



The State Department web site below is a permanent electro information released prior to January 20, 2001. Please see [y](#) material released since President George W. Bush took office. This site is not updated so external links may no longer func [us](#) with any questions about finding information.

NOTE: External links to other Internet sites should not be c endorsement of the views contained therein.



## U.S. Department of State

### Guatemala Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

---

#### GUATEMALA

Guatemala is a democratic republic with separation of government powers and a centralized national administration. The 1985 Constitution provides for election by universal suffrage of a one-term president and a unicameral congress. It also mandates a Human Rights Ombudsman (PDH), who is elected by and reports to the Congress. In the November 1995 elections for president, vice president, congress, and municipal offices, the National Advancement Party (PAN) won 42 of the 80 congressional seats; however, no presidential candidate received an absolute majority of the votes. Alvaro Arzu Irigoyen of the PAN won the runoff presidential election and took office in January 1996. Reflecting a greater opening for political activity, 24 parties, including a broad front coalition composed of civic, human rights, and labor leaders, campaigned in the free and fair elections. The judiciary is independent, but suffers from inefficiency and corruption.

The Arzu administration ended 36 years of internal conflict by signing a comprehensive peace agreement with the Guatemalan National Revolutionary Unity (URNG) guerrillas on December 29, 1996. Implementation of the Peace Accords began almost immediately: Demobilization of the URNG guerrillas was completed in May, the Mobile Military Police (PMA) were disbanded ahead of schedule, and the Government reduced the size of the military forces. As called for in the accords, the Government proposed and Congress enacted a wide-ranging series of legal reforms to protect human rights, strengthen civilian control of the military, address discrimination against the indigenous population, and lay the groundwork for further political and socioeconomic reforms. In the wake of the final Peace Accords, the mandate of the U.N. Human Rights Verification Mission (MINUGUA), established in November 1994 to monitor compliance with the Government-URNG human rights accord, was

expanded to include peace implementation issues. The December 1996 National Reconciliation Law, which provided amnesty for some acts related to the internal conflict, has been narrowly interpreted by the courts and its constitutionality was upheld on October 8.

The Minister of Government oversees the National Civilian Police (PNC) created in January under the terms of the Peace Accords, which has sole responsibility for internal security. There are no active members of the military in the police command structure, but President Arzu ordered the army to support the police in response to public concern about a nationwide wave of violent crime. The Presidential Military Staff (EMP) continued to exercise a law-enforcement role. Some members of the police and security forces committed human rights violations.

The agricultural-based, private sector-oriented economy grew by approximately 5.0 percent in real terms. Coffee, sugar, and bananas are the leading exports, and more than half the work force is engaged in agriculture. Inflation was about 9 percent in 1996. There is a marked disparity in income distribution, and poverty is pervasive, particularly in the large indigenous community. According to U.N. statistics, approximately 80 percent of the citizens live in poverty, with 59 percent in extreme poverty. Per capita gross national product was approximately \$1,450 in 1996.

The significant improvement in the overall human rights situation under the Arzu administration continued. In contrast to past years, there was a marked decline in new cases of human rights abuses, but problems remain in some areas. Positive political developments and the reduction of the size of the security forces, stemming from successful implementation of the Peace Accords, were major factors in these changes. Nevertheless, members of the security forces were implicated in some extrajudicial killings and mistreated suspects and detainees. MINUGUA and other human rights monitors accused the EMP of serious human rights abuses, including at least one forced disappearance. Prison conditions remain harsh. Arbitrary arrest and detention, and lengthy pretrial detention, remain problems. Efforts to reform the police and judiciary continued in an attempt to eliminate the climate of impunity, and the Government initiated some prosecutions of human rights abusers. The failure to resolve past serious human rights abuses remains a major problem. With judges and other law enforcement officials subject to intimidation and corruption, the inefficient judicial system is often unable to ensure fair trials and due process. Elements of the security forces infringed on citizens' privacy rights. Discrimination and violence against women persisted, as did societal abuse of children and discrimination against the disabled and indigenous people. Lynchings and mob attacks continued, and the Government was unable to prosecute the perpetrators.

## **RESPECT FOR HUMAN RIGHTS**

### **Section 1 Respect for the Integrity of the Person, Including Freedom From:**

#### **a. Political and Other Extrajudicial Killing**

There were isolated allegations of politically motivated killings during the year; however, none of these were confirmed.

The number of extrajudicial killings continued to decline and the nature of violations changed. In contrast with the past, government security forces no longer carried out campaigns that resulted in numerous extrajudicial killings. Nevertheless, members of the security forces were implicated in some extrajudicial killings and other abuses. Victims and their families no longer feared to speak out, and the Government demonstrated a willingness to arrest and prosecute those responsible. However, the scarcity of law enforcement resources and a weak prosecutorial and judicial system prevented the Government

from adequately investigating many killings or other crimes or arresting and prosecuting perpetrators.

The PDH's office, which generally compiles data based on personal interviews with victims and their families, listed 66 cases of possible extrajudicial killings in the first 6 months of the year, compared with 173 in all of 1996, and 216 in 1995. Using media reports and interviews with victims and their relatives, the Archbishop's Human Rights Office (ODHAG) compiled 118 reports of extrajudicial killings during the year, only 9 of which were confirmed, compared with 120 in all of 1996. MINUGUA listed 40 complaints of extrajudicial killings during the year and confirmed 40 cases, but many of those confirmed were from 1996.

The final peace accord signed in December 1996 codified a cease-fire in effect since March of that year. By March the URNG guerrillas had peacefully assembled in demobilization camps, and by May they had relinquished their weapons. The military undertook a thorough restructuring and closed a number of military bases in the interior of the country. It had ceased counter-insurgency operations early in 1996. The signing of the Peace Accords and the Government's success in disbanding the PMA and disarming and disbanding the Civilian Defense Patrols (PAC's), which supported and supplemented the army during the years of conflict, helped create a more favorable human rights climate.

The Government and human rights groups pressed charges against a number of former PAC members and military commissioners for crimes committed during the internal conflict. In a significant departure from past practice, a court convicted a military commissioner of murder in September for a 1994 killing. (Military Commissioners, formally decommissioned on September 15, 1995, were generally local civilian leaders who represented the army, serving as intermediaries with PAC members.) In a sign of changing public attitudes, the outcry following the acquittal of former military commissioner Candido Noriega of 158 criminal charges--mostly for crimes committed in the early 1980's--led to the suspension of the presiding judge and a successful motion for a new trial.

Nonetheless, intimidation of witnesses continued to be a problem. For example, the chief prosecutor announced in September that he had received death threats similar to those directed against the prosecutor and the investigative team in the case of Alfredo Moreno, accused head of a customs fraud network. The team in charge of the investigation kept the witness list confidential, provided protection for witnesses since the investigation began, and arranged possible future asylum for some of them who are expected to provide sensitive testimony. Nonetheless, family members assert that a murdered customs agent, as well as four other persons, were killed to prevent their testimony. It is not clear, however, that any of those were planned witnesses. In another instance, on October 8, unknown assailants shot and killed Edgar Estuardo Motta Gonzalez in front of his house. Motta had testified that three policemen had kidnaped and shot him and a friend and left them for dead in February 1995. The friend died; the court found the police officers guilty and sentenced them to death. Motta had been provided witness protection for some time, but it was dropped after the conviction when threats appeared to have passed.

Popular frustration with the inability of the Government to control crime, and of the courts to assure speedy justice, contributed to lynchings and mob attacks throughout the year. Statistics are not available, but reliable sources estimate that about 90 people were lynched during the year, about 45 of whom were killed by mobs, for alleged crimes ranging from murder to petty theft. There was no evidence that these mobs were incited for political reasons. Most of the attacks took place in rural areas. The police, sometimes with the assistance of the military or volunteer firemen, were often successful in rescuing victims of mob attacks. The Government opened prosecutions against the instigators of a few of these attacks.

On October 28, former Minister of Government Danilo Parrinello Blanco, former Vice-Minister of

Government Mario Alfredo Merida Gonzalez, and former police chief Salvador Figueroa, who were sentenced in July to 10 years in prison for the 1994 death of University of San Carlos student demonstrator Mario Alioto Sanchez, were absolved of homicide charges on appeal. In a controversial ruling, a lower court had found the three guilty, given their places in the chain of command, of issuing orders to the police to use force if necessary to maintain order. The appeals court found that the verdict violated the Constitution and cited laws granting protection to government officials taking measures to preserve public order. The appeals court also absolved a policeman sentenced to 10 years in the July verdict and reduced charges against Carlos Venancio Escobar Fernandez, the policeman who shot Sanchez, from first degree murder to unintentional homicide; his sentence was cut from 30 years to 10. Police officers accused of lesser charges against other students were also absolved.

On November 21, former PAC member Juan Acabal Pazan was convicted and sentenced to 30 years in prison for his role in the 1993 murder of newspaper publisher and former presidential candidate Jorge Carpio and three others. The court also convicted Acabal of two other 1993 murders unrelated to the Carpio case. (The 30-year sentence is for all six murders for which Acabal was found guilty.) Charges in the Carpio case remain pending against six other former PAC members, all of whom were allegedly part of a gang; all remained at large at year's end.

There have been about 100 cemeteries exhumed in the past 5 years. Most of the bodies recovered have been those of victims of military or paramilitary killings in areas like Rabinal, Las Dos Erres, and Panzos. Forensics groups are using the information obtained from the exhumations to verify eyewitness reports of massacres and to determine at least in general who might have been responsible. The evidence may be used in some criminal cases and in the report of the recently formed Historical Clarification Commission (CEH--see Section 4). The ODHAG's Forensic Anthropology Unit exhumed a burial site at Chacalte at the CEH's request. The unit found almost 200 victims of a guerrilla massacre, most of them women and children, and most decapitated. A few survivors reported that the guerrillas took several hours to kill the populace of Chacalte and didn't want the noise of bullets to scare others away before the patrol could finish. No case based on evidence from an exhumation has yet been brought to court. The 1982 military massacre at Las Dos Erres is expected to be the first case; it was still under investigation at year's end.

Judicial proceedings continued in the case of the October 1995 killing of 11 returned refugees at the Xaman ranch in Alta Verapaz by an army patrol. In January 1996, the Constitutional Court upheld the constitutionality of a statute defining extrajudicial killing. Hearings on procedural questions have been exhausted and the trial was expected to proceed in early 1998. The 24 soldiers accused in the case remained in jail pending trial.

In September a court sentenced former military commissioner Armando Tucubal to 20 years in prison with no parole for the 1994 murder of evangelical minister Pascual Serech in Chimaltenango. It acquitted Paula Car Tibio, also accused in the Serech killing. Victor Roman, an alleged collaborator with Tucubal and also the accused perpetrator of the 1995 murder of evangelical pastor Manuel Saquic, remained at large despite an order for his capture and an offer of a reward.

In August the authorities reactivated the case of the 1994 murder of Constitutional Court president Epaminondas Gonzalez Dubon. A lower court raised the charges against Marlon Oliver Salazar Lopez and Roberto Antonio Trabanino Vargas from homicide to first degree murder; a third person accused in the case, Mario Rene Salazar Lopez, brother of Marlon, remained at large.

The August 1994 killing of three workers at the La Exacta farm remained under investigation at year's end. Although the criminal case has stalled, negotiations are continuing with the Center for Legal Assistance in Human Rights acting as the community's representative in discussions with the

Government, through the President's Human Rights Commission (COPREDEH). The parties are in the process of amicable settlement procedures under the auspices of the Inter-American Commission on Human Rights (IACHR). Charges are still pending in the labor court, and a criminal case is still possible.

A trial was expected to begin in early 1998 in the case against three military officers accused of ordering the 1990 murder of anthropologist Myrna Mack. In October 1996, the Supreme Court had ruled that the three officers would face trial under the previous Criminal Procedures Code, which severely limited the evidence against them, and that an earlier investigation of their complicity conducted by the prosecution was inadmissible. The Constitutional Court overturned that decision in August; the trial is to proceed under the new Criminal Procedures Code, which allows oral testimony, and with new evidence from the prosecution's investigation.

The Government announced in February that it had reached a settlement with the plaintiffs before the IACHR in the case of the murder of anti-PAC demonstrator Juan Chanay Pablo. The criminal case against the PAC members accused of killing Chanay in Colotenango during a demonstration in August 1993 remained before the courts, having been remanded for a retrial by an appellate court.

The authorities arrested a former PAC member in March for the 1985 killings of American journalists Nicholas Blake and Griffith Davis. The investigation of other former PAC members for complicity in this crime is continuing.

The December 1996 National Reconciliation Law, which provided amnesty for some acts related to the internal conflict, was narrowly interpreted by the courts. The courts denied amnesty to several high profile defendants, including the convicted murderers of U.S. citizen Michael Devine and the army officers accused of ordering the murder of Myrna Mack. The only amnesties granted were to six URNG members accused of transporting weapons and using false documents. On October 8, the Constitutional Court upheld the constitutionality of the reconciliation law.

There was no progress in resolving other past extrajudicial killings: The "white van case;" the 1989 disappearances of 10 university students, 5 of whom were later found dead; the 1990 killings of Salvadorans Hector Oqueli Colindres and Gilda Flores; the 1990 disappearance of Maria Tiu Tojin and her daughter; the murder of Miguel Us Mejia, a member of CERJ (an indigenous human rights organization), and his wife, Lucia Tiu Tum; the 1991 killing of Jose Luis Merida Escobar; the 1991 disappearance of Diego Domingo Martin; the 1992 kidnaping, torture, and murder of Huehuetenango peasant Lucas Perez Tadeo; the 1993 shooting of street child Francisco Tziac; the 1993 shooting of student protester Abner Abdiel Hernandez Orellana; and the 1996 killing of Narciso Alcor.

#### b. Disappearance

There were no credible reports of disappearances attributed to official forces.

The PDH's office investigated 17 complaints of forced disappearance in the first half of 1997, compared with 47 for all of 1996. While motives in the incidents reported by the PDH are difficult to determine, the victims were not, in general, politically active. Using a more restrictive definition than the PDH, the ODHAG reported no forced disappearances during the year. MINUGUA reported three complaints of forced disappearance. MINUGUA and the PDH confirmed only one disappearance, the "Mincho" case from 1996.

In May MINUGUA reported that Juan Jose Cabrera, a guerrilla commander also known as Mincho, had

been captured in October 1996, together with Rafael Valdizon Nunez, also known as "Isaias." The two were involved in the kidnaping of 85-year-old Olga Novella, the matriarch of a prominent Guatemalan family. Isaias was released in a negotiated exchange for Novella, but MINUGUA could not determine the whereabouts of Cabrera. MINUGUA concluded that the Presidential Military Staff was responsible for the capture of the two and criticized the Government for failing to cooperate with its investigation by denying MINUGUA representatives access to those it believes are responsible for the capture.

Disappearances in high-profile cases from recent years remained unresolved at year's end. Arnaldo Xi, a community leader in Tixila, Purulha, Baja Verapaz and a member of CONIC (an indigenous and peasant rights group) remained missing. Armed men reportedly wounded him with gunfire and abducted him in March 1995, while he was taking part in a land invasion. The whereabouts are unknown of Salvador de la Rosa, a member of a military patrol who disappeared in March 1995, and of Lorenzo Quiej Pu, a member of CONDEG (an organization dedicated to helping Guatemalans internally displaced due to the armed conflict), who disappeared in January 1994. The disappearances of San Marcos PAC members Margarito Lopez and Obdulio Zapeta, army enlisted man Diego Chel Matom, and farmers Ramona Munoz and Maritza Gil, who were allegedly kidnaped in 1993 by guerrillas, also remained unresolved at year's end.

Legal developments in court cases failed to shed any light on the fate of guerrilla leader Efrain Bamaca Velasquez, who disappeared following a March 1992 clash between army and URNG forces. The Inter-American Court of Human Rights has not yet ruled on a case it accepted in 1996 against the Government regarding Bamaca's disappearance.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution provides for the integrity and security of the person and prohibits physical or psychological torture of prisoners. However, there were credible reports of mistreatment by members of the security forces.

The PDH's office listed only 1 potential case of torture in 1997, compared with 12 in 1996. The ODHAG listed no cases of torture, compared with four cases in 1996 and five cases in 1995.

Casa Alianza and the COPREDEH reported no instances in which the National Police abused street children. Other groups cite abuses of street children, cases that Casa Alianza and the PDH attribute to family members, gangs, and in some cases private security guards. Since November 1996, the courts have convicted five people, including two police officers and one military officer, of abusing street children. The criminal case against the five policemen charged in the March 1994 baton beating of Luis Antonio Roldan Izeppi remained pending.

Reports of police use of excessive force in evictions tangibly declined. Landless peasants occupied a number of farms throughout the year in attempts to gain land. Although some of the invaders were armed, the occupations were generally peaceful. Because of violent confrontations in the past, the Government's policy was to secure an eviction order from an appropriate court, inform the occupiers of the coming eviction, and send in a lightly armed contingent of police to end the occupation. The Ministry of Government carried out numerous evictions without incident during the year using this policy.

Corruption continued to be a problem with the old police force, and there were credible allegations of involvement by some individual police in criminal activity, including kidnaping. The Government is in the process of training and fielding a new National Civilian Police. All PNC members must meet

minimum education requirements and pass an entrance examination. All members of the old force were to undergo significant retraining before incorporation into the new force. New recruits must complete a 6-month training course before entering on duty. The training course, developed with the assistance of MINUGUA and other countries and international organizations, includes extensive human rights components. A total of 1,200 PNC officers entered on duty in Guatemala City in July. Government plans call for 20,000 PNC officers to be on duty around the country by 2000, up from the current force of 12,000.

In May the IACHR found that the Cerezo government had violated the human rights of U.S. citizen nun Dianna Ortiz in 1989. Following this decision, at the request of the Public Ministry, the presiding judge ordered the case reopened. Prosecutors were studying how to take a written deposition from Sister Dianna in the United States that would be admissible in a Guatemalan court.

Prison conditions are harsh but not life threatening. The prison system suffers from a serious lack of resources, particularly in the areas of prison security and medical facilities. The Government reports that prison capacity is 7,100 persons. Prisoners frequently complain of overcrowding, although there were approximately 6,850 inmates at mid-year. Prisoners also complain of inadequate food. Corruption--especially drug-related--is widespread. Prison officials report increasing incidents of escapes and other manifestations of prisoner unrest. Female prisoners are held in facilities separate from men, and minor children are held in other detention facilities.

The Government permits access to prisons by family members and independent international monitors.

#### d. Arbitrary Arrest, Detention, or Exile

Despite legal safeguards, there were frequent credible reports of arrests without judicial warrants, illegal detention, and failure to adhere to prescribed time limits in legal proceedings. The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for over 6 hours without bringing the case before a judge. The law also provides for bail and access to lawyers.

There are no reliable data on the number of arbitrary detentions, although most accounts agree that the security forces routinely ignore writs of habeas corpus in cases of illegal detention. There were approximately 6,400 men and 450 women imprisoned at mid-year. Reliable estimates suggest that about 70 percent have been sentenced, and 30 percent are awaiting sentencing. Prisoners are often detained past their legal trial or release dates. Prisoners are sometimes not released in a timely fashion after completing their sentences due to the failure of judges to issue the necessary court order.

The Constitution prohibits exile, and it is not practiced. There are instances of threatened individuals fleeing the country.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary. Although independent, the judicial system often fails to provide fair trials due to inefficiency, corruption, and intimidation of judges and prosecutors. courts' response to human rights violations, as well as to general criminal activity, has been inadequate. Members of the judiciary and prosecutors continued to receive threats aimed at influencing current decisions or as reprisals for past decisions. On September 29, the judge in a court responsible for investigating and bringing charges against a drug trafficking ring announced his resignation on account of death threats. Judge Victor Hugo Salguero complained that he was not even allowed time off to move

his family to a safer location. The Supreme Court asked President Arzu to provide increased security for judicial personnel assigned to sensitive cases or to areas of conflict. The Court stated that justice suffers when judges are pressured to free prisoners, disallow evidence, or delay trials on technicalities, all of which contribute to public dissatisfaction with the legal system. Public prosecutors and private plaintiffs also received threats.

The judiciary is composed of a Constitutional Court, a Supreme Court, appellate courts, lower courts, and courts of special jurisdiction (e.g., labor courts). The Constitution provides that the Congress elect Supreme Court and appellate court magistrates from lists prepared by panels comprised of active magistrates, representatives of the bar association, and law school deans.

The Criminal Procedures Code, which came into effect in mid-1994, provides for the presumption of innocence, the right to be present at trial, the right to counsel, and the possibility of release on bail. Trials are public and verdicts are rendered by three-judge panels. The Code also provides for language interpretation for those who require it (see Section 5). The State's Public Ministry, which is independent from the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-complainants. Lengthy investigations and frequent procedural motions by both defense and prosecution often lead to excessively long pretrial detention.

Inefficiency and corruption in the courts, Public Ministry, and police continue to impede the proper functioning of the judicial system and undermine the right to due process. In a departure from past years, the Supreme Court suspended several judges for irregularities in cases under their jurisdiction. A modernization plan for the judiciary drafted by the Supreme Court identified the following problem areas: Inadequacy in carrying out court functions, limited access to administration of justice, corruption, deficient institutional management, and lack of confidence in the court system by the public. A peace accord-mandated commission including prominent jurists, scholars, and a human rights activist issued recommendations for constitutional reforms intended to improve the functioning of the judicial system. In October Congress passed a bill implementing these recommendations, one of which creates a pilot program of five community courts in an effort to decentralize justice and incorporate customary law for minor offenses.

The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment and insufficient numbers of investigators. In addition, prosecutors are susceptible to intimidation and corruption. One key reform during the year was standardization of procedures to govern criminal investigations. Coordination of investigations between the Public Ministry and the PNC is improving, due to a new coordinating committee composed of representatives from the Supreme Court, the Ministry of Government, and the Public Ministry.

There were no reports of political prisoners.

#### f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution provides for the inviolability of home, correspondence, and private documents, but accusations persist that the authorities sometimes disregard these provisions. Elements of the security forces reportedly continue to monitor private communications. Press reports repeatedly accused the Presidential Military Staff of telephone tapping.

The military has honored the June 1994 presidential order to suspend all conscription, including forced recruitment.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The Constitution provides for freedom of expression, and the Government generally respected this right in practice.

In addition to regular and open criticism of government policies, the media publicizes communiques from human rights organizations, unions, and others opposed to the Government or its policies. The press criticizes the military and other powerful sectors. For example, press reports of the disappearance of Juan Jose Cabrera (see Section 1.b.) and the EMP's role in antikidnaping operations preceded the MINUGUA investigation. The press also ran stories on reputed drug traffickers and on official corruption.

Some journalists claim, however, that in a few particularly sensitive cases government pressure and fears of reprisal result in self-censorship and limits on investigative reporting. There were allegations throughout the year that the Government or those purporting to speak on its behalf sought to discourage advertisers from buying space or time in media outlets deemed hostile to the Government.

The Government prepares public information programs, which the radio and television stations are required to broadcast. Opposition parties have no such access to the media, but can purchase air time.

In early December, the Government's official news organ attacked the leading daily newspaper for publishing an article perceived as harming the Government's efforts to attract greater tourism. In response to the incident, the Human Rights Ombudsman declared that the Government's criticism, as well as other direct and indirect intimidation, constituted violations of the right to freedom of expression.

One section of the 1996 Telecommunications Law sought to rationalize the licensing of radio frequencies. An unintended effect left a number of tiny local and community-owned stations operating without legal authority. These stations broadcast cultural, educational, and religious programming to rural communities with large indigenous populations. Although the authorities have the right to close stations that have not complied with the new requirements, none have been shut down. Some station owners believe that these requirements restrict their right to free expression.

The PDH reported two complaints of threats against journalists, only one of which merited. The ODHAG reported no incidents of violence or threats against the media. However, some journalists reported threats of varying degrees of credibility; it is not clear whether the threats were related to their work. One journalist, Jorge Luis Marroquin Sagastume, was killed in Jocotan, Chiquimula, in June. By year's end, the investigation had not yet revealed a motive, although some press reports implicated the mayor of Jocotan.

The Constitution provides for academic freedom. There were no reports of professors or students being subjected to violence or intimidation for their academic work.

### b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the Government respects this right in practice. Peaceful demonstrations were common, and demonstrators sometimes occupied government institutions, including Congress. In all these cases, the police acted with restraint, and the authorities

negotiated a peaceful departure of the demonstrators.

The Constitution provides for freedom of association, and the Government respects this right in practice. The Government did not interfere with political associations. The law requires organizations to obtain legal status, a cumbersome and expensive procedure.

#### c. Freedom of Religion

The Constitution provides for religious freedom, and the authorities respect it in practice.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Government does not restrict foreign travel, nor does it revoke citizenship for political reasons. The Government did not restrict travel within the country during the year.

The Government cooperates with the office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees from other countries. The issue of the provision of first asylum did not arise. There were no reports of forced expulsion of persons to countries where they feared persecution. Voluntary repatriation of refugees from Mexico continued. The UNHCR reported that approximately 2,500 refugees returned, bringing the total to over 35,000 since initiation of the program in 1993.

### **Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government**

Citizens have the right to change their government by peaceful and democratic means, through secret ballot and universal suffrage for those 18 years of age and older. Members of the armed forces and police may not vote. Since the return to democracy and civilian rule in 1985, there have been seven free elections. International observers concluded that both the 1995 general elections and the 1996 runoff presidential election were free and fair. At year's end, the former URNG guerrillas were forming a political party and planned to compete in the 1999 general elections.

Voters elect the 80-member Congress using a system of proportional representation based on with deputies elected both from districts and from a nationwide list. Congress has 64 deputies from districts and 16 from the national list. The last elections involved 24 political parties; 6 won seats in the legislature. Congress can and does act independently of the executive, but fragmentation along party lines and a weak support structure result in a legislature that is relatively weak.

There are no legal impediments to women's participation in politics, but women are underrepresented in the political arena. Nevertheless, women do hold some prominent political positions, including the presidency of Congress. In the 1995 elections, voters elected 11 women to the 80-member Congress. Women hold two seats on the Supreme Court and one on the Constitutional Court.

Indigenous people are entitled to equal rights under the Constitution. Some have attained high positions as judges and government officials, including eight members of Congress. In the 1995 elections, 40 indigenous candidates won mayoral positions (out of 300 municipalities), including the mayor of Quetzaltenango, the second largest city. Nonetheless, they are still heavily underrepresented in politics due to limited educational opportunity and pervasive discrimination (see Section 5).

### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

The Government permits local human rights groups to operate freely. Numerous domestic and international groups investigate and freely report on human rights issues. MINUGUA maintains a staff of 300 with regional offices to monitor implementation of the human rights provisions of the Peace Accords and to strengthen democratic institutions. MINUGUA states that the Government generally cooperated with its investigations but cited isolated incidents in which the Government had obstructed its efforts (see Section 1.b.). The President's Commission on Human Rights actively sought to forge a more cooperative relationship with both domestic and international human rights monitors, often acting as a liaison between such groups and other branches of the Government.

The Human Rights Ombudsman is elected by and reports to Congress and often rules on controversial issues not normally considered human rights topics, such as gasoline prices and electricity rates. Relations between the Ombudsman's office and the executive branch were strained. Ombudsman Jorge Mario Garcia Laguardia complained that the Congress was neither funding his office adequately nor implementing his recommendations on human rights, although the office was hampered by internal administrative problems. Garcia's term as Ombudsman expired in August; Julio Arango Escobar replaced him.

Several members of Congress, who are also leaders of human rights groups, reported receiving threatening letters at various times during the year. Other high-ranking officials working in the fields of human rights and jurisprudence complained publicly and privately of receiving threats stemming from their interest in resolving cases related to human rights violations, official corruption, and drug trafficking.

The Historical Clarification Commission, created by the Peace Accords in an effort to shed light on human rights abuses during past decades began work on September 1. Various human rights groups gave the CEH voluminous documentation of violations, and the CEH is seeking additional information on its own. Human rights groups expect the CEH to provide concrete answers on specific cases, even though the CEH has no mandate to bring to justice those responsible for abuses; only to provide an accounting of what happened. The CEH has one year in which to complete its work.

MINUGUA, the PDH's office, and the ODHAG continued to enjoy widespread public support and respect. Senior government officials also met with numerous foreign government officials and international human rights monitors. While many international human rights organizations and their workers do not enjoy formal legal status, they continue to operate freely and openly.

## **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

The Constitution states that all human beings are free and equal in dignity and rights, and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. In practice, however, the Government is frequently unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system.

### **Women**

CONAVIGUA and the PDH reported that violence against women, including domestic violence, remains common among all social classes. There is no specific law against domestic violence, although it is considered to fall under other statutes. Victims rarely report criminal sexual violence, and relatively few rape cases go to court. The law allows a rapist to be exonerated by an offer of marriage in certain circumstances. If the girl is between the ages of 12 and 16, if she consented to sex, and if she agrees to marry the man, then rape charges can be dropped.

The PDH reported that complaints of spousal abuse committed by husbands have continued to rise due to increased nationwide educational programs, which have encouraged women to seek assistance. There are family courts, and judges may issue an injunction against an abusive spouse or companion. The police are charged with enforcing such injunctions. There is also a Women's Rights Department of the PDH, and various nongovernmental organizations (NGO's) provide medical and legal assistance and information on family planning. In September a Mixco man was sentenced to 6 months in jail for beating his wife, the first time that a criminal penalty has been applied in a domestic dispute.

The Constitution asserts the principle of equality between the sexes. Nonetheless, women face job discrimination and on average receive significantly lower pay than men. They are primarily employed in low-wage jobs in the textile industry, agriculture, retail businesses, and the public sector. More working women than men are employed in the informal sector of the economy, where pay and benefits are generally lower. Women may own, manage, and inherit property on an equal basis with men.

The National Women's Forum, the last of the commitments to create new civil society bodies under the 1996 Peace Accords, was formally inaugurated on November 12. The general purpose of the forum is to broaden the participation of women in the economic and social development of the country. Local women's groups elected representatives to the departmental and national levels. In addition to representatives from the departments, the national assembly includes women elected to represent linguistic communities. In line with the broad goals of the forum in promoting women's participation, improved access to education, health care, and credit were among the key topics for discussion. In effect, the forum serves as a channel for women to make their opinions known and to effect changes in law and administration to overcome discrimination and promote a more active role for women in society. The forum was scheduled to meet again 6 months later.

## Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors. These provisions notwithstanding, the Government in the past has not devoted sufficient resources to ensure adequate educational and health services for children. Under the terms of the Peace Accords, the Government has budgeted substantially more funding for health and education in 1998, almost double the 1995 spending level.

The abuse of street children (see Section 1.c.) is a serious problem in major cities. Estimates of the number of street children range between 1,500 and 5,000, with the majority of these youths concentrated in Guatemala City. Criminals--reported to including private security guards and corrupt police or military personnel--often recruit these children into thievery or prostitution rings. The Government and a number of NGO's operate youth centers, but the funds devoted to them are not sufficient to alleviate the problem. The Government created a Permanent Commission for Children and Youth in 1996 to investigate cases of mistreatment. The new Minors' Code, which offers greater protection for children, is scheduled to be implemented in 1998, in order to allow the Supreme Court time to prepare its staff to apply the new provisions.

The Presidential Human Rights Commission continued weekly meetings of the Permanent Commission for Children, composed of representatives from Casa Alianza and from the judicial and executive branches, with the aim of addressing the problems of street children. The regular meetings continue, despite still tense relations between Casa Alianza and the police, principally due to old cases which the NGO believes the police investigated insufficiently.

## People With Disabilities

The Constitution provides that the State should protect disabled persons. Nonetheless, physically disabled persons are discriminated against in employment practices, and few resources are devoted to combat this problem or otherwise to assist people with disabilities. In November 1996, however, Congress passed a law mandating equal access to public facilities, prohibiting discrimination based on disability, and providing other protection.

The new law defines a disabled person as one whose physical, mental, and emotional deficiencies limit performance of normal activities. It stipulates equal opportunity for disabled persons in health, education, work, recreation, sports, and cultural activities and provides that all disabled persons receive the benefits of labor laws, social security, and the right to work. The new law also establishes equal education opportunities, the requirement that buildings meet access codes, and the right to equal pay. A National Council for the Disabled is to outline the political and internal needs of the disabled; however, implementation of the new law has been slow.

### Indigenous People

The Constitution states that Guatemala is composed of diverse ethnic groups and obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, forms of social organization, and manner of dress of indigenous people. Indigenous people constitute over one-half the population but remain largely outside of the country's political, economic, social, and cultural mainstream. Indigenous people were the most common victims of extrajudicial killings and other human rights abuses during the internal conflict. In an effort to implement relevant constitutional provisions, the Government established a series of commissions, as mandated by the Peace Accords. The commissions are to present recommendations to Congress regarding protection of indigenous culture, traditions, lands, and sacred sites. Indigenous people are organizing into interest groups, as well, to promote bilingual education, women's rights, and community development. The Government is also devoting increased resources to bilingual education.

Rural indigenous people have limited educational opportunities and thus have fewer employment opportunities. Many indigenous people are illiterate and do not speak Spanish. Linguistic barriers hinder interaction with the Government and limit access to public services, including the judiciary, since few officials speak any of the 21 indigenous languages. Indigenous persons arrested for crimes are often at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings. Ninety legal interpreters were working at all levels of the legal system, from the police to the formal courts, to assure non-Spanish speakers the means to bring complaints, resolve conflicts, and provide testimony. Interpreters are concentrated in former conflict areas of the country; more interpreters were in training.

## Section 6 Worker Rights

### a. The Right of Association

The Constitution and the Labor Code provide workers with complete freedom of association and the right to form and join trade unions. The Government does not control unions. Major reforms to the Labor Code in 1992 mandated steps to improve worker rights by facilitating freedom of association, strengthening the rights of working women, increasing penalties for violations of labor laws, and enhancing the role of the Labor Ministry and labor courts in enforcing the statutes. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces.

At most, 8 percent of the work force, or 250,000 of 3.1 million workers, are members of labor organizations. The 1,150 registered unions in the country are independent of government and political party domination. Labor Code amendments have simplified the process for unions to obtain legal status. The Minister of Labor further revised the administrative process in May 1996, reducing the number of steps within the Ministry for consideration of union applications and establishing strict timetables; the time for the procedure was reduced to 20 days from 60. The Labor Ministry also initiated a program to assist unions with their applications, and the Minister warned officials that noncompliance with the timetable could lead to dismissal of those responsible for the delay. These new regulations accelerated the approval procedure and largely eliminated the backlog of union applications. The Labor Ministry granted legal status to 35 unions in the first half of 1997.

Workers have the right to strike, but Labor Code procedures for having a strike recognized as legal are cumbersome. Labor organizers criticize the requirement that two-thirds of the work force must approve a vote to strike, the prohibition of strikes by agricultural workers at harvest time, and the right of the Government to prohibit strikes that it considers seriously harmful to the national economy. In 1996 Congress approved a law that further restricted the right to strike for workers employed in essential public services. The law was strongly opposed by unions and some members of Congress, who called the measure unconstitutional and contrary to commitments to the International Labor Organization (ILO). The law deems such services as urban and interurban transport, mail, and telegraph as essential; the Constitutional Court reviewed it in 1996 and declared it constitutional in January.

Those strikes that do occur are frequently in the public sector and are almost always called without legal authorization. The Government declared illegal a 1996 strike by judicial workers; the workers eventually resumed their duties and were paid for the time they were on strike, a common outcome of such strikes. Previously, the Government made no effort to intervene on the basis of a strike's illegality, but the new essential services strike legislation permits it to act more forcefully. Employers may suspend workers or fire them for absence without leave if the authorities have not legally approved their strike. The strike regulation law calls for binding arbitration if an impasse has been reached after 30 days of negotiations.

The law protects workers from retribution for forming and participating in trade union activities, but enforcement of these provisions is spotty. While an increasing number of employers accept unionization, many routinely seek to circumvent Labor Code provisions in order to resist union activities, which they view as historically confrontational and disruptive. An ineffective legal system and inadequate penalties for violations have hindered enforcement of the right to form unions and participate in trade union activities. While workers illegally fired for union activity should, under the Labor Code, be reinstated within 24 hours, employers often file a series of appeals, or simply defy judicial orders of reinstatement. Penalties for defying such orders were increased somewhat in the 1992 Labor Code reform.

Trade union leaders and members did not suffer labor-related violence. Some public sector union leaders reported receiving threats against themselves and their families. Investigations continued into previous years' cases of violence, including murder, against various labor leaders, although some of these investigations appear to have been suspended for lack of evidence.

An active "solidarity" movement claims approximately 167,000 members in 437 companies. Unions may legally operate in workplaces that have solidarity associations, and workers have the right to choose between the two or to belong to both. The Government views these associations as civic organizations that need not interfere with the functioning of trade unions. The amended Labor Code stipulates very clearly that trade unions have an exclusive right to bargain collectively over work conditions on behalf of workers. Unions charge, however, that management promotes solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. There are credible reports that some

of these associations did not always adhere to democratic principles in their formation and management, and that workers are unable to participate fully and freely in decisionmaking. Similar credible charges are made against some trade unions.

At the request of trade union leaders, the independent human rights Ombudsman, through its office for economic and social issues, receives complaints related to trade union activities. Union leaders and workers filed occasional complaints with the PDH during the year, and the Ombudsman has spoken out in public statements about labor conditions in various sectors of the economy. The PDH can investigate union complaints and issue a statement, but the office has no enforcement powers beyond attempting to ameliorate the situation through publicity and moral persuasion.

Unions may and do form federations and confederations and join international organizations.

#### b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively. However, the practice of collective bargaining is limited by the weak structure of the union movement, the requirement that 25 percent of the workers in a factory or business must be union members in order for collective bargaining to take place, the lack of experience with this practice, and the preference of management in many cases to avoid formal ties with trade unions. While both management and the unions honored some well-written collective contracts, in other instances both parties openly ignored and violated contracts. Most workers, even those organized by trade unions, do not have collective contracts to cover their wages and working conditions but do have individual contracts as required by law. Most workers receive the minimum wages established by bipartite commissions, which operate under the guidance of the Ministry of Labor.

Employers cannot legally dismiss workers for helping to form a trade union; workers file complaints in this regard with the labor inspectors for resolution. The Labor Code provides for the right of employers to fire union workers for cause, permits workers to appeal their dismissal to the labor courts, and requires the reinstatement within 24 hours of any union worker fired without cause. The revised Code prohibits employers from firing workers for union organizing and protects them for 60 days following the official publication of approval of the union. It also prohibits employers from firing any member of the executive committee of a union and protects them for an additional 12 months after they are no longer on the executive committee. An employer may fire a member of the union's executive committee for cause only after a trial and issuance of a court resolution.

Labor courts responsible for enforcing labor laws continued to be generally ineffective. Although two labor courts, the sixth and seventh, continued to function, efforts to restructure and modernize the labor court system made little headway. However, in November 1996 the president of the Supreme Court announced creation of eight new labor courts and two appeals courts. Seven of the new labor courts have been constituted and are accepting cases. A heavy backlog of labor cases continued to clog the courts due to inefficiency and lack of resources, especially competent judges. There is only spotty enforcement of the Labor Code, due to the scarcity of labor inspectors, continuing though declining corruption, the lack of adequate training and resources, and structural weaknesses in the labor court system. Nonetheless, enforcement is improving as new labor inspectors complete training and begin work at the 21 branch offices outside the capital, allowing the Ministry of Labor to increase significantly its rate of inspections. The Ministry continued a series of inspections at farms and plantations in rural areas, especially in Alta and Baja Verapaz, and cited those employers who were not paying the minimum wage. The number of ranches in these regions paying below the minimum wage dropped from 42.6 percent of the total number inspected to 13.9 percent after completion of the program.

The Ministry of Labor reorganized its labor inspector corps to permit some complaints to be heard at the Ministry of Labor rather than requiring that inspectors travel to each work site. The Ministry increased the number of court cases filed for failure to comply with the Labor Code and has begun an educational campaign on worker rights (especially the rights of minors and female workers), including providing some documents in indigenous languages. In an effort to improve enforcement of the Labor Code outside the capital, the Ministry of Labor began an effort to decentralize its operations, beginning by opening a branch office in Coban, Alta Verapaz, in addition to the 21 labor inspector branch offices.

Labor laws and regulations apply throughout the country, including in the few export processing zones (EPZ's). The laws governing the EPZ's are not discriminatory on the subject of organizing trade unions or collective bargaining. Union leaders often blame employer pressures and their unofficially restricted access to the EPZ's for their virtual inability to organize workers in these zones. While labor standards in the EPZ's are no different from those found outside the zones, actual working conditions are often better.

#### c. Prohibition of Forced or Compulsory Labor

The Constitution bars forced or compulsory labor, and the practice does not exist. The law does not specifically prohibit forced or bonded labor by children, but they are covered by the general statute.

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. However, children below this age are regularly employed in the informal and agricultural sectors, usually in small family enterprises. The laws prohibit minors from night work and extra hours (the legal workday for minors under the age of 14 is 6 hours; for minors 14 to 17 years of age, 7 hours), from working in establishments where alcoholic beverages are served, or from working in unhealthy or dangerous conditions. Laws governing the employment of minors are not effectively enforced, due to the shortage of qualified labor inspectors and structural weaknesses in the labor court system. While only 5,000 minors have permission from the Labor Ministry to work legally, thousands of others working without legal permission are open to exploitation, generally receiving no social benefits, social insurance, vacations, or severance pay, and below minimum salaries.

The Labor Ministry has a program to educate minors, their parents, and employers on the rights of minors in the labor market. Economic necessity, however, forces most families to have their children seek some type of employment to supplement family income. Children who work generally do so in family enterprises. There is no forced or bonded labor of children (see Section 6.c.). There are no export industries in which child labor is a significant factor.

The Constitution provides for compulsory education for all children up to the age of 12 or to the sixth grade. However, less than half the population actually receives a primary education. Children in rural and indigenous areas are less likely to complete primary school.

#### e. Acceptable Conditions of Work

Although the law sets minimum wages, the legally mandated minimum wage for most unskilled and semiskilled workers is not always paid. A bipartite committee representing labor and management in specific economic sectors is named each year to make recommendations for increases in the minimum wage. In the event that agreement is not possible, the Government may decree such increases. The most recent minimum wage increase took effect in December. The basic rate is \$3.28 (19.71 quetzales) for industrial workers for an 8-hour workday, including a required hourly bonus, and is \$2.98 (17.86

quetzales) per day plus mandatory productivity bonuses for agricultural workers. The minimum wage is not sufficient to provide even a minimum standard of living for a worker and family. According to the U.N. Development Program, an estimated 80 percent of the population lives below the poverty line, including approximately 60 percent of those employed.

The legal workday is 8 hours, and the workweek is 44 hours, but a tradition of longer hours remains in place due to economic conditions. The amended Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charge that workers are sometimes forced to work overtime, often without premium pay, in order to meet work requirements. Labor inspectors report uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system, inhibit adequate enforcement of the law.

Occupational health and safety standards are inadequate. As with other aspects of the labor law, enforcement of standards that do exist is also inadequate. Workers have the legal right to remove themselves from dangerous workplace situations, and the law provides them with protection for their continued employment. However, few workers are willing to jeopardize their jobs by complaining about unsafe working conditions. When serious or fatal industrial accidents do occur, the authorities generally take no legal steps against those responsible. The Labor Ministry provides training courses for labor inspectors in health and safety standards but does not accord them a high priority due to scarce resources. The Government does not effectively enforce legislation requiring companies with more than 50 employees to provide on-site medical facilities for their workers, although most large employers do provide such facilities.

[end of document]



[Return](#) to 1997 Human Rights Practices report home page.

[Return](#) to DOSFAN home page.

This is an [official U.S. Government source](#) for information on the WWW. Inclusion of non-U.S. Government links does not imply endorsement of contents.