

Guatemala Human Rights *UPDATE*

Guatemala Human Rights Commission/USA

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FUNDAMENTAL VIOLATIONS

Commission Orders Protection for OASIS Members

The Inter-American Commission on Human Rights (IACHR) ordered the Guatemalan government to adopt protective measures without delay for twelve members of the Integral Sexuality AIDS Support Organization (OASIS). The organization has denounced the murders of transvestites, pointing to the involvement of members of the National Civil Police (PNC). In particular, the IACHR ordered protective measures for Kelvin Josué Alegría Robles, who survived an attack by alleged police officers last December. Another transvestite was murdered during the same attack (see insert). OASIS members, including the victims of the December attack, have been intimidated by police and attacked by unidentified persons because of their work within the LGBT community.

Amnesty International Pressures for Dismissal of Charges

Amnesty International has asked that charges against leaders of eighteen communities in Baja Verapaz be withdrawn. The National Electricity Institute (INDE) filed the complaint against the leaders following a peaceful demonstration in September 2004. Protesters gathered to draw attention to the lack of potable water and electricity in local communities, in spite of promises to deliver these services. At the same time, they were protesting the loss of life, housing, and land caused by the construction of the Chixoy dam and the impunity surrounding massacres committed in the area between 1980 and 1982. An estimated 4,000 people were killed during military operations in Rabinal during the 1980s, including approximately 444 of the 791 Río Negro inhabitants. The leaders charged by the INDE include Carlos Chen Osorio, survivor and key witness to the Río Negro massacre in 1982,

and Juan de Dios García, director of the Rabinal Victims Association (ADIVIMA). Amnesty International criticized the charges, which include threatening the internal security of the state, calling them disproportionate, unfounded, and politically motivated.

LAND RIGHTS

CUC Demands Suspension of Eviction Orders

Leaders of the Campesino Unity Committee (CUC) met with Attorney General Juan Luis Florido on February 15 to ask him to suspend eviction orders in a number of *fincas* (plantations). Daniel Pascual, representing CUC, said evictions have been ordered for around twenty *fincas* in Cobán, because of labor disputes. The organization asked the Public Prosecutor's Office (MP) to investigate the cases and justify these measures. Pascual also urged the institution to develop a training manual on how to proceed in the case of a violent eviction.

Pascual expressed satisfaction with the advances made by the MP with respect to eviction orders in ten *fincas* in Izabal, Cobán, Alta Verapaz, Quiché, Coatepeque, Quetzaltenango, and Escuintla. On February 1, Florido offered to negotiate the suspension of these orders. Pascual said that the authorities have decided that these particular conflicts can be resolved through dialogue and negotiation, without resorting to judicial action.

Eviction of Railway Settlements Protested

More than one hundred campesinos set up a roadblock in Santa Lucía Cotzumalguapa, Escuintla on February 14 to protest the eviction of families occupying land belonging to the railway network FE-GUA. The protesters arranged barricades, set tires on fire, and blocked traffic using rocks and sticks. The protest was focused on the eviction of 150

families from the two settlements in Bellos Horizontes El Milagro, Escuintla on February 1. Domingo Hernández, head of the National Coordinating Association of Railway Settlements, said that the protesters took action after hearing rumors that they were also going to be evicted in the near future. They asked the government to complete the necessary paperwork to donate land for them to live on.

Confrontations Break Out During Eviction

On February 8, armed confrontations broke out between state security forces and residents of Tajumulco, San Marcos during an eviction on the Once de Mayo and Nuevo Porvenir estates in Ixchiguán, San Marcos. According to the chief of police in that district, around 150 people resisted the eviction, carried out by two thousand police and 400 soldiers. Police agents used teargas to expel those that resisted. The mayor of Ixchiguán, Jerónimo Navarro Chilel, said that after the majority of the security forces withdrew from the area, residents of Tajumulco, who Navarro said were acting in retaliation, burned fifteen homes in Ixchiguán.

Until 1938, Ixchiguán was part of Tajumulco. When Ixchiguán became a separate municipality, the land was not clearly divided and residents of Tajumulco continue to claim part of the two estates. Tension between residents of the two communities has continued to escalate. After a breakdown in negotiations between the authorities of Tajumulco and Ixchiguán, the contested area was occupied on October 8, 2005 by residents of Boxoncán, Tajumulco.

Minister of the Interior Carlos Vielmann's assertion that drug trafficking rings influence the land conflict between Ixchiguán and Tajumulco has caused some controversy. Vielmann believes that residents are trying to distract security forces from opium production in the area, and he specifically mentioned drug traffickers operating out of Tacaná, San Marcos. Vielmann said the Ministry plans to carry out extensive eradication programs in the area, focusing on poppies and marijuana. Mayor Navarro, of Ixchiguán, said there could be some evidence to support the Minister's claims, such as the types of arms used by those occupying the estates. Conversely, the mayor of Tajumulco, Ismael Gómez, rejected Vielmann's assertion and

asked for further proof.

WOMEN'S RIGHTS

Reports of Domestic Violence Increase

Reports of domestic violence increased by sixty-five percent in 2005, compared to 2004. In 2005, from January to September there were 23,093 reported cases of domestic violence. According to judiciary statistics, the highest number of reported incidents are in the Guatemala, Quetzaltenango, Escuintla, Huehuetenango, and Sacatepéquez departments.

Although more women have come forward with charges, the justice system continues to respond slowly. Representatives of organizations working on domestic violence issues affirmed that many justice operators act as allies to the aggressor reported by the woman. According to representatives of these organizations, judges, judiciary officials, attorneys and police lack awareness of the issue and view violence in the home as normal. Norma Cruz, of the Association of Survivors, said that in several cases judges have ordered security, yet the National Civil Police (PNC) have refused to protect the women, citing a shortage of agents. President of the Supreme Court of Justice (CSJ), Ofelia Beatriz de León, admitted that not all justice operators attend to victims of domestic violence as needed.

Congressional Commission Calls Attention to Femicides

Human Rights Procurator Sergio Morales and Attorney General Juan Luis Florido recently met with the Congressional Human Rights Commission to discuss the high rate of murders of women in Guatemala. The president of the commission, Myrna Ponce, urged the head of the Public Prosecutor's Office (MP) to release information on—at least—twenty femicide cases, through which the weaknesses of the institution's investigations can be examined. Alba Estela Maldonado, an official from the Guatemalan National Revolutionary Union (URNG), pointed out that only 0.24 percent of the known cases are ever brought to trial. According to Ponce, the commission is concerned that the number of femicides will continue to rise, while the state fails to provide corresponding investiga-

tions to bring the victims' cases to a close. Ponce stated that fifty women had already been murdered in 2006 as of February 11.

CHILDREN'S RIGHTS

Forum Held on Education for Child Laborers

Representatives from the United Nations Educational, Scientific and Cultural Organization (UNESCO), as well as civil and governmental organizations from Guatemala, Paraguay, Peru, Ecuador and Panama, participated in a forum, which addressed the need for quality education for child laborers. According to participants, the lack of educational programs designed specifically for child laborers decreases their ability to complete basic education. As a result, they lose out on opportunities to improve their situation. Christian Aponte, director of the Treatment Center for Families and Abused Children, insisted that child laborers need individualized schedules, patient teachers, and content that is sensitive to the reality in which they live. The organizations also agreed that the governments need to develop policies to address the specific needs of these children.

According to the National Statistics Institute, there are about 300 thousand children between the ages of seven and fourteen that work in Guatemala. Twelve percent of child laborers work at home for at least four hours a day. Fourteen percent of indigenous children in rural areas and nine percent of children in urban areas perform more than four hours of housework. Of child laborers in the country, an estimated 62.8 per cent work in agriculture, while seventy-six per cent receive no payment for their work, but rather work to support their family.

Government Fails to Provide Free Education

In a report on primary education, the Social Movement for the Rights of Children and Adolescents concluded that the government has violated the constitution and the Convention on the Rights of the Child in failing to provide free, high-quality education to Guatemalan children. Alejandra Vásquez, a member of the Movement made up of sixty-four human rights organizations, said that charging fees for registration and uniforms is a

clear violation of the constitution, especially considering that the majority of the children live in poverty or extreme poverty. Nidia del Cid, of the Human Rights Procurator's Office (PDH), insisted on the prohibition of fees. The report also lists the lack of adequate facilities and the exclusion of children with disabilities as violations of the Convention on the Rights of the Child, ratified by Guatemala in 1989. Frank La Rue, of the Presidential Human Rights Commission (COPREDEH), agreed with the report, adding that the needs of children with disabilities should be a priority. The experts' primary recommendations were to prohibit registration quotas and special fees, create control agencies in schools, provide teachers with legal training, eradicate exclusive practices, train parents to organize, and expand budgets for programs that provide school supplies, nutritional support, and scholarships.

MP to Arrest Alleged Child Pornographer

The Public Prosecutor's Office (MP) asked the head judge of the Penal Instance court in Jutiapa to re-arrest Edgar Manuel Murga Polanco, originally detained for his participation in a child pornography network. On February 7, the district attorney's office and the judge offered to release him because his crime was no longer listed in the penal code. Attorney General Juan Luis Florido recognized that Murga was erroneously processed for obscene publications and pictures. The new arrest warrant will accuse him of concealment, threats, and aggravated corruption of minors.

According to the MP, around fifteen minors were offered Q2 million to participate in the filming of pornographic videos. The images were sold and distributed in Internet cafes in Jutiapa. On February 6, the MP presented a witness who testified regarding the minors' participation but declined to provide the names of those responsible for the videos.

When the minors involved returned to their school in Jutiapa, parents of other children removed about sixty-five students from the school. "The parents took their children away from the school because they are bothered by the actions and attitudes of the children who appeared in the videos, and they do not want their children studying with them," said the director of the school.

percent shortfall in initial donations pledged as aid to the affected areas.

In a meeting called by the Human Rights Procurator's Office (PDH), representatives of verification committees from fifteen departments met in Guatemala City, where they expressed concerns that social reconstruction was not advancing. Human Rights Procurator Sergio Morales asserted that the funds to attend to the health, education, and food needs of the victims are insufficient. He added that there are communities, such as Sololá and San Marcos that are still marginalized and without government assistance.

Miguel Angel Mendoza, the PDH representative in Sololá, said that there are 535 affected families in Panabaj, while the National Fund for Peace (FONAPAZ) has only planned for the construction of 380 homes. They intend to build these homes fifty meters from where the landslide buried 100 residents. In Panajachel, Sololá, a popular tourist destination, the bridge which crosses the San Francisco River remains in ruins, isolating the population there. Julio Urrea Ruiz, the departmental governor, said that he recently signed an agreement with the Korean Embassy which would provide US\$300 thousand for the reconstruction of the bridge.

SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

Indigenous Lack Political Representation

According to the study, "Elections, Political Participation and the Maya Population 2005," by the Political Management Institute at Rafael Landívar University, indigenous Guatemalans vote at rates similar to *ladinos*. Yet indigenous Guatemalans are the least represented population in the national legislature and municipal governments. In short, the indigenous population actively participates in elections, but have little decision-making power at the local and national level.

Of the 158 parliament members, a scarce twelve are indigenous, while of the 332 municipalities, only 111 have indigenous mayors. Even in departments where the indigenous population constitutes a majority, such as Quiché, Totonicapán, Alta Verapaz, Chimaltenango, and Sololá, there is a lack of equal representation.

Some experts attribute the lack of political power to the fact that there is no common agenda and no political party movement. Others would point to racism and social exclusion. According to Otilia Lux, the former Minister of Culture, the political system is neoliberal and a true democracy does not exist. Lux said that youth, women, and indigenous Guatemalans are only taken into account every four years to gain electoral votes.

DR-CAFTA Threatens Agribusiness

The National Front for the Struggle in Defense of Public Services and Natural Resources (FNL) warned that reforms to the intellectual property rights law constitute new threats for small- and medium-sized Guatemalan agribusiness producers. The US government is pressuring signatories of the free trade agreement between the Dominican Republic, Central America and the United States (CAFTA-DR) to adopt these reforms. The FNL, a coalition of social organizations, said that if the agreement were modified, it would prohibit the production of generic agricultural and farming supplies by obligating the purchase of trademarked products. The FNL predicts that this prohibition would force national businesses now producing generic goods to close. Furthermore, it would reduce the possibilities of real competition for Guatemalan agricultural producers, already compromised due to US agricultural subsidies. The FNL called for the opening of new spaces for opposition and continued resistance using the instruments and weapons of peacetime.

MIGRANT RIGHTS

Central American Parliament Pressures US Senators

The announcement that the US Senate would start debate on border security legislation on March 2 has mobilized advocacy organizations and representatives of the Central American parliament (PARLACEN). The organizations and representatives alike continue to ask for a more just and humane legislation. The bill, passed by the House of Representatives last December, includes provisions for the criminalization of undocumented immigrants and the expansion of a fence along the US-Mexico border. PARLACEN official Alvaro Dubón said that the region will suffer the effects of

the free trade agreement, while at the same time more and more Guatemalans will be deported from the US. He added that the Republicans' proposal would provoke the separation of families because within families there are both documented and undocumented immigrants. PARLACEN intends to create a commission charged with demonstrating the economic benefits of migration to both the United States and Central America. They are also looking for support from religious organizations. Juan García, of the Migrants in Action Committee, said that his conversations with legislators indicate that the proposal is not likely to pass the Senate in its current form.

JUSTICE AND RECONCILIATION

Reparations Payments Suspended

Stating that the National Reparations Program (PNR) should be restructured, the government suspended payments to those affected by the armed conflict. The interim executive director, Martín Arévalo, said that compensation would continue in some specific areas, where there are well-documented cases without legal problems. In the case of Rabinal, Baja Verapaz, for instance, payments are planned for March. President Óscar Berger handed over the first payments in Estancia de la Virgen, San Martín Jilotepeque, Chimaltenango on December 22, 2005.

A number of reforms are planned for the project, with an assigned annual budget of 300 million *quetzales*. According to officials of the program, they are trying to resolve disagreements between program officials, as well as various organizations of victims, that resulted in delays in compensation payments. Nevertheless, a former member of the reparations commission, Ruth del Valle, says that she fears that the reparations payments will be used for electoral ends. Arévalo denies this assertion, saying that they are trying to institutionalize the program so that it will transcend this administration and the next.

LEGAL CASE UPDATES

Defense in Gerardi Case Files an Injunction

The lawyers defending the three men involved in the death of Monseñor Juan José Gerardi are seek-

ing a reversal of the Supreme Court of Justice's (CSJ) recent decision to uphold the sentence handed down by the Court of Appeals. Monseñor Gerardi was assassinated on April 26, 1998, two days after the publication of a report documenting human rights violations committed by the military during the internal armed conflict. Colonel Byron Disrael Lima Estrada, his son, Captain Byron Miguel Lima Olivia, and priest Mario Orantes, are charged with covering up the assassination. They are currently serving a twenty-year prison sentence.

On February 7, defense lawyers filed an injunction against Attorney General Juan Luís Florido before the Supreme Court of Justice (CSJ). Defense lawyer Roberto Echeverría Vallejo requested that the CSJ solicit evidence from Florido on the case, as he plans to file an appeal for review. On February 9, Lima requested an injunction before the Constitutional Court, arguing that the CSJ violated his rights by rejecting the motion for an annulment filed by his lawyers.

Prosecutor Appeals Decision in Favor of Ríos Montt

On February 2, the Public Prosecutor's Office (MP) appealed the recent decision of judge Víctor Hugo Herrera Ríos to suspend the case against Efraín Ríos Montt, the secretary general of the Guatemalan Republican Front (FRG). Ríos Montt is accused of kidnapping, coercion, and sedition, in connection with the violent protests of July 24 and 25, 2003. On these two days, Ríos Montt supporters protested to demand he be allowed to run for president, in spite of his past participation in a coup. Attorney General Juan Luis Florido said that the judge failed to rule on what was presented, as a temporary closure had been requested in order to continue the investigations.

Contempt Laws Declared Unconstitutional

With five votes in favor and two against, the Constitutional Court (CC) declared contempt laws to be unconstitutional. On February 1, the court eliminated the crime's classification as one punishable by up to three years in prison for those guilty of offending, slandering or injuring any public official. According to the lawyer who brought the case to court, the abolition of this repressive and obsolete law will permit writers, journalists, and the general public to express their opinions without

fear of being sent to jail for false assumptions or for offending public officials.

Guatemala is the sixth country that has revoked the crime, along with Honduras, Costa Rica, Paraguay, Perú, and Argentina. The Supreme Court of Justice, the Attorney General, and the MP agreed with the court's decision, while the President of the Congress, Jorge Méndez Herbruger, opposed it.

The Inter-American Press Society (SIP), the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) and the Committee for the Protection of Journalists (CPJ) expressed their support for the decision. "This measure constitutes a decisive step towards the strengthening of freedom of expression in the continent," stated the Rapporteur in a communiqué. Ann Cooper, the director of CPJ, said, "This is another precedent that will reinforce the consensus that officials must not be outside public scrutiny."

OTHER INFORMATION

Militarization of Public Security Criticized

On February 8, President Óscar Berger announced that 3,012 former high- and medium-ranking officers of the military would join the National Civil Police (PNC) within the next month to form the Special Support Unit for Citizen Security. Applicants must have completed military service and must be between twenty-one and thirty years of age.

Guatemalan organizations, as well as members of the international community, have expressed concern about this militarization of public security. In a communiqué, various organizations said that incorporating the army in public security measures was dangerous and irresponsible. They wrote that this plan shows that the current administration is not committed to the Peace Accords, which included provisions to demilitarize the state and Guatemalan society. Giovana Lemus, of the Network for Non-Violence Against Women, said the measure would mean the loss of years of work to strengthen the National Civil Police (PNC). Recalling that the police were completely subordinate to the military throughout the 1980s, Miguel Ángel Albizúrez, of the Center for Human Rights Legal

Action (CALDH), said that the risk is that the military, rather than the police, will handle civil affairs. Alejandro Rodríguez, from the Institute for Comparative Studies in Criminal Sciences (IECCP), said that the system needs scientific experts, not more military officers. Representatives of the United Nations and the European Union, as well as the ambassador of Holland, have also criticized the plan, stating that public security should remain the responsibility of the police and that this institution should be strengthened.

In response to critics, President Berger insisted that the country should take advantage of the experience of military personnel. He said it would only benefit criminals and organized crime if the country continues on the verge of armed conflict.

PDH Denounces Rise in Violence

On February 1, Human Rights Procurator Sergio Morales presented his 2005 annual report on the human rights situation in Guatemala to the international community. Morales described the current violence in Guatemala as "very serious" and he lamented that those involved in violent incidents are mostly youth. "The World Health Organization declares that an epidemic of violence begins when there are ten homicides for every one hundred thousand people, and we have already exceeded forty," he said.

The judiciary morgue reported 201 deaths in the department of Guatemala during the first month of 2006, already the most violent of the past fifteen months. The Criminological Investigations Unit (SIC) of the police reported that there were 529 violent deaths throughout the country this January. Morales asked the government and civil society to work together to resolve the economic hardships that lead youth to join gangs, including unemployment. He also emphasized that marginalized segments of the population want to be included in decision-making and called for their inclusion and integration into society. Regarding attacks against human rights activists, the Human Rights Procurator reported a significant increase as compared to the period of the previous administration. While 125 cases occurred in 2002, 214 were reported in 2005.

The president of the Congressional Human Rights Commission, Myrna Ponce, said that the

UN Report Highlights Violence and Crime

In a report on human rights in 2005, the Office of the United Nations High Commissioner for Human Rights expressed concern for the rise in violence in Guatemala and the weakness of the state in combating it. The head of the agency in Guatemala, Anders Kompass, said that the violence in Guatemala has changed in the past few years from political or state violence to social violence, manifested in the rise in homicides. The report asserts that crime levels and the state of alarm are a product of a number of different phenomenon, including organized crime, common crime, youth gangs, and illegal groups and clandestine security apparatus. Kompass pointed out that public prosecutors lack sufficient resources and that there are only 1.58 police for each 1,000 residents in the country, well below the international standard. In order to address the situation, Kompass recommended extensive judicial reform, congressional review of security legislation, including the Arms and Munitions Law, and the implementation of the Commission to Investigate Illegal groups and Clandestine Security Apparatus (CICIACS). Kompass also urged the government to develop effective and sustainable measures to protect human rights defenders, unionists, journalists, justice operators, and witnesses.

Murders of Gang Members Not Investigated

The police and the Human Rights Procurator's Office (PDH) estimate that fifty-six percent of the 536 murder victims reported in 2006 as of February 13 were youth involved in gangs. Discovered in desolate areas, the majority of the bodies showed signs of torture. Few of these cases have been investigated or prosecuted. The Homicide Unit of the PNC argues that it is difficult to find those responsible for murders of gang members, especially since families and witnesses often hesitate or refuse to cooperate. One detective said that as soon as gangs are mentioned, no one wants to testify in court. In 2005 the PNC managed to arrest ten alleged gang members accused of participating in murders. Of the 251 pending cases involving violent crime that entered the office of the Prosecutor for Crimes against Life in 2005, an estimated twenty-five percent were committed against former gang members. None of these have been prosecuted.

So far this year, statistics suggest that more members of Mara 18 are being murdered than members of

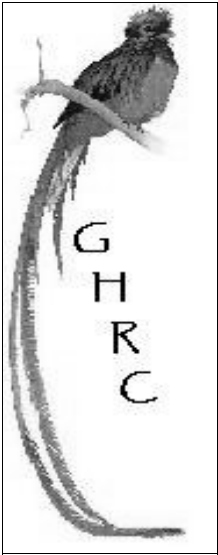
rival gang Mara Salvatrucha. An investigator with the Anti-Gang Unit of the police attributes this difference to the fact that members of M18 participate directly in criminal acts, while the Mara Salvatrucha, partly because of lower numbers, is better organized and members use children and adults to carry out actual crimes. Emilio Goubaud, of the Association for Crime Prevention (APREDE) drew attention to the alarming number of deaths and disappearances of gang members this year, citing the responsibility of the authorities. He said that the Ministry of the Interior appears to have an institutional policy of persecution.

Minister of the Interior Carlos Vielmann countered that the agency is trying to halt the deaths, including both victims of gang violence and the gang members themselves. In a recent meeting with officials from Honduras, the two countries discussed the possibility of creating a bi-national anti-gang force similar to the one created between Guatemala and El Salvador. The officials also discussed exchanging lists of names of gang members in each country.

Southern Command Observes Counternarcotics Efforts

In a speech on February 2 in Miami, Florida, the head of the US Southern Command, General Bantz J. Craddock, classified the national park area of Laguna del Tigre, Petén as an "ungoverned space." "The lack of government presence in this region and along the border has made it an ideal transshipment point for drug and other illicit traffickers moving their illegal goods and contraband."

Craddock called attention to a range of regional problems, including environmental destruction, the sabotage of economic development, the spread of corruption, violence, and crime, and the undermining of the rule of law. According to Craddock, entire communities of squatters have formed around the existence of the drug trade, often as a response to unemployment. These communities now provide security and transportation for drug traffickers. Craddock said that traffickers have intimidated the population to such a degree that criminal and illegal armed groups have become the de facto rule of law in the region. An interagency task force, including officials from the PNC, immigration, and the justice department, received the official's support for their progress through counternarcotics operations.



GHRC/USA is a nonprofit, nonpartisan, humanitarian organization committed to monitoring, documenting, and reporting on the human rights situation in Guatemala while advocating for survivors of human rights violations.

Information in the *UPDATE* that is not gathered directly is culled from various sources, including the Comisión de Derechos Humanos de Guatemala, Casa Alianza, Albedrío, Amnesty International, Associated Press, Reuters, and Guatemalan news sources, such as Cerigua Centro de Estudios de Guatemala, Incidencia Democrática, Prensa Libre, El Periódico, La Hora, and Siglo Veintiuno.

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