



Guatemala

Events of 2009

Guatemala's weak and corrupt law enforcement institutions have proved incapable of containing the powerful organized crime groups and criminal gangs that contribute to Guatemala having one of the highest violent crime rates in the Americas. Illegal armed groups, which appear to have evolved in part from counterinsurgency forces operating during the civil war that ended in 1996, are believed to be responsible for targeted attacks on civil society actors and justice officials. More than a decade after the end of the conflict, impunity remains the norm when it comes to human rights violations. The ongoing violence and intimidation threaten to reverse the little progress that has been made toward promoting accountability.

Guatemala ranks third lowest in the United Nations Human Development Index in all of Latin America, and is also one of the most unequal countries in the region in terms of wealth distribution.

Public Security, Police Conduct, and the Criminal Justice System

Guatemala has one of the highest homicide rates in the hemisphere, reaching 48 per 100,000 inhabitants in 2008. Numbers for the start of 2009 indicate that the rate may grow even higher.

The existence of clandestine security structures and illegal armed groups or organizations is an important factor contributing to this violence. These groups employ violence and intimidation in pursuing both political objectives and illicit economic interests, including drug trafficking. Maintaining links with state officials, they consistently obstruct anti-impunity initiatives.

Powerful and well-organized youth gangs, including the "Mara Salvatrucha" and "Barrio 18," have also contributed to escalating violence in Guatemala. The gangs use lethal violence against those who defy their control, including gang rivals and former members, individuals who collaborate with police, and those who refuse to pay extortion money. The gangs are believed to be responsible for the widespread killings of public transit operators targeted for extortion: in 2008, 165 drivers were murdered, and the killings have continued throughout 2009.

Police have used repressive measures in attempting to curb gang activity, including arbitrary detentions and extrajudicial killings. Investigations by the Human Rights Ombudsman's Office and NGOs have found police involvement in "social cleansing"-killings intended to eliminate alleged gang members and criminals.

The Guatemalan justice system has so far proved largely incapable of curbing violence and containing these criminal mafias and gangs. According to official figures and data from NGOs, 98 percent of all crimes in the country go unpunished. Deficient and corrupt police, prosecutorial, and judicial systems, and the absence of a systematic witness protection program all contribute to Guatemala's alarmingly low prosecution rate. Moreover, members of the justice system are routinely subjected to

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attacks and acts of intimidation: Lawyers' Rights Watch Canada (LRWC), an NGO, documented the murder of 40 judges and lawyers in Guatemala between 2005 and July 2009, including four in the first seven months of 2009.

Accountability for Past Abuses

Guatemala continues to suffer the effects of the 36-year civil war. A UN-sponsored Commission on Historical Clarification (CEH) estimated that as many as 200,000 people were killed. The CEH attributed 93 percent of the human rights abuses it documented to state security forces and concluded that the military had carried out "acts of genocide." Very few of those responsible for grave human rights violations during the civil war have been held accountable. Of the 626 massacres documented by the commission, only three cases have been successfully prosecuted in the Guatemalan courts. Guatemala's first conviction for the crime of enforced disappearance occurred in August 2009, when an ex-paramilitary leader was sentenced to 150 years in prison for his role in "disappearing" individuals between 1982 and 1984. The verdict was made possible by a landmark ruling by the country's Constitutional Court in July 2009, which established the permanent character of the crime of enforced disappearance.

Guatemalans seeking accountability for past abuses face daunting obstacles. Prosecutors and investigators receive grossly inadequate training and resources. The courts routinely fail to resolve judicial appeals and motions in a timely manner, allowing defense attorneys to engage in dilatory legal maneuvering. The army and other state institutions resist cooperating with investigations into abuses committed by current or former members. And the police regularly fail to provide adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases.

The July 2005 discovery of approximately 80 million documents of the disbanded National Police, including files on Guatemalans who were killed or "disappeared" during the conflict, could play a key role in the prosecution of past human rights abuses. Documents in the archive led to the March 2009 arrest of two ex-agents of the National Police for their alleged participation in the 1984 "disappearance" of student leader and activist Edgar Fernando Garcia. President Álvaro Colom has ordered the archives transferred to the institutional authority of the Ministry of Culture, and the process of opening the files to the public is underway.

In February 2008 President Colom announced that he would open the military archives spanning the civil war. Following a Constitutional Court ruling in favor of releasing military archives, in September 2008 Congress passed the Law of Access to Public Information, which orders that "in no circumstances can information related to investigations of violations of fundamental human rights or crimes against humanity" be classified as confidential or reserved. The Guatemalan military, however, has only released a small portion of its archives.

Human Rights Defenders and Journalists

Attacks and threats against human rights defenders are commonplace, significantly hampering human rights work throughout the country. The Protection Unit of Human Rights Defenders (UDEFEQUA), an NGO, reported 220 attacks on human rights defenders in 2008, and 171 attacks in the first six months of 2009. According to the UN special rapporteur on extrajudicial, summary, or arbitrary executions, there were 12 reported killings of human rights defenders in 2008.

Journalists, especially those covering corruption, drug trafficking, and accountability for abuses committed during the civil

war, face threats and attacks for their work. The Center for Informative Reports on Guatemala (CERIGUA) reports that in 2008 three journalists were killed, 13 were assaulted, and 10 others received death threats. In April 2009 gunmen killed Rolando Santis, a reporter investigating the murder of a suburban bus driver.

Labor Rights and Child Labor

Freedom of association and the right to organize and bargain collectively are endangered by an increase in anti-union violence, including attacks on union offices, threats, harassment, and killings of trade unionists. The International Trade Union Confederation reports that nine trade unionists were killed in 2008, the second highest total in the Americas. According to UDEFEGUA, there were 49 attacks on trade unionists between January and June 2009, including five killings.

Workers pressing for their rights in labor cases must rely on labor courts, whose work is stymied by dilatory legal measures, lengthy backlogs, and an inability to enforce rulings. Employers routinely ignore court orders for the reinstatement of illegally fired workers. The lack of enforcement paves the way for employers to circumvent labor code provisions, especially in the export processing zones (EPZs) where "maquilas" (export-processing factories) are located. According to a 2008 United States Department of State report, only two out of the 216 companies operating in the EPZs had recognized labor unions, and none had a collective bargaining agreement. Abuses and sex discrimination against women working in the maquila sector are commonplace.

Guatemala has one of the highest rates of child labor in the Americas. The International Labour Organization reported in 2008 that 16.1 percent of children ages five to fourteen are obliged to work, many in unsafe conditions.

Sexual and Gender-Based Violence

Violence against women is a chronic problem in Guatemala, and the vast majority of perpetrators are never brought to trial. An estimated 722 women were murdered in Guatemala in 2008. The Human Rights Ombudsman's Office reports that approximately 14 percent of victims show signs of torture, and about 13 percent show signs of sexual abuse. According to the UN special rapporteur on extrajudicial, arbitrary, and summary executions, investigations into crimes against women, including transgender women, are often inadequate and obstructed by investigating police who act with a gender bias.

Key International Actors

In September 2007 the UN secretary-general appointed a Spanish former prosecutor and judge to lead the newly-founded Commission Against Impunity in Guatemala (CICIG). The commission's unique mandate allows it to work with the Guatemalan Attorney General's Office, the police, and other government agencies to investigate, prosecute, and dismantle the criminal organizations operating in Guatemala. The CICIG can partake in criminal proceedings as a complementary prosecutor, provide technical assistance, and promote legislative reforms. As of September 2009 the commission has undertaken 39 investigations and is participating in eight prosecutions. In July the Guatemalan Congress ratified the extension of the CICIG's mandate until September 2011.

The UN High Commissioner for Human Rights has maintained an office in Guatemala since 2005 that provides observation and technical assistance on human rights practices in the country.

In a landmark ruling, Spain's Constitutional Court held in September 2005 that, in accordance with the principal of "universal jurisdiction," cases of alleged genocide committed during Guatemala's civil war could be prosecuted in the Spanish courts. In July 2006 a Spanish judge issued international arrest warrants for former military dictator Gen. Efraín Ríos Montt and seven other Guatemalan officials on charges of terrorism, genocide, and torture. In December 2007 the Guatemalan Constitutional Court held that the arrest and extradition requests issued by Spain were invalid. The Spanish court has pushed ahead with the case by collecting evidence and testimony in Spain. However, in November 2009 the Spanish government enacted legislation to limit the application of universal jurisdiction by Spanish courts. At this writing it is unclear what the impact of this legislation would be on the Guatemala case.

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