



JANUARY 2009

COUNTRY SUMMARY

## Guatemala

A dozen years after the end of Guatemala's brutal civil war, impunity remains the norm when it comes to human rights violations. Ongoing violence and intimidation threaten to reverse the little progress that has been made toward promoting accountability. Guatemala's weak and corrupt law enforcement institutions have proved incapable of containing the powerful organized crime groups that, among other things, are believed to be responsible for attacks on human rights defenders, judges, prosecutors, and others.

### Impunity for Civil War Crimes

Guatemala continues to suffer the effects of an internal armed conflict that ended in 1996. A United Nations-sponsored truth commission 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. 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 fully 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.

Of the 626 massacres documented by the truth commission, only three cases have been successfully prosecuted in the Guatemalan courts. The third conviction came in May 2008, when five former members of a paramilitary "civil patrol" were convicted for the murders of 26 of the 177 civilians massacred in Rio Negro in 1982.

The July 2005 discovery of approximately 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 abuses during the conflict. By October 2008 the country’s Human Rights Ombudsman’s Office had processed seven million of those documents, primarily related to cases presently under active investigation. The office plans to open the first part of the archive in 2009.

In February 2008 President Álvaro Colom announced that he would open the military archives spanning Guatemala’s civil war. However, the minister of defense has since delayed handing over the files, arguing that the constitution protects the confidentiality of documents related to national security. A new law passed in September 2008 challenges this argument: article 24 of the Law of Access to Public Information 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 military archives remain closed, however.

### **Impunity for Present-Day Crimes Including Attacks on Civil Society**

Impunity is not only the norm for crimes committed during the war, but also a problem that persists for present-day crimes. In 2007 an average of 16 people were killed each day in Guatemala, yet less than 3 percent of murder cases were resolved, according to a study of police data by a respected think tank. No recent case better illustrates the corrosive spread of violence and impunity in Guatemala than the murder of three Salvadorean representatives from the Central American Parliament and their driver in February 2007. Days after the crime, four Guatemalan policemen were arrested as suspects and moved to prison, but all four suspects were murdered while awaiting legal proceedings. In July 2008 the chief prosecutor in the case, Juan Carlos Martinez, was assassinated. A former mayor was arrested in August in connection with the killings, but at this writing, no one has been found guilty of any of the murders.

Attacks and threats against human rights defenders are commonplace, and pose a significant obstacle to their work. Others involved in human rights prosecutions are

also routinely threatened or attacked, including forensic experts, plaintiffs, and witnesses. The Human Rights Ombudsman's Office documented nearly 200 attacks and threats against human rights defenders in 2007.

The case of Amilcar de Jesus Pop Ac, a lawyer who has been assisting an indigenous community in a dispute with a cement company, is representative. In August 2008 two armed men threatened to kill Pop, asking him why he continued to help the community. Prior to this, Pop had received multiple death threats, which he reported to the police and the public prosecutor, but neither had taken steps to protect him.

The Protection Unit of Human Rights Defenders, an NGO, reported 37 attacks on workers' advocates in the first half of 2008, an alarming increase from the previous year's total of 13 such attacks. In March, Miguel Ángel Ramírez Enríquez—co-founder of a trade union that represents banana pickers—was murdered in his home. A month earlier, Ramírez's daughter had been abducted and gang-raped by four men who asked questions about her father's organizing work. No one has been prosecuted for either crime.

Journalists, especially those covering corruption, drug trafficking, and accountability for abuses committed during the civil war, face threats and attacks for their work. Five journalists have been killed in Guatemala since 2006. In May 2008 a reporter who had been investigating government ties to drug traffickers died after being shot four times in the head, a crime for which no one has been prosecuted.

From January to June 2008 four public prosecutors, a judge, and a magistrate were assassinated, and dozens more were threatened. Most of the victims were involved in trying cases of corruption or organized crime.

There is widespread consensus among local and international observers that the people responsible for many of 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 has so far proved no match for this powerful threat to the rule of law.

### **Excessive Use of Force**

Members of the national police sometimes employ excessive force against suspected criminals and others. In September 2007 police officers arrested five men suspected of being members of a violent drug gang in Guatemala City. The bodies of the men showed up on a ranch several days later, and two police officers are currently standing trial for their murders.

### **Death Penalty**

Guatemalan law allows for the death penalty, but it has not been applied since 2000. In February 2008 Congress passed a decree that would have restored the practice, but the following month President Colom vetoed the decree. At this writing, Guatemala's moratorium on the death penalty continues.

### **Key International Actors**

In September 2007 the UN secretary-general appointed a Spanish former prosecutor and judge to lead the newly-created Commission Against Impunity in Guatemala (CICIG). The commission's mandate is to work with the Guatemalan Attorney General's Office to investigate, prosecute, and dismantle the "clandestine groups" responsible for ongoing violence against human rights defenders. In its first year, the commission has taken on 15 cases, which are seen as representative of the most entrenched problems of impunity. Yet as the CICIG acknowledged in its 2008 annual report, it has also been "systematically obstructed" at times by the very corruption it seeks to root out.

In a landmark ruling, Spain's Constitutional Court held in September 2005 that, in accordance with the principle 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 eight Guatemalans and the Spanish government requested their extradition in late 2006. However, in December 2007 the Guatemalan Constitutional Court ruled that two of

the accused could not be extradited to Spain. Nevertheless, the Spanish court has pushed ahead with the case: in February, May, and October 2008 it collected testimony from witnesses, victims, and experts on the conflict. Meanwhile, in Guatemala, the case continues to be held up by defense motions, while witnesses and experts are subjected to harassment and threats.

Guatemala was reviewed under the Universal Periodic Review mechanism of the UN Human Rights Council in May 2008. At that time, Guatemala pledged to ratify the Rome Statute of the International Criminal Court and the International Convention on the Protection of All Persons from Enforced Disappearance, and to accept article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (which allows individual petition to the ICERD committee). In June Guatemala ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in September it ratified the Convention on the Rights of Persons with Disabilities.

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. The Inter-American human rights system provides an important venue for human rights advocates seeking to press Guatemala to address past and ongoing abuses.

Guatemala is a member of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) between the United States and several countries in Central America. In April 2008 six Guatemalan unions and the US trade union federation AFL-CIO filed a complaint with the US Department of Labor's Office of Trade and Labor Affairs alleging violations of national and international labor laws. The complaint—the first of its kind under DR-CAFTA—was accepted by the US in June and is currently being investigated.