



Human Rights Watch
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More than a decade after the end of Guatemala's brutal civil war, impunity remains the rule when it comes to human rights violations. Ongoing acts of intimidation threaten to reverse the little progress that has been made toward promoting accountability in recent years.

The country continues to face high levels of violence associated with both electoral politics and common crime. Guatemala's weak and corrupt law enforcement institutions have proven incapable of containing the powerful organized crime groups that, among other things, are believed responsible for continuing attacks on human rights defenders.

Confronting Past Abuses

Guatemala continues to suffer the effects of an internal armed conflict that ended in 1996. A truth commission sponsored by the United Nations estimated that as many as 200,000 people were killed during the 36-year war and attributed the vast majority of the killings to government forces. Guatemalans seeking accountability for these abuses face daunting obstacles. The prosecutors and investigators who handle these cases receive grossly inadequate training and resources. The army and other state institutions fail to cooperate fully with investigations into abuses committed by current or former members. The police do not provide

adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases.

Of the 626 massacres documented by the truth commission, only two cases have been successfully prosecuted in the Guatemalan courts. In 1999, a Guatemalan court sentenced three former civil defense patrol members to prison for the murders of two of the 177 civilians massacred in Rio Negro in 1982. In addition, in October 2005, the Supreme Court of Justice upheld the 2004 sentencing of a lieutenant and 13 soldiers to 40 years in prison for the 1995 Xaman massacre in which 11 civilians were killed.

By contrast, the prosecution of former military officers allegedly responsible for the 1982 Dos Erres massacre, in which at least 162 people died, and the trial of six other civil defense patrol members, alleged to be complicit in the Rio Negro massacres, have been held up for years by dilatory defense motions.

The few other convictions obtained in human rights cases have come at considerable cost. In the case of Myrna Mack, an anthropologist who was assassinated in 1990, it took more than a decade to obtain the conviction of an army colonel, Valencia Osorio, for his role in orchestrating the killing. During that time, a police investigator who gathered incriminating evidence was murdered, and two other investigators—as well as three witnesses—received threats and fled the country. Osorio, meanwhile, escaped police custody and has not served his sentence.

The record of Guatemala's Constitutional Court in promoting accountability for human rights crimes has been mixed. On the positive side, it ruled in April 2007 to uphold a lower courts' sentencing of Army Colonel Byron Disrael Lima Estrada, Captain Byron Lima Oliva, and priest Mario Orantes Nájera to 20 years in prison on charges of being accomplices in the 1998 murder of Bishop Juan Gerardi Conedera, who had led the Archbishop's Human Rights Office. More recently, however,

the Court ruled in December 2007 that several former army officers could not be extradited to Spain to face charges in Spanish courts for acts of alleged genocide committed in Guatemala in the 1980s.

Guatemala has taken important steps toward making official records available for human rights investigations. The July 2005 discovery of approximately 70 to 80 million documents of the disbanded National Police, including files on Guatemalans who were murdered and “disappeared” during the armed conflict, could play a key role in the prosecution of those who committed human rights violations during the conflict. In July 2007, a Guatemalan appellate court ordered the declassification of military documents from the 1980s. These documents may also provide crucial evidence for use in future human rights trials. Yet there is no legal framework in place to ensure adequate long-term management and to regulate public access to these files.

Public Security

Impunity remains a chronic problem with common crimes as well. According to the National Civilian Police, 5,885 people were murdered in 2006. This is the highest number of murders reported in the last 10 years. The Guatemalan Human Rights Ombudsman’s Office estimates that convictions are only obtained in approximately 6 percent of all criminal cases; the conviction rate drops to less than 3 percent in cases involving murders of women and children.

On February 19, 2007, three Salvadoran representatives from the Central American Parliament and their driver were murdered near Guatemala City. On February 22, four Guatemalan policemen were arrested as suspects in the crime, but were murdered several days later while in prison awaiting legal proceedings. At this writing, no trial date had been set for the suspects arrested in either of these two cases.

Frustration with the lack of justice in Guatemala has undoubtedly contributed to acts of vigilantism in the last several years. Public lynching is

a common problem, with 40 lynching cases reported between January and August 2007. The majority of lynching victims were suspected of having committed a crime, but there have also been lynching cases in the past few years which were motivated by other factors, such as disputes over land or water.

Electoral Violence

The September 9, 2007, presidential, congressional, and municipal elections and the November 4 run-off presidential election were preceded by a wave of violence against political candidates and members of political parties. The Guatemalan Human Rights Ombudsman's Office reported 55 attacks and threats against political candidates and members of political parties in 2007, resulting in 26 deaths.

Human Rights Defenders

Attacks and threats against human rights defenders remain commonplace. In February 2007, for example, an employee of the Center for Legal Action in Human Rights (Centro para la Accion Legal en Derechos Humanos, CALDH) was briefly kidnapped and several other members of CALDH's legal team received written and oral threats in connection with their work for the organization. Members of the Guatemalan Foundation for Forensic Anthropology (Fundacion de Antropologia Forense de Guatemala, FAFG) continued to receive death threats in 2007 in connection with their work exhuming bodies buried in clandestine cemeteries throughout the country.

Others involved in human rights prosecutions are also routinely threatened or attacked, including justice officials, forensic experts, plaintiffs, and witnesses. Journalists, labor activists, and others who have denounced abuses by the authorities are also subject to violence and intimidation. Guatemalan human rights organizations report that 158 such acts of violence or intimidation were reported between January and August 2007.

There is widespread consensus among local and international observers

that the people responsible for these acts of violence and intimidation are affiliated with private, secretive, and illegally armed networks or organizations, commonly referred to in Guatemala as “clandestine groups.” These groups appear to have links to both government officials and organized crime—which give them access to considerable political and economic resources. The Guatemalan justice system, which has little ability even to contain common crime, has so far proven no match for this powerful and dangerous threat to the rule of law.

Police Abuses

Members of the national police still sometimes employ excessive force against suspected criminals and others. The perpetrators are often poorly trained police officers. In addition, the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions has reported that there is “strong evidence” that members of state security forces have engaged in acts of social cleansing, including the execution of gang members, criminal suspects, and other social “undesirables.” In December 2006, for example, one transgender woman was murdered and another was critically wounded, when gunned down on the street in the center of Guatemala City by men wearing police uniforms and riding police motorcycles. According to the local nongovernmental organization, OASIS, which advocates for the rights of the LGBT community, there have been no prosecutions in any of these cases to date.

Women’s Rights

The law prohibits domestic abuse but does not provide prison sentences for cases of domestic abuse. Prosecutors noted that the law permits the charging of abusers with assault only if bruises from the abuse remained visible for at least 10 days. The law criminalizes rape, including spousal rape and aggravated rape. In the context of the crime of *estupro* (intercourse with a minor through means of deceit) the penal code refers to the violation of an “honest” woman. Article 4 of the Constitution guarantees men and women equal rights. There is a Program for the Prevention and Eradication of Domestic Violence (PROPEVI) and they

gather statistics on violence against women. The National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) developed a national policy to prevent and eliminate domestic violence.

Discrimination against Same-Sex Couples

Guatemalan legislators proposed a bill in 2007 that would bar single parents as well as same-sex couples from the definition of “family,” and threatens the legal status of children conceived through reproductive technologies. The “Integral Protection for Marriage and Family Act” would declare that the nearly 40 percent of Guatemalan families that are not nuclear – consisting of father, mother, and children – are not families at all. As a result, crucial health services now provided for these parents and their children could be taken away. The bill would also punish any Guatemalan officials who advocates, “in any national or international meeting,” for a different definition. A congressional vote on the bill, originally scheduled for October 2007, remains pending.

United Nations Involvement in Guatemala

In September 2007 the UN secretary-general appointed a former Spanish prosecutor and judge to lead the newly-created Commission Against Impunity in Guatemala (Comision Internacional de Investigacion contra la Impunidad en Guatemala, CICIG). The commission will be composed of international and national experts, who will work in conjunction with the Guatemalan Attorney General’s Office to investigate, prosecute, and dismantle the “clandestine groups” responsible for ongoing violence against human rights defenders.