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Discrimination, Detention, and Deportation: Immigration & Refugees

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Human Rights Watch World Report 1998

GUATEMALA

Human Rights Developments

Emerging from more than three decades of internal warfare, Guatemala in 1997 faced soaring criminal violence, an incomplete police reform, continued impunity for human rights violations as well as common crimes and profound uncertainty over the post-conflict role of the military. The signing of a final peace accord in December 1996, capped a steady decline in recent years in the most egregious politically motivated human rights violations. Most notable was the decline in "disappearances," which since the late 1960s had become a regular practice of the Guatemalan military. Security forces carried out one case of forced disappearance in late 1996, which did not come to light until 1997. The Mission of the United Nations in Guatemala (Misin de las Naciones Unidas en Guatemala, MINUGUA) was investigating two additional cases at this writing. Other abuses did not diminish as evidently. MINUGUA confirmed nineteen extrajudicial executions in the first six months of 1997- compared with twenty-two confirmed cases in the previous semester- as well as several cases of ill-treatment, arbitrary detention, and excessive use of force, mostly by the police. Whereas in the past the victims tended to be those perceived by the security forces as ideological opponents-such as journalists, human rights advocates, trade unionists, or peasant organizers-the victims of recent abuses were predominantly poor suspects in cases of common crime.

Although political repression sharply declined, Guatemala remained awash in violence as common crime soared, including car thefts and kidnappings carried out by rings in which members of the security forces were reportedly involved. Efforts by the government in 1996 to prosecute officials and other organized-crime figures languished in 1997, reflecting the overall weakness of the judiciary and law-enforcement bodies and the government's failure to get its witness protection program off the ground. Indeed, while the continued presence of MINUGUA and the end of the conflict kept politically motivated human rights abuse at an all-time low, citizens had no recourse against lawlessness, an insecurity that prompted dozens of cases of lynchings.

A clandestine military unit's forced disappearance of guerrilla Juan Jos Cabrera, alias "Mincho," showed that the powerful Presidential General Staff (Estado Mayor Presidencial, EMP) continued to conduct secret and violent operations outside the law. The stubborn insistence of government officials in covering up the guerrilla's "disappearance" and apparent slaying reflected the army's longstanding refusal to accord captured combatants fundamental human rights. The guerrilla leadership also showed an alarming willingness to suppress information on the case, to the extent that the commander of Mincho's rebel force, the Revolutionary Organization of the People in Arms (Organizacin Revolucionaria del Pueblo en Armas, ORPA) was quoted in the press as denying his militancy in the guerrilla group.

The EMP's secret unit known as the Anti-Kidnapping Command (Comando Anti-Secuestros) reportedly captured Mincho, along with Augusto Rafael Baldizn Nez, alias Commander "Isaas," on October 19, 1996, after the guerrillas had abducted an elderly wealthy woman. The woman's abduction, and her subsequent release in exchange for Commander Isaas, broke down the peace talks and deeply embarrassed both sides. In this context, the "disappearance" of Mincho was kept quiet by both government and guerrillas, and only confirmed by MINUGUA seven months later, after the international and domestic press loudly criticized the observer mission's silence. On May 20, MINUGUA issued a statement holding the EMP responsible for slaying Mincho "at the moment of his capture," without further describing the circumstances of the death. At this writing, Mincho's body has not been found. Noting its secret role in other anti-kidnapping operations, MINUGUA criticized 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."

The government of Alvaro Arz reacted defensively to MINUGUA's report, denying that a second guerrilla was captured or killed along with Isaas. Moreover, a public statement by the president's public relations secretary denied that the EMP had been involved in any anti-kidnapping actions and flatly rejected the U.N. mission's request to interview those security force members involved in the operation in which Mincho allegedly perished. The government's open refusal to facilitate MINUGUA's inquiry in the case marked a rare break with this and the previous government's policy of public support for the U.N. mission. While that support may have often masked behind-the-scenes obstinacy, the government's defiant reaction on the Mincho case marked a low point in cooperation with the mission since its establishment.

The EMP-officially charged with providing security for the president-has for decades been implicated in domestic spying and political assassination. Its covert branch has gone through many incarnations and was until recently known as the "Archivos." Although then-President Ramiro de Len Carpio announced the dissolution of the Archivos shortly after taking office in 1993, then-EMP head Gen. Otto Prez Molina told Human Rights Watch a year later that only its operational arm had been suppressed, while intelligence activities continued. The EMP's Anti-Kidnapping Command is widely perceived to be the reincarnation of the operational unit. In 1997, the Anti-Kidnapping Command was reportedly involved in several cases of torture or ill-treatment of kidnapping suspects before turning them over to the National Police. Under the peace agreement, the government had promised to suppress all "clandestine security machinery" and to put domestic intelligence-gathering in civilian hands. The EMP's Anti-Kidnapping Command violated that commitment.

Military influence over the police-facilitated by a constitutional provision granting the military a role in internal security-has long obstructed effective investigations of human rights violations and contributed to the creation of an abusive police culture. Efforts spawned by the peace accords to create a new, professional, and purely civilian police force were undercut by several developments, including a delay in the promised passage of a constitutional reform limiting the military's role to external defense. In February, the congress passed a new police law, which fell short of the detailed commitments contained in the peace accords regarding police academy training for the new force. Moreover, the government failed to set up an adequate screening mechanism to avoid reintegrating into the new force agents who had been implicated in human rights violations in the past. As a result, more than a dozen police with records of serious human rights violations were admitted into the academy for training. Many members of the now-disbanded Mobile Military Police were surreptitiously admitted to the academy as well, after the briefest of stints at the Treasury Police allowed them to pass as members of that civilian institution, according to MINUGUA.

Impunity for human rights violations persisted, with some exceptions. A conviction was won in the November 1994 murder at the hands of police of university student Mario Alioto Lopez Sanchez. On July 31, a trial judge sentenced Carlos Venancio Escobar Fernandez, formerly the deputy director of the National Police Fifth Precinct, to a thirty-year prison term for the slaying. In addition, then-Interior Minister Danilo Parinello Blanco, Vice Minister Mario Mrida Gonzlez, and National Police Director Salvador Figueroa were each sentenced to ten years for issuing orders that led to the killing, a judgment subsequently overturned on appeal.

Despite this milestone, impunity for human rights violations remained the most common outcome of judicial proceedings, as the shocking exoneration on May 19 of former military commissioner Cndido Noriega Estrada demonstrated. Noriega's acquittal on charges of thirty-five murders, forty-four kidnappings, eight rapes, and dozens of other crimes followed proceedings in which the mostly indigenous prosecution witnesses suffered intimidation, threats, and sorely deficient translation from their native Quich into Spanish. The murders occurred on three occasions in 1982, in which Noriega and another military commissioner, Juan Alesio Sanmayor, reportedly led groups of soldiers through the community of Toluch, in the department of El Quich, identifying villagers as guerrillas for extrajudicial execution by the military.

Noriega's actions were typical of the early 1980s, in which civilian auxiliaries to the army, both military commissioners and civil patrollers, joined together with soldiers in widespread slaughter of perceived guerrilla supporters. Several initiatives were underway in 1997 to uncover and reliably document the abuses that characterized the conflict. Nongovernmental organizations, including the Human Rights Office of the Archbishop of Guatemala, launched massive fact-finding programs. And in July the Historical Clarification Commission established under the peace accords formally began an official study on the subject. Although the commission's mandate bars it from identifying the individual perpetrators of abuse or providing evidence for prosecutions, the naming of respected Guatemalan and international figures to lead the effort raised hopes that its contribution could be significant in bringing to light and to official acknowledgment the immense suffering inflicted on the civilian population during the armed conflict, largely at the hands of the forces designated by law for citizens' protection.

These initiatives also began to expose previously unreported laws-of-war violations by the guerrillas. In August, the Archbishop of Guatemala's forensic team began an exhumation of victims of a 1982 guerrilla massacre that reportedly claimed as many as 180 civilians-including women and children-in Chacalte, El Quich department.

Indeed, Guatemala's highlands were littered with hundreds of clandestine cemeteries from the period, and although many have been exhumed in the 1990s, few prosecutions have resulted. The main obstacles to successful prosecutions included the routine intimidation of prosecutors, judges, witnesses, and relatives of victims, as well as negligence and corruption on the part of the authorities. Nonetheless, in 1997, several military officers were charged in connection with the December 1992 massacre of 162 people-among them sixty-seven children under age twelve-in a hamlet known as "Las Dos Erres" in the department of Petn.

The so-called Law of National Reconciliation passed in December 1996 raised the possibility that judges could grant amnesty for crimes deemed to have occurred in the context of counterinsurgency. While the law specifically prohibited the granting of amnesty for crimes of "disappearance" or torture, the absence of a precise prohibition of amnesty for extrajudicial executions left room for frightened judges to exonerate suspects in such cases. As of this writing, judges had denied every request for amnesty made by defendants in human rights cases; indeed, no member of the military had been granted amnesty. Guerrillas received amnesty for crimes of subversion, but not for violent abuses such as murder.

Initiatives the government announced in 1996 to combat impunity met with mixed results. A witness protection program created by law in 1996 lacked resources and had a negligible impact on the very real practice of intimidating witnesses and judicial officials. A special crimes task force established in 1996 to handle new cases in which security forces were implicated, or in which judicial or police authorities, human rights monitors or international observers became victims, had some successes in solving common crimes under its mandate.

Meanwhile, progress was suspended on the transfer to civilian courts of hundreds of cases of common crimes committed by members of the armed forces, incidents that had come under military court jurisdiction. Landmark legislation in 1996 mandated the shift in jurisdiction, but, at this writing, Guatemala's Constitutional Court had yet to rule on a legal challenge to the law.

In January, a ten-year conviction was handed down against former military commissioner Carlos Morales Sosa for the April 1993 murder of street youth Henry Yubani Alvarez Bentez; this conviction followed two other encouraging sentences in late 1996 for murders by police and private security guards of street children. Impunity remained intact, however, for eleven murders of street children that occurred in 1996; some of these cases appeared to represent a kind of "social cleansing" and at least one was carried out by a member of the security forces.

Children's rights suffered a setback when the government delayed implementation of a new Minors' Code scheduled to take effect in September. As of this writing, the Congress had postponed implementation of the code until at least March 1998. The code represented a vast improvement over current legislation, extending important procedural protections to children accused of crimes, including the right to a lawyer at the government's expense. It forbade placing children in protective custody in juvenile detention centers or imprisonment for status offenses, such as running away or being homeless. Research by Human Rights Watch documented ongoing abuses against street children and those held in juvenile detention in Guatemala, including arbitrary detention of street children, sometimes merely for being homeless; due process violations during adjudication hearings; and the practice of holding children deemed to need the state's protection together with juvenile offenders. The investigation also found children vulnerable to serious mistreatment from staff members and other detainees, sometimes with staff acquiescence.

During 1997, for the first time, a maquiladora union negotiated a contract with a company in the export processing sector. In November 1996, the Labor Ministry failed to determine whether or not the union had mustered sufficient strength to compel the company to bargain under Guatemalan law. Nonetheless, after the conflict between the union and the Phillips-Van Heusen company attracted international attention, the union's sufficient base of support was established, a pattern of anti-union activity was uncovered, and the company voluntarily entered into negotiations with the union, producing the unprecedented contract.

The Right to Monitor

Human rights monitors, especially those pressing for justice in cases of human rights violations, continued to face death threats, surveillance, and intimidation by unidentified assailants, incidents that the government failed to investigate. In the first months of 1997, individuals affiliated with the Association for the Advancement of Social Sciences in Guatemala (Asociacin para el Avance de las Ciencias Sociales en Guatemala, AVANCSO) faced threats and harassment, apparently in relation to the prosecution underway of the alleged intellectual authors of the 1990 extrajudicial execution of AVANCSO co-founder Myrna Mack.

An attempt by the Arz government to promote the election of an unqualified candidate to the Inter-American Commission on Human Rights of the Organization of American States (OAS) was defeated in June by a The candidate, Francisco Villagr Kramer, spent nearly three years in office as vice-president under the regime of Gen. Romeo Lucas Garca (1978-1992), during which government death squads eliminated an entire generation of political and grassroots leaders, and later formed a political alliance with former military dictator Efran Ros Montt, whose regime replaced death squad operations with the widespread slaughter of peasants by the army. Human rights organizations deemed Villagran Kramer unsuited for leadership in the hemisphere's most important organization for the protection and promotion of human rights.

The Role of the International Community

United Nations

The role of the United Nations in moderating the difficult peace process that culminated in the December 1996 agreement, combined with the presence since late 1994 of more than one hundred human rights observers, has been pivotal in reducing politically motivated human rights abuses. Other branches of the world body also played critical roles, such as the independent experts named by the U.N. Commission on Human Rights since 1990, who consistently highlighted the structural factors contributing to human rights abuse in Guatemala. A significant number of the recommendations contained in the reports of Independent Expert Christian Tomuschat and his successor, Mnica Pinto, have been met over the last few years, such as the dissolution of the civil patrols and military commissioners, both civilian groups deputized

by the army with great license to commit abuses. Some of the recommendations, such as the creation of an intelligence service fitting for a democratic society, have been fulfilled in name only. Nonetheless, the Human Rights Commission did not renew Pinto's mandate when it met in Geneva in March and April, instead offering the government "advisory services" on human rights and committing the secretary-general to submit a report on human rights by the end of 1997. Although the human rights situation has undeniably improved, the lack of full compliance with the recommendations of the independent experts ought to have been grounds for extension of the expert's mandate. In August, the U.N. Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, in an effort to avoid duplication of work carried out by other U.N. agencies, officially ended fifteen years of examination of the human rights situation in Guatemala as well. This reduction of international mechanisms closely watching the human rights situation left great responsibility in the hands of MINUGUA by year's end. MINUGUA's prestige suffered from its delay in taking a position on the "disappearance" of the guerrilla known as Mincho, provoking tensions in what had previously been exemplary relations between the mission and local human rights groups.

United States

No longer a supplier of overt military aid, the United States became a source of modest financial contributions to the peace process. Military aid that had been frozen since 1990 was converted into a fund to assist in the demobilization of combatants. The administration also pledged a U.S. \$1 million contribution to the Historical Clarification Commission. In September, the commission formally requested the Clinton administration to declassify records concerning human rights abuses committed during the armed conflict. Guatemalan authorities in September requested documents pertaining to the trial underway of the alleged intellectual authors of the 1990 extrajudicial execution of Guatemalan anthropologist Myrna Mack. U.S. government archives, especially those of intelligence agencies that historically worked in tandem with Guatemala's military intelligence, most likely contain a wealth of information critical to the truth-seeking process underway in Guatemala. In addition to assisting investigations and prosecutions inside Guatemala, the release of U.S. documents is likely to expose important aspects of U.S. policy that contributed to human rights violations in Guatemala.

In May, the Clinton administration released 1,400 pages of Central Intelligence Agency (CIA) documents regarding its covert operations in Guatemala in the 1950s, including plans to assassinate leading officials of the leftist government of Jacobo Arbenz, who was overthrown by a CIA-sponsored military coup. Although only a fraction of the classified files the agency maintains on the coup, the documents released provided a chilling inside look at the methods used and promoted by the agency, including targeted political assassination and mass murder. These documents underscored the need for a thorough airing of the U.S. role in promoting human rights violations in Guatemala and elsewhere.

Documents released as a result of a lawsuit filed by Jennifer Harbury, the wife of disappeared Guatemalan guerrilla commander Efran Bmaca Velsquez, show that U.S. agencies had information about her husband's fate within days of his March 12, 1992 capture and clandestine detention by the army. Yet this information was denied to Harbury, a U.S. citizen, for more than two years, during which time she engaged in three hunger strikes demanding information regarding Bmaca's fate.

Relevant Human Rights Watch reports:

Guatemala's Forgotten Children, 7/97

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