

FEBRUARY 14, 2012 BRIEFING
Militarization and Threats to Justice in Guatemala

Kelsey Alford Jones:

Good afternoon and thank you for coming. My name is Kelsey Alford-Jones and I am the Director of the Guatemala Human Rights Commission, a non-profit organization based in Washington, DC that has been monitoring human rights violations in Guatemala for the last 30 years, and advocates on behalf of victims and survivors of abuses. I am joined by Jennifer Harbury and Annie Bird.

We are here today because we are concerned about the implications of the recent presidential elections in Guatemala, and what the new administration's "iron fist" approach will mean for the nation's still fragile democracy.

Threats to Democracy

The Peace Accords still have not been fully implemented, and the root causes of the nation's internal armed conflict - including vast inequalities, widespread poverty, and disputes over land and natural resources – have not been adequately addressed. Most of those responsible for war crimes have not been held accountable.

Criminal networks that formed during the internal conflict have not been dismantled and continue to operate clandestinely within the military, as well as local and national government. Meanwhile, community leaders, journalists, labor leaders and victim advocates – who are integral to civil society efforts to protect individual and collective rights, denounce corruption and abuse, and seek to hold the government accountable to democratic processes – are more at risk than ever. In 2011, 19 defenders were murdered, the majority with impunity.

History of Internal Armed Conflict

The brutal internal armed conflict ended a full 15 years ago, yet it continues to be one of the most important elements in understanding and addressing current social, political and economic affairs. According to the UN-backed Historical Clarification Commission report, the Guatemalan military and paramilitary was responsible for 93% of the human rights violations committed during the war. 86% of the victims were indigenous. Under the cover of a counter-insurgency war, the military and paramilitary forces carried out acts of genocide and other crimes against humanity.

Ban on US Funding to the Guatemalan Army

The U.S. Congress, concerned about these human rights violations, voted to ban military aid to Guatemala. This was a critical move that cut off direct support for a military that was engaging in widespread atrocities. Today, the ban remains in place as a partial restriction that limits FMF and IMET

funding to the Army Corps of Engineers, Navy and Airforce, allowing only Expanded IMET to the Guatemalan Army.

The FY2012 appropriations language states that funding to the army will only be considered in FY2013 if the army complies with a series of stipulations, including “a narrowly defined mission focused on border security and external threats, cooperation with civilian investigations and prosecutions of cases involving current and retired officers and with the CICIG, and is publicly disclosing all military archives pertaining to the internal armed conflict.”

As we will discuss today, these conditions have not been met. Military control of government and civilian institutions is expanding, key documents have not been declassified, and emblematic human rights cases in the courts continue to be at risk of being thrown out.

President Pérez Molina

Recently elected General Otto Pérez Molina is implicated in cases currently being prosecuted relating to war crimes and is remilitarizing the State.

Pérez Molina himself was a founder of the Kaibil Special Forces, a Kaibil officer, and graduate of the U.S. school of the Americas. He was the commander of the Nebaj outpost in the Ixil region under then dictator Ríos Montt (who is now on trial for genocide committed in the Ixil); witness testimony, declassified documents, and video footage all confirm that Pérez Molina directly participated in the genocide and implicates him in torture and other war crimes. Furthermore, he was the director of military intelligence in 1992 and 1993, during which time they ran a large-scale program of detention and clandestine torture operations. He has publically, and repeatedly, denied that acts of genocide occurred in Guatemala.

Militarization of the Guatemalan Government

His ascent to the presidency has placed the armed forces in control of key institutions. Military and former military now run Guatemala’s Interior Ministry, (which oversees the National Civilian Police, the penitentiary system, immigration and border patrol, and civil intelligence gathering), the Defense Department, and the National Security Council, which coordinates and supervises all institutions responsible for security. There is concern that agencies integral to overseeing compliance with the Peace Accords and responding to human rights violations, such as the Peace Secretariat, Presidential Human Rights Office and National Reparations Program, will also be led by men with links to the military and military intelligence.

Soon after his election, Pérez Molina announced his plan to increase the use of the Kaibiles in combating organized crime. The Kaibiles, Guatemala’s elite Special Forces unit, are notorious for their grueling training program and responsibility for some of the most horrific human rights abuses committed during the internal armed conflict. Active and retired Kaibiles were – and continue to be – recruited to train the Mexican drug gang *Los Zetas*, and former Kaibiles were responsible for the brutal massacre of 27 peasants in Petén in May 2011.

Despite the military ban, the U.S. Department of Defense has continued to support and train the Kaibiles. An army spokesperson recently confessed: "We've counted about 14 or 16 former Kaibiles who have been arrested and linked to organized crime. But you have to keep in mind that once they leave the army we no longer have any control over them."

Furthermore, Guatemala's remilitarization is not seen only in cabinet appointments and in the fight against organized crime. The army now also plays a leading role in citizen security and is patrolling Guatemalan streets. The new administration has installed military checkpoints across the country and has increased police-military partnerships. Civil society organizations have also noticed a concentration of militarization around land conflicts and mega-development projects.

Declassification of Military Archives

The declassification of military archives, mandated by the Foreign Operations Appropriation bill for the resumption of military funding, is incomplete. Key plans from the early 1980s still have not been declassified. Multiple attempts to visit the archive in the past month have been denied, and the fate of the archive is currently uncertain. Guatemalan organizations have also expressed concern over recent attempts by members of Congress to amend Guatemala's Freedom of Information Act to limit transparency and access to information.

Solutions to Violence

Militarizing the fight against organized crime is not an effective strategy. According to a recent Congressional Resource Service report on CARS [August 30, 2011], the evidence has shown that military engagement in public security has "not reduced crime."

However, an independent judiciary and strengthened Public Prosecutor's Office has proven successful in fighting organized crime, protecting defenders, decreasing corruption, and ending cycles of violence and impunity. For example, the recent series of key prosecutions in human rights cases demonstrates the judiciary's ability to function properly when provided with the necessary protection and support. The U.S. has provided crucial support for institutional strengthening and for the Attorney General, Claudia Paz y Paz. We hope to see that continue.

Unfortunately, recent events suggest that this window for justice is beginning to close. Jennifer Harbury will elaborate on some human rights cases and why we are concerned. Annie Bird will discuss the presence of clandestine criminal networks and the importance of strengthening the judiciary. We will conclude with some recommendations and then take questions.

Jennifer Harbury:

My name is Jennifer Harbury. I am a United States citizen, and a practicing attorney. I have been deeply involved in human rights efforts in Guatemala ever since the 1985. I would like to comment today on

why the judicial crisis in Guatemala is so critical at this time, and explain some of the history behind that crisis.

History of the Internal Armed Conflict

As you know, the UN sponsored Truth Commission held in its 1998 report that the Guatemalan army and its related security forces had engaged in genocide against its Mayan citizenry, carrying out 660 massacres, which often involved the murders of some 300 civilians in a single day. More than 200,000 persons were either murdered or forcibly "disappeared", a toll higher than Argentina, Chile and Honduras combined. The army was held responsible for 93% of the war crimes, with 4% unknown and 3% assigned to the URNG or resistance movement. The UN report also noted that the military controlled most civilian institutions, including the judiciary, making it impossible to bring the perpetrators to justice. The murder of a Supreme Court Justice remains unsolved today, likewise, the endless murders of witnesses, lawyers, and prosecutors, including many in my own case.

Case of Efraín Bámaca

My husband, an indigenous resistance leader named Efraín Bámaca Velasquez, is one of the disappeared. He was captured alive by the Guatemalan army in 1992, and, given his rank and important information, promptly turned over to the Intelligence Division. We know from escaped prisoners, eye witnesses, and declassified U.S. documents, that he was secretly detained and severely tortured in various intelligence cells for two years if not longer. He was once injected with a toxin that caused his body to swell horribly, leaving an arm and leg bandaged as if they had hemorrhaged. He came so close to escaping that he was placed in a full body cast. Eventually he was either thrown from an intelligence helicopter into the sea, or dismembered and scattered across a sugar cane field.

The evidence indicates that he was submitted to a special intelligence program for the long term torture of high value prisoners. The goal of the program was not to kill the prisoner, but to continue the torture until he or she broke psychologically and agreed to collaborate with the intelligence division. My husband was at all times in the custody of intelligence officers, concealed in intelligence cells, tortured by intelligence specialists, and transported in intelligence aircraft. Although he was occasionally "loaned" to other divisions, a military officer had to obtain special authorization from the Director of Intelligence in order to receive him, and intelligence officers remained with him at all times. He remained largely in the hands of "El Comando," a secret but official death squad of the intelligence division.

The Director of Intelligence was Otto Pérez Molina, now President of Guatemala. I met him in 1994 to beg for my husband's life but he was not interested in any resolution. He is also deeply implicated in the genocide campaign in the Quiché region. He studied here, at the School of the Americas.

Prosecution of Cases from the Internal Armed Conflict

Like many Guatemalans, I brought the case to a full trial in the Inter American Court on Human Rights of the O.A.S., and a landmark ruling in our favor was issued in 2000. In 2009, the Court became impatient with Guatemala's failure to comply with its orders to immediately investigate and proceed with

prosecutions in a number of cases, including mine. The administration of President Colom tried hard to press the historic prosecutions of 10 paradigmatic war crimes cases, including the genocide case, the Rio Negro massacre, and many others. Supreme Court Justice Barrientos issued historic rulings upholding international law. He is under death threats today.

And so we found ourselves on track for a head on collision: Nuremberg v. the Army High Command. Worse yet an election year was approaching with the military determined to regain power through its candidate, General Otto Perez Molina.

Attempts to Derail Prosecution

The first attempt to shut down the cases came in the spring of 2010, when the army tried to force President Colom to appoint a corrupt, pro-military Attorney General. When this was blocked by a U.N. official, four human heads appeared in the streets, one on the steps of the Congress. Colom nevertheless appointed a brilliant lawyer, Claudia Paz, who badly needs your support now.

In late 2010 the Constitutional Court ordered Judge Barrientos to "reconsider and explain" his reopening of my case, and other rulings. The Inter American Court intervened with a vociferous resolution in November 2010. The case nevertheless, remained suspended for many months until the election was finished. Last November, I was called to Guatemala for a hearing on 24 hours notice, only to be told that it was suspended because the judges were recusing themselves. No reason was given and the Supreme Court reversed the recusal. I was then called back in December, only to have the hearing postponed on a technicality. I waited, and the army attorneys cancelled again by presenting the same recusal petition that had just been denied.

Meanwhile, some fifty of us human rights defenders and journalists were named in a series of bizarre criminal complaints involving violations which occurred in the 1960s and 1970s. Some in the group had not been born yet. I had yet to set foot in Guatemala, but I am on the list.

Prosecution of President Pérez Molina in the Bámaca Case

Given this paralysis, I filed a new complaint with the Public Prosecutor against army officers not named in the original complaint, including General Otto Perez Molina. In early January of this year my lawyer was called by a court clerk and told that he had a hearing in three days. He asked which case and got no answer. He asked what issue and got no answer. When he arrived in court he was told that the hearing was to close the new Bamaca complaint without any investigation. When he asked for time to gather the evidence to dispute the army lawyers, he was given none. When he appealed the Judge refused to submit the appeal to the appellate court.

Risk of Impunity for Genocide

The historic Genocide Case is pressing forward at this time, and although General Rios Montt has been charged, the defense is already filing petitions to suspend and endlessly delay the prosecution. Moreover, within 24 hours president Otto Perez Molina again claimed that genocide had never occurred. We are all very concerned that all the war crimes cases will soon be shut down. An illegal

amnesty is being urged in Congress, and a military officer is urging the Constitutional Court to repeal Guatemala's long standing submission to the Inter American Court's jurisdiction. The initial move towards judicial independence is clearly shutting down under the new President.

Cost of Impunity

If Guatemala cannot achieve minimal justice for the war crimes which its people endured, then the violence will continue. Indeed, as Annie Bird will discuss, many military officers, including those in my own case, were on the DEA's corrupt officer list. After the war they simply became drug lords, forming mafia like structures and training local gangs, and even the Mexican Zetas, to carry out the work. We have to help the Guatemalans bring the impunity to an end. Without an independent and safe judicial system there can be no peace or democracy.

Annie Bird:

As Ms. Harbury so clearly described, a battle is going on to purge Guatemala's justice system of clandestine criminal networks that have infiltrated the State in order to protect both the authors of crimes against humanity and organized crime cartels. These networks are made up of former military officers and others associated with the military during the armed conflict, such as businessmen and large land holders who collaborated with the military in death squads during the 1980s.

Clandestine Criminal Networks and Connections to Government

The drug networks in the department of Izabal provide a clear example of this. This region's first major kingpin, Arnoldo Vargas, in 1992 was the first Guatemalan to be extradited on drug charges to the United States. He was known to have formed part of the "Mano Blanco" death squad with tight connections in the Zacapa military base, and was the mayor of the town of Zacapa.

Another example is the retired General Ortega Menaldo, head of the presidential intelligence service (the Estado Mayor Presidencial) when Otto Perez Molina was head of military intelligence. He is broadly understood to be a puppet master behind the clandestine criminal networks that serve organized crime.

The ongoing role of many former military officers in clandestine criminal networks, as well as their involvement in crimes against humanity, makes their recent placements throughout the government extremely concerning. Cases like that of Efraim Bamaca demonstrate that tentative advances in justice system reform are already being reversed, something the international community cannot allow to happen.

Kaibiles Special Forces in Government

The Guatemalan Special Forces unit known as the Kaibiles has been particularly implicated in war crimes, and drug trafficking today, yet President Perez Molina has stated his intent to use them in operations against drug trafficking, and the Kaibils receive US training.

In August 2011, four former Kaibiles and their commanding officer were sentenced to 6,060 years in prison for their participation in the gruesome massacre of 264 men, women and children in 1982. This was the first time that soldiers have been arrested, tried and sentenced for any of the hundreds of massacres committed by State security forces during the military campaigns from 1981 to 1983.

President elect Perez Molina was a founder of the Kaibiles, and has named former Kaibils to the three top military positions. The Minister of Defense was the director of the Kaibil training academy until 2009, and the Commander and Deputy Commander of the Joint Chiefs of Defense were Kaibil instructors.

This decision is even more shocking given the extensively reported ties between Kaibiles and the gruesomely violent Zeta organized crime network.

Kaibiles Ties to the Zetas gang

The Zetas were originally members of an elite unit of the Mexican Army Airborne Special Forces (GAFE) that in the late 1990's were trained by the Guatemalan Kaibiles, and then in 2000 left GAFE, en masse, to begin work as Gulf Cartel's enforcers. The Gulf Cartel has, for decades, had a solid presence in Guatemala. It grew out of a network of local traffickers with strong ties to the military and death squads.

Ever since, but particularly since 2005, reports of Zeta recruitment of former Kaibiles and former Kaibil training of Zetas, have been frequent. On April 6, 2011, the Mexican Vice Minister of Security reported that current and former Kaibiles were training Zetas in northern Guatemala and participated in drug smuggling, at the same time denouncing a pattern of large scale robbery by Zetas of weapons from military bases in Mexico and Guatemala.

The Kaibiles have been credited as responsible for introducing some of the most gruesome techniques to the Zetas, including severing heads and dismembering bodies. This is no surprise given the Kaibiles' savage history in the Guatemalan civil war. Most recently, on May 17, 2011 former Kaibiles, now members of the Zetas, were arrested for the massacre and decapitation of 27 farmworkers on the Los Cocos farm in Sayaxche, Peten.

Increased militarization, whether through military or militarized police forces, is expected to only increase violence. Mexico's drug war, fueled by the US funded Merida Initiative, modeled after Plan Colombia, has cost estimated 40,000 to 50,000 lives in Mexico, without significant progress in curtailing drug trafficking.

Militarization and Ties to Mass Evictions

Many community activists observe that militarization is concentrated where there are conflicts over control of land and resources, leading many to the conclusion that militarization in Central America is less about controlling crime than political and territorial control.

Eviction of Community of Nueva Esperanza

One of many examples is the August 23, 2011 eviction of over 300 campesinos from the community Nueva Esperanza in the Peten department from the lands to which they held title. The families were expatriated and forced across the border into Mexico. The eviction was carried out without proper legal proceedings. The Interior Minister justified the action, claiming publically the families assisted drug traffickers. The campesinos were assisted in Mexico by the United National Refugee Agency, drug war refugees.

Far from 'drug traffickers' the community's transgression was that it was situated in an area of interest for tourism development. Three years before, President Colom announced plans to clear the area of "invaders and drug traffickers" to make room for the mega tourism development project Cuatro Balam. A series of hydroelectric dams on the Usamacinta River that would provoke massive flooding threaten some of the same communities with displacement. Ever since these plans became public, communities have denounced before national and international human rights bodies that they are under the threat of illegal eviction from their lands.

Eviction in the Polochic Valley

An ongoing conflict in Guatemala's Polochic Valley provides another example of the link between militarization and interest in controlling land. In this region, organized crime networks renowned to be linked to the Zetas are working as 'paramilitary' groups, together with the military, police, private security companies, and local judges to terrorize, criminalize and evict Maya Q'eqchi' communities whose ancestral lands are being taken over by a transnational sugar cane company intent on producing ethanol.

Many of the same individuals and families in these 'paramilitary' groups were involved in the famous Panzos massacre of these very same villages in 1979, and in extreme repression in surrounding years, all stemming from conflicts over land rights. The US's most recently extradited accused Guatemalan drug trafficker, Mario Ponce, is associated with this criminal network.

Militarization Increases Violence

As Ms. Jones mentioned, human rights organizations across Central America are concerned that increased militarization will negatively impact human rights throughout the region, increasing rather than decreasing violence, as was seen in Mexico.

Much of this militarization is taking place in the framework of the implementation of the Central American Integration System's (SICA's) Regional Security Strategy. State Department's Central American Regional Security Initiative, CARSI, modeled after the Merida Initiative and Plan Colombia, has folded in to SICA's Security Strategy.

While there is no doubt that the terrible crime rates in Central America must be brought down, experience shows that the answer is not militarization. Guatemala's incipient advances show that building up the Public Prosecutors ability to investigate and prosecute, and the dismantlement of clandestine criminal networks are key first steps.

Kelsey Alford-Jones:

Guatemala's transition to a strong, transparent and functioning democracy depends on a clear return to civilian rule, an independent judiciary, an active and engaged civil society, and a government that strives to protect the wellbeing of its most vulnerable citizens.

As the U.S. supports the CARSI program, it will be important for the U.S. congress to monitor militarization and human rights abuses, given the nation's history of violent military rule and presence of entrenched clandestine networks.

It is critical to maintain the current restrictions on military funding in Foreign Operations Appropriations bill.

We also ask that Congress increase oversight of Defense spending and joint training operations in Guatemala, with a particular focus on the Kaibil Special Forces.

Organized crime cannot be fought in the streets with guns; instead it must be dismantled through judicial prosecutions. We urge the U.S. Congress to prioritize funds to support institutional strengthening, increasing the investigative capacity of the Public Prosecutor's Office, and providing protection for judges, prosecutors and witnesses. We stress the importance of continued support of the Attorney General and the CICIG.

Progress in Guatemala's emblematic human rights cases can be used as a barometer for the health of the judiciary. If cases from the internal conflict are not successfully prosecuted, there can be little hope for successful prosecutions for perpetrator's of current violence. Congress should evaluate the army's cooperation with investigations and prosecutions based on the Inter-American Court's position as to their compliance with human rights orders.