Spence, Jack, et. al. *Promise and Reality: Implementation of the Guatemalan Peace Accords* (Cambridge, MA: Hemisphere Initiatives, August 1998), p. 33.

<sup>51</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 7.



selection of new recruits, including “purchase of places on the course and other irregularities which enabled candidates to be admitted who did not meet the necessary requirements.”<sup>52</sup>

The first PNC units were deployed in 1997 in Guatemala City, the coastal region of Escuintla, and the Petén.<sup>53</sup> Dogged by poor showings in opinion polls that indicate public dissatisfaction with efforts to curtail crime, the Arzú administration initially chose to place the new police in areas suffering epidemics of crime. The URNG, on the other hand, called for early deployment in isolated areas that were once the focus of conflict, as has been done in neighboring El Salvador. That would make it easier to fulfill the provision of the Accords which requires that the army be limited to defense from foreign aggression. Similarly, MINUGUA favors deployment in rural areas to counter the emergence of vigilantism, including lynchings, which have likewise become epidemic.<sup>54</sup> Accordingly, 1998 deployments have been in Quiché and Quezaltenango.<sup>55</sup>

An important aspect of police reform is the effort now underway to establish specialized bureaus to deal with drug trafficking, customs and tax evasion, border security, and violations of environmental protection standards, as stipulated in the Accord. These would not only help professionalize the police, but would clearly define these as subject to police, not military, jurisdiction. For though the military is supposed to be excluded from “internal security” under the peace accords, the army has been taking advantage of the vacuum to continue to assert itself in these areas, citing them as threats to “sovereignty and territorial integrity.”<sup>56</sup>

Despite the aforementioned problems, complaints of corruption and human rights violations by the police have declined in regions where the PNC has replaced the PN or the army.<sup>57</sup> Another encouraging development has been the training of indigenous police. Following extensive consultations in the towns of Nebaj, Cotzal, and Chajul in the Ixil Triangle of El Quiché, 60 Ixils were chosen for a pilot program at the new police academy. Forty were deployed

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<sup>52</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 4 February 1998, ¶ 63.

<sup>53</sup>UN General Assembly. *Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 4 February 1998, ¶ 64; Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 8.

<sup>54</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 8-9.

<sup>55</sup>*Suplemento al Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 180.

<sup>56</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 5; *Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 178.

<sup>57</sup>*Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 181.

in their native communities in 1998, helping break the traditional barracks mentality by enabling a greater proportion of police to live in their own communities.<sup>58</sup> In the most recent round of recruitment, the government extended its outreach to indigenous communities, selecting 235 candidates from ten ethnic groups. Also unprecedented is the incorporation of 390 women in the PNC.<sup>59</sup>

## V. Due Process and the Justice System

Though the Guatemalan constitution requires presentation of a court-issued arrest warrant prior to the detention of suspects, and mandates a maximum period of six hours to present a suspect to a judge, these safeguards are frequently ignored. In his annual report for 1997, the Human Rights Ombudsman documented 16 cases of illegal arrest.<sup>60</sup> According to the Department of State,

Despite legal safeguards, there were frequent credible reports of arrests without judicial warrants, illegal detention, and failure to adhere to prescribed time limits in legal proceedings....There are no reliable data on the number of arbitrary detentions, although most accounts agree that the security forces routinely ignore writs of habeas corpus in cases of illegal detention....Prisoners are often detained past their legal trial or release dates. Prisoners are sometimes not released in a timely fashion after completing their sentences due to the failure of judges to issue the necessary court order.<sup>61</sup>

The judiciary suffers from corruption, inefficiency, and intimidation by armed individuals and groups that are effectively beyond the reach of the law. MINUGUA reports that “death threats continue to affect prosecutors, judges, lawyers, and human rights workers.”<sup>62</sup> It also reports that the armed forces are applying psychological pressure on the courts in an effort to influence verdicts. On February 28, 1998, a large number of members of the Presidential General

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<sup>58</sup>Garst, Rachel. *The New Guatemalan National Civilian Police: A Problematic Beginning* (Washington, DC: Washington Office on Latin America, November 1997), p. 8; Report of the Secretary-General, United Nations Verification Mission in Guatemala (MINUGUA), 4 February 1998, ¶ 65.

<sup>59</sup>*Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 173, 175.

<sup>60</sup>“Guatemala: Human Rights Ombudsman Presents Report on Violations,” FBIS-LAT-98-034, from *Prensa Libre*, 30 January 1998, p. 3.

<sup>61</sup>U.S. Department of State, “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington, DC: Government Printing Office, March 1998), p. 531.

<sup>62</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 27.

Staff (EMP) entered the courtroom during the murder trial of fellow EMP member José Obdulio Valladares Arévalo, taking photographs and filming videos of all who were present.<sup>63</sup>

According to the Department of State,

The Constitution provides for an independent judiciary. Although independent, the judicial system often fails to provide fair trials due to inefficiency, corruption, and intimidation of judges and prosecutors. The courts' response to human rights violations, as well as to general criminal activity, has been inadequate. Members of the judiciary and prosecutors continued to receive threats aimed at influencing current decisions or as reprisals for past decisions. On September 29, the judge in a court responsible for investigating and bringing charges against a drug trafficking ring announced his resignation on account of death threats....The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment and insufficient numbers of investigators. In addition, prosecutors are susceptible to intimidation and corruption.<sup>64</sup>

A recent case in point was the May 20, 1998 murder of Public Ministry prosecutor Silvia Jerez Romero de Herrera on the Pan-American Highway. According to *La Hora* (May 25), the two suspects detained in the case were also implicated in the kidnapping of Olga Patricia Recinos Días de Diez, the Spanish wife of a prominent landowner in Retalhuleu—one of the cases Silvia Jerez had been working on.<sup>65</sup> Another example is the June 12 attack on the home of prosecutor Luis Arturo Archila Alvarez in Zone 5 of Guatemala City. Unidentified men fired on the prosecutor's house and automobile. Two days earlier, three newly-hired prosecutors announced they would be resigning from the Public Ministry, complaining of a "lack of defined criminal policy and moral support for newly-arrived officials at the institution."<sup>66</sup>

Though a large percentage of the majority indigenous population does not speak Spanish, the judicial system is in most cases still not providing interpreters, effectively denying due process rights to hundreds of thousands of Guatemalans. According to MINUGUA,

One of the due process guarantees is the right to be assisted by an interpreter if one doesn't understand or speak the language of the court, an especially important right in Guatemala because of its multiethnic character. In that respect, the

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<sup>63</sup>Valladares, a presidential bodyguard, shot to death Pedro Haroldo Sas Rompiche on 4 February 1996. *Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 65, 75.

<sup>64</sup>U.S. Department of State, "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington, DC: U.S. Government Printing Office, March 1998), p. 531.

<sup>65</sup>Guatemala Human Rights Commission/USA, *Update* (Washington, DC: No.11/98, 29 May 1998).

<sup>66</sup>"Guatemala: Unknown Individuals Attack New Prosecutor's Home," FBIS-TOT-98-163, from Agence France-Presse (AFP), 12 June 1998.

Mission has once again noted the absence of translators in the courts of law, a failing that seriously limits the exercise of the right of defense among indigenous persons.<sup>67</sup>

## VI. The Return of the Left to the Political Scene

In August 1997, the former guerrilla alliance URNG (*Unidad Revolucionaria Nacional Guatemalteca*, Guatemalan National Revolutionary Unity) converted itself into a democratic political party, maintaining the same name. A party assembly named Jorge Ismael Soto García (former commander “Pablo Monsanto”, founder of FAR, the Revolutionary Armed Forces) secretary general, and Ricardo Arnoldo Ramírez de León (former commander “Rolando Morán”) assistant secretary general. Ricardo Rosales Roman (former commander “Carlos González”) became recording secretary (*secretario de actas*), and Rodrigo Asturias (former commander “Gaspar Ilom,” head of ORPA-Revolutionary Organization of the People in Arms, and son of Nobel laureate in literature Miguel Angel Asturias) was made secretary for organization and municipal affairs, whenever he should return from exile.<sup>68</sup> Asturias returned to Guatemala on September 6, 1997.<sup>69</sup>

The party platform calls for extensive reform in the social and economic as well as political realms, and for full inclusion of indigenous peoples. According to deputy leader Ricardo Arnoldo Ramírez de León, the party statutes define the URNG as “democratic and revolutionary,” meaning it represents the “democratic left.”<sup>70</sup> Critics, many of them on the left, nonetheless questioned the new party’s commitment to democracy, given the fact that its leadership was chosen by 40 top-level cadres and former field commanders. As a result, the four former members of the URNG General Command head the party, and women and indigenous persons are seriously underrepresented, as they are in all other political parties except the New Guatemala Democratic Front (*Frente Democrático Nueva Guatemala*, FDNG).<sup>71</sup>

The FDNG was hastily formed by progressive intellectuals, human rights activists, and grassroots organizations in 1995 to run candidates in national congressional elections. It won 6 seats in Congress, making it the third largest voting bloc, and subsequently won several

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<sup>67</sup>Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), 15 June 1998, ¶ 46.

<sup>68</sup>“URNG Elects Provisional Executive Committee 30 Aug,” *Siglo Veintiuno*, 31 August 1997 (FBIS-LAT-97-245).

<sup>69</sup>Guatemala Human Rights Commission/USA. “Rodrigo Asturias Returns to Guatemala,” *Guatemala Human Rights Update* (Washington, DC: No. 16, 12 September 1997).

<sup>70</sup>“‘Exclusive’ Interview With URNG Leader,” *Prensa Libre*, 20 July 1997, 4 (FBIS-LAT-97-231).

<sup>71</sup>Taylor, Ruth. “The Left In Transition: Moving In To The Electoral Arena,” *Report on Guatemala* (Washington, DC: Guatemala Human Rights Commission/USA, Vol. 18, No. 4, Winter 1997).

municipal elections. In the June 7, 1998 municipal elections, however, it won only one of the 30 municipalities (out of a total of 330) up for grabs—Tajumulco, in western San Marcos.<sup>72</sup>

Though clearly the dominant party of the left, the FDNG has been handicapped by its origins. To register in time for the 1995 elections, it had to take over the existing registration of the Revolutionary Party (*Partido Revolucionario*, PR). Originally formed to support the ideals of the democratic Revolution of 1944, the PR became discredited through its more recent association with some of the country's most ruthless generals. Moreover, PR secretary general Rafael Arriaga Martínez insisted on retaining his post as a condition of converting the PR registration to the FDNG. That has given Arriaga substantial control over internal operations, finances and membership, and caused many members to abandon the nascent party. Even so, the FDNG has the most democratic internal processes of any Guatemalan party, and the highest level of participation of women and Maya representatives in leadership roles. The FDNG is considering an alliance with the URNG for the 1999 presidential election.

Another new force on the left is the United Democratic Left (*Unidad de la Izquierda Democrática*, UNID), which is fiercely independent of both the URNG or FDNG, despite similar political goals. Its nucleus consists of three groups: the Popular Support Groups (*Grupos de Apoyo Popular*, GAP), United Democracy (UD), and the Refugee Permanent Commissions (CCPP). The former two left the FDNG because of its alliance with the PR. UNID is also indirectly supported by the Rigoberta Menchú Foundation. Dominated by intellectuals and artists, it has a distinctly urban character that limits its appeal in rural Guatemala.<sup>73</sup>

A fourth party, occupying the center-left, is the Democratic Alliance (*Alianza Democrática*, AD). Formed in August 1997, the AD is a successor to the Democratic Civic Movement launched by journalist Oscar Clemente Marroquín in 1992, and to the Social Christian Party (*Partido Social Cristiano*, PSC). The link to the Social Christian Party places it in the Catholic reformist tradition. Marroquín, who is the leading columnist for the daily newspaper *La Hora*, is the party's secretary general. Its deputy secretary general is Alfonso Alonso Barillas, who, together with Danilo Barillas (slain in 1989), made the first contact with the then-rebel URNG in Madrid.<sup>74</sup>

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<sup>72</sup>"Guatemala: PAN dominates in mid-term Municipal elections," *Central America Report* (Guatemala City: Inforpress Centroamericana, 11 June 1998).

<sup>73</sup>Taylor, Ruth. "The Left In Transition: Moving In To The Electoral Arena," *Report on Guatemala*, Vol. 18, No. 4 (Winter 1997).

<sup>74</sup>"New 'Democratic Alliance' Party Formed," Spanish news agency ACAN-EFE, 27 August 1997 (FBIS-LAT-97-243); Taylor, Ruth. "The Left In Transition: Moving In To The Electoral Arena," *Report on Guatemala*, Vol. 18, No. 4 (Winter 1997).

Despite the generally more open political atmosphere, politicians and political activists—particularly those perceived to be on the left—continue to be at risk:

- On January 31, 1997, two army specialists shot and killed Congressman Joel Mendoza Pineda and his 7-year-old nephew in Escuintla. The two were shot in the congressman's car as he was about to drive for a radio interview that turned out to have been a ploy to get him out of the house. The soldiers were jailed, along with several alleged co-conspirators, including a municipal policeman.<sup>75</sup>
- On April 6, 1997, former civil patrollers beat Pascual López Méndez, resident of a hamlet in Colotenango, Huehuetenango, accusing him of being a guerrilla because of his membership in the Peasant Unity Committee (*Comité de Unidad Campesina*, CUC).<sup>76</sup>
- On April 11, 1997, six former civil patrollers assaulted Alberto Godínez, a demobilized URNG combatant and now president of the Pro-Improvement Committee of the hamlet of El Chorro, Colotenango, Huehuetenango, and leader of the CUC. Though the former patrollers inflicted serious injury to Godínez' left arm and hand, severing the tendons to four fingers, a local court dismissed the injuries as minor.<sup>77</sup>
- On November 1, 1997, the body of Pedro Lugo Ramírez, a former URNG combatant, was discovered with seven bullet holes, on the Las Ilusiones plantation, in Santa Lucía Cotzumalguapa, Escuintla. The authorities have not fulfilled their obligation to investigate the case in a thorough and timely manner.<sup>78</sup>
- On February 25, 1998, one or more unknown assailants murdered Juan González Lanas, shooting him three times in the back as he was working his land in Las Victorias, Santa Barbara, Suchitepéquez. González, who had been receiving death threats for two years, was a leader of the Pro-Land Movement in his community, and a former URNG combatant.<sup>79</sup>
- On May 6, 1998, masked gunmen broke into the home of Santa Cruz del Quiché mayor Luis Yat Zapeta, 31, and shot him to death in front of his family. The mayor, a Maya, had worked with victims of violence, and helped organize human rights efforts. Elected to Congress in 1995, Yat Zapeta had just taken office as mayor in February. The Mutual Support Group for Families

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<sup>75</sup>Suplemento al séptimo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), September 1997, ¶ 6.

<sup>76</sup>Suplemento al séptimo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), ¶ 16.

<sup>77</sup>Suplemento al séptimo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), ¶ 17.

<sup>78</sup>Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala (MINUGUA), 15 June 1998, ¶ 115-116.

<sup>79</sup>"Land Movement Leader Assassinated," *NISGUA Rapid Response Alert*, 19 March 1998.

of the Disappeared (GAM) and the Defensoría Maya denounced the assassination as politically motivated.<sup>80</sup>

## VII. Labor laws and treatment of union organizers

In 1996, the Guatemalan Congress ratified Convention 169 of the International Labour Organization. In April 1997, the Ministry of Labor and Social Welfare created eight labor and social welfare courts of first instance. But because of delays in naming judges, only two cases had been heard by the end of April 1998.<sup>81</sup> According to the International Confederation of Free Trade Unions (ICFTU),

The government said it had doubled the number of labour inspectors, but enforcement of the labour code remained poor. Several new labour courts were created at the end of 1996 but the system was still inefficient, inadequate and often corrupt. Labour ministry officials collude with employers, and there have been reports that the labour ministry warned companies in advance of “surprise inspections.”<sup>82</sup>

In November 1997, Decree 114-97 removed public sector employees from the jurisdiction of the labor ministry, in effect denying them the right to legal recognition and to collective bargaining. It also seemingly placed employer-sponsored “solidarity organizations” on a legal par with free labor unions. In May 1998, Congress enacted additional changes to the labor code, but still failed to address the single greatest obstacle to enforcing the labor laws—the fact that the executive branch, including the labor ministry, still has no authority to impose sanctions on violators. That forces reliance on a woefully inadequate, slow, and often corrupt judicial system.<sup>83</sup>

Looking back on 1997, MINUGUA reported that

...although the procedures for the authorization of trade unions have been streamlined, the situation with regard to worker organization remains precarious, as the signs of anti-union practices at the time of the first collective actions

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<sup>80</sup>“Indigenous Mayor Killed,” *Connection to the Americas* (Minneapolis: Resource Center of the Americas, Vol. 15, No. 5, June 1998), p. 9. Guatemala Human Rights Commission/USA. *Guatemala Human Rights Update* (Washington, DC: #10/98, May 15, 1998).

<sup>81</sup>*Report of the Secretary-General, United Nations Verification Mission in Guatemala* (MINUGUA), 30 June 1997, ¶ 24; “Worker Rights and the Generalized System of Preferences—Guatemala: The AFL-CIO Petition to the Office of the United States Trade Representative, 16 June 1998, p. 6.

<sup>82</sup>International Confederation of Free Trade Unions. “Guatemala,” *Annual Survey of Violations of Labor Rights 1998* (from <http://www.icftu.org/english/turights/survey1998/etusurvey1998.html>).

<sup>83</sup>International Labor Rights Fund, et al. *To the U.S. Trade Representative: A Petition and Request for Review of the GSP Status of Guatemala Under the GSP Worker Rights Provisions* (15 June 1998), p. 4-6.

indicate. This could be one of the reasons for the drop in the number of applications for recognition of trade union organizations.<sup>84</sup>

According to the International Confederation of Free Trade Unions (ICFTU),

Unions are destroyed through sustained threats and pressure, firings, and plant closures. There is only one collective agreement in the maquiladoras. Working conditions are poor and workers are forced to work long hours. While violence against union activists has decreased, there are still reports that factory owners and employers hire thugs and gunmen to intimidate workers. They are rarely prosecuted.<sup>85</sup>

Under the glare of international publicity, giant shirt-maker Phillips-Van Heusen Corporation (PVH) reversed a six-year anti-union policy at its Guatemala plant, and negotiated a collective bargaining agreement with the Camisa Modernas' Workers Union (*Sindicato de Trabajadores de Camisas Modernas*, STECAMOSA). Significantly, the Guatemalan government played no role in this outcome. For a union to be recognized, the Labor Ministry must certify that it has the publicly-declared support of at least 25% of the workers—no easy task in the context of harassment of workers who express sympathy for unions. For only the second time in Guatemalan history, and the first time in ten years, a maquila union was able, with assistance from foreign unions, to demonstrate that it met the standard. Yet the labor minister ignored the results. Foreign union organizers, however, noticed that Bruce Klatsky, chief executive officer of PVH, also sat on the board of Human Rights Watch. That prompted Human Rights Watch to send a fact-finding team to Guatemala. It was their report, which criticized the ministry of labor for failing to certify the union, and accused local PVH personnel of engaging in illegal union-busting, that led CEO Klatsky to reverse course. A contract was ratified on August 14, providing the mostly female work force with wage increases slightly higher than inflation, a grievance procedure, and increased lunch, transportation, and child-care subsidies.<sup>86</sup>

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<sup>84</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala [MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 50.

<sup>85</sup>International Confederation of Free Trade Unions. "Guatemala," *Annual Survey of Violations of Labor Rights 1998* (from <http://www.icftu.org/english/turights/survey1998/etusurvey1998.html>).

<sup>86</sup>Bounds, Wendy. "Phillips-Van Heusen, in Reversal, Plans To Negotiate With Union in Guatemala," *Wall Street Journal* (New York: 18 March 1997); "Human Rights Watch Report Supports Workers; PVH Agrees to Negotiate!," *U.S./Guatemala Labor Education Campaign Update* (Chicago, IL: #18, April 1997), p. 1-3; "PVH Contract Signed in Guatemala!," *U.S./Guatemala Labor Education Campaign Update* (Chicago, IL: #20, October 1997), p. 1-2; Human Rights Watch. *Human Rights Watch World Report 1998* (New York: 1997), p. 119.



The labor dispute at another garment maquiladora, Korean-owned Daimi Atlántica, is more typical of what happens without foreign exposure. In mid-1997, workers began organizing for recognition of a union. As is customary in such cases, workers filed for a court injunction to prevent management from firing union organizers. Prior to receiving formal notification, the company fired several organizers, including Santos Tocay Gómez, who could not legally be fired anyway, because she was still in the post-partem nursing period. After receiving legal notice, management held the three workers who had signed the documents after work. For more than four hours, they offered the workers bribes, threatened them with dismissal and blacklisting, warned that the factory would have to close, and cautioned that union organizing is dangerous and potentially deadly. The two female employees desisted, but the male held firm, and was dropped off in a dangerous part of town in the middle of the night. The company then fired more workers in defiance of the injunction. It also organized gangs of pro-management workers who threatened union supporters as they exited the factory gates. Then, on February 2, 1998, labor inspector Gerardo Morales Rodríguez showed up for a spot inspection. Without ever getting in touch with pro-union workers, the inspector certified that the company had not violated any labor laws. The document, signed by two supervisors, stated that workers were paid according to law, even though workers had pay stubs that proved they were not receiving minimum wage. With the police, the courts, and the labor ministry failing to enforce the labor laws, workers eventually abandoned their unionizing efforts.<sup>87</sup>

Agricultural workers face similar obstacles. On February 19, 1998, banana workers seeking to organize a union at Bandegua's Mopa and Panorama plantations on the Caribbean Coast obtained an injunction prohibiting any firings without a court order. Yet Guillermo Lippman Romero, who manages the two plantations on a lease from Bandegua, the Guatemala subsidiary of Del Monte Fresh Produce, fired 22 workers on February 23, reportedly getting labor inspectors to backdate the documents to February 18. Lippman ignored a court order to reinstate the fired employees, instead closing the plantations and accusing the workers of an illegal occupation. On March 25, three hundred National Police searched the plantations in an attempt to arrest 69 workers.<sup>88</sup> About 50 National Civilian Police officers then set up roadblocks in the area, checking identification against lists of union organizers. On April 14, workers at Bandegua's El Paraiso banana plantation went on strike in support of 16 co-workers who had been fired after they filed for a court injunction on April 6, the first step in organizing a union. Bandegua leases

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<sup>87</sup>*Worker Rights and the Generalized System of Preferences—Guatemala: The AFL-CIO Petition to the Office of the United States Trade Representative* (Washington, DC: 16 June 1998), p. 16-18.

<sup>88</sup>"4,500 Banana Workers Strike Del Monte: Police Set Roadblocks; Chiquita Also Faces Conflict," *U.S./Guatemala Labor Education Campaign Update* (Chicago, IL: #21-22, April 1998), p. 1-2.

El Paraiso to Francisco Rosal, and it was Rosal who fired the union organizers in brazen violation of the law, which does not permit discrimination against union organizers. On the first day of the strike, the chief security guard (Abel Ipiña) shot a worker (Oscar René Soto) in the chest.<sup>89</sup>

At issue is the substantial difference in wages paid on union and non-union plantations. Union workers on the Bandegua plantations earn \$6/day, about double the \$3.00/day minimum wage for non-union workers. Major banana companies, such as Del Monte, Chiquita, and Dole, have allegedly been trying to reduce labor costs by subcontracting production to local managers (as in the Del Monte-Bandegua-Lippman and Rosal arrangements) in an effort to circumvent labor unions. Chiquita (formerly United Fruit) relies on a de facto Guatemalan subsidiary called Cobigua to supply it with bananas, and Cobigua subcontracts to local plantation owners. The Arizona and Alabama plantations, which produce for Cobigua, are owned by Victor Manuel Morales Haeussler. Following efforts to organize a union on those plantations, Morales fired all the workers who were on the executive committee of the pro-union group, then shut down operations and accused workers of illegally occupying the plantations.<sup>90</sup>

MINUGUA reports yet another example of such obstruction, on the Nueva Florencia plantation in Colomba, Quetzaltenango. In that case, the owner fired 32 workers a week after they had filed legal notice that they were trying to form a union.<sup>91</sup>

Because of the aforementioned impediments to organizing, only 8% of Guatemala's work force is unionized. But that is only the beginning of the problem. According to the Department of State,

Workers have the right to strike, but Labor Code procedures for having a strike recognized as legal are cumbersome. Labor organizers criticize the requirement that two-thirds of the work force must approve a vote to strike, the prohibition of strikes by agricultural workers at harvest time, and the right of the Government to prohibit strikes that it considers seriously harmful to the national economy.<sup>92</sup>

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<sup>89</sup>"Guatemala: Banana Workers Strike," *Connection to the Americas* (Minneapolis, MN: Resource Center of the Americas, Vol. 15, No. 4, May 1998), p. 7-8; *Worker Rights and the Generalized System of Preferences—Guatemala: The AFL-CIO Petition to the Office of the United States Trade Representative* (Washington, DC: 16 June 1998), p. 12.

<sup>90</sup>"4,500 Banana Workers Strike Del Monte: Police Set Roadblocks; Chiquita Also Faces Conflict," *U.S./Guatemala Labor Education Campaign Update* (Chicago, IL: #21-22, April 1998), p. 1-2.

<sup>91</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala [MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 53.

<sup>92</sup>U.S. Department of State. "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 536.

Minimum wages are inadequate to support a family above the poverty level, and are widely ignored. As reported by the Department of State,

Although the law sets minimum wages, the legally mandated minimum wage for most unskilled and semiskilled workers is not always paid. A bipartite committee representing labor and management in specific economic sectors is named each year to make recommendations for increases in the minimum wage. In the event that agreement is not possible, the Government may decree such increases. The most recent minimum wage increase took effect in December. The basic rate is \$3.28 (19.71 quetzales) for industrial workers for an 8-hour workday, including a required hourly bonus, and is \$2.98 (17.86 quetzales) per day plus mandatory productivity bonuses for agricultural workers. The minimum wage is not sufficient to provide even a minimum standard of living for a worker and family. According to the U.N. Development Program, an estimated 80 percent of the population lives below the poverty line, including approximately 60 percent of those employed.<sup>93</sup>

Child labor laws are also widely disregarded. The Constitution prohibits employment of minors under the age of 14 without written authorization from the Ministry of Labor. Yet, as reported by the Department of State, “children below this age are regularly employed in the informal and agricultural sectors, usually in small family enterprises....Laws governing the employment of minors are not effectively enforced, due to the shortage of qualified labor inspectors and structural weaknesses in the labor court system.”<sup>94</sup>

## **VIII. Truth Commissions: Efforts to Uncover the Truth about the Past**

An official truth commission—the Commission for Historical Clarification (Commission for Historical Clarification of Human Rights Violations and Other Acts of Violence That Have Caused the Suffering of the Guatemalan People)—began work on July 31, 1997, as provided for in the Peace Accords. Its budget was provided by grants from the governments of Guatemala, Canada, Denmark, the Netherlands, Norway, Sweden, and the United States totaling nearly \$4 million, half the amount requested by the Commission’s members.<sup>95</sup>

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<sup>93</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 538.

<sup>94</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 538.

<sup>95</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala [MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 13.

According to MINUGUA, the URNG has “gradually cooperated” in the investigations, whereas the armed forces have been less cooperative:

Commission members have indicated that, while the armed forces have provided information and made military documents available, replies have been slow and incomplete, access has been restricted and the documents provided are not key elements of military operations. This situation is cause for concern. Impartial clarification of what happened during the armed conflict is an important part of the peace process and an inalienable right of society as a whole, and victims in particular, to have the truth acknowledged.<sup>96</sup>

Underscoring the army’s reluctance to acknowledge the truth about its past behavior is its treatment of unusually candid remarks by Col. Otto Noack. In mid-July 1998, Noack, formerly the army’s chief spokesman, said the military should recognize the atrocities it committed during the civil war. The Army High Command immediately arrested Noack, sentencing him to 30 days’ imprisonment for making the statement.<sup>97</sup>

In April 1998, the Human Rights Office of the Archdiocese of Guatemala (*Oficina de Derechos Humanos del Arzobispado de Guatemala*, ODHAG) released a 1,400-page report entitled “Guatemala: Never Again,” documenting atrocities committed during the country’s 36-year civil war. The report, prepared by the Interdiocesan Project for the Recovery of Historical Memory (*Proyecto Interdiocesano de Recuperación de la Memoria Histórica*, REMHI), concluded that previous estimates of the number of persons killed during the war were too low. It estimated that 150,000 Guatemalans were killed outright, and another 50,000 “disappeared,” meaning they were taken away and never seen again. Investigators used sources of information not hitherto available under the strict controls maintained by the military, and conducted 6,500 interviews, many of them in Mayan languages. The report concludes that more than 90 percent of the victims were civilians, and about three quarters were Maya.<sup>98</sup>

According to early press reports in the United States, REMHI concluded that at least 80 percent of human rights violations were committed by the army and paramilitary allies of the army, including death squads and civil patrols, and that at least 9 percent were carried out by

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<sup>96</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala [MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 15.

<sup>97</sup>“Guatemala: Colonel who spoke out gets 30-day sentence,” *Miami Herald* (Miami, FL: 19 July 1998).

<sup>98</sup>Hegstrom, Edward. “Church finds higher toll of victims in Guatemala war,” *Miami Herald* (Miami, FL: 24 April 1998). Previous estimates were 100,000 killed outright, plus another 40,000 “disappeared.” John Ward Anderson, “Guatemalan Crime Soared After End of Civil Warfare,” *Washington Post*, 20 January 1998, p. A10.

guerrillas.<sup>99</sup> Yet the latter figure was not substantiated by the actual text of the REMHI report as finally published in July 1998, where it is nowhere to be found. The only fairly reliable comparative statistics are those for victims of massacres, since the figures in all other categories of killings are the product of unscientific sampling (REMHI acknowledges in a footnote that it oversampled URNG violations). In the case of massacres, on the other hand, REMHI believes it has figures that encompass nearly the entire sampling universe. Those figures suggest the guerrillas were responsible for 3% of the massacres and 3.6% of the killings. REMHI's best effort to come up with a figure for overall killing responsibility (subject to the aforementioned sampling errors) is 5.4%.<sup>100</sup>

## **IX. Human Rights Workers, including Members of the Clergy**

On April 26, 1998, just two days after Bishop Juan Gerardi Conedera presented the report "Guatemala: Never Again" in the Guatemala City Cathedral, one or more assailants bludgeoned him to death in his garage as he returned from having dinner with his sister. Gerardi, who was in charge of the archdiocese's human rights office, had long been at odds with the military. As bishop of El Quiché in the late 1970s and early 1980s, he had denounced army massacres. The army responded by killing three of his priests. In 1980, Gerardi narrowly escaped death himself when a peasant forewarned him of a planned army ambush. He closed the diocese and flew to the Vatican to brief the Pope in 1982, then was barred from reentering at the airport. He spent several years in exile in Costa Rica. When he was finally able to return to Guatemala, he was reassigned to Guatemala City for his own safety.

Police charged a 24-year-old drifter named Carlos Enrique Vielman with the crime. But his appearance did not match police sketches based on accounts of eyewitnesses, who also reported that there had been more than one intruder. Vielman's deformed right arm also raised doubts about his ability to lift the concrete block that was repeatedly used to crush the bishop's face to the point where the latter could only be recognized by his ecclesiastical ring.<sup>101</sup>

A month later, in May 1998, Pedro Notta, a priest and close associate of the slain bishop who helped prepare the report, fled Guatemala for his native Italy. He had been receiving death

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<sup>99</sup>Hegstrom, Edward. "Church finds higher toll of victims in Guatemala war," *Miami Herald* (Miami, FL: 24 April 1998). / Associated Press. "Prelate Killed in Guatemala After Issuing Rights Report," *New York Times* (New York: 28 April 1998).

<sup>100</sup>Oficina de Derechos Humanos del Arzobispado de Guatemala. *Proyecto Interdiocesano de Recuperación de la Memoria Histórica, Guatemala Nunca Más* (Guatemala: 1998), Tomo II ("Los Mecanismos del Horror"), p. 3 (note 4 on URNG oversampling, and sidebar), and Tomo IV ("Víctimas del Conflicto"), p. 517.

<sup>101</sup>Rohrer, Larry. "Bishop's Death Shakes Hopes for Guatemala Peace," *New York Times* (New York: 9 May 1998).

threats, which became more frequent after he read sections of the report at the April 24 presentation in the Cathedral.<sup>102</sup>

In June 1998, the investigation of the murder of Bishop Gerardi took a bizarre twist. With no progress in the case, rumors began circulating that the Bishop had been homosexual, and had been killed in a lovers' quarrel. As described in the section on homosexuals elsewhere in this report, Guatemalan society is deeply prejudiced on the issue of sexual orientation, making it an ideal vehicle for scapegoating. On July 22, the police arrested Mario Orantes, the priest who discovered the bishop's body in the garage of the San Sebastian Church rectory where both worked and lived. They also arrested Margarita López, a cook at the rectory.<sup>103</sup>

For physical evidence, the police relied on an analysis of photographs of the body, conducted by Spanish investigators. The Spaniards claimed that the photographs revealed dog bites, suggesting the involvement of the priest's German Shepherd, a gaunt 11-year-old male that walks with a limp.<sup>104</sup> A team of U.S. forensic experts, however, subsequently concluded otherwise after examining the disinterred body. Their autopsy determined that the wounds in question could not have been caused by dog bites. They also concluded that there had to have been at least two assailants, who not only bludgeoned the bishop with a chunk of concrete, but also fractured his eye sockets with a thin, hard, smooth object. They also noted evidence that the bishop's 240-pound body had been moved by two persons working together. "It was not a crime of passion," one of the experts told the *San Francisco Chronicle*. "It is a political crime. I don't say that because it is simply the more likely explanation. I say it because it is the only possibility."<sup>105</sup>

The focus of the investigation has since shifted to the military. Under suspicion are Captain Byron Lima Oliva, active member of the Presidential General Staff (EMP) on the day Bishop Gerardi was assassinated, and his father, Byron Lima, a retired infantry colonel, together with four other officers suspected of being collaborators: an Air Force major, two captains, and an infantry colonel. Captain Lima Oliva left the country four days after the assassination.<sup>106</sup>

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<sup>102</sup>Herald Wire Services. "Guatemala: Italian priest leaves country after threats," *Miami Herald* (Miami, FL: 26 May 1998).

<sup>103</sup>"Guatemala Jails Priest In Slaying," *Washington Post* (Washington, DC: 23 July 1998), p. A23.

<sup>104</sup>Hegstrom, Edward. "Bishop's body to be exhumed for new clues," *Miami Herald* (Miami, FL: 17 September 1998).

<sup>105</sup>Wallace, Bill. "Experts Say 2 Attackers Killed Guatemalan Bishop," *San Francisco Chronicle* (San Francisco, CA: 7 October 1998), p. A10.

<sup>106</sup>"Names of Gerardi Murder Suspects Revealed," *Prensa Libre* internet edition (7 August 1998) – as reported by the Foreign Broadcast Information Service (FBIS), PA1108203998.

Politicians and other public officials who have sought enforcement of human rights have been subjected to death threats. According to the State Department,

Several members of Congress, who are also leaders of human rights groups, reported receiving threatening letters at various times during the year. Other high-ranking officials working in the fields of human rights and jurisprudence complained publicly and privately of receiving threats stemming from their interest in resolving cases related to human rights violations, official corruption, and drug trafficking.<sup>107</sup>

Those who take part in the exhumation of the mass graves that are the legacy of massacres carried out in the 1970s and 1980s have been subjected to harassment, intimidation, and death threats. The perpetrators are believed to be former military commissioners, civil patrollers, and members of the armed forces who participated in atrocities, and are anxious to avoid exposure. In September 1997, for instance, unidentified men repeatedly came looking for Marlon García, a photographer with the Guatemalan Forensic Anthropology Team at his hotel in Izabal department, as he was working on the exhumation of a mass grave believed to contain the remains of as many as 100 Kekchí inhabitants of Panzós, Alta Verapaz, killed by soldiers in 1978, allegedly on orders of a local landowner with whom the villagers were in a dispute over land.<sup>108</sup>

According to MINUGUA, threats against human rights workers are on the rise throughout the country.<sup>109</sup>

## **X. Rights of Indigenous Peoples**

The Agreement on Identity and Rights of Indigenous Peoples has helped spur a growing involvement by, and recognition of, indigenous peoples in national institutions. Maya delegates are participating in the Presidential Office for Legal Assistance and Dispute Settlement in Land

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<sup>107</sup>U.S. Department of State. "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 534.

<sup>108</sup>Amnesty International. "Guatemala," *Amnesty International Annual Report 1998* (London: 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>. / UN Verification Mission in Guatemala (MINUGUA). *Octavo informe sobre derechos humanos de la Misión de Verificación de las Naciones Unidas en Guatemala* (15 June 1998), ¶ 92.

<sup>109</sup>UN Verification Mission in Guatemala (MINUGUA). *Octavo informe sobre derechos humanos de la Misión de Verificación de las Naciones Unidas en Guatemala* (15 June 1998), ¶ 90.

Matters, the Historical Clarification Commission, the Follow-Up Commission, the Commission on the Strengthening of the Justice System, and the Women's Forum.<sup>110</sup>

They are also taking part in the Educational Reform Advisory Commission. Yet the Coordinating Group of Organizations of the Mayan People in Guatemala (COPMAGUA) protested the inauguration of the Commission, complaining that indigenous peoples were seriously underrepresented. Though more than half the population is indigenous, indigenous representatives hold only 23% of the seats on the Commission.<sup>111</sup>

The Public Defender's Office, the Public Prosecutor's Office, and the judiciary have hired bilingual staff. The Public Prosecutor's Office, with assistance from MINUGUA, is training interpreters of indigenous languages. The Office of the Counsel for Human Rights has been consulting with indigenous organizations to improve its ability to defend indigenous rights.<sup>112</sup>

The Commission on Strengthening of the Justice System has recommended recognition of the principles, criteria, and procedures used by indigenous peoples to settle disputes. Recent amendments to the Code of Criminal Procedure have created Community Courts of the Peace, empowered to apply traditional usages and customs of indigenous communities in settling disputes. MINUGUA cautions, however, that

it is important that the implementation of these amendments should not weaken the traditional authorities responsible for applying indigenous norms, where such authorities exist. In this context, it is essential that communities be consulted in the process of selecting community justices of the peace and that the powers of community authorities to indicate what community norms apply be recognized, in accordance with the Agreement.<sup>113</sup>

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<sup>110</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala[MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 16.

<sup>111</sup>"New Education Commission Found Wanting," *Cerigua Weekly Briefs*, #43 (6 November 1997), p. 3. US Department of State. "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington, DC: US Government Printing Office, March 1998), p. 535.

<sup>112</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala[MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 17.

<sup>113</sup>UN General Assembly. *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development: United Nations Verification Mission in Guatemala[MINUGUA]: Report of the Secretary-General* (Geneva: 4 February 1998), ¶ 22.



## A. Land Rights and Conflicts

Indigenous peoples, whether nomadic or agricultural, have traditionally defined their collective identities in terms of their relationship to land (or, in some cases, a body of water). International law is just now beginning to address aboriginal claims in a serious way. Still unresolved is the relative weighing of two concepts of land rights. One, rooted in the concept of national self-determination, suggests that any nation, defined as a distinct ethnic group, should have sufficient autonomy to secure its survival. That can mean anything from having secure possession of traditional lands, to local autonomy, to independence. Another concept of land rights, based on international human rights law, instead centers all such claims in individual human beings, regardless of ethnicity. States tend to prefer this approach, because it forestalls the devolution of power to local authorities, and, in extreme cases, the creation of new independent states. As evidenced by the evolution of international treaties on indigenous rights, international law is tending toward a compromise that recognizes some validity to both approaches, in essence promoting greater autonomy for indigenous peoples while generally discouraging outright independence.

There is a growing international consensus in favor of recognizing the right of indigenous peoples to the *traditional uses* of the lands they have occupied. That means that if they were accustomed to using a given tract of land to hunt, that use of the land should be recognized by law. Similarly, agricultural communities should be able to continue farming the land they have occupied for extended periods of time. On the other hand, unless they had been previously engaged in mining, the subsoil rights would belong to all citizens of the state, not just the descendants of the particular aboriginal group that happened to be using the soil above the unknown minerals.<sup>114</sup>

In Guatemala, these concepts are particularly threatening to the status quo. Guatemala was already a settled country when the Spaniards conquered it several centuries ago. That means that the Mayan peoples, who remain a majority of the population, could eventually press claims to most of the land in the country. When one considers that the present pattern of ownership concentrates 72% of all tillable land in the hands of just 2% of the population, and that the landowning elite is predominantly of European descent, it is easy to see just how sensitive these issues are.<sup>115</sup>

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<sup>114</sup>Holley, Michael. "Recognizing the Rights of Indigenous People to Their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala,"<sup>15</sup> *Berkeley Journal of International Law* (1997) p. 135-142.

<sup>115</sup>Inter-American Commission of Human Rights, Organization of American States. "Guatemala," *Annual Report of the Inter-American Commission on Human Rights, 1993* (Washington, DC: 1994), p. 410.

As has happened in other settler states with majority indigenous populations (e.g., Ireland and South Africa), the elite has responded with a strategy of divide and conquer, pitting one native ethnic group against another. A case in point is the conflict between the Quiché and the Ixil (pronounced “ee-sheel”) in Los CimIENTos, on the edge of the Ixil Triangle.

The Ixil Triangle is a remote region in the mountainous northern department of El Quiché, centered on three towns—Nebaj, Cotzal, and Chajul. The ruggedness of the terrain, and the independent spirit of its inhabitants made it fertile ground for the Guerrilla Army of the Poor (*Ejército Guerrillero de los Pobres*, or EGP, which later merged with other guerrilla groups into the URNG) in the late 1970s. The army responded by making the area a prime target of its scorched-earth policy in the early 1980s. It destroyed most of the region’s villages, massacring thousands and displacing 80% of the population. It then concentrated the remaining population in fortified villages supervised by army garrisons, and required male inhabitants to take part in civil patrols. Adjusting to an apocalyptic reality, the residual Ixil population was careful to align itself with the victorious armed forces, and as described by David Stoll in *Between Two Armies in the Ixil Towns of Guatemala*, to embrace the civil patrols.<sup>116</sup> The army in turn rewarded loyalists by having them take over the lands of “subversives” who had either died or fled.

Los CimIENTos, which lies on the edge of the Ixil Triangle, sits just across a mountain range from Quiché territory. Around the turn of the century, Quichés first colonized the area, and were able to obtain legal title from President Cabrera in 1909. The Ixils, who had not previously occupied the area, challenged that title in court in the 1960s, hoping to expand their settlements. The court upheld the Quiché claim.

When the army’s counterinsurgency drive reached Los CimIENTos in late 1981, troops ferried in by helicopter rounded up villagers, accused them of sympathizing with the guerrillas, and instructed them to leave before their town was bombed into oblivion. To terrorize the inhabitants into fleeing, soldiers cut open two young men “like sheep.” Villagers were not allowed to return until 1990. By then, the army had built a new “model village” on the ashes of the old one. It had settled 50 Ixil families on the site, arming and organizing them into civil patrols, and erecting a military outpost atop the sacred ancestral cemetery of the Quichés.

In 1988, representatives of the 672 families in the community were able to get the civilian government to recognize their right to return to the land to which they held legal title. With help from an indigenous non-governmental organization, some 100 Quiché families resettled in the area in 1994. But with the Ixil occupiers still heavily armed and backed by the army, the once

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<sup>116</sup>Stoll, David. *Between Two Armies in the Ixil Towns of Guatemala* (New York: Columbia University Press, 1993), p. 93-128.

relatively prosperous Quiché farmers have only been able to squat on the edge of their lands, facing disease and malnutrition.<sup>117</sup>

Similar patterns underlie conflicts over land throughout the Maya-dominated regions of rural Guatemala. Sometimes, as in Los Cimientos, they pit one ethnic group against another; sometimes one village against another; sometimes one group of families against another. Typically, the army has fostered such conflicts by deliberately rupturing the traditional social fabric of Mayan communities. It has done so by deliberately breaking the ties to land that play a critical role in sustaining indigenous identity, and by replacing traditional leaders with persons chosen for their allegiance to outsiders, who have suddenly gained power over their communities through possession of firearms. Though the civil patrols have been formally disbanded, many patrollers remain armed, and are jealously guarding the lands and privileges they acquired by cooperating with the army.<sup>118</sup>

The Guatemalan government's acceptance of a MINUGUA-supported plan to recruit members of the National Civil Police (PCN) from the indigenous population of the Ixil Triangle needs to be understood in the context of the virtual destruction of the traditional Ixil social and political structure, and its replacement with a more compliant power structure. As documented by David Stoll, if there is anywhere that the scorched-earth policy of the early 1980s succeeded, it is there, which is why Guatemala City is now relatively comfortable letting the region police itself.<sup>119</sup> That could also explain why the government has been slow to replicate the experiment in community policing elsewhere among the Maya, as recommended by MINUGUA.

As provided for in the Peace Accords, the government formed a Permanent National Commission on Land Rights, composed of representatives of indigenous groups. Yet in March 1997, a hooded man in an army uniform shot to death two Commission members, Tomás Alonzo Sequen and his son, Roque Jacinto Alonzo Quisque, both indigenous community leaders in the department of Chimaltenango. And though the Socio-Economic Accord called for creation of a

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<sup>117</sup><sup>117</sup>Holley, Michael. "Recognizing the Rights of Indigenous People to Their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala," 15 *Berkeley Journal of International Law* (1997) p. 120-123.

<sup>118</sup><sup>118</sup>Holley, Michael. "Recognizing the Rights of Indigenous People to Their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala," 15 *Berkeley Journal of International Law* (1997) p. 130-135.

<sup>119</sup><sup>119</sup>Stoll, David. *Between Two Armies in the Ixil Towns of Guatemala* (New York: Columbia University Press, 1993), p. 15-16. Stoll, whose research only included the small Ixil area, and who only interviewed those who remained behind after the massacres, and did so at a time (1989) when the army was still in effective control of the area, nevertheless tries to draw the broad conclusion that civil patrols were on balance a positive development throughout rural Guatemala. He blames the guerrillas for provoking the army into massacring entire villages, and argues that the civil patrols, by restricting contact between the population and the guerrillas, helped protect the former from reprisals by the army. He also criticizes human rights organizations—among them Amnesty International and Human Rights Watch, which he loosely associates with "solidarity" organizations—for denouncing the army and civil patrols on the basis of international human rights norms that he believes are inappropriate in a context of counterinsurgency.

new commission to resolve land disputes, the government has continued to use the security forces for forced evictions, resulting in deaths and injuries. In August 1997, a forcible eviction from disputed lands in Sayaxché, El Petén, caused the death of at least two peasants.<sup>120</sup>

## **B. Language**

Another key element of indigenous peoples' identity is language. In addition to Spanish, and very often instead of Spanish, Guatemalans speak 22 recognized indigenous languages. The December 1996 Peace Accords formed a Commission to Officialize Guatemala's Indigenous Languages. Composed of representatives of each of the linguistic groups, the Commission presented its report to the government on March 23, 1998.

The report recommended establishment of three categories of languages. The first would consist of "territorial languages," defined as those that are spoken by more than 300,000 persons and more than 20 municipalities. Four languages would qualify: Mam, Kakchiquel, Quiché, and Kekchí. These would be made official throughout the regions in which they are spoken, and would be used in municipal governments, courts, medical clinics, and schools.

A second category—"community languages"—would consist of languages that are dominant in particular communities, but do not meet the criteria for territorial languages. These would be official only in the villages where they are spoken. The 16 languages in this category are Kanjobal, Tzutujil, Poqomchi, Ixil, Poqonam, Chuj, Jakalteko, Chorti, Achi, Sakapulteko, Akateko, Uspanteko, Mopan, Sipakapense, Tektiteko, and Garífuna (spoken by descendents of fugitive slaves who settled on the Caribbean coast two centuries ago).

A third category, "special languages," consists of two languages—Xinca and Itza—that are in danger of being lost. The Commission recommended that they be studied and rescued as integral parts of the national heritage.

The Commission also recommended that the government promote bilingualism in the Spanish-speaking population, and that place names be corrected to reflect indigenous usage.<sup>121</sup>

## **C. Traditional Clothing**

Guatemala's Mayan peoples have also traditionally expressed their identity through clothing. Weaving was an art form in the region long before the Spaniards arrived, and was used to make clothing that served as a badge of identity for ethnic groups. Following the Spanish

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<sup>120</sup>Amnesty International. "Guatemala," *Amnesty International Annual Report 1998* (London: 1998), from <http://www.amnesty.org/ailib/aireport/ar98/amr34.htm>.

<sup>121</sup>"Guatemala: Language Panel Reports," *Connection to the Americas* (Minneapolis, MN: Resource Center of the Americas, Vol. 15, No. 4 (May 1998), p. 8.

conquest, and the resettlement of the Mayan peoples in villages centered on the obligatory Catholic church, the focus of identity became narrowed to the particular village.

Originally, the distinctive forms of dress were worn by men and women alike. Today, they are worn almost exclusively by women except on ceremonial occasions. The most important women's garment is the *huipil*, a tunic embroidered with brightly colored patterns and symbols of spiritual significance to the Maya, such as jaguars and quetzals. Because they are made by hand, they cost as much as \$400, depending on intricacy and workmanship. In the context of widespread poverty, a family's *huipil* is typically a major part of its net worth, and a good indicator of the family's relative wealth.

The *huipil* identifies not only the ethnicity of the wearer, but the village to which she belongs. Though that traditionally helped cement the community together, in more recent times it has threatened both the community and the wearer. As guerrilla organizations began to build a social base of support among the Mayan peoples in the second half of the 1970s, the army's counterinsurgency efforts began to target communities that sympathized with the rebels. Mayan soldiers knew how to identify the village dress codes, which meant that in effect men and women wearing traditional dress might as well have been wearing identity cards. Soldiers could readily detain and execute persons from communities targeted for annihilation. Taking advantage of enmities between Mayan villages—especially adjacent villages with histories of conflict over land—the military armed loyalist Mayans to pursue traditional rivals. Guerrilla groups occasionally did likewise. In the early 1980s, as the slaughter of civilians hit an all-time high, wearing traditional Maya dress became too much of a liability. Men stopped wearing it for all but special ceremonial occasions. To a lesser degree, women did likewise. According to Otilia Lux de Coti, a Maya educator and indigenous rights advocate, “Many people had to change their dress so as to say they were not from a particular place. Not to do so would have put their lives in grave danger.”<sup>122</sup>

The war also displaced half a million Mayas, who fled to the relative safety of Guatemala City, the mountains, and Mexico. Many of those who went to the capital became influenced by television and advertising, which led them to want to dress in more modern ways. All three groups ended up intermingled with refugees from other villages and ethnic groups. That weakened village ties, but has strengthened ethnic identification.

For the first time since the conquest, a Mayan Renaissance is underway, as Mayans of the diaspora begin to recognize their common heritage and interests. One form this is taking is the wearing of the *huipil*. Rigoberta Menchú wore hers to Oslo to accept the Nobel Peace Prize;

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<sup>122</sup>Rohrer, Larry. “Maya Dress Tells a New Story, and It’s Not Pretty,” *New York Times* (New York: 13 June 1997).

Rosalina Tuyuc and other indigenous representatives in Congress likewise wear their *huipiles* to all official functions.

## **XI. Freedom of the Press, and Attacks on Editors and Journalists**

The Guatemalan peace process has enabled the communications media to become more critical and pluralistic in their reporting. The disappearance of government-sponsored death squads has enabled reporters to begin probing formerly forbidden subjects, such as government corruption, drug trafficking, and violations of human rights by the military. The weekly news magazine *Crónica* has established a reputation for aggressive investigative reporting. *Cerigua*, a leftist news service that once operated from exile in Mexico, now has an office in Guatemala City.<sup>123</sup>

Yet there are disturbing signs of new forms of censorship. Soaring crime rates and widespread economic misery have led to increasing media scrutiny of the administration of President Alvaro Arzú. Stung by unaccustomed levels of criticism, the government has responded by urging businesses to take part in an advertising boycott of selected periodicals. The prime target has been *Crónica*, which, according to Joel Simon of the Committee to Protect Journalists, has helped set a standard for serious journalism in Guatemala. *Crónica* executives report that eighty companies have stopped advertising in the magazine over the past two years. Some have said they are doing so at the request of government officials, some out of allegiance to President Arzú, some out of concern about losing government contracts, others for fear of being subjected to tax audits. A government memo leaked to *Crónica* described a January 1998 meeting in which an Arzú spokesman told government agencies to stop advertising in *Crónica* and *El Periódico*, a newspaper that also has been critical of Arzú, and to deny official interviews to both publications.<sup>124</sup> Shortly beforehand, at the November 1997 Ibero-American summit, Arzú had been one of only three Latin American heads of state who supported an initiative affirming a “right to free and truthful information.”<sup>125</sup> In April 1998, Human Rights Ombudsman Julio Arango Escobar criticized President Arzú for violating freedom of the press in the *Crónica* case.<sup>126</sup>

Though the Guatemalan government is no longer using the threat of physical force against independent editors and journalists, journalism continues to be a risky profession in Guatemala.

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<sup>123</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 195.

<sup>124</sup>Kotler, Jared. “Guatemala’s New War—of Words: Publishers Accuse Government of Leading Punitive Ad Boycott,” *Washington Post*. (Washington, DC: 13 April 1998), p. A20.

<sup>125</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 195.

<sup>126</sup>“Guatemala: President Argues with Ombudsman,” *Central American Report* (Guatemala City: Inforpress Centroamericana, 23 April 1998).

In some cases, such as the following one, it is clear that assassins were hired by individuals (in this case a politician) who were unhappy with media coverage of their activities. In other cases, the evidence is more circumstantial. The major problem in all cases is impunity, the inability of the police and judicial system to apprehend and punish murderers with any degree of regularity.

- On June 5, 1997, two assassins fatally shot Jorge Luis Marroquín, founding editor of the local monthly *Sol Chortí* in Jocotán, Chiquimula. The brothers who were charged with the crime, Neftalí and José Gabriel López León, said they had been hired by Jocotán mayor José Manuel Ohajaca, who was angry about Marroquín's reporting on corruption. Under Guatemalan law, elected officeholders are ordinarily immune from prosecution. The Archbishop's Human Rights Office in Guatemala City petitioned the courts to lift immunity in this case. The request was denied by the Sixth Court of Appeals in Jalapa, and at last report was before the Supreme Court. The co-founder and present editor of *Sol Chortí* has also reported receiving death threats.<sup>127</sup>
- On July 16, 1997, heavily armed men assaulted Hernández Pérez, a newscaster on Radio Campesina (Peasant Radio) in Tiquisate, Escuintla. He and a station messenger, Haroldo Escobar Noriega, were killed almost instantly by the gunfire. The motive is unknown.<sup>128</sup>
- On November 14, 1997, an assailant stabbed Luis Ronaldo De León Godoy, editor of the weekend supplement of the leading daily newspaper *Prensa Libre*, as he was leaving his home in the heart of Guatemala City. He died following three hours of surgery. Eyewitnesses said the attacker had been waiting in a parked car for several hours beforehand. The murderer did not remove any documents or valuables, all but ruling out robbery as a motive.<sup>129</sup>
- On June 24, 1998, unknown assailants driving an unmarked car shot and killed Francisco Antonio Castillo Galvez, 47, along Fourth Street and Sixth Avenue in Zone 8, Mixco, Guatemala City. According to presidential spokesperson Ricardo de la Torre, Castillo Galvez, who edited the television news program *Avances*, had been receiving death threats for months prior to his death.<sup>130</sup>

Looking back on 1997, the Committee to Protect Journalists concluded:

...the press has become more pluralistic and professional, but is still hindered in its work by a climate of violence and growing tensions with the government of President Alvaro Arzú Irigoyen. While the government-sponsored death squads that targeted journalists during the civil war have disappeared, political violence continues, especially in the countryside.<sup>131</sup>

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<sup>127</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 195. / *Suplemento al octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 2-5.

<sup>128</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 196.

<sup>129</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 196.

<sup>130</sup>Guatemalan Human Rights Commission/USA. *Guatemala Human Rights Update* (Washington, DC: #12-13, 26 June 1998).

<sup>131</sup>Committee to Protect Journalists, *Attacks on the Press in 1997* (New York: CPJ, 1998), p. 194.

Impunity for past offenses remains a problem. The 1993 murder of newspaper publisher Jorge Carpio Nicolle, for instance, remains unsolved.

## **XII. Street Children**

The Inter-NGO Programme for Street Children and Street Youth defines “street children” as “those for whom the street...more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults.”<sup>132</sup> There are between 1,500 and 5,000 street children in Guatemala, most of them in Guatemala City. About two-thirds are boys.<sup>133</sup>

Most end up on the street after having been abused by their own families. Many bear permanent scars from beatings, stabbings, and burns. One study found that almost a quarter had been sexually abused by parents, and still more had been sexually abused by other relatives. The same study found that a majority came from homes with alcoholic parents, and one third from homes with parents who were narcotics addicts.<sup>134</sup>

Without parental support and unable to get employment, street children derive most of their meager income from begging, petty theft, and prostitution. More than half are infected with sexually-transmitted diseases. To seek refuge from pain, loneliness, and hunger, or to “get courage” to perform sex acts, they typically smoke marijuana or inhale fumes from shoe glue or paint thinner. The toluene in the shoe glue dissolves brain cells, eventually causing permanent mental impairment. In the short run, though, the body reacts to the damage by flooding the brain with soothing endorphins, that temporarily desensitize the body to cold, hunger, and other forms of stress. The process is addictive.<sup>135</sup>

These behavioral traits have turned street children into pariahs in Guatemalan society. That has made them easy targets of “social cleansing” by police, private security guards, and vigilantes who have until recently operated with complete impunity. As a government official told Human Rights Watch, “Guatemalan society rejects these kids...they would even like to see them dead.”<sup>136</sup>

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<sup>132</sup>Save the Children, *Street and Working Children: A Guide to Planning*, Development Manual 4 (1994), p. 15.

<sup>133</sup>Tierney, Nancy Leigh. *Robbed of Humanity: Lives of Guatemalan Street Children* (St. Paul, MN: Pangaea, 1997), p. 3.

<sup>134</sup>Tierney, Nancy Leigh. *Robbed of Humanity: Lives of Guatemalan Street Children* (St. Paul, MN: Pangaea, 1997), p. 19-23.

<sup>135</sup>Tierney, Nancy Leigh. *Robbed of Humanity: Lives of Guatemalan Street Children* (St. Paul, MN: Pangaea, 1997), p. 25-27, 216-217 / Human Rights Watch. *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 12-13, 15.

<sup>136</sup>Human Rights Watch. *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 39.



In the early 1990s there was a rash of police killings of street children. International exposure by Casa Alianza, the Guatemalan branch of the U.S.-based church group Covenant House, has contributed to a decline in killings by police officers. So has the gradual replacement of the National Police (PN) by the National Civilian Police (PCN), which is no longer under military control.

Yet abuses persist. Street children are still being killed, but their murderers are now primarily private security guards, off-duty members of government security forces, and vigilantes. It is also still commonplace for uniformed police to abuse street children in other ways. According to Human Rights Watch, “thousands of children living in Guatemala’s streets face routine beatings, thefts, and sexual assaults at the hands of the National Police and private security guards.”<sup>137</sup>

As provided for by the Private Police Law (*Ley de Policías Particulares*), private security guards are subject to the jurisdiction of the Government (or Interior) Ministry (*Secretaría de Gobernación*). On paper, the legislation provides for licensing, regulation of firearms, and accountability.<sup>138</sup> In practice, this arrangement ensures the opposite. Having arisen in a context of counterinsurgency, in which security guards were hired by influential businessmen and ranchers to protect their property from “subversives,” it has translated into a form of vigilantism with official sanction. Typically, security guards are off-duty or retired members of the armed forces or the police. It is also commonplace for private security agencies to be run by former military officers, who maintain close ties to government security forces, often making it difficult to hold them accountable for human rights abuses.<sup>139</sup>

The government has, however, begun to convict and incarcerate offenders. In November 1996, a court sentenced former private security guard Oscar Leonel Jiménez Nájera to eight years for the 1993 murder of 19-year-old Marvin Benjamín Monterroso. Jiménez had worked for *Los Vigilantes*, a security firm run by a former National Police colonel. Shortly thereafter, a judge sentenced another security guard, Arnoldo Martínez González, to 15 years for the 1995 murder of 21-year-old street youth Oscar René Marroquín. Martínez was likewise employed by a security agency owned by a former military officer. Two National Police officers who helped dispose of the body were sentenced to three years apiece. On January 22, 1997, Carlos Morales Sosa, a former military commissioner, was sentenced to ten years for the 1993 slaying of 18-year-old

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<sup>137</sup>Human Rights Watch. *Guatemala’s Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 1, 18.

<sup>138</sup>Private Police Law, Decree 73-70, Article 8 of which specifies that “Private Police will be under the control of the Interior Ministry.”

<sup>139</sup>Human Rights Watch, *Guatemala’s Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 35.

street youth Henry Yubani Alvarez Benítez.<sup>140</sup> On April 28th, 1997, the Fourth Appeals Court sentenced Luis Francisco Duarte Pérez to 20 years and fellow *Los Vigilantes* agency guard Leonel Villalobos Calderón to 13 years and 4 months for the September 1994 slaying of 10-year-old Daniel Rosales and 14-year-old Rubén García.<sup>141</sup>

In other cases, impunity prevails. Cecilio Jax and Juan Ramos Cifuentes were tortured and killed in July 1994. The suspect is a prominent businessman reputed to be involved in drug trafficking. By August 1996, fear of reprisals had caused the government to be on its sixth prosecutor in the case. Key investigative reports were “lost,” including those made by police, the prosecutor, and the judge at the scene of the crime. Also “lost” were the ballistics report and recovered bullets and casings. Having exhausted domestic remedies, Casa Alianza has brought this case before the Inter-American Commission on Human Rights.<sup>142</sup> Casa Alianza has three other cases involving street children pending before the Inter-American Commission, and another before the Inter-American Court of Human Rights—the first case heard by the court in which the victims were children.<sup>143</sup>

Spotty enforcement of the law, and continued popular prejudice against street children, contribute to a continuing pattern of murder and physical abuse:

- At about 1 am on March 18, 1997, uniformed National Police in a patrol car detained street youth Luis Alfredo Bonilla Juárez (17) and another youth known as “Dientudo” at the corner of 9th Avenue and 16th Street of Zone 1 in Guatemala City. The police asked the two boys, who had been roughhousing in the street, for identification. Like most street youths, they had none. The police placed Luis in the back seat of the car, drove a few blocks, then pulled him out, kicked him, and beat him with their night sticks, leaving him with cuts and bruises. No report was ever filed.<sup>144</sup>
- Around midnight on April 27, 1997, a mob of about 20 youths attacked Carlos Antonio Rodríguez and a dozen companions in a small shop in Santa Catalina Pinula, about 30 minutes from Guatemala City. They kicked Carlos and shot him to death. Upon their arrival at the scene,

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<sup>140</sup>Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 37-38.

<sup>141</sup>The two were shot from behind, and the guards even paused to reload. The guards confessed to the killings. Yet in 1996, a three-judge appeals court overturned the guards' 30-year sentences, setting them free. The decision came after attorneys and the dead boys' families received death threats, contributing to a perception that the judges had been either bribed or threatened. Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 40-41 / Harris, Bruce. Casa Alianza, via e-mail, 13 August 1998.

<sup>142</sup>Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 38.

<sup>143</sup>Harris, Bruce. Casa Alianza, via e-mail, 13 August 1998.

<sup>144</sup>Casa Alianza. “Guatemala: Illegal Detention and Beating of Street Youth by Police,” *Review of Last Minute News* (2 April 1997). / Casa Alianza case dossier, 18 March 1997.

members of the National Police (PN) nonetheless pursued Carlos' group, firing at them from a distance. The police did not file a report, and there has been no investigation.<sup>145</sup>

- At 3:30 am on May 5, 1997, street youth José Humberto Sandoval Guillo (24) was sleeping in the lobby of the Hotel María del Rosario, at the intersection of 17th Street and 10th Avenue in Zone 1 of Guatemala City. Two men arrived in a red pickup truck, and fired thirteen bullets into the youth, killing him. The men, who appeared to be professionals, removed the bullet casings before leaving.<sup>146</sup>
- On June 15, 1997, a licensed private policeman guarding the *El Macarrone* pizza restaurant in Zone 1 of Guatemala City ordered 16-year-old Engelber Armando López González to stop begging for food from customers as they exited onto the sidewalk. The hungry street youth ignored him. The policeman summoned a second private policeman from across the street. Together, and with encouragement from bystanders, they began hitting the youth with the butts of their shotguns. When another street boy—"Chiqui"—stepped in to protect his friend, one of the police shot Engelber in the arm with a 16-gauge shotgun, shattering his bones. The police fled the scene, leaving "Chiqui" to call an ambulance.<sup>147</sup>
- Early in the morning of August 19, 1997, unknown assailants shot to death Mynor Geovanny Regalado (22) near the corner of 17th Street and 9th Avenue in Zone 1 of Guatemala City. He was shot in the abdomen several times.<sup>148</sup>
- On September 15, 1997, three auxiliary mayors in the Siete de Febrero hamlet of San Marcos detained 16-year-old Domingo Gamalies Sales Bautista for being unable to pay less than a dime (half a Quetzal) at an eatery. They tied the boy's hands and feet, beat him, then blindfolded him and burned his skin with cigarettes as they demanded the names of his friends and associates.<sup>149</sup>
- On September 23, 1997, 19-year-old street youth Gustavo Ricardo Aguilar's burnt and tortured body was found beside the body of Carlos Rubén Vásquez (18) at Kilometer 5 on the road to Palencia, Guatemala, about 30 minutes outside Guatemala City. Both had been dismembered with machetes, then burned alive. Gustavo (aka Tito) was Honduran and had been in the Casa Alianza program. Vice Minister of the Interior Salvador Gandara attributed the murders to gang wars or drug trafficking. But an investigation by Casa Alianza's Legal Aid Office suggested that the youths had been murdered by private police hired by bus owners who accused Aguilar of theft.<sup>150</sup>

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<sup>145</sup>Casa Alianza. *The List of Shame* (<http://www.casa-alianza.org/>).

<sup>146</sup>Casa Alianza. "Guatemala: murder of street youth," *Review of Last Minute News* (15 May 1997).

<sup>147</sup>Casa Alianza. "More violence in Guatemala," *Review of Last Minute News* (12 August 1997). / Casa Alianza, case dossier, 26 June 1997.

<sup>148</sup>Casa Alianza. *The List of Shame* (<http://www.casa-alianza.org/>).

<sup>149</sup>*Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 29; *Suplemento al octavo informe*, ¶ 24-25.

<sup>150</sup>Guatemala Human Rights Commission/USA. "Street Youth among Thirteen Murdered in Two Days," *Guatemala Human Rights Update* (Washington, DC: #17, 26 September 1997) / Casa Alianza. "'Social Cleansing' Murders Erupt Again in Guatemala," *Review of Last Minute News* (25 September 1997).

- On May 27, 1998, at 18th Street and 5th Avenue in Zone 1, an unidentified man shot Juan Antonio López Rosales (15) in the head, killing him. López had been in the company of several other street youths, one of whom had attempted to pickpocket the man. Casa Alianza's Legal Aid Office believes the gunman may have been a private policeman who works in the area.<sup>151</sup>
- In the early morning hours of June 5, 1998, two street boys were forced at gunpoint to lead two men to where a girl was spending the night in Colón Park in Zone 1 of Guatemala City. The men then raped the girl. The girl found refuge and medical attention in a halfway house. The boys later identified the rapists as members of the National Civil Police (PCN).<sup>152</sup>

The Guatemalan authorities also subject street children to a variety of non-lethal abuses. At present, children who are taken into protective custody are sent to the same detention centers as children who have committed crimes. In practice, that means that children who are abused by their families are placed in detention centers where they are routinely abused by other (generally older) youths, and are often initiated into criminal behavior. According to Human Rights Watch,

Young adolescents are also exposed to great risks when incarcerated with older adolescents. In addition to the deleterious influence that older, repeat offenders may have on young novices to the system, there is the danger of physical assault and rape. This is exacerbated by the overcrowding of the facilities, which results in double- and sometimes triple-bunking.<sup>153</sup>

Guatemalan and international law forbid the incarceration of minors with adults. Yet the practice persists. A young man named Vicente told Human Rights Watch:

When I was 16, I was sent to Zone 18. They didn't want me in the reform system. They said I was a troublemaker....In the adult prisons, you have to pay money to get a place to sleep. Otherwise you sleep on the floor, in the garbage. And you have to pay for a mattress and for blankets. Boys who are put in with the adults are often raped. Zone 18 is the prison with the most minors, therefore it is the prison with the most rape. The guards don't pay any attention. In jail, money runs everything.<sup>154</sup>

In September 1996, the Guatemalan Congress passed a new Code on Childhood and Adolescence (*Código de la Niñez y Adolescencia*), though it has yet to take effect. The code bars the placement of children in protective custody in juvenile detention centers. It stipulates that

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<sup>151</sup>Casa Alianza. "Another street child murdered in Guatemala City," *Review of Last Minute News*, (3 June 1998, (<http://www.casa-alianza.org/>)).

<sup>152</sup>Guatemalan Human Rights Commission/USA. *Guatemala Human Rights Update* (Washington, DC: #12-13, 26 June 1998).

<sup>153</sup>Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 65.

<sup>154</sup>Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 66-67.

minors accused of criminal violations be provided with a defense attorney if their guardians cannot afford one. It prohibits indeterminate sentencing, as in the present practice of sentencing children to detention centers “until rehabilitated.” It abolishes deprivation of liberty for children in cases where the same penalty could not be applied to an adult. At present, children who are homeless or run away from an abusive family situation may be detained indefinitely. A particularly blatant and indiscriminate case occurred in early April 1998, when National Civilian Police chief Angel Antonio Conte Cojulún ordered the detention of all street children to head off delinquency during Easter Week. Without due process, police placed over 40 children in the “Las Gaviotas” juvenile detention center.<sup>155</sup>

The new law bans the use of corporal punishment and isolation, which are common practices in boys’ detention centers. It requires the National Civilian Police (PCN) to form a special juvenile unit trained to respect the rights of minors, and increases the penalties for violations of such rights. It sets up special courts for minors. And it requires compliance with international human rights treaties ratified by Guatemala, including the United Nations Convention on the Rights of the Child.<sup>156</sup>

Were the new code’s provisions to be enforced, conditions for street children would improve markedly. But in August 1997, Ricardo Umaña, the president of the Supreme Court, asked Congress to delay implementation, arguing that the judicial system lacked the resources to set up the juvenile courts required by the legislation. The ruling National Advancement Party (*Partido de Avanzada Nacional*, PAN) agreed, and Congress postponed implementation for six months.<sup>157</sup> But in March 1998, the Catholic Church joined forces with the far-right Guatemalan Republican Front (FRG), arguing that the legislation would weaken the authority of parents. Congress again postponed implementation, this time opening the door to revision of its content.<sup>158</sup>

Even should the code take effect, it will still be necessary to monitor implementation closely. As suggested by repeated violations of the laws forbidding incarceration of minors with adults, there is often a breach between what the law says on paper and actual practice.

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<sup>155</sup>“Conte Cojulún orders detention of all street children,” *El Gráfico*, 7 April 1998 - as reported by Casa Alianza. (<http://www.casa-alianza.org/>).

<sup>156</sup>Human Rights Watch, *Guatemala’s Forgotten Children: Police Violence and Abuses in Detention* (New York: July 1997), p. 46-49.

<sup>157</sup>Jeffrey, Paul. “Government Drags Feet on Children’s Law,” *Latinamerica Press* (Lima, Peru: Vol. 30, No. 8, 5 March 1998), p. 1.

<sup>158</sup>“Guatemala: Children’s Code set back again,” *Central America Report* (Guatemala City: Inforpress Centroamericana, 1 April 1998).

In fact, as alluded to by the United Nations Committee on the Rights of the Child, Guatemala is presently violating its own constitution (Article 46) by delaying enforcement of provisions it agreed to by ratifying the Convention on the Rights of the Child:

In view of the fact that the Constitution of Guatemala recognizes the predominance of duly ratified international conventions in the field of human rights, the Committee urges the State party to apply the principles and provisions of the Convention in the area of juvenile justice, rather than the provisions of the national legislation which are in contradiction with the Convention...<sup>159</sup>

For example, Article 33 of the Convention requires Guatemala to “protect children from the illicit use of narcotic drugs and psycho-tropic drugs,” and Article 34 requires the government to “protect the child from all forms of sexual exploitation and sexual abuse,” including prostitution. Yet as pointed out by Nancy Leigh Tierney,

No public programs exist to treat child addicts in Guatemala, and no legislation effectively restricts the sale of glue or solvents despite the high rates of addiction among street children. Child rights advocate Bonnie Hayskar notes “it is striking that...armed guards with automatic weapons protect fast-food restaurants, but 55-gallon barrels of narcotic shoe glue sit in the open for public sale in local stores.” Child prostitutes also sit for public sale every day and night in the open of Guatemala’s streets. National police officers readily observe their “negotiations” with clients but rarely intervene, and when they do, they arrest the child, not the client.<sup>160</sup>

### **XIII. Homosexuals**

There are no laws prohibiting homosexuality in Guatemala, nor any that assure equal rights for persons with different sexual orientations. The police rely on vague laws forbidding “scandalous behavior” to harass and detain homosexuals, especially transvestites.<sup>161</sup>

Homosexuality is so taboo in Guatemalan society that there are no homosexual organizations as such. Though there are several organizations dedicated to AIDS education and awareness, only one—OASIS (*Organización de Apoyo a una Sexualidad Integral frente al SIDA*, Integral Sexuality AIDS Support Organization), founded as an AIDS prevention group in 1993—indirectly addresses homosexual issues. Its executive director is Rubén Mayorga, a French-

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<sup>159</sup>Concluding observations by the UN Committee on the Rights of the Child: Guatemala. ¶230, 7 June 1996, in World Organization Against Torture. *Rights of the Child in Guatemala* (Geneva: Organization Mondiale Contre la Torture, 1996), p. 33.

<sup>160</sup>Tierney, Nancy Leigh. *Robbed of Humanity: Lives of Guatemalan Street Children* (St. Paul, MN: Pangaea, 1997), p. 126.

<sup>161</sup>Inforpress Centroamericana. *Report on Homosexuality in Guatemala* (Guatemala City: 18 August 1998), p. 4.

trained physician who specializes in infectious diseases, including AIDS, and consults for Doctors without Borders (*Médecins sans Frontières*). OASIS has about 200 members, many of whom oppose “politicizing” the organization by addressing gay issues.

An affiliated organization, *Mujeres Somos* (“We Are Women”), is the only lesbian organization in Guatemala. Reflecting the context of repression, it disguises its identity with a cryptic name. According to one of its leaders, that repression is internalized in the lives of gays and lesbians alike, who “get married and try to live their homosexual lives on the side”:

This is a common enough situation here in Guatemala but it is more difficult for lesbians who are married to men to meet their lovers than it is for gay men who are married simply because men have more power, more control over their own lives than do women. That is, women, unlike men, do not have the cultural permission to come and go as they please. On the other hand, women in Guatemala have access to spaces with each other that men do not have because women are given more freedom to be close and affectionate with each other. For example, two women can hold hands in public whereas two men cannot. Also, two women can share a bed as friends, but two men cannot.<sup>162</sup>

Prejudices against lesbians are evident in the widely-expressed societal belief that being lesbian is a choice made by women who are either unable to attract men, or have not experienced sexual intercourse with a “real” man. That makes lesbians particularly vulnerable to rape, by men who cynically claim they are doing the women a favor.<sup>163</sup>

By far the most serious violations of human rights are directed at transvestites. That has a lot to do with prevailing cultural attitudes. Latin American *machismo* tends to equate maleness with dominance. That means that *perceived* male homosexuality has less to do with the sex of one’s partner than with whether the relationship is one of dominance or submission. It is not unusual for Guatemalan men to brag to their peers about other men performing fellatio on them, or even submitting to anal intercourse. That actually contributes to their aura of male virility, demonstrating that even other men would like to submit to them.

The reverse, on the other hand, is a source of shame and ridicule. For a man to willingly assume a submissive role is to be feminized. And to accept and openly flaunt that perceived feminization by also adopting the clothing, makeup, and demeanor of a woman is to invite contempt and ridicule. Yet in the extremely repressed culture of homosexuality in Guatemala, pretending to be a woman is a virtual necessity for prostitutes, because it helps their customers

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<sup>162</sup>International Gay and Lesbian Human Rights Commission (IGLHRC). Interview conducted by Robert Sautter in Guatemala City on 8 July 1996, *Guatemala Update* (San Francisco: No. 1, [30 August 1996]).

<sup>163</sup>Inforpress Centroamericana. *Report on Homosexuality in Guatemala* (Guatemala City: 18 August 1998), p. 6-7.

maintain the illusion that they are not gay.<sup>164</sup> It's a vicious circle that associates being a transvestite with prostitution and disease, feeding deep-seated hatreds.

These are particularly dangerous emotions in a society long accustomed to dehumanizing whole categories of human beings on the basis of imputed beliefs, and to weeding out "subversives." As demonstrated by a recent string of homicides of transvestites, ideas of "social cleansing" find a ready echo in such a cultural context. In July 1998, the U.N. Mission noted

...various attempts against the right to life of persons said to be delinquent or homosexual, within a context described as 'social cleansing.' In some cases, the Mission has verified the existence of practices leading to the extrajudicial execution of such persons through planned and coordinated actions.<sup>165</sup>

In one of the following cases, there is evidence of police complicity. In the others, the lack of arrests and prosecution suggests official indifference.

- On the evening of October 2, 1997, men in a white pickup truck shot to death Luis Palencia ("La Conchita", or "María Conchita"), a transvestite prostitute and prominent activist for HIV/AIDS awareness. The attackers shot Palencia in the stomach, killing him almost instantly. He had previously been threatened by police at gunpoint, and was slain while plying his trade just 100 feet from the office of OASIS, with which he was associated.<sup>166</sup>
- On October 22, 1997, passers-by came upon the body of the well-known drag queen Geraldo Estupinian ("Stacy"), badly beaten and near death in a roadside ditch outside Guatemala City. He died shortly thereafter.<sup>167</sup>
- In February 20, 1998, armed assailants shot to death a transvestite near the intersection of 11th Avenue and 10th Street in Zone 2 of Guatemala City. Witnesses reported seeing a gray car with tinted windows speeding from the scene. Firemen who first arrived at the scene had to wait several hours for the arrival of the police.<sup>168</sup>

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<sup>164</sup> "...what defines a gay man in some segments of the Latino world is whether he's on the top or the bottom during intercourse. 'The salient property of the *maricón*,' my Cuban friend adds, 'is his passivity. If you're a top—*el bugarón*—you're not a faggot.' Moreover, there are also many heterosexual Latino men who do not regard sex with another man as a homosexual act. 'A lot of heterosexual Latinos—say, after a few drinks—will [see] a transvestite as a surrogate woman,' says Pujol, 'and that is culturally acceptable—absolutely acceptable.'" Bardach, Ann Louise. "The white cloud: Latino America's stealth virus," *The New Republic* (New York: 5 June 1995), p. 6.

<sup>165</sup> *Octavo informe sobre derechos humanos de la Misión de verificación de las Naciones Unidas en Guatemala* (MINUGUA), 15 June 1998, ¶ 20.

<sup>166</sup> Guatemalan Human Rights Commission/USA. *Guatemala Human Rights Update* (Washington, DC: #18, 10 October 1997. / Wockner, Rex. "Guatemalan AIDS Activist Murdered," 14 October 1997, from <http://www.wockner-news.com/>, story ID# 2890; personal communication, following on-site investigation by Katie Kerr in Guatemala City, by e-mail, 14 February 1998.

<sup>167</sup> Personal communication, following on-site investigation by Katie Kerr in Guatemala City, by fax, 16 December 1997, and by e-mail, 14 February 1998.

<sup>168</sup> "Matan a travestido," *Diario La Hora*, (Guatemala City: 20 February 1998). / Guatemalan Human Rights Commission/USA. *Guatemala Human Rights Update* (Washington, DC: #5, 6 March 1998).



Though transvestites are prime targets, other gay men are also at risk.

- On October 28, 1997, unidentified assailants shot to death Julio Alfredo (“Freddy”) de la Roca Toledo, a dancer and choreographer, in front of his house. Without corroborating evidence, the director of the National Civilian Police (PNC) attributed the killing to a band of carjackers.<sup>169</sup>

Worse yet, homosexuals cannot under any circumstances count on the authorities to protect them from violence, or pursue assailants after the fact. Societal prejudice is so pervasive that it is commonplace for homosexuals to internalize prevailing attitudes, by accepting the risk of assault as an inevitable corollary of their condition. Within heterosexual society, it is also commonplace for the security forces to accuse the victims of crimes of being gay or lesbian, as a means of dehumanizing them, and making the offense seem less serious in the eyes of the public. Anthropologist Myrna Mack, murdered by an army death squad member in 1990, and U.S. nun Dianna Ortiz, kidnapped and tortured by the army in 1989, were both said to be lesbians. Bishop Juan Gerardi, murdered in 1998, was said to be gay.<sup>170</sup>

This atmosphere of stifling hatred and discrimination greatly restricts the options available to most homosexuals. In an interview conducted a year before his death, Luis Palencia (“La Conchita”) described the forces that drive poor young men to become prostitutes:

**When did you become a prostitute?** Ten years ago. I was 18.

**Why did you do it?** What could I do? I came from Jutiapa. What could I do without work and with no one to count on for help? I was gay and it was obvious. Who wants to hire a queer in a company, an office, a business, and, to top it off, without an education or profession? They did not want me as a doorman, a waiter, even less as a messenger. I then met other gays who introduced me to this way of life. They took me to gay discos. Then I realized that in this city there are many men who pay to go to bed with men dressed up as a women. So I did it, and began making some money...

**Are you aware of your rights as a person?** They pass us throwing eggs, urine, and whatever else they can think of. They insult us, and some of us have been murdered. They think of us as sick, but they forget there are many men who seem masculine but nonetheless seek us out for sex, knowing full well that we are men as well. Many of them later insult us; it angers them to discover they are homosexuals. Some are even married and come looking for us saying their wives don’t understand them. I know I have my rights and that I live in a free country; but that is only an ideal, the truth is something else. People are afraid of us, they hate us, and discriminate against us. I know there are gays who are not prostitutes and who live very happily; but they are educated, they are professionals, and they

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<sup>169</sup> Asturias, Laura. “Siete homosexuales fueron asesinados,” *Prensa Libre* (Guatemala City: 19 November 1997)

<sup>170</sup> Inforpress Centroamericana. *Report on Homosexuality in Guatemala* (Guatemala City: 18 August 1998), p. 4.

have money...They are not exposed as long as they keep their mouths shut and pass as normal at work and in their neighborhood.<sup>171</sup>

Homosexuals who are fortunate enough to be born into Guatemala's social elite are exempt from the economic constraints that drive the poor to prostitution. Their families' wealth allows them to obtain good educations that provide a comfortable standard of living. Yet they too are subject to discrimination, hatred, and violence should their homosexuality become public. It is commonplace among well-to-do families to send homosexual children abroad, both to get a good education, and to get them out of Guatemala. According to Rubén Mayorga, "homosexuals are routinely harassed by family members, the church, the military and police forces, the media, the educational system, and by society at large. Because there are no formal laws, gays and lesbians who have been persecuted on the basis of their sexual orientation have no judicial recourse."<sup>172</sup>

Mayorga, who is a physician by profession, says "there are abuses against gays and lesbians by governmental authorities in the form of rape, forced fellatio, imprisonment without trial for prolonged periods of time, theft of personal belongings, beatings, threats to cause bodily harm, and death....In my years of practice I have personally witnessed the effects of bodily harm to gay men and persons living with HIV/AIDS by government authorities."<sup>173</sup>

Beyond physical abuse, Mayorga says homosexuals are likely to lose their jobs if they are open about their sexual orientation. "In Guatemala, a gay man or a lesbian is in danger of losing his/her job, home, professional status solely on the basis of his/her sexual orientation." He describes how, after being nominated to be Infectious Disease Specialist at the Herrera Llerandi Hospital in Guatemala City, some of his colleagues objected, citing his presumed sexual orientation. After another colleague denied he was gay and asked how his sexual orientation could bear on his professional qualifications, he was given the job. Yet he was fired without explanation a few months later.<sup>174</sup> Similarly, when lesbian members of *Mujeres Somos* took part in an International Women's Day demonstration, their photos appeared in newspapers, and one marcher was fired by her employer shortly thereafter.<sup>175</sup>

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<sup>171</sup>Quintana, Rafael Echeverría. "Conductas Sexuales," *Vida Médica*, (Year 1, No. 4 (March-April 1996), p. 11.

<sup>172</sup>Mayorga, Rubén. 19 September 1996, annex I to affidavit by Heather McClure of the Midwest Human Rights Partnership for Sexual Orientation, dated 10 April 1998.

<sup>173</sup>Mayorga, Rubén. 19 September 1996, annex I to affidavit by Heather McClure of the Midwest Human Rights Partnership for Sexual Orientation, dated 10 April 1998.

<sup>174</sup>Mayorga, Rubén. 19 September 1996, annex I to affidavit by Heather McClure of the Midwest Human Rights Partnership for Sexual Orientation, dated 10 April 1998.

<sup>175</sup>Personal communication, following on-site investigation by Katie Kerr in Guatemala City, by e-mail, 14 February 1998. / Wockner, Rex, "Guatemalan AIDS Activist Murdered," 14 October 1997, from <http://www.wockner-news.com/>, story ID# 2890.

Though there are some gay bars and discos (El Encuentro, Pandora's Box, Happy Rooster, Metropolis, Trilogy, Eclipse) in Guatemala City, they are, according to Rubén Mayorga,

run by men who have very good connections with the police and the military, and pay regular "financial contributions" to guarantee that their bars are not closed and their clients are not harassed. Pandora's Box, Guatemala's first gay bar and only one for a number of years, was opened in 1976 through an agreement between government authorities and the gay community, in order to have all these "queers" inside an establishment and not out on the streets. Even if there are a few gay bars, men who are seen going in or out of these places have been fired from their jobs merely because bosses or coworkers suspect them of being gay....A recently televised program on "Pornography in Guatemala" showed the clientele of a gay bar (Trilogy), including their faces, against their will. One of the men who was attending the club shown on this program was fired from his job shortly after the program was aired.<sup>176</sup>

The Center for Human Rights and Legal Action (CALDH), a national human rights organization, initiated an anti-discrimination project in 1997. It produces posters, calendars, radio spots, and a cartoon series published in the daily *Prensa Libre*.<sup>177</sup>

#### **XIV. Treatment of Persons Infected with HIV, or Afflicted with AIDS**

Several economic and cultural traits combine to render Guatemala especially vulnerable to the transmission of Human Immuno Virus (HIV), and hence to the spread of Acquired Immune Disorder Syndrome (AIDS). The largest religious organization—the Roman Catholic Church—opposes the use of condoms. *Machista* attitudes similarly lead many men to believe that real men don't use condoms, particularly since children are considered the only sure sign of male virility.

The repression of homosexuality causes many gay men to lead double lives, by marrying for the sake of appearances, but having sex with transvestite prostitutes, allowing them to pretend to themselves and others that they are not gay, and making it more likely that they will infect their wives. Because AIDS (SIDA in Spanish) continues to be thought of as a gay disease, families are so ashamed of having their members associated with it that they prevail on physicians to label AIDS deaths as being due to more socially-acceptable diseases such as tuberculosis. That reduces the percentage of those who may have been exposed to the virus who are tested.

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<sup>176</sup>Mayorga, Rubén. 19 September 1996, annex I to affidavit by Heather McClure of the Midwest Human Rights Partnership for Sexual Orientation, dated 10 April 1998.

<sup>177</sup>Inforpress Centroamericana. *Report on Homosexuality in Guatemala* (Guatemala City: 18 August 1998), p. 8.

Poverty drives many gay men and street children to become prostitutes. It also ensures that rates of detection of HIV are very low, and that most of those who are identified as being infected will not get the sort of treatment that will lower their viral counts, and hence the danger they pose to others.

As of April 1998, there were about 2,800 known cases of AIDS in the country, with another 100 being diagnosed each month. According to Casa Alianza, 3-5% of all street children are HIV-positive.<sup>178</sup> By the year 2000, it is expected that there will be between 66,000 and 120,000 Guatemalans infected with HIV, and 11,000-12,000 deaths from AIDS per year.<sup>179</sup>

Only a small portion of those suffering from AIDS receive the currently-recommended mix of medications. The 15% of the population that is covered by the National Health Plan has access to AZT and 3TC, two of the main ingredients in the retroviral cocktail. Some patients also apparently receive the proteases that are the other main ingredient in the cocktail. Another 30 individuals have the financial means to purchase the medications, and another 50 are taking part in a Merck study which provides the medications without charge. That leaves about 80% of those afflicted with AIDS without access to medication.<sup>180</sup>

Discrimination against HIV-positive persons is widespread in the workplace, in residential neighborhoods, and even in hospitals.

Several organizations promote education about, and prevention of, HIV/AIDS. One is OASIS, described in the preceding section. Another is the Association for the Prevention and Help to AIDS Patients (*Asociación de Prevención y Ayuda a Enfermos de SIDA*, APAES). Founded in 1992 and recognized as an NGO in 1994, APAES does HIV testing, distributes brochures and condoms, sponsors lectures and conferences, and provides assistance to AIDS patients.<sup>181</sup> The Association for the Prevention and Control of AIDS (*Asociación Guatemalteca para la Prevención y Control del SIDA*, AGPCS) runs a telephone hotline, a clinic at the government-run San Juan de Dios Hospital, and an education group that focuses on children, teenagers, and women. Other groups include the Guatemalan Sex Education Association (*Asociación Guatemalteca de Educación Sexual*, AGES), Central American AIDS Action Project (*Proyecto Acción SIDA de Centroamérica*), Christian Commission against AIDS (*Comisión Cristiana contra el SIDA*), Council of Catholic Entities Against AIDS (*Consejo de Entidades Católicas contra el SIDA*), National Evangelical Program against AIDS (*Programa Nacional*

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<sup>178</sup>Stern, Richard. "Isthmus AIDS Patients Face Uphill Battle," *Tico Times* (San José, Costa Rica: Vol. 4, No. 14, 17 April 1998) online edition ([www.ticotimes.co.cr](http://www.ticotimes.co.cr)).

<sup>179</sup>"Guatemala: Las Cifras Oficiales del SIDA," *Crónica* (Guatemala City: 21 July 1995), p. 62-67.

<sup>180</sup>Stern, Richard. "Isthmus AIDS Patients Face Uphill Battle," *Tico Times* (San José, Costa Rica: Vol. 4, No. 14, 17 April 1998), online edition ([www.ticotimes.co.cr](http://www.ticotimes.co.cr)).

<sup>181</sup>"Lo que hace APAES Solidaridad," *APAES Informa*, (Guatemala City: Year 1, No. 1, August 1995), p. 2.

*Evangélico contra el SIDA*, PRONECSIDA), Committee of Educators for AIDS Prevention (*Comité de Educadores para la Prevención del SIDA*), and the Coordinating Committee of Sectors against AIDS (*Coordinadora de Sectores de Lucha Contra el SIDA*). Positive People (*Gente Positiva*), formed in October 1997, is a self-help group for HIV-positive persons.<sup>182</sup>

## **XV. Rights of, and Treatment of, Women**

Patriarchy is deeply ingrained in Guatemalan institutions, from the Catholic Church, to the legal system, to the structure of the family. As in many other Latin American societies, women are valued primarily in their roles as mothers, or as chaste girls awaiting marriage before having sexual intercourse. They are supposed to be gentle, faithful, and deferential to their male partners, who are seen as their protectors. In a sense, that is not much different from attitudes prevailing in the United States in the nineteenth century.

This social structure has several corollaries that tend to lead to serious, widespread, violations of the rights of women. One is that men, believing they are entitled to obedience by women, frequently resort to beatings to assert their dominance. Studies, though sketchy, suggest that about a third of all women are subjected to physical violence by men. A survey of one thousand women in the department of Sacatepéquez found that 35% had suffered physical aggression. In a more recent survey of 74 women conducted in 1996, about a third (25) reported being subjected to physical aggression. Women are generally reluctant to talk about such abuses, either because they fear further violence, or because the subject is taboo, and they are apt to lose face in their communities.<sup>183</sup>

Another corollary of *machismo* is a double standard in expectations about faithfulness. While it is expected, and very much a matter of male pride, for a man to have sexual relations with various women, women are expected to remain strictly faithful to their husbands, and to avoid all sex prior to marriage. Until recently, legal penalties for adultery were greater for women than for men.

A further corollary is the distinction made between chaste women, and women of loose morals. One reason rape is so widespread in Guatemalan society is that it is not judged a crime when the woman is not believed to be chaste.

Sexual offenses, including rape, have a patriarchal quality in our penal legislation, as they are considered to be committed only against “honest women.” By establishing that there is no rape of “dishonest” men or women, this concept

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<sup>182</sup>Inforpress Centroamericana. *Report on Homosexuality in Guatemala* (Guatemala City: 18 August 1998), p. 15-17.

<sup>183</sup>Pan-American Health Organization, *Violencia Familiar: Síntesis de Algunos Estudios y Datos Latinoamericanos* (Guatemala: September 1996), p. 91-95.

completely devalues sexual freedom and the physical integrity of persons who should be the objects of legal protection.<sup>184</sup>

In a sense, a single woman who has not guarded her virginity (or a male prostitute who has taken on a female role) is perceived as inviting sexual intercourse. Rape of minors is punishable by law, but only when the victim is a girl, not a boy.

According to the Department of State,

CONAVIGUA and the PDH reported that violence against women, including domestic violence, remains common among all social classes....Victims rarely report criminal sexual violence, and relatively few rape cases go to court. The law allows a rapist to be exonerated by an offer of marriage in certain circumstances.<sup>185</sup>

Just as important is the fact that most women do not have a clue that they have any rights. Except among educated elites, little in their experience has ever suggested the idea to them. Granted, they are accustomed to being in charge of the household, but that is only in a very domestic sense, much as a maid or nanny. Beyond the hearth, their authority all but vanishes.

Reinforcing the inferior status of women is the legacy of military government. For three decades, the army suppressed virtually all efforts by civil society—including women—to organize.

Reflecting their inferior status in society, women have much lower rates of literacy than men. In some indigenous rural areas, female illiteracy reaches 80%. Another factor that hinders development of a national women's movement is that women are split into 23 ethnicities and languages.

A quarter of the work force is female. Because of low levels of education, most are employed either in the textile maquiladoras (assembly plants for foreign export), in domestic employment as maids, and in the informal sector. The maquiladoras deliberately hire young rural women, because they are least susceptible to organization.

Guatemala has ratified several international human rights treaties that establish the rights of women, including the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women. Since Article 46 of the Guatemalan constitution makes ratified treaties the

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<sup>184</sup>Mijangos, Eugenia. *Equidad de Género y Situación de las Mujeres en Guatemala* (Guatemala City: Centro de Acción legal en Derechos Humanos—Area de Derechos de la Mujer, 1998). “Los delitos sexuales, incluyendo la violación, tienen en nuestra legislación penal sesgo patriarcal, al considerarse cometidos únicamente contra “mujer honesta”, estableciendo que no existe violación de hombres o de mujeres “no honestas”, esta concepción desvaloriza totalmente la libertad sexual y la integridad de las personas que deben ser los bienes jurídicos tutelados.”

<sup>185</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 534.

highest law of the land, the Convention's provisions are therefore supposed to take precedence over any contradictory provisions in domestic legislation.

Article 4 of the Guatemalan Constitution affirms the equality of all persons, and Article 47 establishes the equal rights and responsibilities of both partners to a marriage. Yet in blatant violation of these constitutional provisions, the Civil Code still makes the male the head of household, except in his absence, death, or imprisonment. It also enables the husband to deny his wife the right to work outside the home, when, in his judgment, it would compromise her duties as housekeeper and mother. Article 80 of the Code bars women from remarrying within 300 days of a divorce. Article 131 places the husband in charge of administering the family's property.<sup>186</sup>

The Peace Accord on Identity and Rights of Indigenous Peoples calls for classifying sexual harassment as an offense, and as an aggravated offense when the victim is an indigenous woman, and the offender is her employer.

On October 24, 1996, the Law to Prevent, Punish, and Eradicate Violence Within the Family went into effect. Drafted by the National Office for Women (*Oficina Nacional de la Mujer*, ONAM), with assistance from UNIFEM and UNICEF, it defines domestic violence as a human rights violation, encompassing "any act or omission which directly or indirectly causes harm or physical, sexual, psychological, or patrimonial suffering," regardless of whether committed by a spouse, present or former partner, or by someone with whom one has had children.<sup>187</sup> On paper, the law provides means of protecting the lives, physical integrity, security, and dignity of persons subjected to violence within their families. Congress has yet to pass the enabling legislation, however, which would provide standardized procedures for enforcement.<sup>188</sup>

There are five family courts, but because the caseload is too heavy, many cases, particularly in rural areas, are handled by regular courts or justices of the peace, who tend to rely on outdated legislation and traditions. In September 1997, a Mixco man was sentenced to six months for beating his wife, the first time such a penalty has been applied in a domestic dispute.<sup>189</sup>

In that same month, however, Congress passed a series of amendments to the Penal Code that weakened protection of women. The amendments shifted responsibility for pressing charges in cases of rape of women over 18, threats, and withholding child support from the state to the victims. The Code previously required the Public Ministry to prosecute in all cases. According to

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<sup>186</sup>Mijangos, Eugenia. *Equidad de género y situación de las mujeres en Guatemala* (Guatemala City: Centro de Acción legal en Derechos Humanos—Area de Derechos de la Mujer, 1998).

<sup>187</sup>*Ley Para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*, Article 1.

<sup>188</sup>Infopress Centroamericana. *Domestic Abuse in Guatemala* (Guatemala City: 18 August 1998).

<sup>189</sup>U.S. Department of State. "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 534.

the National Human Rights Coalition of Guatemala (CONADEHGUA), “Privatizing public action in these crimes leaves implicit the notion that they are not offenses against society. It foments impunity for a very serious crime against the integrity and dignity of the person, the crime of rape.” The legislation was jointly criticized by six organizations that support women’s rights, including the National Office for Women (ONAM), which pointed out that the amendments violate Guatemala’s international treaty obligations under the U.N. Convention on the Elimination of all Forms of Discrimination Against Women.<sup>190</sup>

There are several government agencies that address women’s issues. The National Office for Women (*Oficina Nacional de la Mujer*, ONAM) is part of the Labor Ministry. It has an advisory assembly consisting of delegates from inside and outside of government, and a relatively independent technical office. Yet its low stature and small budget limit its ability to influence government policies and programs.

The Office of the Human Rights Ombudsman (*Procuraduría de Derechos Humanos*, PDH) also has a Women’s Advocate (*Defensoría de la Mujer*), and the Ministry of Public Health (*Ministerio de Salud Pública*) has a Program on Women, Health, and Development (*Programa Mujer, Salud y Desarrollo*).

Under the terms of the 1996 Peace Accords, a National Women’s Forum was formed in November 1997, consisting of members elected by local women’s groups and by each of the country’s linguistic communities. Its mandate is to expand the participation of women in the economic and social development of the country.<sup>191</sup>

The Congress has a Committee on Women, Minors, and the Family, chaired by congresswoman Nineth Montenegro (FDNG), a longtime human rights activist.

There are a few small nongovernmental groups promoting women’s rights. One is the Guatemalan Women’s Group (*Grupo Guatemalteco de Mujeres*, GGM). Focusing on domestic violence, it has founded the first women’s shelter in Guatemala. Another women’s rights group is Live Earth Women’s Group (*Agrupación de Mujeres Tierra Viva*). The Center for Legal Assistance and Human Rights (*Centro de Asistencia Legal y Derechos Humanos*, CALDH) has a Women’s Rights Section (*Area de Derechos de la Mujer*).

Guatemala has two shelters for battered women. The first, *Asociación Nuevos Horizontes* (“New Horizons Association”) opened in Quetzaltenango, the country’s second largest city, in 1995. The second, the Women’s Center for Integral Support, opened in Guatemala City in April

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<sup>190</sup>“Laws Protecting Women Rolled Back,” *Cerigua Weekly Briefs* (Guatemala City: No. 38, 2 October 1997), p. 3.

<sup>191</sup>U.S. Department of State. “Guatemala,” *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 535.



1997 by the GGM, offers temporary shelter (up to two months) for up to five women at a time. The center has a staff of eight that offer psychological, social, and legal counseling.<sup>192</sup>

According to *Inforpress Centroamericana*,

Project workers at these two NGOs have learned that domestic violence is a very difficult issue, because most of the women they assist do not see it as a problem, but as a part of life. Generally, aggressors use any excuse to justify the abuse; including bad housekeeping, poor child care, jealousy, etc. In general terms, families and close friends of the victim are supportive, but very often suggest that the problem should be kept within the family, since there must be a reason for the aggression.<sup>193</sup>

*Nuevos Horizontes* reports that almost half the women they assist end up returning to the men who abused them. Poverty, inability to find employment, and lack of day care for children are factors that compel many women to endure chronic physical and psychological violence. Similarly, the Guatemalan Womens' Group shelter in Guatemala City reports that only about 10% of the women they assist are able to regain full control of their lives.<sup>194</sup>

In 1995, with legal assistance from the Women's Rights Section of CALDH, a handful of feminist women challenged the constitutionality of Articles 232 and 235 of the Penal Code. These articles set different standards for adultery (applicable only to women) and concubinage (applicable only to men). The penalty for adultery was 6 months to two years; for concubinage, 4 months to one year. Concubinage was also only considered to be aggravated when a man kept his mistress in the home of his spouse. The Constitutional Court agreed that these provisions "rendered null the constitutional mandate to eradicate inequality, leaving empty of meaning and unfulfilled the relevant international treaties ratified by Guatemala, which, according to Article 46 of the Constitution, take precedence over the Penal code."<sup>195</sup>

Women have recently scored some political gains. In the 1995 congressional elections, voters elected women to 11 of 80 seats. Women also hold two of thirteen seats on the Supreme Court and one of five on the Constitutional Court.<sup>196</sup>

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<sup>192</sup>"City Gets First Shelter for Abused Women," *Cerigua Weekly Briefs* (Guatemala City: No. 14, 10 April 1997), p. 1.

<sup>193</sup>*Inforpress Centroamericana. Domestic Abuse in Guatemala* (Guatemala City: 18 August 1998).

<sup>194</sup>*Inforpress Centroamericana. Domestic Abuse in Guatemala* (Guatemala City: 18 August 1998).

<sup>195</sup>Mijangos, Eugenia. "Equidad de Género y Situación de las Mujeres en Guatemala," (Guatemala City: Centro de Acción legal en Derechos Humanos—Area de Derechos de la Mujer, 1998.) "...hacían nugatorio el mandato constitucional de erradicar la desigualdad, quedando vacíos de contenido y sin cumplimiento los convenios internacionales ratificados por Guatemala en esta materia, los cuales según el artículo 46 de la Constitución, tienen preeminencia sobre el Código Penal."

<sup>196</sup>U.S. Department of State. "Guatemala," *Country Reports on Human Rights Practices for 1997* (Washington: DC: U.S. Government Printing Office, March 1998), p. 533.

## XVI. Returnees

Most Guatemalans returning from exile abroad are not at risk, according to Mario Geremia, a Brazilian priest who deals with refugee issues for the Archdiocese of Guatemala. “They face no physical danger, just the economic violence of poverty.”<sup>197</sup>

There are, however, important exceptions. Most of those who fled Guatemala during the civil war were from rural areas that had been targeted for repression by the military. It was commonplace for the army to reward loyalists who joined the civil patrols by giving them possession of the homes and fields involuntarily left behind by those who fled for their lives. Because those who fled were presumed to be sympathetic to the guerrillas, the military governments declared such lands “abandoned,” hence available for others to settle. In resettling vacant parcels, the army deliberately took advantage of ethnic and religious divisions among indigenous peoples. Writing about the village of Santa María Tzejá in the Ixcán rainforest of northern Quiché, Clark Taylor reports:

In a calculated effort to divide the community, the army had invited people in to farm the land left by those who were by then refugees in Mexico. The newcomers were of different ethnic groups from the original settlers, who were all K’iche’ in language and custom. The newcomers were predominantly Q’ueqchi, though other ethnic groups were represented. Nearly all were fundamentalist Protestants, in contrast to the original settlers, who were Roman Catholic. The newcomers owed the opportunity to farm to the army and agreed to be loyal to it.<sup>198</sup>

Throughout most of rural Guatemala, an important test of loyalty to the army was the formation of paramilitary civil patrols. Though these have since been demobilized, and though the army retook possession of the guns it had distributed to the patrols, former patrollers in many cases remain heavily armed and determined to hold onto the properties they acquired during the war. As explained earlier in this report, the army encouraged patrollers to purchase their own weapons, taking advantage of the country’s extremely lax laws on firearms.<sup>199</sup> That means that refugees who try to return to their former homes and lands in many cases face a situation fraught with risk. According to Clark Taylor,

In some settings there are problems between returnee communities and surrounding non-refugee communities. An example would be Chacula (the name of the farm; the village is called Nueva Esperanza) in northern Huehuetenango. Another is San Antonio Tzejá, where the returnees were turned away in a volatile

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<sup>197</sup>Geremia, Mario. Archdiocese of Guatemala, telephone interview, 11 June 1998.

<sup>198</sup>Taylor, Clark. *Return of Guatemala's Refugees: Reweaving the Torn* (Philadelphia: Temple University Press, 1998), 27.

<sup>199</sup>Kobrak, Paul, sociologist working for Catholic Relief Services in Guatemala, telephone interview, 11 June 1998.

confrontation that involved the taking of UN hostages. Other villages in the Ixcán that have resisted returnees successfully include Santa María Dolores, Kaibil Balam, San José la Veinte, Santo Tomás.<sup>200</sup>

Beyond the conflict over land (discussed in the section on “land rights and conflicts”), the separation caused by war gave rise to sharply divergent experiences between those who fled and those who remained behind. In regions traumatized by massacres and the destruction of villages, the remnant population adapted to fear and danger by cooperating with the army in the formation of civil patrols, by avoiding any form of organizing or speech that could offend the military, and by joining fundamentalist Protestant churches whose theology focused on salvation for the hereafter.

The refugees in the Mexican diaspora, on the other hand, learned about universal human rights, became accustomed to expressing themselves freely, and tended to maintain ties with the Catholic Church, including priests who espoused liberation theology. Their return to their communities has not been easy. According to Clark Taylor, “[b]y the time of the return, those who stayed had internalized the army’s ideology, which demonized the guerrillas and associated all references to human rights with subversive activity.”<sup>201</sup>

In many villages, the war has thus left a legacy of ethnic, religious, and political divisions. In some cases, as in Santa María Tzejá, the dividing line between returned refugees and the rest of the population has been vanishing with time. In other villages, such as Victoria, the first of the return communities, the division has remained so acute that it has led to the creation of two separate school systems and town offices.<sup>202</sup>

Refugees who speak Spanish, are literate, and have at least a modicum of education, can most likely relocate to Guatemala City or one of the larger departmental capitals, though, as discussed in the section on “the economic context,” high rates of underemployment may make finding a job difficult. For those who cannot speak Spanish, and who have little in the way of marketable skills, subsistence farming may be just about the only viable option. Given the degree of ethnic fragmentation, and the tight social structure of indigenous villages, it is difficult for an indigenous subsistence farmer to relocate, except where the government provides land for that purpose.

Of some 20,000 mostly-rural exiles who have so far gone back to Guatemala in organized, collective returns, only about a third have been able to return to their former lands,

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<sup>200</sup>Taylor, Clark. e-mail response to query, 3 August 1998.

<sup>201</sup>Taylor, Clark. *Return of Guatemala's Refugees: Reweaving the Torn* (Philadelphia: Temple University Press, 1998), p. 79.

<sup>202</sup>Taylor, Clark. *Return of Guatemala's Refugees: Reweaving the Torn* (Philadelphia: Temple University Press, 1998), p. 189-190.

because they remained unoccupied during the war. Most of the remainder have had to be resettled on lands purchased by the government at high prices with funds made available by international assistance. That means that, on the one hand, those who went into foreign exile and came back in organized returns are faring much better than the internally displaced, or than those who return as individuals. On the other hand, the government's strategy of purchasing expensive parcels for resettlement is dependent on foreign assistance and unlikely to be sustained for long.<sup>203</sup>

## **XVII. Abbreviations**

CALDH	Centro de Acción Legal en Derechos Humanos
CONFREGUA	Conferencia de Religiosos de Guatemala
COPMAGUA	Coordinadora de Organizaciones del Pueblo Maya de Guatemala
COPREDEH	Comisión Presidencial de los Derechos Humanos
CUC	Comité de Unidad Campesina
CVDC	Comité Voluntario de Defensa Civil
EMP	Estado Mayor Presidencial
FONAPAZ	Fondo Nacional para la Paz
FRI	Fuerza de Reacción Inmediata
GH	Guardia de Hacienda
INACOP	Instituto Nacional de Cooperativas
LRN	Ley de Reconciliación Nacional
MP	Ministerio Público
ODHAG	Oficina de Derechos Humanos del Arzobispado de Guatemala
OPODEDHGUA	Organización Popular de Derechos Humanos de Guatemala
PCN	Policía Civil Nacional
PDH	Oficina del Procurador de los Derechos Humanos
PN	Policía Nacional
REMHI	Proyecto Interdiocesano de Recuperación de la Memoria Histórica
URNG	Unidad Revolucionaria Nacional Guatemalteca

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<sup>203</sup>Spence, Jack, et al. *Promise and Reality: Implementation of the Guatemalan Peace Accords* (Cambridge, Massachusetts: Hemisphere Initiatives, August 1998), p. 18, 21.