

# GUATEMALA

## RETURN TO VIOLENCE

### Refugees, Civil Patrollers, and Impunity

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## SUMMARY

Recent cases of state violence against returning refugees cast serious doubts on the Guatemalan government's commitment to ensure safe repatriation. In one incident, uniformed troops of the Guatemalan army were involved in a massacre of returnees in the northern department of Alta Verapaz. In other incidents in neighboring El Quiché department, the civil patrol apparatus created and controlled by the army was responsible for numerous human rights violations against returnees and those working with them.

On October 5, 1995, a patrol of soldiers fired into a crowd of former refugees in Aurora 8 de Octubre in Xamán, Alta Verapaz department, killing eleven villagers, including two young children, and wounding more than thirty others. Earlier in the year, an association of armed civil patrollers attacked Guatemalans and took international officials hostage to stop refugee repatriation to San Antonio Tzejá and neighboring villages in the Zona Reyna del Ixcán in El Quiché department. Although the perpetrators were identified, the civilian authorities failed to prosecute them, while some government agencies continued to work closely with them. The defense minister and the regional army commander refused to disarm patrollers who committed violations and reneged on official accords between the government (including the army) and the refugees.

Tens of thousands of Guatemalans fled systematic army repression between 1980 and 1983, flooding southern Mexico with refugees. Hundreds of thousands more were estimated to be displaced internally. Refugees began to return individually in 1985. In 1993, refugees began returning in organized groups under the rubric of a negotiated accord between the Guatemalan government and refugees in Mexican camps signed on October 8, 1992. In June 1994, the government and the Guatemalan National Revolutionary Union (URNG) reached an accord on displaced populations as part of the ongoing peace negotiations. The accord created mechanisms for the resettlement and reintegration of internally displaced persons and refugees which is to take effect when a final peace agreement is reached.

The Guatemalan army, whose high command signed these accords, nonetheless remained ambivalent about repatriation. Viewing the refugees as guerrillas or guerrilla collaborators, and loathe to see them return to conflictive areas, the army adopted a dual strategy: at the highest levels it endorsed repatriation, while regional commanders generally avoided direct contact with returnee communities. At the same time, army officials publicly linked the refugees to the guerrilla forces, so that the army's civil patrol networks were generally hostile toward, and distrustful of, the returnees. Although the military arms, trains, and supervises the civil patrols, officers have attempted to dissociate themselves from resulting local tensions, which they portray as no more than land conflicts between villagers.

The resistance to repatriation evidenced by some army officials and their representatives erupted into violence this year when civil patrollers and local officials, led by *de facto* civil patrol chief Raúl Martínez Pérez of Kaibil Balam, organized to prevent Guatemalan refugees from returning to their villages in the Zona Reyna del Ixcán, which had long been under strict military control. Unrestrained by higher authorities, this group successfully prevented roughly 300 refugees who crossed the border in April 1995 from returning to San Antonio Tzejá and San Juan Ixcán under official agreements. The returnees were forced to take refuge with the Catholic Church in the municipal seat of Cantabal out of fear for their safety.

At the request of a Public Ministry prosecuting attorney, a district court issued an arrest warrant against Martínez in May 1995, but the authorities made no effort to enforce it. When frustrated returnees precariously lodged in Cantabal decided to walk to San Antonio Tzejá in late June, Raúl Martínez and the civil patrollers took hostages, among them a civilian and a military observer of the United Nations human rights observer mission (MINUGUA) and a representative of the United Nations High Commissioner for Refugees (UNHCR), lodging specific demands for their release. (They were released unconditionally after twenty-six hours.) The army did not alert the United Nations despite the presence during the incident of a lieutenant colonel in radio contact with the regional army base, violating international commitments. After the hostages' release, the civilian government intervened not to arrest the perpetrators, but to negotiate with them about the resettlement of the returnees. The latter eventually were able to settle

on lands south of San Antonio Tzejá, but the patrollers responsible for a growing list of human rights violations remained at large and maintained their status as armed agents of authority accountable only to the army. The Public Ministry's initiatives to investigate and prosecute these abuses were sluggish and incomplete. A district judge issued an arrest warrant (containing several factual errors) in August with the names of seven others allegedly involved in conjunction with Raúl Martínez, but these too resulted in police inaction.

The regional army commander refused to disarm the civil patrollers despite their resort to coercion and intimidation to derail the return process, a clear message to both civil patrollers and refugees: the former could count on impunity, even when they attacked international officials with diplomatic protection; the latter could repatriate--at their own risk. The patrollers, and Raúl Martínez, were further rewarded by government concessions to demands they made while threatening violence, including the expedited issuance of titles to them for lands they had occupied from which the refugees had originally fled. This had the concurrent effect of closing the door to future refugee return to several Zona Reyna villages. Moreover, Western Atlas International, a U.S. oil exploration company working in the region, contributed to Martínez's impunity by hiring him while he was a known fugitive.

The climate of insecurity for returning refugees deepened when, on October 5, 1995, a patrol of soldiers opened fire on former refugees living in Aurora 8 de Octubre, Xamán. Governmental and independent preliminary investigations into the massacre, including an on-site visit by a representative of Human Rights Watch/Americas, concluded that the army had used massive deadly force on an unarmed crowd, as well as carrying out execution-style killings in at least two cases. An eight-year-old boy was executed by soldiers some distance away from the initial spate of gunfire, and other victims apparently were shot while fleeing the scene or lying injured on the ground. These actions violated international standards by which force may be used only when strictly necessary and only to the minimum extent required under the circumstances--lethal force must be used only when strictly unavoidable to protect life. On October 10, the UNHCR condemned the massacre as a violation of "the principles that inspire the return process and the fundamental instruments that govern it."

The massacre prompted the resignation of Defense Minister Mario René Enríquez Morales, who had declared immediately after the killings that his troops had acted in self-defense. President Ramiro de León Carpio named a special commission to investigate the killings and assigned a special prosecutor to the case; he promised justice for those responsible and compensation to the victims. The accused soldiers were remanded to the military tribunal in Jalapa department where legal proceedings were initiated. Although the new Guatemalan Criminal Procedures Code assigns common crimes committed by military personnel to a military tribunal, military jurisdiction in such cases is inconsistent with Guatemala's recognized international obligations to ensure an independent and impartial trial. Deficiencies in the initial investigation, including incomplete autopsies and failure to preserve the crime scene, resulted in the loss of potentially key physical evidence. The attorney general reported that the Public Ministry prosecutor had been threatened in connection with the case.

After the massacre, the refugees temporarily suspended the upcoming repatriations of roughly 2,000 Guatemalans and exhorted the government to remove army bases from designated return areas to assure their safety. President de León countered by announcing he would no longer permit refugees to return to areas where armed confrontation persisted. The security of returnees would be better served, however, by government actions to attack the underlying problem of impunity. In its preliminary report, MINUGUA analyzed the deadly attack in the context of army impunity for human rights violations and "pernicious" army rhetoric "that identifies refugees and returnees with the guerrillas."

The Guatemalan government must thoroughly investigate and prosecute those responsible for the killings so as to break the traditional impunity that has protected uniformed killers in Guatemala. Unfortunately, the two-and-a-half year term of Ramiro de León Carpio, former human rights ombudsman, has failed to break this pattern of impunity. Guatemala's new government should act quickly to show that this tragic pattern will not persist. The international community, which has invested millions of dollars in the repatriation process, the global peace negotiations, and human rights verification mechanisms, has a stake in assuring that army impunity not derail these initiatives.

The cases described in this report are also a product of the absence of rule of law and civilian authority in rural areas, a void typically filled by the army or its civil patrollers. Tensions in the Zona Reyna intensified because the government offered no legal alternative to supplant the civil patrollers' ability to assert their will by force--alleged offenders were not prosecuted, and legal complaints filed by victims were ignored. Referring to the local insecurity and conflict associated with the refugee return, one Zona Reyna civil patroller told Human Rights Watch/Americas, "the government is the first to violate the law, why can't we violate it to get the government to act?" Similar conflicts combining competition for land, ideological polarization, and deep distrust of authority are brewing in other areas affected by significant displacement and return. The Guatemalan government must act to resolve disputes lawfully and equitably, and swiftly punish lawbreakers, to discourage further violence.

## RECOMMENDATIONS

### **The Xamán Massacre**

The Guatemalan government should prosecute vigorously all those responsible for the eleven deaths and more than thirty wounded in Xamán on October 5, 1995. The Public Ministry should petition to transfer the case to a civilian court in compliance with Guatemala's international obligations to ensure an independent and impartial legal proceeding. The government should investigate and punish those responsible for death threats against the public prosecutor and take necessary measures to assure his security and that of all judicial officials and witnesses connected with the case. The newly appointed defense minister, Gen. Marco Antonio González Taracena, should publicly support efforts to achieve justice.

The army must defer to the judicial authorities, including in land conflicts. At the same time, it should provide explicit instructions to its troops regarding the proper handling of tensions and disturbances involving unarmed civilians, including observance of the internationally-accepted guidelines to protect the right to life and physical integrity found in the U.N. Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The government and the army should address seriously the recommendations of the human rights ombudsman, MINUGUA, and the Archbishop of Guatemala's Human Rights Office (ODHA) stemming from their investigations of the circumstances of the massacre, as well as those of the Verification Commission created to examine compliance with the October 8, 1992 accord between the refugees and the government.

### **The case of San Antonio Tzejá/Raúl Martínez**

President Ramiro de León Carpio should order the defense minister to disarm immediately the civil patrollers and former military commissioners of Kaibil Balam, San Antonio Tzejá, Santo Tomás, and Nueva Siná, as authors of, or accomplices to, human rights violations. The army supplied these individuals' weapons and can take them away without any formal proceeding. Further, the army should suspend any formal status of these individuals in the civil patrol and military reserve systems. Although the military commissioner system has been dissolved formally, more must be done to assure that they do not continue to operate with their accustomed military authority. The new president should instruct the army to remove former military commissioners implicated in human rights violations from any position as agents or representatives of the armed forces.

Defense Minister Marco Antonio González Taracena should assure military police compliance with judicial orders regarding the apprehension of Martínez and seven others.

The National Police should allocate the resources and logistical support needed to arrest Martínez and others sought by the civil courts.

The Public Ministry should pursue actively the arrest and prosecution of Raúl Martínez Pérez and seven other individuals with pending arrest warrants. The special prosecutor should conduct a thorough investigation of each

incident, focusing particularly on the role of local authorities, civil patrollers, and former military commissioners and, where warranted, press charges. The presiding judge should correct any errors and omissions in the August arrest warrant against seven villagers allegedly involved in attacks on returnees. The judge should reiterate the warrant against Raúl Martínez, adding charges stemming from events subsequent to the original warrant, including the June hostage-taking incident.

While Human Rights Watch/Americas does not take a position on land tenancy per se, we insist on the need for due process to settle competing land claims. President de León should reiterate that the “voluntary abandonment” stipulation (Article 114) of the agrarian transformation law does not apply to the forcibly displaced, as recognized by the Accord for the Resettlement of the Population Displaced by the Armed Conflict. The National Agrarian Transformation Institute responsible for adjudicating land titles should refrain from invoking Article 114 in the case of lands formerly occupied by refugees. Competing land claims should be handled without discrimination against those forced to flee their homes or lose their lives, taking into account the mechanisms established in the October 8, 1992 accord between the Permanent Commissions of Guatemalan Refugees in Mexico and the government, and the June 1994 Accord for the Resettlement of the Population Displaced by the Armed Conflict between the government and the URNG.

MINUGUA should be particularly vigilant in verifying progress in these two cases given their transcendence in terms of combating impunity, curbing civil patrol violence, and making possible the safe repatriation and reintegration of Guatemalan refugees.

The international community should scrutinize the Guatemalan government’s progress in achieving justice in these cases. These cases should be included in the U.S. evaluation of military cooperation with efforts to resolve human rights cases as a condition for security assistance and training. Other countries should also strengthen their efforts to ensure progress in human rights cases; Great Britain, for example, should reconsider its recent lifting of a ban on military sales to Guatemala until measurable progress is made in prosecuting human rights violations.

## **BACKGROUND: SETTING THE STAGE FOR VIOLENCE<sup>1</sup>**

Tens of thousands of Guatemalans fled to southern Mexico between 1980 and 1983, as the army systematically massacred and razed entire villages, primarily in the departments of El Quiché, Huehuetenango, the Petén, Alta and Baja Verapaz, and San Marcos. Hundreds of thousands more were displaced internally. To consolidate its control in the countryside, the army relocated tens of thousands of displaced Guatemalans into centralized “model villages,” designated strategic areas as “development poles,” and required villagers to form civil patrols. Much of the Ixcán municipality, including the Zona Reyna in northern Quiché province, formed part of a strictly regimented development pole.<sup>2</sup>

When a civilian president, Vinicio Cerezo Arévalo, took office in 1986, Guatemalan refugees in Mexico began to assess the possibility for repatriation. During the ensuing years, a small number of refugees repatriated individually and in family groups, under the auspices of the United Nations High Commissioner for Refugees (UNHCR). In 1987,

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<sup>1</sup> Many villagers in the Zona Reyna, Guatemalan judicial officials, and foreign observers agreed to speak with us on condition that their names not be used. All of the interviews cited in this report were conducted by Human Rights Watch/Americas unless otherwise indicated.

<sup>2</sup> The establishment of model villages and development poles enabled the army to control, and coordinate assistance to, rural populations as part of its counterinsurgency strategy. The army organized, trained, and armed civil patrols in hundreds of villages to augment its local presence and control. Although the 1985 Constitution made patrol duty voluntary by law, participation in the patrols often remained obligatory in practice. Civil patrol involvement in human rights violations remains among the principal human rights problems in Guatemala. For a discussion of model villages and development poles, see Beatriz Manz, *Refugees of a Hidden War: The Aftermath of Counterinsurgency in Guatemala*, (New York: State University of New York Press, 1988), pp. 20-21, 42-43.

refugees in camps in the Mexican states of Campeche, Quintana Roo, and Chiapas organized the Permanent Commissions of the Guatemalan Refugees in Mexico (hereafter, permanent commissions). The permanent commissions negotiated directly with the Guatemalan government the conditions, mechanisms, and structures for organized, collective returns, with the close involvement of the UNHCR and Guatemalan and international nongovernmental organizations.

On October 8, 1992, the Guatemalan government and the permanent commissions signed a detailed accord to facilitate refugee return "under conditions of security and dignity." Significantly, the accord states that the government "continues to recognize the civilian and peaceful nature of the returns and of the returnee population."<sup>3</sup> The first collective return under the October 1992 accord occurred on January 20, 1993, when roughly 2,500 refugees returned to Polígono 14 in the Ixcán municipality, baptizing their settlement Victoria 20 de Enero. Between January 1993 and October 1995, 14,432 Guatemalans returned to Guatemala under the collective return process.<sup>4</sup>

The Defense Ministry formally ratified the government's commitments regarding refugee return. A Defense Ministry staff officer, Maj. José Mauricio López Bonilla, represented the defense minister in negotiations about specific returns and was authorized to sign the resulting agreements (such as the one pertaining to the tumultuous return to San Antonio Tzejá). Moreover, in some cases, army commanders in the Ixcán moved military posts out of designated return sites, as was the case in Pueblo Nuevo on the Ixcán Grande cooperative in El Quiché department prior to the December 1993 return of refugees. In response to the returnees' aversion to armed presence in their communities, army commanders instructed their troops not to patrol in repatriated villages.<sup>5</sup>

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<sup>3</sup> For a discussion of the accord and early refugee repatriations, see Human Rights Watch/Americas, *Human Rights in Guatemala During President De León Carpio's First Year* (New York: Human Rights Watch, June 1994), pp. 64-82.

<sup>4</sup> UNHCR figures show that an additional 5,434 Guatemalans repatriated from Mexico individually during the same period. A total of 29,650 Guatemalans are registered as having repatriated since 1984. According to the Mexican Commission for Refugee Assistance (COMAR), there were 32,272 Guatemalan registered refugees still in Mexico as of October 1995. There is a comparable or greater number of unrecognized refugees located mainly in Chiapas who do not receive Mexican government or UNHCR protection and assistance. The refugees refer to the organized, collective process as "returns," distinguished from individual or family-group "repatriations."

<sup>5</sup> This was not part of an official accord, although the army has publicly recognized this policy (see below).

In practice, however, the behavior of local army commanders toward returnees was often in conflict with the official stance.<sup>6</sup> While generally avoiding direct confrontation with the returnees, army officials publicly associated them with guerrilla forces. Civil patrollers and military commissioners, in turn, marginalized and vilified returnees.<sup>7</sup> Although returns occurred relatively uneventfully for two years, army and civil patrol propaganda against returnees produced increased tension and polarization. Army officials, (including former-President Serrano's defense minister, Gen. José García Samayoa) on many occasions publicly linked the returnees, as a social group, with the URNG guerrillas. At the time of his October 1995 resignation, then-Defense Minister Mario Enriquez was reported to have said that returned refugees "served as a...shield of the guerrillas."<sup>8</sup> In August, Playa Grande military zone commander General Luis Miranda Trejo told Human Rights Watch/Americas that there were three reasons refugees left the country: they were members of the guerrillas, they collaborated with the guerrillas, or they were fleeing battles between the army and the guerrillas.<sup>9</sup> In late September, 1995, the army second-in-command in the Santa Elena military zone publicly accused returnees in La Esmeralda of transporting weapons used for a recent guerrilla attack on the base, yet offered no evidence to substantiate this charge. The Mediating Commission created by the October 1992 refugee accord took the charges seriously. The UNHCR sponsored meetings on October 23 and November 8, between the returnees, the permanent commissions, and the commander in order to clarify his statements.<sup>10</sup>

For years, the army has trained civil patrols to spy on and repress suspected guerrilla supporters in their villages. For that reason, public statements by senior military officers are interpreted by local patrollers as license to intimidate and attack returnees. In addition to defamatory public statements, during its regular meetings with civil patrollers, army officers instructed them to shun the returnees in order to avoid problems (including having suspicion cast on their own loyalty). The Catholic church described this as a widespread practice, and reported examples as recently as September 1995 in villages close to the newly resettled refugee community south of San Antonio Tzejá. A Catholic church public opinion survey conducted several months prior to the first return in January 1993 indicated that virtually 100 percent of civil patrollers and military commissioners opposed refugee return. The church worked to combat this attitude through public education, sponsoring, for example, 2,000 radio messages about refugee return which were broadcast in five languages.<sup>11</sup> De facto patrol head Raúl Martínez told Human Rights Watch/Americas that

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<sup>6</sup> Some analysts attribute this to divisions within the army between those committed to maintaining its traditional authoritarian power, and those favoring a transition toward a modern, professional force subordinate to civil authority.

<sup>7</sup> Military commissioners, the army's hybrid civilian-military representatives in towns and villages responsible, among other things, for military recruitment, have been implicated in numerous human rights violations. President de León dissolved the position of military commissioner effective September 15, 1995, (see below).

<sup>8</sup> Verification Commission, "Dictamen de la Instancia de Verificación en Relación con los Sucesos de Xamán, el 5 de Octubre de 1995," Guatemala City, October 31, 1995. The Verification Commission was created by the October 1982 refugee accord to examine and ensure the compliance of both the refugees and the government. It includes a representative of U.N. Independent Expert Mónica Pinto.

<sup>9</sup> In fact, most refugees were fleeing the army's scorched earth campaign of the early 1980s, which explains their deep distrust of the military and government authorities.

<sup>10</sup> The Mediating Commission (Instancia Mediadora) is headed by Bishop Gerardo Flores of the Catholic Episcopal Conference and includes a representative of the UNHCR and the human rights ombudsman (the position of human rights ombudsman, mandated by the 1985 Constitution, was created by legislation in 1987. The ombudsman is appointed by the Congress). The International Consulting Group in Support of the Return Process (GRICAR), which includes diplomatic and nongovernmental representatives, advises the mediating commission.

<sup>11</sup> Interview with Bishop Gerardo Flores, Cobán, Guatemala, August 10, 1995. Bishop Flores told Human Rights Watch/Americas that he had received letters from villagers in areas not designated for returns, asking his intervention to prevent "communist refugees" from taking their lands. For a discussion of army fomented hostility toward refugees, see Human Rights Watch/Americas *Human Rights in Guatemala During President De León Carpio's First Year*, (New York: June 1994); pp. 78-82.

“people not involved with the guerrillas came back earlier. People who came back before the [1992 refugee] accords are fine--the others waited for the accords.” Some villagers interviewed in Zona Reyna civil patrol-dominated communities concurred with this view.<sup>12</sup>

Ongoing conflict, the attendant ideological polarization, and competing land claims continued to complicate refugee return and nowhere in Guatemala was this manifested as acutely as in the Ixcán. The northwestern section of the Ixcán municipality was colonized by indigenous Guatemalans in the 1960s with the support of the Catholic Church.

The colonizers formed the Ixcán Grande cooperative which linked five smaller cooperatives. In 1981 and 1982 army scorched earth operations completely destroyed and depopulated the cooperative, whose members either were killed, fled into southern Mexico, or became internally displaced. The first collective refugee returns were to Ixcán Grande where returnees reactivated the cooperative. Many of these returnees recovered their lands, although not always their original plots, through a volatile process that in some cases required the carefully-negotiated relocation of more recent settlers, brought into the area by the army in the refugees' absence. Much of the cooperative lands continued to be conflictive areas with ongoing URNG guerrilla presence, inhabited largely by once-nomadic groups of displaced civilians, including former cooperative members, called Communities of Populations in Resistance (CPR).<sup>13</sup>

In contrast to the Ixcán Grande cooperative, refugees hoping to return to their villages in the Zona Reyna were contending with new settlers and displaced original villagers who had returned shortly after the most acute violence to an area tightly controlled by the army. The civilian and military authorities brought new settlers from other provinces to the Zona Reyna beginning in the mid-1980s. Loyalty to the army was a prerequisite and the new settlers were obliged to form civil patrols. In exchange, the government promised to legalize the land holdings of the new settlers and began the process by invoking the "voluntary abandonment" (article 114) of the National Agrarian Transformation Decree of 1967. Article 114 provides for the readjudication of lands whose owners have voluntarily abandoned them for one year.

Armed conflict and the attendant instability in southern Mexico have made it an increasingly less hospitable haven for Guatemalan refugees at the same time that the recent attacks on former refugees in Guatemala have augmented the fear and insecurity associated with return.

### **XAMAN: SOLDIERS MASSACRE FORMER REFUGEES**

On October 5, 1995, twenty-six soldiers opened fire on at least 200 unarmed Guatemalan men, women, and children in Aurora 8 de Octubre, Xamán, in the municipality of Chisec, Alta Verapaz department, killing eleven villagers and wounding more than thirty. Ninety of the 256 families (1,356 people) in the community had returned to Guatemala from Mexican refugee camps exactly one year before the massacre where they were joined by 116 families from Victoria 20 de enero and other Ixcán settlements, and fifty local families. At the time of the massacre, the community was preparing to celebrate its first anniversary in Xamán. Approximately 2,000 refugees scheduled to return in late 1995 temporarily suspended their plans in response to the massacre.

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<sup>12</sup> Interview with Raúl Martínez and several other villagers in Kaibil Balam, August 12, 1995.

<sup>13</sup> The Communities of Populations in Resistance are displaced persons who remained in conflictive areas; formerly nomadic in nature, in the Ixcán region these groups established permanent, defined temporary settlements during the past two years. Recently, CPR communities on the Ixcán Grande cooperative agreed to resettle on farms elsewhere in the Ixcán municipality. A church-sponsored agreement with the Ixcán Grande cooperative that legally established a spin-off cooperative in Xalbal continued to produce tensions. In September, returnees temporarily settled in Veracruz, Ixcán, marched to Xalbal to reclaim lands, although the firm legal standing of the Xalbal cooperative and timely interventions by the Catholic diocese, UNHCR, and MINUGUA contributed to a nonviolent resolution of the matter.



According to the Archbishop's Human Rights Office (ODHA), an army patrol of twenty-six soldiers, commanded by Second Lt. Camilo Antonio Lacán Chaclán, left the Rubelsanto detachment on October 3 to investigate reports of a land takeover in the village of Las Mercedes and to conduct civil affairs operations (to engage and interact with the civilian population). They continued their patrol in neighboring villages approaching Xamán en route to San Pedro Limón on October 5. The soldiers were patrolling on the property of the Aurora 8 de Octubre community when several returnees detected them and went to question them about their presence.<sup>14</sup> The returnees, led by several women, told the soldiers to accompany them to the village center to account for their presence on community lands, which they considered a breach of the government's commitment to respect the civilian nature of their community.<sup>15</sup> The soldiers agreed and the group went to the center of the village, where a large group of villagers converged, after community leaders summoned them by loudspeaker.

Tensions heightened as angry villagers surrounded and yelled at the soldiers, demanding an explanation for their presence on community lands and exhorting them to put down their weapons and remain where they were until MINUGUA and the UNHCR arrived. MINUGUA's preliminary report gave the following description of events:

After approximately half an hour, this led the patrol to attempt to break the circle, using its weapons to push the people, who continued to impede the soldiers' departure. At that moment, one person grabbed the barrel of a sergeant's weapon, with the intention of taking it away from him. The sergeant gave the order to shoot to a soldier who, in doing so, killed the above-mentioned person and two others nearby. Immediately thereafter, other soldiers began to fire indiscriminately, in all different directions, wounding many persons, six of whom died, some of them killed while they lay injured on the ground.

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<sup>14</sup> ODHA, "Preliminary Report of the Archbishop of Guatemala's Human Rights Office," Guatemala City, October 11, 1995. This information is consistent with interviews of witnesses by a Human Rights Watch/Americas representative who visited Xamán on October 7, 1995.

<sup>15</sup> Although there appears to be no such agreement in writing, statements immediately after the October massacre in Xamán by then-Defense Minister Mario Enríquez Morales affirmed that the army, as a matter of policy, avoided patrolling in returnee communities ("Ejército admite autoría en contraataque a retornados," *Siglo Veintiuno*, October 6, 1995). In a communiqué dated October 11, the Presidential Human Rights Commission (COPREDEH) reported that Second Lt. Lacán said he had "disobeyed military instructions" by entering the returnee community. Gen. Miranda Trejo, then-regional commander of Military Zone 22 in Playa Grande in the Ixcán, told Human Rights Watch/Americas in August that he had instructed his soldiers not to patrol in returnee communities. The presence of soldiers in returnee communities had produced severe anxiety and hostility toward soldiers in the past (see below).

The mission has verified that 200 meters away from the events, as the patrol left the site of the incident, eight-year-old Santiago Pop Tut, who was walking on a road, was deliberately attacked by a soldier, clearly identified, who wounded him on one hand. When the child ran towards his house, the soldier returned and, in cold blood, shot him in the chest and the head, killing him.<sup>16</sup>

The soldiers fired at the telephone company tower (GUATEL) as they retreated from the community and shots reportedly were heard in the jungle for some forty-five minutes after the initial attack.

Within hours, MINUGUA and UNHCR personnel were at the scene to evacuate the wounded and begin their investigation. U.N. Independent Expert Mónica Pinto arrived the following day for her scheduled human rights mission and traveled to Xamán, as did a governmental commission named by President de León, the Archbishop's Human Rights Office, and the Rigoberta Menchú Foundation. A Human Rights Watch/Americas representative, and numerous journalists and human rights groups, also visited the site in the days following the killings.

The dead were officially identified as: Abel Ramírez Pérez (visiting from Victoria 20 de Enero, Ixcán); Manuela Mateo Pascual, twenty (visiting from Los Angeles, Ixcán); Pedro Medina Sánchez, forty-two, vice-president of the community council; Pablo Coc Coc, thirty-five; Juana Jacinto Felipe, thirty-nine; Hilaria Mercado de la Cruz, forty-eight; Pedro Diego Andrés, thirty-four; Andrés Miguel Mateo, fifty; Carlos Fernando Choc Chic, seventeen (died October 6 in the hospital in Salamá); Maurilia Coc Macs, seven; and Santiago Pop Tut, eight. The following is partial list of wounded: Efraín Grave Morente, Juana Felipa (or Juan Felipe) Velásquez, Mateo Pedro, Pascual José, Francisco Hernández, Santos Choc Mac, Santiago Maquín, Martín Quip Moc (Mucu), Victor Carrillo, Rosenda Sales Ortíz, Ricardo Pop Caal, Marcos Jolom Nayac, Rosendo Morales Ortíz.<sup>17</sup> Three soldiers were also wounded by gunfire, none of them critically; they were identified by the Defense Ministry as Ricardo Chub Cholóm, Marcelino Caal Sacul and Fernando Caal Choc.

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<sup>16</sup> MINUGUA, "Preliminary Conclusions Reached by MINUGUA Following Verification of the Events Occurred on 5 October 1995 at the Returnee Community 'Aurora 8 de Octubre' (Xamán Farm) in Alta Verapaz," Guatemala City, October 10, 1995; hereafter: MINUGUA, "Preliminary Conclusions").

<sup>17</sup> Médicos del Mundo-España distributed the lists on October 6 and the human rights ombudsman provided nearly identical lists in his October 9 report of the incident. (The lists contained minor differences in spelling and name order.)

The massacre sparked a chain of events that led to the resignation of the defense minister, Gen. Mario René Enríquez Morales, on October 9. Immediately after the killings, General Enríquez blamed the villagers for the incident, stating that “the problem arose when the patrol went into the community and was surrounded by 300 people, men, women, and children, who took three Galil rifles from them and fired upon them. This obliged the soldiers to respond with fire to recover their weapons and save their lives.”<sup>18</sup> A Defense Ministry preliminary report of the incident alleged that three soldiers were wounded by fire from the villagers and “the second lieutenant gave the order that no soldier should respond, but some soldiers, seeing what had happened, disobeyed the order and answered the fire, causing a shootout between the two groups....The soldiers were able to see that men armed with shotguns and rifles were firing from the houses, which caused the officer to give the order to collect the wounded and retreat immediately from the area. Before retreating, the soldiers were able to recover their weapons.”<sup>19</sup>

MINUGUA and ODHA’s preliminary findings refuted the defense minister’s claims. According to MINUGUA, “the verification does not reveal any evidence that the members of the community were armed, and there are sufficient elements to conclude that all the victims, including the three injured soldiers, were hit by bullets fired by members of the patrol. The mission is in possession of irrefutable elements that indicate the identity of the authors of four deaths, as well as details that even show, in one case, that the victim was shot in the back and, in another, that an eight-year-old boy was cold-bloodedly executed.” Similarly ODHA concluded that “it is not likely that a person without training can rapidly disarm a soldier, manipulate a weapon that weighs ten pounds, twelve pounds with the magazine, and fire at the soldiers.”<sup>20</sup>

The soldiers’ use of massive deadly force against the hostile, but unarmed, crowd was unjustifiable and grossly disproportionate under the circumstances, in violation of international standards governing the use of force by law enforcement officials (including military personnel involved in law enforcement activities). Moreover, the manner in which soldiers killed eight-year-old Santiago Pop Tut and other victims who appear to have been shot while fleeing the scene or while lying injured on the ground, indicate deliberate, execution-style killings carried out by some of the soldiers.<sup>21</sup>

President de León named a special commission composed of Presidential Human Rights Commission (COPREDEH) President Vicente Arranz, Attorney General Ramsés Cuestas Gómez, Interior Minister Carlos Reynoso Gil, and National Fund for Peace (FONAPAZ) Director Alvaro Colóm. President de León accompanied the

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<sup>18</sup> “Ejército reconoce autoría en masacre de campesinos,” *La República*, October 6, 1995. (Translation by Human Rights Watch/Americas).

<sup>19</sup> Ministry of Defense, “Información Inicial: Hechos Ocurridos en la Cooperativa '8 de Octubre,' Finca Xamán, Cobán A.V. el 05Oct95,” (Guatemala, October 6, 1995). Translation by Human Rights Watch/Americas.

<sup>20</sup> MINUGUA, “Preliminary Conclusions” and ODHA, “Preliminary Report.”

<sup>21</sup> According to Article 3 of the *U.N. Code of Conduct for Law Enforcement Officials*, (adopted by the General Assembly in its resolution 34/169 of December 17, 1979), “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duties” in accordance with existing principles of proportionality. Article 5 of the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (General Assembly resolution 45/166, December 18, 1990) states with regard to the use of firearms that “law enforcement officials shall (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) minimize damage and injury, and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.” It further provides that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (Article 9) and that law enforcement officials shall “give a clear warning of their intent to use firearms (Article 10).” These documents constitute persuasive guidelines to interpret the right to life and other internationally-recognized rights codified in the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, to which Guatemala is a party.

commission to Xamán on October 6, where, contradicting the defense minister, he accepted institutional responsibility for the killings, pledged to bring those responsible to justice, and to compensate the victims and their families.<sup>22</sup> He dismissed the regional commander of Military Zone 21 in Cobán, Col. Samy Noé Vásquez Benavente. As far as we know, however, no action has been taken against Chaclán's immediate superior in charge of the Rubelsanto base. On October 9, President de León accepted General Enríquez's resignation and named Gen. Marco Antonio González Taracena as defense minister.

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<sup>22</sup> President de León also named Lic. Alcides Sagastume as prosecutor in the case, but he later resigned. As a judge, Sagastume ordered the arrest of Rigoberta Menchú when she returned to Guatemala from exile in 1988. Menchú, whose foundation works in Xamán, is a joint plaintiff (*querellante adhesiva*) in the case. Lic. Ramiro Contreras replaced Sagastume on October 24.

The soldiers were placed in pre-trial detention in Jalapa department under the jurisdiction of the military tribunal (*Juzgado de Primera Instancia Militar*), where they will be tried under procedures established in the new Criminal Procedures Code.<sup>23</sup> Article 546 of the new code makes the critical distinction between strictly military infractions and common crimes committed by military personnel, although both are assigned military jurisdiction. Under Article 546, the Public Ministry conducts the pre-trial investigation for common crimes committed by military and brings charges against the accused, at which time its role terminates. The military judge (*juez militar de instrucción*, who must be an attorney) assumes control of the investigation and interim proceedings (*procedimiento intermedio*). The “oral and public” trial is conducted by a court-martial (*Consejo de Guerra*) comprised of a three-person civilian sentencing court (*Tribunal de Sentencia*) and two superior officers of the Guatemalan army (there is no stipulation that the latter must be attorneys). The Supreme Court selects the military judges and the two military officers for the court martial from a list provided by the Defense Ministry. The appeal process returns to the civilian courts up to the Supreme Court. According to the organic law of the judiciary (*Ley del Organismo Judicial*), two high-ranking army officers (*jefes del ejército*) will be added to the Supreme Court when it entertains cases decided by a court martial.)

Guatemala is a party to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, which set due process standards which are binding on Guatemala, including an impartial and independent proceedings in criminal trials.<sup>24</sup> Military courts do not constitute independent and impartial tribunals when prosecuting common crimes by the military because they are wholly beholden to their commanders up the ranks. Therefore, an investigation and prosecution of a serious crime like the one in Xamán, if left to military jurisdiction, would place Guatemala in violation of fundamental human rights principles.

Rigoberta Menchú, as joint plaintiff in the case, petitioned the military judge to transfer venue to civilian jurisdiction. The judge denied the petition, but an appeals court (Sala Quinta de Jalapa) annulled the decision on procedural grounds and returned the matter to the military judge for another ruling. The Public Ministry should enter its own petition to transfer the case to civilian jurisdiction on the grounds outlined above.

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<sup>23</sup> The human rights ombudsman identified the soldiers under the command of Second Lt. Lacán Chaclán as: Hector May Garcia, Alejandro Cu Cal, Marcos Can Quej, Ricardo Chub Cholóm, Fernando Caal Coc, Manuel Morán, Pablo Pou Pop, Manuel Tec Caal, Elías Coc Pop, Marcelino Caal Chub, Agustín Choc Caal, Julio César López, Eliázar Tox Xol, Carlos Juc Coy, Manuel Chen Yat, José Asig Tec, Marcelino Caal Sacul, Ricardo Chub Pop, Francisco Tzul Ba, Florencio Juc Ixim, Mauricio Juc Caal, Pedro Bep Xol, Carlos Cuc Cacao, Martín Tiul Xol, and Ambrosio Macz Cojoc. One soldier, Martín Tiul Xol, was only sixteen years old and had been in the army for more than one year. He was sentenced by a juvenile court judge to three months in a juvenile detention facility in Guatemala City, after which he was to be released to his family. ODHA reported that several other soldiers, eighteen years old at the time of the massacre, stated that they had been in the army for up to two years. Under Guatemalan law, the minimum legal age to serve in the military is eighteen.

<sup>24</sup> Article 14(1) of the International Covenant on Civil and Political Rights states that “everyone shall be equal before the courts and tribunals in the determination of any criminal charge....everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal...” The American Convention on Human Rights (Article 8(1) contains similar language guaranteeing trial by an independent and impartial tribunal. Article 46 of the 1985 Guatemalan Constitution recognizes the supremacy of international law over Guatemalan law.

The initial investigation of the Xamán massacre was deficient and valuable evidence may have been lost. Despite the on-site visit of the special commission named by the president, and the first public prosecutor, Lic. Sagastume, immediately following the killings, the authorities did not preserve the crime scene or interview witnesses present. Of approximately 250 rounds of ammunition fired, only twenty-six bullets were recovered, according to international observers. ODHA reported deficient autopsies and lack of analysis of physical evidence including the clothing worn by the victims, problems confirmed by the current prosecutor, Ramiro Contreras.<sup>25</sup> The initial failure to preserve physical evidence may make it more difficult to assign individual responsibility for the eleven deaths and dozens of injuries. Further, military judge Mynor López Chanquín, acceding to the defense attorneys' request, prohibited the presence of MINUGUA observers during the indictment of the soldiers in October. This violated Article 10 of the Human Rights Accord, signed in 1994 by the government and the guerrillas, which allows MINUGUA to "make visits to State installations...freely and without prior notice when it deems them necessary for fulfilling its functions." The question of access to verify due process was later resolved satisfactorily, according to MINUGUA.<sup>26</sup>

The Public Ministry requested that a separate lawyer and adequate interpreter services be provided each defendant. To date, the attorneys hired by the Defense Ministry to defend the soldiers have proffered a joint defense, despite the fact that the interests of individual soldiers are incompatible. For instance, information provided by some witnesses to human rights observers suggested that not all of the soldiers fired their weapons during the incident.<sup>27</sup>

Attorney General Ramsés Cuestas reported publicly in December that Public Prosecutor Ramiro Contreras had received threats in relation to the Xamán case. The authorities should take all necessary measures to protect him. Intimidation and attacks on those prosecuting or hearing militarily sensitive cases sadly remain the norm in Guatemala.

The hostility and fear encountered by the Rubelsanto patrol was not without precedent. The army had reported prior incidents in which irate villagers in Veracruz (a temporary return settlement in Ixcán Grande) detained and provoked soldiers they encountered in or near their community. General Miranda, commander of Military Zone 22 in Playa Grande, Ixcán, told Human Rights Watch/Americas of four such cases between May and August 1995: in three of the cases, returnees allegedly detained soldiers in or near Veracruz for between fifteen minutes and two hours. In one instance, the captured soldier alleged that the returnees were armed.<sup>28</sup> General Miranda described a fourth incident in an August 6 letter to the Guatemalan authorities and MINUGUA alleging that on August 2, a military patrol was intercepted by a group of returnees from Veracruz "led by three people of foreign appearance who claimed to belong to MINUGUA and the UNHCR." The letter alleged that one soldier, José Zi Ichich was hit and his backpack was ripped, and a woman in the crowd hit another soldier, Mario Coy Loc, on the back. The returnees admonished the soldiers not to pass through the area again.<sup>29</sup>

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<sup>25</sup> "ODHA: Deficiencias del MP causan pérdida de pruebas del caso Xamán," *Siglo Veintiuno*, October 25, 1995. Special Prosecutor Ramiro Contreras told Human Rights Watch/Americas that there was negligence in the autopsies and affirmed that the clothing of the deceased had not been examined and appeared to have been buried with them. Telephone interview, December 13, 1995. Not one projectile was removed from the deceased, despite instances where no exit wounds were found on the bodies.

<sup>26</sup> Telephone interview with Rosemarie Bornand, verification coordinator of the Guatemala city regional office, December 13, 1995.

<sup>27</sup> Telephone interview with ODHA representative, October 10, 1995.

<sup>28</sup> General Miranda sent letters to the Guatemalan judicial authorities and MINUGUA in each of these cases, on May 21, June 13, and July 1, respectively, citing violations of the soldiers' constitutionally-guaranteed right to freedom of movement and protection from illegal detention (Articles 6 and 26).

<sup>29</sup> Staff of the MINUGUA office in Cantabal told Human Rights Watch/Americas in August that its personnel had not been present in the area at the time, and were deeply concerned that the base commander had accused its personnel of directing or participating in the incident.

While similar incidents had not been reported in the area of Xamán, the army officers and troops were well aware of their potential. This was demonstrated by the instructions reportedly circulated to troops to avoid returnee settlements, which Second Lieutenant Lacán said he disregarded on October 5. The soldiers should have been prepared to react with minimum force to avoid bloodshed when confronted by hostile, but unarmed, civilians.

In the aftermath of the massacre, President de León assured the world that it was an “isolated incident” and not “government policy.”<sup>30</sup> In fact, government soldiers do not routinely massacre civilians as they did during military governments of the early eighties, although political killings and disappearances attributed to military and paramilitary agents continue. To prevent future incidents, the president announced he would not allow returns to conflictive areas, saying that “Guatemala is the only country in the world in which refugees are returning to conflict areas, but we must correct this because our fellow citizens must return to safer places.”<sup>31</sup> All Guatemalan citizens would be better protected by a government commitment to prosecute and punish those who violate human rights, however; Guatemala's tragic history of impunity for countless army massacres continues to be unbroken, leaving citizens defenseless.

As MINUGUA aptly pointed out in its preliminary report, the massacre “is proof of the consequences that can result from the autonomy enjoyed by the Army in its counterinsurgency and anti-subversive activities....reactions such as that displayed by the members of the patrol that killed eleven persons indicate the pernicious influence of the rhetoric that identifies refugees and returnees with the guerrilla.”<sup>32</sup> In his October 9 report, the human rights ombudsman exhorted the authorities to cease hostilities, surveillance, and reprisals of a physical, moral, or any other nature against the residents of Aurora 8 de Octubre. ODHA's recommendations included, “that returnee communities not continue to be analyzed or considered from a national security perspective, and officers and troops should be adequately instructed about the commitments acquired by the State...regarding the return process.” Human Rights Watch/Americas urges the government of Guatemala to pay close attention to these recommendations in addition to those specifically related to the the legal proceedings.<sup>33</sup>

### IXCAN: CIVIL PATROLLERS DEFY RETURN

Beginning in September 1994, residents of Kaibil Balam joined forces with neighboring communities to organize opposition to refugee return from Mexico to villages in the Zona Reyna.<sup>34</sup> Villagers from Kaibil Balam, San Antonio Tzejá, Santo Tomás, and Nueva Sináí formed the Regional Association of Landholders of the Ixcán (ARAP-

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<sup>30</sup> “Guatemala: Guatemala Defense Minister Resigns After Peasant Massacre,” *Reuters News Service Business Briefing*, October 9, 1995.

<sup>31</sup> “President Not to Allow Refugees' Return,” *Siglo Veintiuno*, Foreign Broadcast Information Service (FBIS), Central America, October 16, 1995.

<sup>32</sup> MINUGUA, “Preliminary Conclusions”.

<sup>33</sup> The refugees have called on the government to order the removal of army bases from return areas, a call echoed by the Verification Commission. A precedent for this was the removal of the army base from Santiago Atitlán after the December 1990 massacre there, which brought an end to the violent human rights violations which had plagued the area.

<sup>34</sup> Opposition to refugee return in the Zona Reyna is not new: the Association for the Advancement of Social Sciences in Guatemala (AVANCSO), which conducted extensive research on forced migration and return, reported that “when the first repatriates returned in 1987 with the intention of returning to the Ixcán, three communities (Xalbal, Kaibil Balam, and Santo Tomás) drew up statements rejecting their entrance.” AVANCSO, *Dónde Está el Futuro? Procesos de reintegración en comunidades de retornados* (Guatemala: Inforpress Centroamericana, July 1992), pp. 66-67. (Translation by Human Rights Watch/Americas.)

KSI), whose membership includes local officials, armed civil patrollers, and military commissioners. As preparations progressed for returns to San Antonio Tzejá and San Juan Ixcán in April 1995, ARAP-KSI, directed by its president, Raúl Martínez Pérez, a Jehovah's Witness pastor, businessman, and *de facto* civil patrol leader in Kaibil Balam, employed increasingly violent tactics to block them. The authorities failed to take effective legal action despite increasingly brazen crimes and mounting legal complaints against Martínez. The civilian government stepped aside when the civil patrollers, unhindered by their military superiors, drew a line in the sand for returning refugees.

ARAP-KSI provides an example of the army use of civil patrols to combine its traditional counterinsurgency agenda with its peacetime goal to maintain its influence in the economic, political, and social sphere (along the lines of its controversial plan to convert civil patrols into so-called peace and development committees). Although ARAP-KSI is not synonymous with the civil patrol, its membership unites armed civil patrollers from four villages, as well as former military commissioners, and local elected officials such as auxiliary mayors.<sup>35</sup> Most of the men in Zona Reyna villages, including most ARAP-KSI members, serve as patrollers in rotating shifts and patrol chiefs routinely meet with army civilian affairs officers. According to Kaibil Balam village records, ARAP-KSI formed in December 1994 as a non-profit organization of a "social, educational nature for cooperation, assistance and services...apolitical and nonsectarian...to request of the government legalization of lands, clinics, churches, schools...." However, as former military commissioner and ARAP-KSI member Romeo Ramírez told Human Rights Watch/Americas, "we are organized to defend and fight for the security of our lands."<sup>36</sup>

Raúl Martínez is the *de facto* authority in Kaibil Balam, and as ARAP-KSI's president, in three other villages. As illustrated in the cases outlined below, Martínez has governed through credible threats to detain, injure, or expel his detractors; his ability to control land-related processes and to extort funds; and the deference and obedience shown him by local officials, civil patrollers, and government representatives. In fact, Martínez's actual relationship with the army remained unclear: local Guatemalans, and even government officials, constantly referred to him as a civil patrol chief or military commissioner, although the local army commander denied that he was serving officially in either capacity. There was also some evidence that ARAP-KSI membership was not totally voluntary, as some villagers reported to international observers that ARAP-KSI leadership pressured them to join at the risk of losing their lands.<sup>37</sup> Zona Reyna villagers complained to Human Rights Watch/Americas of government neglect and said they feared losing lands they had invested in and relied on for their livelihood. Raúl Martínez and the civil patrollers he controlled whipped these fears into a violent revolt against refugee return.

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<sup>35</sup> The military commissioners served as local army representatives and their tasks included army recruitment. On June 30, 1995, President de León announced their dissolution, effective September 15. MINUGUA has urged the government to disarm the former military commissioners and publicize widely their dissolution and its significance at a local level. For a discussion of civil patrols and peace and development committees, see Human Rights Watch/Americas *Human Rights in Guatemala During President De León Carpio's First Year*, pp. 14-16. See also: The Robert F. Kennedy Memorial Center for Human Rights, *Institutional Violence: Civil Patrols in Guatemala 1993-1994* (Washington D.C.: Robert F. Kennedy Memorial Center for Human Rights, August 1994), pp. 58-67.

<sup>36</sup> Interview in Kaibil Balam on August 12, 1995.

<sup>37</sup> Telephone interview with an international monitor in Guatemala who asked not to be identified, June 2, 1995.



Long before the return of the refugees, Raúl Martínez and his allies threatened and harassed a group of Kaibil Balam cooperative members who are sympathetic to refugee return and who have chosen not to join ARAP-KSI.<sup>38</sup> They are members of the Agricultural Cooperative and Various Service "Jun Chembal Te Kipamal, R.L.," founded in Kaibil Balam in the mid-1960s, who fled to Mexico during the 1982 violence. Of the 137 original cooperative members, twenty-five families repatriated to Kaibil Balam in the late eighties, returning to a village already occupied by new settlers loyal to the army. Seventy to eighty new settlers currently live on what were originally cooperative lands.<sup>39</sup>

Negotiations for the San Antonio Tzejá return were in the final stages when violence intensified in early 1995. The government had agreed that the refugees would settle on thirty-four vacant plots of land in the village. In addition, more than sixty families (known as "negotiators") living in San Antonio Tzejá already had agreed to relocate to other areas in exchange for government compensation for their improvements to the property, leaving additional lands available for returnees. Some of these families reported to international monitors that they were threatened repeatedly by Martínez and his followers for having agreed to leave. Despite these agreements, as preparations for the return progressed in early 1995, ARAP-KSI members intensified their efforts to prevent it.

On April 20, the roughly 300 refugees returning to San Antonio Tzejá and nearby San Juan Ixcán arrived, along with other returnee groups, in Nuevo Orizaba on the Mexican-Guatemalan border.<sup>40</sup> The following day, after discussions with the refugees, the government (including the defense minister's representative, Major López Bonilla), signed an agreement with them to address the violence threatening to prevent their return to the two villages. The authorities pledged, among other things, to "present and support the refugees' request to collect the weapons of the [civil patrols] in the area, and to take measures to stop the illegal actions perpetrated by Raúl Martínez." Unfortunately, the Guatemalan authorities did not curb Martínez and ARAP-KSI civil patrollers; rather, on May 9, Martínez and ARAP-KSI took hostages to force a meeting with the authorities, during which the defense minister would renege on these and other prior agreements. Upon crossing the border, the returnees were forced to seek refuge with the Catholic church in the municipal seat of Cantabal for their own safety, where they remained for two months.

The following is a sampling of abuses reportedly committed by Raúl Martínez and ARAP-KSI members, including local officials:

On September 13, 1994, in Kaibil Balam, local residents led by Raúl Martínez intercepted a delegation of permanent commission members, UNHCR personnel, nongovernmental representatives, and Guatemalan government officials from the National Commission for Attention to Refugees and Displaced (CEAR) and the National Institute for Agrarian Transformation (INTA) who were visiting area villages to assess conditions for return. They threatened to tie up and jail the delegation members unless the latter signed a document expressing the villagers' opposition to refugee

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<sup>38</sup> The Zona Reyna conflict includes a complex array of actors in each village, characterized by their unique histories and their varied positions on refugee return: ARAP-KSI includes new settlers brought to the area in the mid 1980s to resettle, under army supervision, lands left behind by the refugees. There are also original residents who returned to their villages after a short period of displacement in the 1980s; still others living in these villages are the adult children of original settlers who may or may not favor return. The term "negotiators" (*negociantes*) describes villagers who favored refugee return or were willing to relocate to other areas in exchange for government compensation. In San Antonio Tzejá, at least, the majority of the villagers were "negotiators" willing to leave to make way for the refugees. Though beyond the scope of this report, ethnic and religious factors are often central to community politics.

<sup>39</sup> Interview with two cooperative members who asked not to be identified, Kaibil Balam, August 12, 1995. The court case filed by the cooperative members is described at length below.

<sup>40</sup> The San Juan Ixcán group was not facing similar opposition since the village, originally a part of ARAP-KSI, had withdrawn from the association months earlier. However, they were unable to proceed to San Juan Ixcán until late June because of ARAP-KSI's threat to their security.

return. They also announced their intention to prohibit access to the area of any individual or institution involved with the return process until the government gave them permanent titles to the lands they occupied.<sup>41</sup>

In November, cooperative members from Kaibil Balam formally accused Martínez of numerous abuses, including threats, coercion, and illegal detention. These charges, which the authorities ignored for six months, were combined, in August 1995, with more recent charges brought against Martínez (see below).

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<sup>41</sup> Interview in Guatemala City with an international humanitarian worker who was part of the delegation in the Zona Reyna, who asked not to be identified, August 7, 1995.

On March 24, 1995, Martínez, Kaibil Balam auxiliary mayor Balbino Lucas, and former military commissioner Romeo Ramírez led a meeting of ARAP-KSI members in Kaibil Balam, instructing them in methods to impede the return. The methods, to be employed successively, were: closing the "hammock" (rope) bridge leading to Kaibil Balam (which is the principal access to Kaibil Balam, San Antonio Tzejá, and other communities in the Zona Reyna); attacking those associated with the return process using machetes, knives, slingshots, hot water, water mixed with hot pepper or lime, and gasoline; and finally, killing the returnees with army-supplied weapons. The cases below reflect that some of these weapons were visible or their use threatened during the commission of violations.<sup>42</sup>

After the March 24 meeting, ARAP-KSI members took turns guarding the hammock bridge separating Xalbal and Kaibil Balam. They erected a sign saying "Attention: passage is prohibited for the institutions INTA, CEAR, ACNUR [UNHCR],...GRICAR and returnees." On April 12, Raúl Martínez and his followers guarding the bridge stopped and threatened UNHCR officials and local Guatemalans who had been hired by the UNHCR to haul materials.<sup>43</sup>

In an April 12, 1995 letter to MINUGUA, leaders and residents of San Antonio Tzejá stated, "we are not responsible for any harm or injury that occurs to any commission, national or international, since fourteen years of war have been a school for us." The committee asked MINUGUA to distribute the letter to the UNHCR, the international consulting group in support of the return process (GRICAR), and the permanent commissions.

On April 18, 1995, the Guatemalan daily *Prensa Libre* reported that ARAP-KSI members led by Raúl Martínez demonstrated on April 17 in San Antonio Tzejá. Martínez is quoted saying that ARAP-KSI members "are prepared to arm their people" to demand permanent land titles. During the same period, members of Martínez's group destroyed temporary shelters (*galeras*) that had been constructed for the returnees.<sup>44</sup>

On April 18 and 19, villagers armed with clubs and machetes prevented helicopters carrying U.N. and Guatemalan government officials from landing. On April 18, villagers reportedly carrying firearms intercepted a group of Guatemalans who had landed at the San Antonio Tzejá airstrip intending to visit relatives in the area. The villagers threatened to pour gasoline on the visitors, forcing them to leave the area.<sup>45</sup>

In an April 19 interview with *Teleprensa* [a Guatemalan television news program], Raúl Martínez declared that his followers had decided to "declare war" and that "if there are traitors among us who want to negotiate, who will they negotiate with if we are not going to permit anyone to enter? [I]n Kaibil Balam we have more than one hundred ready to attack the returnees and the international institutions as well....and from now on the returnees, international institutions and mediators are forewarned that, if they come, they will be captured."

On April 20, ARAP-KSI members with machetes and clubs struck a helicopter carrying Guatemalan and international officials, preventing their disembarkation. This led the government to suggest to the refugees, who were then approaching the border crossing from Mexico, that the return could not take place. (The refugees' opposition to this suggestion led to further negotiations and the signing of an agreement the following day, as described above.)<sup>46</sup>

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<sup>42</sup> Telephone interview with international monitor who asked not to be identified, June 2, 1995.

<sup>43</sup> Ibid.

<sup>44</sup> "Campesinos protestan porque les quitan tierras para retornados," *Prensa Libre*, April 18, 1995. Translation by Human Rights Watch/Americas.

<sup>45</sup> Telephone interview with international monitor who asked not be identified, June 2, 1995.

<sup>46</sup> Ibid.

On April 23, Raúl Martínez and fifteen other people guarding the bridge to Kaibil Balam stopped a Guatemalan man and his son. Martínez and his men reportedly beat and robbed the man, and fired a weapon as he fled the area.<sup>47</sup>

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<sup>47</sup> Ibid.

In 1995, Raúl Martínez and ARAP-KSI members took hostage Guatemalan and international officials on two occasions, demanding a series of actions by the government in exchange for their release.<sup>48</sup> In both cases, army officers were present and did not intervene.

On May 7, ARAP-KSI members seized a representative of an international assistance organization while he was in San Antonio Tzejá conducting land appraisals. They took him to Kaibil Balam accompanied by a patrol of uniformed soldiers who apparently made no effort to prevent the capture. Also on May 7, Raúl Martínez and ARAP-KSI members captured Major Sergio Villalta of the army's Civil Affairs division at the hammock bridge between Xalbal and Kaibil Balam. They subsequently seized Edgar Diemeck, an engineer with CEAR, at the bridge when he went there seeking Major Villalta. Human Rights Watch/Americas reviewed two statements, that of a Kaibil Balam villager, and that of an eyewitness to the captures, which indicated that both men were held against their will until their release on May 9.<sup>49</sup> Raúl Martínez demanded that a high-level government delegation travel to Kaibil Balam to negotiate the conditions for the release of all three hostages.

On May 9, in Kaibil Balam, Defense Minister Enríquez led a delegation to Kaibil Balam that included then-commander of Military Zone 22, General Luis Miranda Trejo, CEAR, FONAPAZ, and INTA officials, and special prosecutor Jorge Luis García Yelmo (whom the Public Ministry had assigned to prosecute the case against Martínez). Several hundred soldiers provided security for the delegation. According to sources present at the meeting, Raúl Martínez and his followers denounced the returnees as guerrillas and said that forty-five of their people had died in fourteen years defending the army. When the defense minister broached the possibility of disarming the patrollers, some of those present threatened to murder forty-five returnees with their bare hands. In the face of these brazen threats, the defense minister promised, among other things, to suspend the returns to the area, and to expedite procedures to issue permanent land titles to the current occupants.<sup>50</sup>

Later that day, the defense minister and CEAR officials informed the refugees then sheltered in Cantabal that they could not return to San Antonio Tzejá for security reasons, and proposed that they move to a farm in Alta Verapaz which the government had originally obtained for the relocation of current land occupants willing to leave San Antonio Tzejá. By taking this position, the defense minister showed a curious deference to what, on its face, was a group of civil patrollers committed to imposing its will at gunpoint.

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<sup>48</sup> Article 201 of the Guatemalan Criminal Code defines kidnaping (*plagio o secuestro*) as “the kidnaping of a person with the object of receiving ransom, exchange for third parties, and other illicit purposes of equal or analogous character...” In both instances, Martínez and his accomplices demanded concrete actions in exchange for their hostages, including dropping the charges against Martínez. The sentence for kidnaping is eight to fifteen years in prison, which may be increased if, among other things, the crime is committed by more than two people, or if the perpetrators impersonate authorities. Translation by Human Rights Watch/Americas.

<sup>49</sup> The testimony reviewed by Human Rights Watch/Americas, including that of an eyewitness, indicated that Martínez may have been present during both captures, which given the distances involved, would be difficult but not impossible. His protagonist role after the actual captures, however, is well documented, as are his prior threats to capture government officials and international monitors. Human Rights Watch/Americas was able to review these testimonies in August on the condition that their origin not be revealed.

<sup>50</sup> This account was provided to Human Rights Watch/Americas by a government official present at the meeting. According to village records of the meeting in Kaibil Balam, the defense minister and the government delegation promised: 1) that no refugees would enter Kaibil Balam and Santo Tomás; 2) legal titles to 119 farm plots (*parcelas*) would be issued to the current occupants of Kaibil Balam and Santo Tomás within sixty days; 3) FONAPAZ would build the road to Kaibil Balam in sixty days, and then to Santo Tomás, San Antonio Tzejá, and Nueva Sinai in sixty day increments; 4) two farms would be purchased for Nueva Sinai residents; 5) the San Juan Ixcán group would be allowed to proceed with their return. In the same document, one villager asserted that the San Antonio Tzejá returnees “mistreated them” and the defense minister responded that “absolutely no returnees will enter San Antonio Tzejá.” Acta 10-95, May 9, 1995 Kaibil Balam.

The second hostage-taking occurred on June 28, 1995, when Raúl Martínez and ARAP-KSI members took five foreigners hostage in San Antonio Tzejá. They captured Capt. Rui Matsuda, a MINUGUA military liaison from Brazil, Grahame Russell, a MINUGUA civilian observer from Canada, U.S. citizens Paula Worby of the UNHCR and Daniel Long of the World Council of Churches and the International Group for Consultation and Support of the Return Process (GRICAR); and Anne-Marie Subervie, a Doctors of the World representative from France.<sup>51</sup> The following reconstruction of events is based on our interviews with victims, residents of Kaibil Balam and San Antonio Tzejá, and U.N. officials:

June 26: The returnees, who had spent two months crowded into Catholic church installations in Cantabal, set out on foot for San Antonio Tzejá, spending the night in Santa María Tzejá.

June 27: The returnees continued to Santa María Dolores, where they spent the night. That day, in San Antonio Tzejá, one “negotiator” (a villager willing to relocate in exchange for compensation) suffered a machete wound during an altercation between ARAP-KSI members and negotiators from San Antonio Tzejá.

June 28: Hearing reports of the clash and possible wounded, the National Police headquarters sent Immediate Reaction Brigade (FRI) policemen to Cantabal. An officer identified only as Lt. Col. Trujillo from Military Zone 22, along with three soldiers, went by helicopter to San Antonio Tzejá, ostensibly to evacuate the wounded. (The soldiers apparently found no one requiring evacuation.) Meanwhile, the returnees arrived on the outskirts of San Antonio Tzejá where angry ARAP-KSI members stopped them, forcing them to camp in the muddy jungle. The five foreign observers accompanying the returnees entered San Antonio Tzejá to request that the children and other vulnerable people be lodged in the village during the night. ARAP-KSI members refused their request, in spite of housing offers by other villagers. As the five foreigners were leaving the village at 5:00 p.m., approximately fifty people armed with sticks surrounded and seized them, taking them to a communal building in the village center where they would spend the night as prisoners. The villagers took the radio from Captain Matsuda, the MINUGUA military liaison. ARAP-KSI members informed the international observers that they would be held until ARAP-KSI’s demands were met: these were that government officials arrive to negotiate with them about the land, and that the government suspend the arrest warrant against Raúl Martínez. Armed civil patrollers were in full view throughout the incident, and patrolled close to the communal building throughout the night.

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<sup>51</sup> A month earlier, on May 25, an arrest warrant had been issued against Martínez stemming from a complaint filed by the UNHCR for threats, coercion, and other alleged abuses, which the police had failed to enforce (see below).

That evening, Lt. Col. Trujillo and three soldiers went to the building where the hostages were held, saying that they had been unable to depart by helicopter that afternoon. The five international representatives explained to Lt. Col. Trujillo that they were being held involuntarily (which the officer subsequently confirmed with ARAP-KSI members) and asked that he notify his base and inform MINUGUA. During the evening, Lt. Col. Trujillo communicated twice by radio with Military Zone 22. However, the army never notified MINUGUA and the UNHCR about the hostages.<sup>52</sup> This was a serious breach of the Guatemalan government's commitment to guarantee the security of MINUGUA under the Human Rights Accord and the Status of Mission agreement between the government and MINUGUA.<sup>53</sup>

June 29: Raúl Martínez, who was not present when the hostages were first seized, arrived at 8:00 a.m. accompanied by other ARAP-KSI members from Kaibil Balam. He reiterated the conditions for the hostages' release specifying that the president, the defense minister, and the U.N. secretary general should visit San Antonio Tzejá to discuss ARAP-KSI's demands, which included dropping the criminal case against him. During the morning, seventy police officers from the Immediate Reaction Brigade (FRI) and the riot squad, who had been sent to Cantabal the previous day, arrived in San Antonio Tzejá. The hostages queried the police commander about the arrest warrant against Raúl Martínez, who was still present. The commander responded that he had no orders to arrest Martínez. At approximately 11:30 a.m. an army specialist from Military Zone 22 arrived with members of the Guatemalan press. One journalist reported to the hostages that the army had invited them to San Antonio Tzejá and provided transportation. Just after noon the police commissioner informed the hostages that they were going to launch a rescue effort to take them out of the village. Raúl Martínez used the loudspeaker to rally ARAP-KSI members, who surrounded the police menacingly; he then commanded stick-bearing woman and children to prevent the escape of the hostages. Later that afternoon, an ARAP-KSI delegation from Kaibil Balam, led by Romeo Ramírez, a former military commissioner, arrived to talk to the hostages. The ARAP-KSI members freely admitted they were committing a crime, but reiterated their demands; after a protracted discussion, however, ARAP-KSI agreed to release the hostages without conditions.

ARAP-KSI members interviewed in August attempted to excuse the hostage-taking by telling Human Rights Watch/Americas they had taken the foreigners "to protect them" from the violence they feared was about to erupt between irate villagers in San Antonio Tzejá and returnees, a version contradicted by the facts. "We got the people out of the way so they wouldn't be hurt...otherwise they would have died among the refugees because if the returnees had

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<sup>52</sup> It is not clear whether Trujillo failed to inform his superiors about the detentions, or whether the latter were informed and failed to alert MINUGUA, the UNHCR, and the Guatemalan civilian authorities. MINUGUA and the UNHCR found out their personnel had been taken hostage on June 29, when they arrived at the returnee campsite outside of San Antonio Tzejá after hearing a false report that returnees and ARAP-KSI members had clashed violently. There they met one of the hostages, Captain Matsuda, who had been permitted to leave briefly to inform the returnees of what had transpired. A National Police commander (*comisario*) of the Immediate Reaction Brigade, who had arrived in San Antonio Tzejá that morning, accompanied Captain Matsuda, apparently at Martínez's bidding.

<sup>53</sup> Paragraph 22 of the Human Rights Accord signed by the government and the URNG on March 29, 1994, states that, "The parties agree to offer their fullest support to the mission, and in said sense, they accept an obligation to provide any cooperation required by the mission to fulfill its functions; in particular, to safeguard the security of the mission's members and of persons presenting denunciations or testimony to it." The status of mission agreement, contained in an exchange of letters on November 25 and 28, 1994, confers diplomatic immunity on mission observers and commits the government to assure the security of the mission.

taken one step further toward San Antonio Tzejá the people were ready to do battle."<sup>54</sup> However, San Antonio Tzejá military commissioner Rolando Villatoro was quoted in the press saying that ARAP-KSI "would not release [the hostages] because they were a golden trophy."<sup>55</sup> Romeo Ramírez of Kaibil Balam described the incident as follows: "The negotiators [supporting the refugees] got on the loudspeaker and said they were going to go in by force and they had Ixcán Grande and the EZLN [the Mexican insurgent group] behind them. The people reacted very strongly, the [ARAP-KSI members] got clubs, gasoline, machetes, and everything [to use against the negotiators and the refugees]. To avoid injuring [the foreigners] they [the ARAP-KSI members] took them into the center of the village....it was not a crime because it would have been worse to hurt or kill them."<sup>56</sup>

While making no move to arrest Martínez and others directly involved in the hostage-taking, President de León named a special commission, led by Fund for Peace (FONAPAZ) director Alvaro Colóm, to negotiate with the returnees and San Antonio Tzejá villagers. ARAP-KSI members from San Antonio Tzejá and Kaibil Balam who had participated in the hostage-taking were among the negotiators. Both sides eventually agreed that the returnees would settle fifty-two adjacent tracts (*parcelas*) of twenty-one *manzanas* each (one-half of a parcela as defined by INTA) with a separate urban center, creating, in effect, a twin village. (This arrangement was similar to one that Martínez had proposed in June to government officials as acceptable if they would agree to drop the charges against him.) A mixed commission of representatives of both communities, the government, and international observers would oversee the compensation and relocation of the families who agreed to leave. INTA would assign any additional vacant lands according to existing registers, presumably meaning that original colonizers, now mostly displaced and refugees, would have priority. The returnees moved to the designated lands, naming their new community Cimientos de la Nueva Esperanza 20 de Abril (Foundations of New Hope, April 20).

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<sup>54</sup> Interview with auxiliary mayor Lorenzo Pérez, in San Antonio Tzejá, August 13, 1995.

<sup>55</sup> "Entre PAC y comisionados," *Siglo Veintiuno*, July 4, 1995. Translation by Human Rights Watch/Americas

<sup>56</sup> Human Rights Watch/Americas interview in Kaibil Balam, August 12, 1995. The crowd of ARAP-KSI members included men and women armed with machetes and sticks while armed civil patrollers remained in the background, in plain view.



Although the governmental commission's efforts achieved the resettlement of the returnee families, they were not accompanied by initiatives to rectify the underlying problem of impunity. On June 30, Army Day, President de León made the encouraging announcement that the military commissioner structure would be dissolved. His failure to curb violations by military commissioners and civil patrollers in progress in the Zona Reyna, however, diminished the impact of this measure.<sup>57</sup> The international incident caused by the hostage-taking two days before led several embassies, including the U.S., to boycott Army Day festivities.

### **Travesty of Justice**

The civilian and military authorities buttressed human rights violators in the Zona Reyna by abdicating their responsibility to protect Guatemalan citizens: the president made public excuses when the police did not arrest Martínez in late June, while other government agencies continued to work openly with him. The police claimed they were not in a position to arrest Martínez. The regional army commander maintained that the civil patrollers would not be disarmed, a position President de León supported publicly. As the months passed, official complicity with the perpetrators of these brazen violations created a travesty of justice that imperiled the safety of returnees and the viability of refugee return. During monthly meetings with the president, the Mediating Commission repeatedly urged him to ensure Martínez's apprehension, without a positive response according to the human rights ombudsman's office.<sup>58</sup>

While the safe resettlement of the San Antonio Tzejá returnees was accomplished through the post-hostage negotiations, the potential for violence was reinforced by the absence of appropriate legal action to bring human rights violators to justice. Martínez had been terrorizing local Guatemalans for months. When the latter turned to the courts for relief, their complaints were neglected, increasing their vulnerability to abuse. But the stakes were raised immeasurably when Martínez and ARAP-KSI dared to target United Nations officials and international humanitarian workers (tactics which ultimately were aimed at the returnees) and suffered no adverse consequences.

In fact, the government rewarded Martínez and the civil patrollers. Government officials maintained a close working relationship with Martínez rather than the adversarial one befitting his status as a fugitive from justice. The following is an example of how government officials fortified Martínez's de facto authority over the civil authorities and the army's civil patrollers in Kaibil Balam and mismanaged land adjudication procedures to reward human rights violators. (These actions also contributed to the inability of refugees from Kaibil Balam to assert their claims to their former lands upon their return from Mexico, as described below):

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<sup>57</sup> The practical impact of the dissolution of the military commissioners was not immediately apparent: the army high command reportedly has not systematically disarmed the commissioners and has indicated that it will facilitate their obtaining permits to carry their weapons; it appears too that former commissioners continue to carry their military credentials. This leaves some question as to whether former military commissioner do not continue to have some formal status within the military reserve and intelligence systems. Moreover, the government has not prosecuted military commissioners involved in human rights abuses, including those in the Zona Reyna. In November 1995, ex-military commissioners (apparently still wielding their accustomed authority) and civil patrollers in Santa Barbara, Huehuetenango, threatened to kill MINUGUA personnel and representatives of the Myrna Mack Foundation and the Archbishop's Human Rights Office who were attending a meeting with the mayor of Santa Barbara to discuss prior death threats against a Myrna Mack Foundation representative.

<sup>58</sup> Telephone interview with a source at the human rights ombudsman's office on November 9, 1995. The Mediating Commission, established by the October 8, 1992 refugee accords, includes a representative of the UNHCR, the human rights ombudsman, and the Catholic Church represented by Bishop Gerardo Flores.

On June 21, 1995, the National Agrarian Transformation Institute (INTA) sent five officials to Kaibil Balam to conduct a land survey required for the issuance of permanent titles to the current occupants (as the defense minister had promised during the May 9 meeting described above). INTA officials began by having lunch with Martínez in his home to discuss how the census would be conducted, although at the time, a warrant for Martínez's arrest had been pending for nearly one month. Raúl Martínez ordered ARAP-KSI civil patrollers from San Antonio Tzejá to guard the door of the schoolhouse, where the survey was conducted, and announced that only those possessing a ticket (which he had distributed) would be included. Seventeen cooperative members who had not received tickets were told that they would have to pay 110 quetzales (about U.S. \$20.00) in order to obtain one. Some of the seventeen paid the money, apparently fearing that to do otherwise would jeopardize their land titles. Others protested to the INTA employees who responded that they "had to respect the association [ARAP-KSI] and Don Raúl."<sup>59</sup> The argument erupted into fighting when the cooperative members insisted that they be included, and Martínez ordered the civil patrollers to throw them out. During this time, four shots were heard from about 200 meters away. The civil patrollers asserted that URNG guerrillas had fired the shots and, with weapons in hand, began to walk among the angry villagers. MINUGUA observers who investigated the incident discounted the possibility that guerrillas had fired the shots, and attributed them to intimidation by the patrollers.<sup>60</sup>

According to an INTA official present, community leaders told them that "an intransigent group that supports the returnees" had refused to pay their community dues. Martínez told the group that they had to contribute to the costs of soliciting the lands and transporting INTA to Kaibil Balam for the survey. The official confirmed that INTA did not charge for its services, but said, "when we went, Raúl Martínez took advantage of the situation to charge the money." A second INTA official present actually encouraged the people to pay: "I said, if the community leadership (directiva) says you have to pay 110 quetzales then pay it. INTA says the titles will be ready in thirty to sixty days, you'll have your lands, so why not pay? Now you're against them [ARAP-KSI]--you're going to lose a lot going through the whole process."<sup>61</sup> The INTA officials did not include in their survey the cooperative members who refused to pay.

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<sup>59</sup> Interview with cooperative members in Kaibil Balam, August 12, 1995.

<sup>60</sup> Interview with MINUGUA observer in the sub-regional office in Cantabal, August 11, 1995.

<sup>61</sup> INTA vice-president Carlos Sosa confirmed that the census had been arranged directly with Martínez and other local leaders. He said his technicians reported that civil patrollers were guarding the door to the schoolhouse during the incident, but was unaware whether they were carrying weapons at the time. He stated that ARAP-KSI members "intimidated" his technicians, a view contradicted by interviews with Revolorio and Estrada. Interview with Carlos Sosa in Guatemala City, August 18, 1995 and with Saúl Revolorio Vásquez and Enoc Estrada, INTA technicians, Cantabal, August 16, 1995. Another technician interviewed in Cantabal echoed army rhetoric when he said "the returnees don't want to go to other lands, they want to go to those mountains. Why? That is the mystery."

The Archbishop's Human Rights Office denounced reports that INTA had charged the villagers the 110 quetzales. INTA denied the accusation stating that Raúl Martínez (whom INTA officials described as a military commissioner) had demanded the payments.<sup>62</sup> We were unable to ascertain whether any INTA officials had received payments. However, INTA contributed to the mockery of justice in this case by blatantly upholding Martínez's authority and demands, and discriminated against the affected individuals by refusing to include them in the census, which had to be completed subsequently.<sup>63</sup>

According to local sources, and Raúl Martínez himself, a Houston-based oil exploration company hired Martínez despite his role in human rights violations and the pending arrest warrant, contributing to the circle of impunity surrounding him. Western Atlas International, under contract with the Triton Energy Corporation of Dallas, began a seismic study in the Ixcán municipality in June 1995.<sup>64</sup> The company worked through local authorities to hire work crews on thirty-day contracts, to explain the mechanics of the seismic study, and to secure owner (or occupier) authorization to conduct the study on private lands in exchange for compensation for the minor damage caused.

In Kaibil Balam and the three other villages organized into ARAP-KSI, the local authority was Raúl Martínez, by then a notorious human rights violator and a fugitive from the law. Martínez, who told Human Rights Watch/Americas that he worked for Western Atlas from June 20 to July 5, described his employment as follows: "the company asked me and [another villager] to organize the people to work. I was going to work the whole month with my [mules]...and then continue as a cook for six months. I helped the company form a plan for a lottery system for the communities to work for a month each." Two Kaibil Balam villagers reported that "Raúl Martínez was on the loudspeaker saying who was going to work which day--we sent two letters to the company saying that these matters should have been handled by the auxiliary mayor's office. Raúl Martínez was named by the company...to choose workers and he used his mules to haul materials--we protested because he was getting all the profits."<sup>65</sup>

Reports that Martínez was working for Western Atlas in some capacity generated inquiries to the company from human rights organizations and the U.S. Embassy. In August, Douglas Reichenbach, manager of the Western Atlas International office in Cantabal, denied that the company had ever contracted Martínez, except for daily hires of his mules, but added, "he is a leader in Kaibil Balam-- we couldn't ignore him." As far as we could ascertain, the company severed its relationship with Martínez in early July.<sup>66</sup>

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<sup>62</sup> "Iglesia exige despidos en INTA y CEAR," *Siglo Veintiuno*, June 30, 1995 and "Aclaración del INTA," *La Hora*, July 6, 1995.

<sup>63</sup> During the first week of August, Martínez was transported from San Antonio Tzejá to Kaibil Balam in a helicopter contracted by FONAPAZ and INTA officials, according to residents of both villages interviewed by Human Rights Watch/Americas on August 12 and 13, 1995. In early September, Kaibil Balam cooperative members denounced that FONAPAZ was diverting to ARAP-KSI funds earmarked for them. Both of these incidents should be investigated.

<sup>64</sup> According to company representative Jaime Jaramillo, Triton Energy Corporation began working in the Ixcán in 1994 to conduct a technical, as well as socio-political survey of the area, and sensitize the communities to the benefits of oil exploration. Explorations by other oil companies in the mid-eighties apparently were halted by the armed conflict, including guerrilla sabotage. The company's outreach initiatives reportedly included medical and dental visits to some Ixcán villages.

<sup>65</sup> Human Rights Watch/Americas interviews with Martínez and with cooperative members in Kaibil Balam on August 12, 1995.

<sup>66</sup> Human Rights Watch/Americas interview with Douglas Reichenbach in Cantabal, August 15, 1995.

On July 31, Human Rights Watch/Americas wrote to John Russell, president of Western Atlas International in Houston, Texas, expressing concern about Martínez's involvement in human rights violations and inquiring about his employment status. Our letter, to which we did not receive a formal reply, stated: "Since the human rights violations attributed to Mr. Martínez have been committed with the complicity of numerous ARAP-KSI members (including local authorities) whom the government has not yet moved to arrest or prosecute, it might be helpful for your company to articulate publicly a policy that espouses respect for human rights in your operations, accompanied by concrete steps to assure that Western Atlas' hiring practices reflect that policy." Given the involvement of local authorities in repressive practices in Ixcán villages, we reiterate that corporations working in the area must take steps to ensure that their operations do not contribute to human rights violations.<sup>67</sup>

The traditional absence of civilian government structures in remote Ixcán villages has allowed civil patrollers under army tutelage to take the law into their own hands as a matter of course, and has left the army with vast operating room. Victims and victimizers interviewed in five Zona Reyna village visited by Human Rights Watch/Americas complained that the absence of effective governance and legal remedies led to violence. The fact that the perpetrators have been rewarded while the cases of those who sought legal protection were ignored is extremely damaging in this context.

### **Legal Proceedings Languish**

On May 8, 1995, the UNHCR, alarmed that Martínez's threats and violence endangered its own personnel as well as returnees, filed a formal complaint with the Public Ministry. The attorney general assigned José Luis García Yelmo as special prosecutor in the case (originally filed as C744-95 and later connected with other cases under C2295-94). On May 25, the district court judge in Cobán (*Juzgado de Primera Instancia*) issued an arrest warrant against Raúl Martínez for the crimes of coercion (*coacción*), abuses against private citizens (*abuso de particulares*), interference with communication (*entorpecimiento de comunicación*), instigation to commit a crime (*instigación a delinquir*), and disorderly conduct (*desorden público*).

Months earlier, Guatemalans who had been threatened repeatedly by Martínez and other local authorities already had sought legal redress without success. Members of the Agricultural and Services Cooperative "Jun Chembal Te Kipamal" of Kaibil Balam filed a formal complaint against Raúl Martínez (Case 665-94, November 11, 1994) charging that he had falsely accused them of being guerrillas, violated their freedom of association, movement, and expression, and had threatened to expel them from the village. They alleged that in the past Martínez had charged displaced villagers large sums of money to return to the community and illicitly distributed national lands to people of his choosing. Tomás Gregorio Lucas reported that in November 1994, Martínez prevented him from assuming the office of second auxiliary mayor after he was elected by the village assembly. Martínez denounced him over a loudspeaker as an "enemy of the people and the authorities" and asked which of those present wanted to answer for what could happen to him. The assembly then selected someone else. When Gregorio protested, Martínez threatened to abduct him. (Martínez allegedly had illegally "jailed" one of his own employees for ten days the year before, forcing him to work all day and locking him up in the village at night). Cooperative members also reported that Martínez banned them from village meetings. Gregorio stated that he feared for his and his family's lives.<sup>68</sup> No further action was taken in the case, which was revived only after the court initiated proceedings against Martínez in May 1995 based on later incidents.

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<sup>67</sup> Oil exploration in the Ixcán is a factor in underlying political efforts to obstruct refugee return and is likely to play an increasingly prominent role in the region. Western Atlas is engaged in a program of exploration extending across the Ixcán. While the company has said it has obtained permission to do so from communities and individual landholders in the army-controlled Zona Reyna, some communities of displaced persons and repatriated refugees in the Ixcán Grande cooperative have refused them entry.

<sup>68</sup> Human Rights Watch/Americas interviews in Kaibil Balam, August 12, 1995.

In August, the Kaibil Balam cooperative's case and more recent charges were accumulated into one case against Martínez in the Cobán court.<sup>69</sup> On August 8, Public Ministry Special Prosecutor García Yelmo petitioned Cobán Judge Victor Hugo Jiménez for arrest warrants against eight more individuals allegedly involved in the threats, destruction of temporary shelters for the returnees, and other incidents in April in San Antonio Tzejá (described above).

On August 29, Judge Jiménez issued an arrest warrant against seven of the eight individuals: Lorenzo Pérez (auxiliary mayor of San Antonio Tzejá), Ricardo Caal, German Yat, Mauricio Ichic, David Hernández, Felix Sica, and Efraín Gamarro, all of San Antonio Tzejá.<sup>70</sup> The National Police did not arrest any of the individuals cited, despite a police detachment having been present in San Antonio Tzejá since June 28.

After securing the initial arrest warrant against Martínez, the Public Ministry's special prosecutor did not complete the investigation of the charges against him and other ARAP-KSI members. The relative passivity and inefficiency of the Public Ministry contributed to the lack of progress in this case.<sup>71</sup> Lic. García Yelmo participated in the negotiations in San Antonio Tzejá following the June 28 hostage incident, but did not thoroughly investigate the facts of the case, such as the identity of the ringleaders (in addition to Martínez) and the involvement of armed civil patrollers, military commissioners, or local officials. He failed to take statements from villagers, from the army and police personnel at the scene during the incident, from witnesses to the violence on June 27 between ARAP-KSI members and "negotiators," or from four of the five hostages.<sup>72</sup> His involvement during the negotiations with ARAP-KSI was misplaced to the extent that it undermined his prosecutorial duties in favor of reaching a compromise with those who repeatedly had taken the law into their own hands.

The Public Ministry has yet to bring charges against the alleged leaders in the hostage-taking, although available information points to the involvement of ARAP-KSI civil patrollers in Kaibil Balam and San Antonio Tzejá. In addition, either the Public Ministry or the judge could reiterate the warrant against Martínez, adding the new charges, and neither have done so. Meanwhile, the Guatemalan daily *Prensa Libre* reported in July that Martínez threatened "to retain the deliveries to the returnees if the MP [Public Ministry] and the police authorities did not desist in his capture...."<sup>73</sup>

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<sup>69</sup> The following files against Martínez were connected to case 2295-94 in the Cobán first instance court: C665-94 for illegal detention, threats, coercion (*coacción*), and improper assumption of official functions (*usurpación de funciones*); C744-95 (which led to the May 25 warrant); C354-95 (June 7, 1995), inflicting injury (*daños y lesiones*), threats, sedition, interference with communication, inciting criminal behavior (*instigación a delinquir*), disobedience, and public disorder (*desorden público*); C234-95 (November 3, 1994) for robbery; C267-95 (May 17, 1995) for illegal detention, coercion, and sedition; C385-95 for threats and discharging a weapon (see the June 21, 1995 INTA incident described above). In addition, a misdemeanor charge (case 433-95) was pending against Martínez before the justice of the peace in Cantabal for 433-95 from July 18, 1995; the justice of the peace twice ordered Martínez to appear, which he failed to do.

<sup>70</sup> The text of the warrant included errors which had not been rectified as of November: it mistakenly named four of the five internationals taken hostage in June as the victims (*ofendidos*), while the charges of sedition, threats, and inflicting injury (*daños and lesiones*), stemmed not from the June hostage incident, but from the April attacks on the returnees. So far no charges have been filed related to the hostage-taking. In addition, Vicente Cu, president of the San Antonio Tzejá land commission, was included in the special prosecutor's original petition to the judge, but his name did not appear in the warrant. The district judge described these as lapses that he would rectify when Human Rights Watch/Americas brought them to his attention. Telephone interview, November 7, 1995.

<sup>71</sup> This is illustrative of chronic problems in the prosecutors' office of the Public Ministry. See Human Rights Watch, *World Report 1996* (New York: Human Rights Watch, December 1995), p. 94.

<sup>72</sup> The prosecutor did not request statements from four of the hostages or the institutions they represent. The UNHCR, which filed the statement leading to the May 25 arrest warrant against Martínez, provided an additional statement to the prosecutor regarding the hostage incident.

<sup>73</sup> "Continúa prófugo responsable de retener a observadores de la ONU," *Prensa Libre*, July 2, 1995 (quoting an interview with Martínez by the Alta Verapaz correspondent for the news program *Patrullaje Informativo*). Translation by Human



Martínez's attorney, Misraé Hiram Aben Auyón Barrios, told us in September that he had notified the human rights ombudsman's office that Martínez was going to surrender to the authorities, a promise that had not materialized as of this writing.<sup>74</sup> Human Rights Watch/Americas is concerned by indications from the special prosecutor that he would not object to conditional liberty (confinement to home or village, or release on bond) pending trial in exchange for Martínez's surrendering to the authorities. Although Human Rights Watch/Americas generally is in favor of release pending trial, we object to it under the present circumstances: under Guatemalan law, likelihood to abscond or to obstruct the investigation of the case are reasons to deny conditional liberty and Martínez has proven himself a risk on both counts. The judge and prosecutor should base such decisions on the law rather than on negotiations with a fugitive whom the authorities have made no serious effort to arrest.

### **Police Inaction**

The National Police, the Interior Ministry (with jurisdiction over the police), the army's Mobile Military Police (PMA), and President de León have offered several reasons why Martínez has not been apprehended, citing variously the isolation of the area, the inability of the police to locate him, and the protection afforded him by armed civil patrollers. The police stationed in the area, however, reported to Human Rights Watch/Americas in August that they simply had no orders to arrest him.

On June 29, seventy police of the Immediate Reaction Brigade (FRI) and riot squad who arrived in San Antonio Tzejá during the hostage incident came face to face with Martínez, but did not attempt to arrest him before he left the village later that day. Guatemalan press quoted National Police Deputy Director Edgar Leonel Lorenzo describing the region as "very inhospitable, making it difficult for the Immediate Reaction Brigade to mobilize in the Ixcán." Lorenzo admitted that Martínez was in San Antonio Tzejá when the police arrived, but said he later disappeared and the FRI was unable to locate him due to "the distances and isolation."<sup>75</sup> (The FRI commander appeared to contradict this version when he informed the hostages that he had no orders to arrest Martínez.)

President de León stated that, because "the people" protect Martínez, it was necessary to "avoid a clash with fatal consequences." The president also said that he "personally preferred to put a stop to refugee return rather than lose human lives."<sup>76</sup> Raúl Martínez, in turn, told Human Rights Watch/Americas in August that "to capture me they have to capture all of the communities," while ARAP-KSI members gathered around made statements such as, "all of those crimes weren't just by Raúl Martínez, they were by all of us." While we concur with the need to act cautiously to protect human lives, President de León's recognition of the dangerousness of Martínez and the belligerent civil patrollers, and the evidence that they function as local authorities, make the failure to apprehend him all the more egregious. President de León should order the army to disarm the patrollers in order to facilitate the arrests, rather than allow the patrollers to hold the state hostage with the ill-disguised support of the military zone.

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<sup>74</sup> Telephone interview with Lic. Auyón Barrios, September 20, 1995. A source at the human rights ombudsman's office told Human Rights Watch/Americas that his office had invested considerable resources to assure Martínez's safe appearance at the Cobán court at the request of his attorney, but Martínez failed to appear. Telephone interview, November 9, 1995.

<sup>75</sup> "Continua prófugo responsable de retener a observadores de la ONU" *Prensa Libre*, July 2, 1995. Translation by Human Rights Watch/Americas.

<sup>76</sup> "Resuelven conflicto con los repatriados en Ixcán, Quiché," *Siglo Veintiuno*, July 10, 1995. The interior minister, apparently unaware of the warrant pending against Martínez since May 25, was quoted the week before in the Guatemalan press saying that if a warrant did indeed exist Martínez would be detained immediately. ("Cinco observadores internacionales tomados como rehenes en Ixcán, Quiché." *Prensa Libre*, June 30, 1995.) Translations by Human Rights Watch/Americas.

In an August 8, 1995 letter to Human Rights Watch/Americas, Special Prosecutor García Yelmo stated that the National Police had reported to him that Martínez had not been seen in the area, despite the presence of police from the Immediate Reaction Brigade in San Antonio Tzejá since June 29. In August, Deputy Police Commander (*comisario*) Jesús Coto González, in charge of twenty-six police in San Antonio Tzejá, told Human Rights Watch/Americas that he did not have orders to arrest Martínez, although he had heard that the arrest warrant existed. He added that he would need written orders, logistical support such as adequate transportation and radio communication, and sufficient manpower to carry out the arrest. When a villager present at the discussion confirmed that Martínez had been in San Antonio Tzejá the previous day, Commander Coto said he didn't know what Martínez looked like.<sup>77</sup> Moreover, despite the ongoing police presence in San Antonio Tzejá, we are aware of no attempt to enforce the seven arrest warrants issued in August against residents, including auxiliary mayor Lorenzo Pérez. Cobán Police Commander Juan Solís told us in November that his men stationed in San Antonio Tzejá had made no attempt to arrest Martínez or the others since they could "cause a massacre of policemen."<sup>78</sup>

Meanwhile, at the Public Ministry's request, the defense minister announced that he had ordered the Mobile Military Police (PMA) to assist in apprehending Martínez. In a June 27 letter to the Public Ministry, PMA commander Brigadier General José Mauricio Rodríguez Sánchez reported that "this command posted a squadron of Mobile Military Police to Military Zone 22, Playa Grande, Quiché, with the objective of complying [with the order] but to date Mr. Raúl Martínez Pérez has not been found." In an August 11, 1995, letter to Military Zone 22, the ranking PMA officer stationed there reported that he and a group of eight men had looked for Martínez in San Juan Ixcán on August 9, San Antonio Tzejá on August 10, and Kaibil Balam on August 11. The officer reported that in Kaibil Balam "everyone told us there was no one there by that name, making his capture impossible."<sup>79</sup> A Human Rights Watch/Americas researcher who arrived in Kaibil Balam the following day, August 12, attended an ARAP-KSI meeting directed by Martínez and had lunch with him afterward.

### **Military Intransigence**

The civil patrollers, undeterred by their military superiors, openly and repeatedly threatening the lives of Guatemalans and foreigners. While they generally used clubs and machetes in most of the reported human rights violations, their army-issue weapons were a powerful threat to their victims. During the April 17 demonstration in San Antonio Tzejá, for example, ARAP-KSI members cited in the national press declared that the government had armed them to defend those lands, converting them "from peasants to warriors." The article continued, "The president of the four communities, Raúl Martínez, said that they are organized into [ARAP-KSI]...where they are prepared to arm their people to demand that INTA issue them permanent land titles."<sup>80</sup> Significantly, the patrollers threatened armed violence

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<sup>77</sup> Interview in San Antonio Tzejá, August 13, 1995. Commander Coto's description of the police's mission in the village demonstrated the authorities' bias against the returnees: "the returnees want to keep advancing and the real owners are afraid they will take their lands. We are here to protect this community because they are the real owners, and we are protecting their property." The police had not visited the new returnee community south of the village.

<sup>78</sup> Telephone interview, November 7, 1995. Commander Solís, who estimated that there were a total of seventy high-calibre weapons in the hands of civil patrollers in San Antonio Tzejá and Kaibil Balam, added that a major operation would have to be launched from the capital in order to arrest Martínez. See Human Rights Watch/Americas, *Human Rights in Guatemala during President De León Carpio's First Year*, pp. 12-13, for a discussion of previous cases of civil patrollers preventing arrests.

<sup>79</sup> The letter, addressed to the Artillery Major, Intelligence Office, Military Zone 22 and signed by Cabo Alejandro Ortiz, was given to Human Rights Watch/Americas by General Miranda, who commented that he did not believe the PMA patrol had even gone to Martínez's home. Further, Commander Coto, interviewed on August 13 in San Antonio Tzejá, told us that he was unaware of any army or PMA efforts to apprehend Martínez. In a similar letter dated August 6, a PMA corporal reported that on August 4, he had visited Kaibil Balam with another soldier to inquire about Martínez, with no results.

<sup>80</sup> "Campesinos protestan porque les quitan tierras para retornados," *Prensa Libre*, April 18, 1995. Translation by Human Rights Watch/Americas.



to impede Raúl Martínez's arrest, threats that appeared to stymie efforts by the National Police and the PMA to apprehend him. Rather than restrain them, high level army officers defended what they considered the patrollers right to remain armed.<sup>81</sup>

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<sup>81</sup> A representative of the human rights ombudsman's office told Human Rights Watch/Americas that he had received what he considered to be credible reports from local sources that the Guatemalan Army had given more weapons to civil patrollers in the area in March of this year. Telephone interview on November 9, 1995.

The army's response to the June hostage-taking, described above, underscored its intransigence with regard to the patrollers. Soldiers were sent to San Antonio Tzejá on June 29, not to remove the patrollers' weapons, but to transport the national press. On June 30, the army issued a statement denying any military involvement with the conflict between villagers.<sup>82</sup> Then-Defense Minister Enriquez tried to deflect attention from the civil patrol violence by declaring that the issue contained a "loaded ideological focus," since the refugees rejected resettlement elsewhere and instead insisted on going to isolated areas.<sup>83</sup>

In an August interview with Human Rights Watch/Americas, Gen. Miranda Trejo, then-commander of Military Zone 22 in Playa Grande, Quiché, stated that he had circulated instructions to the civil patrollers not to use weapons to solve personal, land, or legal problems. When asked about civil patrol violations in the Zona Reyna, however, he asserted, "The director of the National Police has to tell me that the civil patrollers are impeding the capture...I haven't heard from them. Through word of mouth we've heard that they are going to use their weapons, but it isn't proven that they have misused their weapons. In my view they haven't done anything wrong. Even if the police ask, I won't take away their weapons, but I'll make sure they don't abuse them, if they abuse them, then I'll take them."<sup>84</sup> MINUGUA's third report described the events of June 28 saying that military commissioners, civil patrollers, and others "not only interfered with the returnees' freedom of movement, but also displayed weapons and made death threats against the returnees and against inhabitants of the town who were willing to accommodate them, and even detained five international officials, in front of seventy police officers who were unable to stop them or to capture the chief perpetrator."<sup>85</sup> Vice-President Arturo Herbruger supported General Miranda's argument in his statements to the Guatemalan press that the army's control over the civil self-defense patrols "is not very direct" and that these groups "must have a certain autonomy, since if they always had to wait for a superior order they might as well not exist."<sup>86</sup>

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<sup>82</sup> "Cinco observadores internacionales tomados como rehenes en Ixcán, Quiché," *Prensa Libre*, June 30, 1995. Translation by Human Rights Watch/Americas.

<sup>83</sup> "Liberan a funcionarios de ONU que permanecían como rehenes," *Prensa Libre*, July 1, 1995. Translation by Human Rights Watch/Americas.

<sup>84</sup> Human Rights Watch/Americas interview in Military Zone 22, Playa Grande, Quiché, August 16, 1995.

<sup>85</sup> United Nations General Assembly, "Third Report of the Director of The United Nations Mission for the Verification of Human Rights and Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala," (A/50/482, October 12, 1995); paras. 151-153.

<sup>86</sup> Carlos Castañaza, "Vicepresidente: Ejército no ejerce control muy directo sobre las PAC," *Siglo Veintiuno*, July 6, 1995. Translation by Human Rights Watch/Americas. The relationship between the civil patrollers and the army is described in Human Rights Watch/Americas, *Human Rights in Guatemala during President de León Carpio's First Year*, "Although the patrols were organized by the army and legally form part of the military reserves, the army portrays them as spontaneous self-defense organizations for which it bears no responsibility. Soldiers arm, train, and supervise the patrols yet make no visible attempt to discipline members who commit abuses. This enables the army to use the patrols as a form of political control, while deflecting human rights scrutiny from the army. Because the patrols are widely seen as an extension of army power, they are widely feared."

In her 1993 report, U.N. Independent Expert Mónica Pinto, stated that the government “must require the army to disarm the PAC [civil patrols] in zones where the Human Rights Ombudsman and the Judiciary have proved the commission of abuses.”<sup>87</sup> The human rights ombudsman repeatedly has called on the army to disarm the abusive civil patrollers in the Zona Reyna.<sup>88</sup> Alarming, General Miranda did not consider death threats, illegal detentions, and other violations of law as serious abuses meriting disarming the patrollers; he dismissed the matter by saying that the civil patrols would be dealt in the context of the peace accords.<sup>89</sup> President de León and National Peace Commission (COPAZ) coordinator Hector Rosada buttressed this position by deferring the issue to the negotiating table in response to the Guatemalan Episcopal Conference’s call to disarm abusive patrollers in the Zona Reyna.<sup>90</sup>

## LAND, LAWLESSNESS, AND LOCAL CONFLICT

The government’s failure to resolve lawfully competing land claims fueled unrest and violence in the Zona Reyna, and threatened to do so in other areas affected by significant displacement and return.<sup>91</sup> Raúl Martínez, the civil patrollers, (and army officers supporting them), found fertile ground to mobilize villagers against refugee return by assuring them that their land, and hence their survival, was in jeopardy, converting their legitimate fears into organized violence. At the same time, the civilian and military authorities mischaracterized the abuses committed by local authorities and civil patrollers as a mere land conflict between villagers and “resolved” it by resettling the San Antonio families, rather than addressing the underlying problem of law and impunity.<sup>92</sup> The land titling currently underway in Kaibil Balam and other Zona Reyna villages (pursuant to the defense minister’s assurances in May), coupled with the lack of prosecutions, ultimately rewarded human rights violators and appeared to preclude further returns to the area.

Interestingly, villagers on both sides of the San Antonio Tzejá conflict did not expect the civilian government to protect their rights, nor those of their adversaries, and believed that the government had deceived both groups. One Kaibil Balam ARAP-KSI member described their violent campaign as follows: “We pressured the government to come in and mediate the issue. We knew it was illegal, but the first one to violate the law is the government, why can’t we break it to get the government to act?” Likewise, a returnee representative interviewed in Cimientos de la Nueva Esperanza warned, “the government betrayed everyone...there is no law in the Ixcán, there could be conflict here.”<sup>93</sup>

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<sup>87</sup> U.N. Economic and Social Council, “Informe de la Experta Independiente Sra. Mónica Pinto, sobre la situación de los derechos humanos en Guatemala preparado de conformidad con la resolución 1993/88 de la Comisión,” (E/CN.4/1994/10, January 20, 1994; para. 162.

<sup>88</sup> Telephone interview with a representative of the human rights ombudsman’s office, November 9, 1995.

<sup>89</sup> The Guatemalan government announced on August 31 that General Miranda had been suspended from duties for his alleged involvement in unlawful military recruitment.

<sup>90</sup> “Embajador: Agrado en EUA por supresión de los comisionados” *Siglo Veintiuno*, July 4, 1995, and Carlos Ajanel Soberanis: “Presidente se niega a desintegrar las PAC” *La República*, July 5, 1995. Translations by Human Rights Watch/Americas.

<sup>91</sup> While Human Rights Watch/Americas does not take a position on land ownership per se, competing land claims should be resolved in accordance with law and due process guarantees rather than through violence or threats.

<sup>92</sup> The land situation of returnees to San Antonio Tzejá essentially had been resolved prior to the violence. They were to settle on thirty-four vacant plots and other lands made available by the (government-compensated) departure of the “negotiators.” Government delays in providing promised compensation, coupled with threats by ARAP-KSI, may have led some of these residents to reconsider their agreement to move, however.

<sup>93</sup> Human Rights Watch/Americas interviews in Kaibil Balam on August 12 and Cimientos de la Nueva Esperanza on August 14, 1995.

The civil patrollers' recalcitrance and discriminatory land adjudications by the government threatened renewed violence in Kaibil Balam and the nearby village of Santa María Dolores. Refugees in Mexico had been negotiating their return to these villages for nearly two years, when the process was stalled by ARAP-KSI's violent opposition. Frustrated by the lack of progress, they announced their intention to walk to their villages where they would have been greeted by armed civil patrollers. Urgent negotiations in August temporarily averted the crisis and both groups of refugees agreed to consider alternative lands for resettlement under conditions arrived at with the government; the situation was to be resolved within sixty days, according to the agreement. However, the refugees did not renounce their legal claims to their original land holdings (the Kaibil Balam group holds provisional land titles and the Santa María Dolores group hold definitive land titles) and asked the government not to issue titles to the current occupants until they were successfully resettled.<sup>94</sup>

These delays had left twenty-seven refugee families from Santa María Dolores and Kaibil Balam camped precariously in Márquez de Comilla on the Mexican-Guatemalan border since August 20. Exactly two months later, with the land question still unresolved, eleven of these families walked into Guatemala without official assistance, going temporarily to Victoria 20 de Enero; the remaining sixteen families followed suit on October 31. As of this writing, these returnees were threatening to march to their villages unless the government offered acceptable lands for their permanent relocation. The remaining refugees from Santa María Dolores originally announced that they would leave Campeche, Mexico, for Guatemala on November 6, but subsequently agreed to postpone the move while the government sought an acceptable alternative for their resettlement.<sup>95</sup>

As of this writing, INTA was preparing to distribute permanent land titles to current occupants in Kaibil Balam (including Raúl Martínez and other abusive ARAP-KSI members) under Article 114 of the 1967 Agrarian Transformation Law. Article 114 provides that the right to lands distributed by INTA can be revoked due to "voluntary abandonment...or the absence without cause of the beneficiary and his family from the area...for more than one year."<sup>96</sup> In the late 1980s, after the current occupants had resettled lands left vacant by refugees in Kaibil Balam under army supervision, INTA extended provisional titles to them based on Article 114. In May 1995, when the defense minister assured ARAP-KSI members that no refugees would be allowed in Kaibil Balam and that their permanent land titles would be expedited, INTA began the process of issuing them permanent titles.

The readjudication of lands left behind by refugees under Article 114 discriminates against refugees wishing to exercise the option of recovering those lands through lawful means. It has continued despite the government's official recognition that refugee flight cannot be construed as voluntary abandonment. According to INTA Vice-President Carlos Sosa, an executive directive in 1990 discontinued land titling in the Ixcán based on Article 114. (Sosa said the directive was never put into writing, but he added that INTA has not issued titles under Article 114 in procedures begun since that date.) He emphasized, however, that land titling under Article 114 continued in villages such as Kaibil Balam and Santo Tomás because the process began prior to 1990.<sup>97</sup>

In a June 29, 1994, letter to Bishop Gerardo Flores, Human Rights Ombudsman Jorge Mario García Laguardia and Dr. Michel Gabaudan of the Mediating Commission (established under the October 8, 1992 refugee accord to facilitate the return process), President de León pledged to halt land adjudications: "I have received your

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<sup>94</sup> In once case, the government offered the possibility of resettlement to lands in the Petén but it turned out that the lands had already been offered to another refugee group.

<sup>95</sup> Telephone interview with nongovernmental representative involved in the return process, November 11, 1995.

<sup>96</sup> Agrarian Transformation Law, Decree 15-51, June 8, 1967.

<sup>97</sup> Interview in Guatemala City, August 18, 1995. Kaibil Balam residents were given provisional titles under Article 114 in 1989.

message...expressing your concern about lands [previously] adjudicated to many Guatemalan refugees now in Mexico, which are currently occupied by third parties, as well as the complaints received by the Mediating Commission relating to problems suffered by the refugees, particularly harassment and intimidations....I have accepted the proposal by the Mediating Commission and have circulated explicit instructions to suspend the adjudications and collateral procedures by INTA and have requested that the corresponding authorities report to me about the complaints received." (Translation by Human Rights Watch/Americas.)

The Accord for the Resettlement of the Population Displaced by the Armed Conflict (signed by the government and the URNG in Oslo, Norway, on June 17, 1994) explicitly states: "in the particular case of the abandonment of land due to the armed conflict, the government agrees to revise the law and promote legal provisions which do not deem this voluntary abandonment...In this context, the government will promote the return of land to the original holders and/or will seek adequate compensation." Although this accord does not go into effect until the signing of a comprehensive peace accord, INTA should halt titling in the conflict areas based on voluntary abandonment since the accord recognizes that voluntary abandonment provisions should not apply to victims of forced displacement.

Land conflicts may erupt into further violence in other areas of resettlement if the government does not take steps to resolve them by legal means and with respect for due process. In the Ixil triangle region of the Quiché province, a conflict is brewing with characteristics reminiscent of the Zona Reyna. According to sources at the Catholic diocese of El Quiché, members of the displaced Communities of Population in Resistance of the Sierra (CPR-Sierra) are currently occupying lands claimed by hundreds of families from the municipality of Chajul. The Chajul families, who have been unable to visit these lands for fifteen years due to the armed conflict, are now demanding the return of the lands. However, the CPR families have said they will not consider moving until a final peace accord is signed. The CPR believe they have the right to remain on the lands because they defended them against army repression for a decade. The Catholic Diocese of El Quiché is attempting to mediate a settlement to the problem to avoid violence. Both international attention and the commitment of the Guatemalan government to lawfully address this dispute will be necessary in order to ensure its fair and peaceful resolution.<sup>98</sup>

In contrast, the May 1994 return of refugees to Santa María Tzejá in the Zona Reyna provided an important example of violence prevention. The village was completely abandoned following an army massacre in 1982, but some of the original residents returned to the village shortly thereafter and were joined by new settlers invited in by the army. Preparations for the reactivation of the original cooperative and the return of its members from Mexico sparked threats of violence from civil patrollers, including a bomb threat during a September 1993 meeting that was attended by refugees visiting from Mexico. Tensions were diffused, however, when the civil patrol chief collected the weapons, reportedly at the suggestion of the former commander of Military Zone 22. Many of the new settlers agreed to relocation and received government compensation (although some difficulties in relocating these families persisted), and the return was successfully accomplished.

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<sup>98</sup> Telephone interview with an employee of the Catholic Diocese's of El Quiché, October 24, 1995.

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### *Human Rights Watch/Americas*

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