



HUMAN RIGHTS IN GUATEMALA

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INTERNATIONAL COMMISSION OF JURISTS

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GUATEMALA**

*Report of a mission to Guatemala in June 1979
on behalf of
The International Commission of Jurists*

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CONTENTS

	Page
INTRODUCTION TO GUATEMALA	
Geographical Setting	1
Historical Background	2
Economic Setting	5
THE VIOLENCE OF GUATEMALA	
Historical Background	8
Contemporary Manifestations of Violence	9
1960-1967	9-10
1970-1971	11
1976-1978	12
Presidency of General Lucas	13-16
Socio-Economic Violence	17
Nature of the Forces of Repression	19
Guerilla Army of the Poor (EGP)	22
Consequences of the Generalized Situation of Violence	23
Effects of the Prevailing Violence on Certain Principal Institutions	24
1. The Church	24
2. The Labor Movement	28
3. Political Parties	33
4. Education	35
OPPORTUNITIES FOR DEMOCRATIZING GUATEMALA	
The Political Constitution	37
Legal System	43
CONCLUSIONS	56

INTRODUCTION TO GUATEMALA

Geographical Setting

The Republic of Guatemala is the most populous of the five Central American Republics with a gross national product substantially larger than the others. Its population of 6.6 million is growing at the rate of 2.9% yearly. The total land area of about 42,000 square miles, about the size of the State of Tennessee, includes a heavily populated central highland region around the capital of Guatemala City and a 200 mile-long Pacific coastline. The relatively narrow belt between the Pacific and the western mountains constitutes a fertile agricultural area exploited by large landowners, as do the river valleys that make up the Caribbean coastline. The sparsely populated area of Peten takes up the northern one-third of the country. The remaining highlands are devoted to subsistence farming on small plots of land.

In statistical terms, about 40% of the land mass is agricultural and most of the remainder is forest. Approximately 55% of the agricultural land is utilized;^{1/} of this 40.8% is owned by the top 0.1% and over 72% is controlled by 2.1%

^{1/} National Plan of Development 1979-1982, Objectives and Strategy of Long Term Development and General Lines of Policy of the National Development Plan 1979-1982 (Dec. 1978), hereinafter referred to as the 1979 Development Plan, published by the General Secretariat of the National Council of Economic Planning of the Ministry of Public Finance of the Republic of Guatemala.

of landowners. The larger farms, those over 2,176 acres, are devoted primarily to the production of coffee, sugar, cotton, beef and bananas for export. The vast majority of agricultural landowners (88.4%) hold only 14.3% of the agricultural land, on which rice and beans are grown for subsistence along with some small cash crops for the national market.^{2/}

As stated in the most recent development plan published by the National Council of Economic Planning, this form of agricultural activity grew out of the type of social and economic relationships imposed by the Conquistadores of the colonial period. Since this type of land tenancy has largely determined the nature of the economy and hence of the Guatemalan society, it is worthwhile to consider the causes and effects thereof.

Historical Background

When Pedro de Alvarado, who was one of Hernan Cortez' lieutenants, left Mexico for Guatemala in 1523, he brought with him the formula of the Spanish conquest. This was to defeat the Indians in battle and seize their lands, subjecting them to servitude and then to slavery.

King Charles V named Alvarado Governor and Captain

^{2/} Comite Interamericano de Desarrollo Agricola, Tenencia de la Tierra y Desarrollo Rural en Centroamerica (1975).

General of the Kingdom of Guatemala, an area that extended from Southern Mexico to the Costa Rican border with Panama. Through the institution of the Royal Audiencia, the Spanish monarchy generally supervised and exacted tribute from the large landowners who applied the Conquistador formula in the various regions of the country.

In 1821, the locally born descendants of the Conquistadores, the Criollo landowners, determined no longer to pay tribute to the Spanish throne and independence was declared, without the necessity of revolution or bloodshed. After dissolution of the brief-lived United Provinces of Central America, which succeeded to the Captaincy General of Guatemala when independence was granted, the Republic of Guatemala developed, first under the domination of Conservatives and, after their overthrow in 1871, by the Liberal Party. The Liberals brought certain important changes to the social, political and economic life of the country, including confiscation of properties of the Catholic Church and curtailment of its ecclesiastical privileges, as well as an invitation to the Presbyterian Church of the United States to send missionaries to take their places.

Both independence and the Liberal reform resulted in increasing the concentration of land ownership and in worsening the exploitation of the majority of the inhabitants, who remained unassimilated Indians. Under the leadership of

President Barrios, who has been called the "Reformer", serving from the time of adoption of the new Liberal constitution of 1879 until his death in 1885, the servitude of the Indians was assured by the "Reglamento de Jornaleros".^{3/} This required agricultural workers to carry a book in which their obligations to work off debts by service on large estates was kept track of. This system was further perfected by the last dictator, General Ubico, who served from 1931 until he was forced to resign in 1944. In place of the earlier law which required the Indians to contribute their work as a means of liquidating indebtedness, under Ubico the so-called "Ley de Vagancia" was adopted. Under this law any land-owning Indian had to demonstrate that he had worked 100 days a year on the large estates and any Indian without land 150 days; otherwise they would be required to break rocks for road building purposes without pay. Thus, the colonial system of exploitation imposed by the Conquistadores was perfected by their successors. By means largely of force and fraud the Indians were expelled higher into the mountainous regions where they owned smaller plots of poorer land and were obliged by necessity and the system to work for little or no pay on estates of the large landowners.

The Indians, who constitute over half of the population of Guatemala, have been systematically exploited for over

^{3/} El Reglamento de Jornaleros, decreto numero 177, 3 de abril, 1877.

400 years. Their subjection is institutionalized by the fact that they continue to speak diverse Indian dialects rather than Spanish^{4/} and by their distinct native costumes, which vary in color and design from town to town. Since these costumes did not exist prior to the Spanish conquest, it has been theorized that they were also imposed in order to help keep track of Indians who were found distant from the place to which they were assigned to work.^{5/} According to Pelaez, the fact that half of the Guatemalans still continue as "Indians" is the most important proof that the initial colonialism continues, supported by the system of large landholding and the exploitation of the Indians by the minority of landholders.^{6/}

Economic Setting

During the 1960's, the Central American Common Market encouraged industrialization and the rate of private investment, which increased at a rate of 8% yearly from 1960. The National Council of Economic Planning points with pride to the fact that from 1950 to 1970 the gross national product of Guatemala quadrupled and exports increased by over six times. However, the National Council points out, this is due

^{4/} Of the 18 languages spoken by Indians in Guatemala, the principal are Quiche, Cakchiquel and Kekchi.

^{5/} Severo Martinez Pelaez, La Patria del Criollo 606 (5th ed. 1979).

^{6/} Ibid, 574.

principally to the expansion of export agriculture and investments in capital intensive industries, both of which have aggravated the unfair distribution of income. According to the statistics, the 25% of the Guatemalan population which received 60.5% of the national product in 1948 received 66.5% in 1970, whereas the bottom 25% which received 7% of the national product in 1948 received only 6.7% in 1970. The 1979 Development Plan points out that the social effects of this income distribution are disastrous; for example, only 52% of the school-age population receives a primary education and only 48.8% of all primary students are in the rural areas. Only 18.4% of the rural population has access to potable water. Infant mortality is 81.1 per 1,000, due principally to diarrhetic, parasitic and respiratory diseases, which are aggravated by the under-nutrition that affects 82% of the population less than 5 years of age. The National Council puts forth the altogether obvious conclusion that although the economic growth of the Guatemalan economy is statistically satisfactory, it has failed miserably in terms of the ultimate objective of promoting the quality of life of the whole country.

In order to develop the economic potentialities of Guatemala and to address the inequities of its society, the 1979 Development Plan calls for a restructuring of agriculture and for fiscal changes ^{6a/} that will enable the government to

^{6a/} Cf. a similar conclusion of the Harvard Law School International Tax Program: Watkin, Taxes and Tax Harmonization in Central America, Ch. IV (1967).

develop the agricultural section in the interests of the entire country and to increase the income of the rural population. The Plan describes Guatemala as "a poor people living in a potentially rich territory." It warns that if the government does not make an effort to restructure the economy the period of 1979-1982 will be one of recession and increasing inflation.

In some ways this 1979 Development Plan reflects the 1970 Five Year Plan developed under the leadership of the Guatemalan economist Gert Rosenthal, with substantial help from the United States AID and international lending agencies.^{7/} The reformist call was submerged at that time by a law and order campaign that sought to repress dissent rather than to take any steps toward curing the underlying system of injustice. The only serious consideration given to agrarian reform and change in the underlying structure of exploitation took place following the 1944 revolution. During the ensuing presidencies of Arevalo and Arbenz, the reform effort continued, but incurred international concern arising from a perception that communist infiltration of the government would lead to domination by the international communist movement. With the assistance of the United States, an armed revolt by

^{7/} Although this report was, even more than its latest successor, devoid of ideological content, its principal author was induced, by the ensuing uproar, to become an expatriate. He is now in charge of the Mexico office of the United Nations Economic Commission for Latin America.

Lieutenant Colonel Castillo Armas led to the fall of Arbenz and a plebiscite which confirmed Castillo Armas as President in 1954.

Since that time, despite the urging of the World Bank, the Inter-American Committee of the Alliance for Progress (CIAP) and its economic planners,^{8/} the government has concentrated on repressing dissent, leaving the economy to free private enterprise.

THE VIOLENCE OF GUATEMALA

Historical Background

At the outset it must be recognized that Guatemala is a country with a tragic past. It has suffered the violence of the Spanish conquest and of the colonization process that followed; the violence of political dictators renowned for arbitrary cruelty; and the violence of nature, from volcanos and from the earthquakes which destroyed the original capital, Santiago de Guatemala, in 1651 and claimed 22,000 lives in 1976.

^{8/} One theory is that the planning process was a cynical effort to tap the U.S. treasury without making structural reform and was followed by acceptance of a "strategy" which produced increasing concentration of income, political repression, and governmental corruption. Jonas and Tobis, Guatemala: Una Historia Inmediata 173-182 (1976). The official theory of development is expressed by the Inter-American Economic and Social Council, Latin America's Development and the Alliance for Progress (OAS 1973)

The history of the conquest was reported in some detail by Francisco Antonio de Fuentes y Guzman in the 17th Century and exhaustively analyzed by later historians. One of the most sensitive reflections of the ensuing violence is provided by Guatemala's Nobel Prize winning novelist, Miguel Angel Asturias: Hombres de Maiz (1949); El Señor Presidente (1933).

Contemporary Manifestations of Violence

A modern era of violence in Guatemala can be seen as beginning with an uprising of military personnel in 1960 against the regime of General Ydigoras, who had succeeded Castillo Armas. This revolt was carried out with the declared intention of reforming the army and punishing corruption. At least in part it was a reaction to the training of Cuban exiles in Guatemala for the ill-fated invasion of Cuba. The uprising failed but some of the military went on to combine forces with remnants of the dissolved PGT (Communist Party) and to create guerilla bands, known as Fuerzas Armadas Rebeldes (FAR), Movimiento Revolucionario 13 de Noviembre (MR 13) and Frente Guerillero Edgar Ibarra (FGEI). These separate groups, which were beset by rivalries and internal problems, were responsible for armed attacks on United Fruit Company properties and military units. According to reliable estimates, their number did not exceed

450 and their territory of activity was limited to the mountains in the northeast and the western plateau.^{9/}

The reaction to these armed left-wing groups was a major counter-insurgency campaign began by the army in 1966.^{10/} In this pacification campaign, conducted by Colonel Arana, between 3,000 and 8,000 people were killed, largely peasants.^{11/} Also during this period, a number of right-wing paramilitary groups were formed and participated in the campaign. The most widely known is MANO (Movimiento Anti Comunista Nacionalista Organizado), which is said to be linked with the national liberation movement (MLN), the political party which grew out of the anti-communist crusade led by Castillo Armas in the mid-1950's.

By 1967, the military campaign had crushed the bases of these organized groups. Their remnants shifted operations to the cities and eventually killed both the United States and German Ambassadors.

The final stage of the pacification campaign began when Colonel Arana, with MLN support, was elected President

^{9/} Dr. Rene de Leon Schlotter, Hearings on Human Rights in Central America, House Sub-Committee on International Organization (June 1976).

^{10/} Department of State Background Notes on Guatemala (January 1979).

^{11/} American Friends Service Committee, Volume XXIV, No. 4 (June 1977).

in 1970. A state of siege was declared, suspending constitutional impediments, and in the ensuing period between November 1970 and May 1971 at least 2,000 people were killed.^{12/}

In May of 1971, September of 1972 and June of 1973 the Inter-American Commission on Human Rights requested information on reports of an unusually high number of deaths and disappearances during this period. The Guatemalan government attributed the assassinations during this period to "extremist factions bent on mutual destruction", but provided no information on the specific cases mentioned in the allegations. In November of 1973 a request by the Commission to make an investigation in the country was declined.

In 1976, it was estimated that the total number of deaths and disappearances attributable to official and semi-official forces in the previous decade exceed 20,000.^{13/} Some well-meaning apologists attribute this violence to the traditions of the country, its political evolution and the tendency of the Ladino population, particularly in the northeast, to carry arms and resolve disputes by force. For example, the most recent human rights report of the State Department to the Congress on practices in countries receiving U.S. aid states:

^{12/} New York Times Magazine, June 13, 1971, p.72.

^{13/} Amnesty International, Guatemala, p.11 (December 1976).

"Throughout its history, Guatemala has been plagued by military coups and political violence . . . In this violence-prone society, it is even impossible to differentiate politically-inspired from privately-inspired violence . . . Overall, the level of both political violence and human rights violations remain lower than during the decade prior to 1976."^{14/}

It may be that such a relatively optimistic assessment was affected by the undeniable economic boom that took place in Guatemala. According to the U.S. Department of Commerce, this boom, based on rising prices for coffee and cotton, is further brightened by start-up operations by a subsidiary of International Nickel Company and oil prospection in Peten.^{15/}

Unfortunately, this boom was also accompanied by an increase in the cost of living, which increased popular dissatisfactions and led to a rise of labor militancy.^{16/} In the course of the last year, the principal eruption of violence occurred on May 29, 1978, when the army killed at least 100 Kekchi Indians who had peacefully gathered in a public square to discuss with the mayor the seizure of their traditional

^{14/} Senate Committee on Foreign Relations, Report on Human Rights Practices in Countries Receiving U.S. Aid (February 8, 1979).

^{15/} The rising rates of inflation from 1975-77 ranged from 13% to 17%. Department of State, Background Notes on Guatemala (January 1979).

^{16/} 77 Foreign Economic Trends and Their Implications for the United States 137, prepared by American Embassy in Guatemala (October 1977).

farmland by local landowners. In October of that year a series of spontaneous disturbances took place in Guatemala City in response to a proposal to raise the city busfare, which provided the occasion for a generalized crackdown on labor organizers and their popular organizations. In a week of violence, at least 30 people died, 300 were wounded and 800 jailed.

In July 1978 the administration of General Laugerud gave way to that of General Lucas. In the process of consolidating its power and "pacifying" the country, the Lucas government has increased the level of repression. From July through December of 1978, a total of 505 assassinations and kidnappings for political purposes were reported in the newspapers, of which 413 were of the masses, one was a guerilla and 30 were the police or the army.^{17/} In statistical terms, the number of assassinations and kidnappings during the last 6 months of 1978 represented a 35% increase from the first 6 months. In the subsequent 6 months, the first half of 1979, the number increased in all categories of murder, kidnapping, torture and mutilation. During the first half of 1979, local newspaper reports indicate that over ⁸⁰⁰ people were killed. The majority continued to be poor people, but students, professionals, university faculty, journalists and opposition politicians

^{17/} 45 Dialogo 47 (abril/mayo 1979)

were also affected. For the first time in the history of the country, the politically-directed violence began to reach leading members of the society.

To these incidents of violence should be added the number of expatriations following the publication of death-lists. The first deathlist of the Ejercito Secreto Anti-comunista, issued in October 1978, threatened death for 38 people. Shortly thereafter one of those listed, the student leader Oliverio Castañeda, was machine-gunned to death after a public demonstration in Guatemala City's Central Park and another student leader, Antonio Ciani, disappeared the following month. As implementation of the list continued some, like the head of the Christian Democratic Party who escaped an attempt on his life in October, made no more public appearances and others, such as labor leaders Israel Marquez and Miguel Angel Albizurez, fled the country.

In addition to expatriates who escape the country because of threats against them, are those who are expelled from the country, principally foreign-born religious ministers; e.g., Padre Gregorio Barreales in June 1979, Padre Carlos Stetter and Sor Raymunda Alonso Queralt de Cahabon. It is relatively rare for religious leaders to be executed, although Father Hermógenes Lopez of San Jose Pinula was assassinated two days after he had made a public declaration blaming the government for much of the repression.

The recent culmination of the campaign of repression has been the assassination of the leaders of the two opposition political parties which are still active in offering an alternative to continued military government. Dr. Alberto Fuentes Mohr, former Minister for Foreign Affairs, Minister of the Treasury and leader of the Socialist Democratic Party, was assassinated while driving his automobile on one of the principal thoroughfares at midday. The government of Guatemala addressed a note to the United Nations Commission on Human Rights expressing "its condemnation and repudiation of the unspeakable crime" which it attributed to "persons or criminal groups acting outside the law."^{18/} Not only were the perpetrators of this "unspeakable crime" never identified, but also the next two leaders of the PSD were assassinated on June 12, 1979.

On March 22, 1979 Lic. Manuel Colom Argueta, leader of the Frente Unido de la Revolucion, also a democratic leader of a non-violent opposition party, was assassinated in broad daylight in the center of Guatemala City. The brother and sister of Colom Argueta published a statement that this crime would also not be solved. They described the murder as

^{18/} United Nations Economic and Social Council Commission on Human Rights, Thirty-fifth Session, E/CN.4/1342, 12 March 1979.

having been executed by the intelligence section of the army, G-2, using from 9 to 12 cars belonging to the armed forces. They identified the intellectual author of the murder as General Cancinos who is reputed to have been ambitious to succeed General Lucas in the presidency. Several months later General Cancinos himself was assassinated. This has not been attributed to persons avenging the deaths of the leaders of the FUR and PSD, but rather to another right-wing group who sought thereby to eliminate a presidential contender.

The steadily increasing wave of violence in Guatemala during the year since the installation of the government of General Lucas seems clearly to be directed towards suppressing the leadership of dissident groups. Some of the crimes are claimed by paramilitary groups.^{19/} Some like that of Cancinos are attributable to crass political rivalry. A relatively small number are attributable to retribution against the oppression applied to the poor.

The fact that none of these crimes led to arrests, that they do not appear to be seriously investigated and frequently occur under circumstances in which the witnesses must be legion have convinced many that the major part of the repression is at least tolerated by the government and perhaps

^{19/} Ejercito Secreto Anticomunista, Comunicado de Accion, Boletin No. 6, 3 de enero de 1979.

directed from within the high command of the armed forces, whose reaction to the Sandinist victory in Nicaragua indicates a resolve to prevent any source of subversion in Guatemala.

Socio-Economic Violence

For the purpose of analysis, it may be useful to separate from the wave of politically-motivated violence that which is endemic in a socio-economic system that seeks to maintain a majority of the population in conditions of serfdom. International awareness of this structural problem was awakened as a consequence of the 1976 earthquake which claimed over 22,000 lives and rendered over 1 million homeless. The international community which supplied disaster relief returned with reports about the country, making clear that the effects were not significant in the wealthy residential or commercial sectors, but were disastrous for the great mass of the population living in inadequate housing.^{20/}

In my own view, based on an admittedly brief 10-day visit in June 1979, some of the salient characteristics of the systemic violence applied to the indigenous poor are the following:

^{20/} See Plant, Guatemala: Unnatural Disaster, 5-11 (1978).

(i) the "contratistas", who assure a seasonal labor force on the large plantations by taking truckloads of Indians from their small subsistence plots in the highlands and "hiring" them to the plantation owners. The physical violence as well as the economic exploitation applied by this class is inhumane by any reasonable standard.

(ii) the conscription into the army is carried out in the rural areas by kidnapping able-bodied youths and taking them by truck to training areas. No notice is given to the families and the "training" is particularly brutal.

(iii) the usury of the moneylender or "prestamista" who lends at the rate of 15% per month, with the expectation of foreclosing on property required to be pledged as security for these loans;^{20a/}

(iv) the seizure of Indian lands, which is made more profitable by the increasing value of these lands, is also accelerated under cover of law. The Ley de Titulación Supletoria, which was passed by the reformist government of Arevalo in 1945, was intended to provide a way to obtain documents of title to traditionally held lands. Increasingly the facilities provided by the law have been used by larger landowners, as in the communities surrounding Panzos, to obtain lands traditionally worked by the Indians. The protests of

^{20a/} This is despite the 1964 Civil Code which states: "Anyone who, by taking advantage of the position he occupies, or of the need, inexperience, or ignorance of another, induces him to grant usurious advantages or to contract obligations that are obviously prejudicial to his interests, is compelled to return what he has received, together with damages, once a court declares that the agreement is void."

the Indians are ignored and their eviction thereafter obtained with the aid of the Policia Militar Ambulante.

(v) Franja Transversal del Norte is a strip of land running from Lake Izabal in the east of Guatemala to Huehuetenango in the west. This area has been carefully colonized by the government and acts as a northern barrier to the Indian lands in the western area of Quiche. On the eastern boundary of the area of Quiche, hydro-electric developments are causing the expropriation of lands. The Indian tribes in the area of Quiche which have been forced to move to plots of land higher in the mountains by the local Ladino landowners thus find themselves blocked and organizational efforts to protect their communal interests have ensued. The landowners react to the protests of the Indians by calling on the armed forces for protection against subversion.

Nature of the Forces of Repression

From the above outline of the socio-economic or systemic violence, it appears that a continuing source of repression is the narrowly-perceived economic interests of the larger landowners.

Secondly, it appears that these interests are enforced by clandestine paramilitary forces which began in the 1960's as clans organized in the northeastern region for

political, economic and security purposes. Later they became institutionalized for political and economic gain. Spreading from the northeast to the capital, the south coast and the western border regions of Guatemala, they now represent a continuing source of violence cloaked behind the ideological banner of anti-communism.

In addition to clandestine paramilitary units there are a number of official military units including mobile police and commissioners, the latter group consisting of former military personnel who are theoretically distributed throughout the nation on the basis of one comisionado for every 500 people, at least one for every small aldea (village).^{21/}

Finally, the repression is carried out by the regular armed forces themselves, which are, with the exception of Cuba, the best equipped, organized and trained military institution in the Central American/Caribbean region. All of the Presidents of Guatemala, but one, since 1954 have been military officers. As the role of the army in the repression expands so does the potential for its abuse of power. Although it is widely accepted that the Guatemalan army assisted in the process of reconstruction without the corruption that characterized the reaction of the Somoza government to the

^{21/} Caesar Sereseres "Guatemalan Paramilitary Forces, Internal Security and Politics", Supplemental Military Forces Chapter 7 (1977).

1972 Nicaraguan earthquake, increasing attention is being devoted to the privileges and immunities claimed by military personnel. Not only does unconstitutional physical abuse of the Indians in the course of "manuevers" and "recruitment" raise resentment and fear, but also criticism mounts of land seizures by the military. This is the cause of the popular name given to the Northern Transversal Strip, "The Generals' Strip".^{22/}

The actual relationship between the government, the official paramilitary groups and the clandestine paramilitary groups is not clear. There is little evidence to establish a well-planned collaboration between these units for the purpose of suppressing "subversion". On the other hand, there is no evidence that the government has made any attempt to suppress the clandestine groups. While preserving the facade of democratic institutions and judicial process, the operations of these paramilitary forces in suppressing dissent have the inevitable long-term effect of breaking down the judicial system, increasing criminality and flagrant disregard for due process.

^{22/} See, e.g., Latin American Political Report 21 (May 1979); AFSC Program Staff, Central America: Roots of the Crisis 9 (1979).

Guerilla Army of the Poor (EGP)

Coalescence of these various types of repression has produced a widening reaction. This has included the establishment of the Ejercito Guerrillero de los Pobres. This is not a descendant of the guerilla movement of the sixties. Apparently it began late in 1975 as a kind of northern "guerilla summer camp" for university students who have interacted in some ways with Indians driven from Quiche after the initial military operations there in early 1978. In January of 1979 this group "occupied" the town of Nebaj during a day for the purpose of reading in the native dialects accusations against 15 of the local gentry who had been particularly brutal in the treatment of the Indians. The response to this action by something less than 200 persons was to send a contingent of 2,000 soldiers. The commanding officer assembled the Indians and explained to them the evils of communism and military operations have continued on a regular basis from that time to demonstrate the superior force of the government and its intention to use it. Since that time, military operations in the area have been continuous and it is estimated that up to 3,000 soldiers are stationed in the towns of the region or camped outside.^{23/}

^{23/} 19 Noticias de Guatemala, 18 de junio 1979, p.274.

Although a growing number of actions, including "executions", have been attributed to the EGP, there is little evidence of active support from the Indian communities. Having been so often repressed in the last 400 years, the Indians are unlikely rebels. However, if the pace and brutality of the army "manuevers" continue, an uprising may be fomented.

Consequences of the Generalized Situation of Violence

Newspaper accounts indicate that in 1978 political violence caused the death of 879 people, the rate increasing during the second half of the year by as much as 35%.

In the 14-day period ending May 7, 1979, it is estimated that the assassinations were occurring at the rate of 8 a day.^{24/} Although the most noteworthy are the leaders of the various popular organizations and political figures, the principal class to suffer consists of peasants and working people. According to an advertisement published in El Grafico on June 26, 1979 by the Christian Democratic Party, this violence is caused by an effort to repress the popular will and is inevitably leading to civil war. The notice ends on a note of hope stating that if all men and women of good will work to democratize Guatemala there is time yet to avoid such a consequence.

Effects of the Prevailing Violence on Certain Principal Institutions

In view of the injustice and violence affecting Guatemala, it is useful to analyze briefly the position of the various institutions of the country with respect to its central problems:

1. The Church

At the outset it is important to mention that by contrast to its neighbor, El Salvador, which is 98% of the Roman Catholic religion, Guatemala has a large number of growing and diverse Protestant sects. This phenomenon dates from the 1870 Liberal revolution, which was largely directed at the Roman Catholic Church and which led to the expropriation of Church lands and the expulsion of religious orders.

Again, by contrast to El Salvador, where the Archbishop of San Salvador is the principal spokesman for opposition to governmental repression, Cardinal Mario Casariego of Guatemala presents the more traditional model of a Spanish colonial primate. Although the Episcopal Conference of Guatemala has in recent years issued two pastoral letters of social concern, it has not taken any direct position against the growing wave of violence. The last pastoral letter "Fe y Politica", issued before the last presidential election, spoke of the obligation of voting, but not of the situation confronting the voter and the Bishops made no further response

to the obvious fraud committed in the course of the election. More importantly, although the dramatis personae have changed over the last quarter century of military dominance, the Catholic Church has continued in general institutional support of the status quo.

The Guatemalan Bishops of Quiche, Zacapa and Verapaces, regions of current conflict, all have spoken up. On the anniversary of the massacre at Panzos, the local Bishop, Flores, issued a communication reminding that the demonstration of the Indians that led to the slaughter arose out of the theft of their lands and that "only the unlimited goodness of our agricultural worker community has succeeded in avoiding a violent crisis occurring as a result of the theft of lands." He also stated that the government has made no effective action to resolve the problems that led to this unjustified killing.^{25/}

Another factor which brings the Catholic Church into a more exposed position of conflict is the implementation of positions taken at the two conferences of Latin American Bishops. According to a document published by the first conference, a duty of the clergy is that of "encouraging and favoring all the efforts of the people to create and develop their own organizations" (organizaciones de base) Medellin

24/ 45 Dialogo 50-51

Doc. No. 2/27. The second meeting of Latin American Bishops held this year in Puebla, Mexico, confirmed this position, repeating the support of the Bishops for "the aspirations of workers and campesinos who want to be treated as free and responsible men called to participate in the decisions that concern their life and their future." Puebla Doc. No. 1162. The carrying out of this mission has exposed members of the clergy to accusations of fomenting subversion. The Minister of Defense of Guatemala, General Otto Spiegler, publicly blamed the Panzos massacre on members of the clergy who had incited the Indians to protest. Several days thereafter, the Government confirmed the accusation by expelling from the country Sister Raymunda Alonso for "having become involved in political activities that were not within her religious competence."

On December 20, 1978, without any further explanation, the government also expelled Father Carlos Stetter, a parish priest of Ixcán. On June 6, 1979 Father Gregorio Barreales of the Parish of Salama, Baja Verapaz, was also expelled from the country.

In addition to these relatively painless expulsions of alien clergy, the various security forces who take direct action against persons perceived to be leaders of popular organizations frequently take action against the "Catequistas" who are the most active native lay leaders of the rural parishes.

In July of 1978 one such Catequista (and CNT organizer) Mario Mujia Córdova, familiarly known as "Guigui", was killed. These actions are becoming more frequent in areas such as Quiche and Ixil where the army is conducting "maneuvers"^{25/}. The most recent instances in July of 1979 involve the assassination of one Catequista in Cozamal and the kidnapping of another.

What had been believed to be an unbreakable tabu against using violence against ordained priests disappeared on June 29, 1978 when Father Hermógenes Lopez of the Parish of San Jose Pinula was assassinated. Recently published death-lists of so-called anticommunist clandestine organizations include the names of the Bishops who have protested against various aspects of the prevailing repression, but to date none of these threats have been carried out.

On balance, religious institutions in Guatemala provide greater support for stability than for change, due to the otherworldliness of the Protestant sects and the institutional conservatism of the Catholic Church. The contrast with El Salvador is stark if one considers that in 1977 the entire Jesuit order was threatened with death if the priests

^{25/} According to X Comunicado del Comité Pro Justicia y Paz, published after the assassination of Colom Argueta, 60 Catequistas had by then been tortured or killed in Quiche and Ixil.

did not leave the country^{26/} and that since the election of President Romero five priests have been assassinated.^{27/}

2. The Labor Movement

The groups which are most strongly and directly repressed and whose leaders are most frequently subjected to violence are those which seek to organize urban or rural workers. A bulletin published by the Secret Anticommunist Army in January of 1979 listed 24 condemned to death for "creating unions in factories with the aim of destroying these places of work and of organizing groups of our unqualified youth" . . .^{28/} This Bulletin No. 6 referred to Oliverio Castañeda, who was one of the student leaders included in the first ESA death list that appeared in October of 1978. Castaneda was machine-gunned to death two days after publication of this original deathlist near the Central Park of the capital city. Several of the labor leaders included in the ESA deathlist in January are now in exile, including Israel Marquez, former Secretary General of the Coca Cola Bottling Company union. On December 12, 1978, that union's financial secretary, Pedro Quevedo, was assassinated. On April 5, 1979, 28 year-old Manuel Lopez Balan, who had replaced Israel

^{26/} Los Jesuitas ante el Pueblo Salvadoreño (San Salvador 1977).

^{27/} Secretario de Comunicacion Social, Arzobispado de San Salvador, Boletín No. 9 (July 1, 1979).

^{28/} Ejército Secreto Anticomunista Boletín No. 6, January 3, 1979.

Marquez, was assassinated. Balan's successor, 22 year-old Marlon Mendizabal, received, upon his appointment, a number of death threats and was incarcerated by the police on April 30, 1979. On June 19, 1979 another one of the Coca Cola Bottling Company unionists, Silverio Vasquez, was shot. In the meantime, members of the Coca Cola Union were subjected to various kinds of threats, both in and outside the plant, by official forces including the Policía Militar Ambulante and by the plant's own security forces, which included a number of former military officers.

Violence against labor unions has continued unabated. On May 22 of this year the Secretary General of a striking union of private security guards was machine-gunned to death. In June Benvenuto Serrano, the Secretary General of the Bankworkers Union was kidnapped and has not reappeared. The violence has extended beyond the union leaders themselves to lawyers representing them. The most distinguished example, Mario Lopez Larrave, who had been Dean of the law faculty of San Carlos University and an author of many scholarly works on labor law, was machine-gunned to death outside his home on June 8, 1977. In February of 1979 Manuel Andrade Roca, a labor lawyer, was assassinated as he was leaving the Bar Association on the night that he had been a candidate for election as President of that organization.

The labor union movement in Guatemala began in 1918 but was suppressed during the dictatorship of General Ubico from 1931 to 1944. Unions grew during the following decade but were destroyed for a second time by the 1954 coup.^{29/} In the following years a number of labor unions and three major union federations have been established, although their activities have been severely hampered by a rigid labor code and its unsympathetic application by the judiciary, as well as by hostile management.^{30/} At the present time it is estimated that about 5% of the economically active population is organized in unions affiliated to one of these federations.^{31/}

Currently the largest federation is the Confederación Centroamericana de Trabajadores (CCT), which is affiliated with the Latin American Workers Confederation (CLAT) and the World Confederation of Labor. This federation, which claims 40,000 dues-paying members, includes the largest union, that of the social security workers (STIGGS), and is characterized by prudent if sometimes determined action to improve the economic circumstances of its members. Recently this group lost control of another group of unions which appropriated both its name

^{29/} Guatemala has ratified 39 of 151 I.L.O. conventions, but none since the 1964 Convention on Hygiene (Commerce and Offices). See Centro de Estudios Laborales Centroamericanos CELCA-CTCA Cuadro de Ratificaciones de Convenios Internacionales (1978).

^{30/} See Mario Lopez Larrave, A Brief History of the Guatemalan Labor Movement (1976).

^{31/} See Plant, Guatemala - Unnatural Disaster 46 (1978).

and its headquarters. Under the name of Central Nacional de Trabajadores (CNT), the latter group claims 14 existing unions and 26 others in the process of formation. The split occurred in May of 1978 over differing strategies with respect to an umbrella organization which had been formed under the name of National Committee for Trade Union Unity (CNUS). This is an ad hoc coordinating group formed in April of 1976, which has moved toward a more politicized, radical orientation.

The new CNT, together with several other similarly oriented federations now collaborate in CNUS, which seeks a generalized grouping of students, workers, and agricultural laborers. Other prominent federations in this group are the Guatemalan Workers Federation (FTG), the Autonomous Trade Union Federation of Guatemala (FASGUA), some of whose leaders were members of the now illegal Guatemalan Communist Party, and the Committee of Agricultural Worker Unity (CUC), a group of university students principally engaged in organizing agricultural workers.

In the wake of the violence in the October 1978 bus strike and particularly the action taken by the forces of order in the poorer barrios around Guatemala City, the radicalization of the labor movement has increased. On the one hand the government reacted to petitions made by leaders of the postal workers, telegraph workers and nurses unions

by revoking their personería jurídica (legal status).^{32/} On the other hand, attempts by workers to follow dutifully legal procedures to obtain union recognition were repressed by the owners with threats and violence. One of the most poignant recent examples was in the case of the private security guards (VIP) in which, after long delays, a judicial hearing was held resulting in a recommendation of the court. The management rejected the recommendation and three days later the secretary general of the union was killed.

As a result of the frustration of organizing efforts, the radical groups are increasingly inclined to push their members towards illegal actions. In the case of Duralita, a company whose workers' petition for recognition of the union had been pending for three years, the workers peacefully occupied the Swiss Embassy in September 1978. In June of this year a similar action was taken by the union at Panamtex, peacefully occupying the Mexican Embassy in an ultimately futile attempt to prevent the employers from closing the factory in what was claimed to be the ultimate move to get rid of the union prior to establishing elsewhere.^{33/} According to the current leadership, the CNT organized 63 unions from 1976 until the end of 1978. Of all these organizing efforts, only 4

^{32/} The action committee which sought to unify the efforts of the civil service workers (CETE) was also declared illegal.

^{33/} Prensa Libre, 27 de Junio 1979.

finally received recognition after delays averaging about a year. Thirty of the unions were destroyed before a judgment was reached on granting legal status and one was destroyed after having received it.

In these circumstances, it is not difficult to see why radical leaders are able to induce extra-legal actions. For example, the CUC (Comite de Unidad Campesina) refuses to seek legal recognition on the grounds that the Constitution explicitly permits all groups to organize and that an application would be an instrument to be used for the destruction of the group. Although CUC refuses to be categorized as a clandestine group and joins public marches under the banner of the CNUS, its leadership does not take the risk of establishing a headquarters

3. Political Parties

The principal legalized political party since 1954 has been the National Liberation Movement (MLN). Two recognized parties that have split off from the MLN are the PNR and the FUN. CAO is the party of ex-President Arana. The United Front of the Revolution (FUR), a social democrat party, was legalized shortly before the assassination of its principal leader, Manuel Colom Argueta. The Institutional Democratic Party (PID) and the Revolutionary Party (PR), to which belonged Mendez Montenegro, President from 1966-1970, supported the Frente Amplio which secured the 1978 election of

General Lucas. Alberto Fuentes Mohr, a leader of a Social Democratic Party and a vice presidential candidate in the 1974 election, was assassinated in January of 1979. The Chairman of the Christian Democratic Party, who is also Secretary General of the Christian Democratic World Union, has been a virtual prisoner in his own home since an attempt was made on his life in October of 1978.

According to the Christian Democratic leadership, most of the mayors in the small Indian villages favor that party, which continues to work with them and with the cooperative movement in favor of a peaceful, evolutionary change.

FUR, despite the assassination of its leaders, continues its activity, having recently held meetings in the various towns of the Department of Retalhulen.^{34/}

Even among the right-wing parties supporting the Frente Amplio of General Lucas, there is some indication of a desire to form a consensus in favor of a more just society. Lic. Jorge Garcia Grañados, a member of the Partido Revolucionario who currently serves as Secretary General of the Presidency, has written:

"Also is it an incontrovertible truth that societies without distributive justice are not truly free . . ."^{35/}

^{34/} Informacion del FUR Boletin No. 31, Guatemala, 26 de junio 1979.

^{35/} Granados, El Nacionalismo Científico 7 (1973).

It should be mentioned that PR is the party of President Mendez Montenegro who won the 1966 election. Although he campaigned on a program opposing disappearances and assassinations, his presidency was marked by FAR violence and the Arana counter-insurgency campaign which came to reach even leaders of the PR party. Although PR leadership would like to play a constructive part in Guatemala politics, its only links are with the propertied classes and its only role seems to be to try to influence the present military government without having the kind of leverage that would make it effective.

In spite of the repression and the evident fraud in the elections of 1974 and 1978, the political parties in opposition continue to demonstrate remarkable vitality. This is even though in the elections in March 1978, only 15% of the eligible voters participated. It is generally acknowledged that outright fraud was applied in counting even this limited vote and that the "winner", General Lucas, probably received the smallest number of votes of the 3 candidates in the election.

4. Education

The National University of San Carlos is based in the capital city, with a branch in Quetzaltenango and

certain extension activities. As an autonomous institution it is by law free of government control and entitled under the Constitution to an appropriation based on a percentage of the national budget. Its autonomy has been respected to the extent that several faculties are dominated by Marxists and the University newspaper "7 days in USAC" is openly critical of the government and of the "maintenance of the system of exploitation and violation of economic, social and cultural rights".^{36/} This toleration does not extend to actions taken outside the University, as demonstrated by the assassination and kidnapping of student leaders (Oliverio Castañeda and Antonio Ciani) and death threats to professors and the last two rectors (Valdeavellano and Osorio Paz). Furthermore, as a reaction to the politization of the University, the government has declined to increase its contribution in accordance with the increased national budget, as a means of pressure toward reduction of student activism.

The current Minister of Public Education, Colonel Clementino Castillo Coronado, has carried this pressure to another level by forbidding political activities on the part of students in secondary schools.

It is probable that the level of political activity and the intolerant uniformity of Marxist teaching in certain

^{36/} 3 December 1978, p.4.

faculties reduce the scholarly position of the university and that this was an important incentive to the establishment of private universities, of which four now exist and are growing in importance.

OPPORTUNITIES FOR DEMOCRATIZING GUATEMALA

The Political Constitution

The Guatemalan Constitution of 1965 is an eminently liberal and democratic document:

Article 1

"Guatemala is a free, sovereign and independent nation established for the purpose of guaranteeing to its inhabitants the enjoyment of freedom, security and justice. Its system of government is republican, democratic and representative . . ."

Article 43

"In Guatemala all human beings are free and equal in dignity and rights. The State guarantees as rights inherent in the human person: life, corporeal integrity, dignity, personal security and that of his property."

Article 55

". . . nor shall physical or moral torture, cruel treatment, infamous punishment or acts, hardship or coercion be inflicted . . ."

Article 56

"Public officials or employees who give orders contrary to the foregoing Article,

and subordinates who carry out such orders shall be removed from their posts, be permanently barred from holding any public office or employment and shall receive the pertinent legal punishment."

Article 57

"A domicile is inviolable. No one may enter another person's home without permission of the occupant except on the written order of a competent judge and never before 6 a.m. or after 6 p.m."

Article 62

"The inhabitants of the Republic have the right to address petitions individually or collectively to the authorities and the latter are obligated to act upon them according to law without delay and to communicate their decisions to the persons concerned."

Article 63

". . . the right of assembly and of public demonstration may not be restricted, limited or restrained and the law shall regulate these rights for the sole purpose of guaranteeing public order."

Article 64

"The inhabitants of the Republic have the right to associate freely for the various objectives of human life for the purpose of promoting, exercising and protecting their rights and interests, especially those established by the Constitution."

Article 65

"Thoughts may be freely expressed without prior censorship . . . denunciation, criticism or censure directed against public officials or employees for strictly

official acts committed in the course of their duties do not constitute the offenses of libel and slander. Persons who deem themselves offended are entitled to have their defenses and corrections published. Public officials and employees may demand that a court of honor, set up as prescribed by law, declare that the publication that affects them is based on incorrect information or that the charges made against them are unfounded. A decision that vindicates the person offended must be published in the same organ of the press in which the offensive publication occurred. Public officials or employees may not be members of that court. . . . A jury shall have exclusive jurisdiction over crimes and misdemeanors to which this article refers and a law of a constitutional nature shall determine all matters relating to this right."

Article 74

"Every person has free access to the court for the purpose of exercising his rights of action in accordance with the law."

Article 79

"Any person who finds himself illegally imprisoned, detained, or restrained in any other way in the enjoyment of individual liberty, who is threatened by the loss of it, or suffers grievances even when his imprisonment or detention is based on law, has the right to request an immediate hearing before the courts of justice. . . . Authorities who order the concealment of the detained person or who refuse to present him to the proper court, or who in any other way frustrate this guarantee, as well as agents who carry out such an order, shall be considered to have committed the crime of abduction and will be subject to punishment in accordance with law."

Article 80

"Every person has the right to petition for amparo in the following cases:

1. In order that his enjoyment of the rights and guarantees established by the Constitution may be maintained or restored.

2. In specific cases to obtain a ruling that a law, a regulation or a decision or act of an authority is not binding upon the petitioner because it contravenes or restricts any of the rights guaranteed by the Constitution.

3. In specific cases to obtain a ruling that an order or resolution which is not purely a legislative act of the Congress of the Republic does not apply to the petitioner because it violates the constitutional right.

4. In all other cases expressly set forth in the Constitution."

Article 84

"Habeas corpus and amparo shall be initiated through specific appeals. A constitutional law shall regulate the form and requirements thereof . . ."

Article 99

"The University of San Carlos of Guatemala is an autonomous institution with juridical personality. . . . A special appropriation of not less than 2-1/2% of the budget of ordinary revenues shall be allocated to the University of San Carlos of Guatemala for the accomplishment of its purposes and to pay for its support, development and progress. This appropriation may be increased by other revenues as the State may designate."

Article 105

"It is compulsory for professionals to join their professional associations, for the purpose of the moral and material advancement of the university professions and the control of their practice."

Article 111

"The labor system of the country must be organized in accordance with principles of social justice."

Article 113

"The laws governing relations between capital and labor are conciliatory; they shall deal with all pertinent economic and social factors involved, and they shall serve as guardians of workers."

Article 114

"The principles of social justice on which labor legislation is based are:

. . .

12. The right of workers and employers freely to organize for the exclusive purposes of economic protection and social betterment. These organizations and their directors, as such, may not take part in partisan politics.

14. The right to strike and lockout, exercised in accordance with the law and as a last resort when all other attempts of conciliation have failed."

Article 123

"The economic and social régime has as its aim the achievement of a dignified existence for human beings and the development of the nation."

Article 126

"The State shall promote the agricultural and livestock development of the country . . .

9. Preferential protection to farmworkers, and to small and medium farmers under a rural policy designed to give them land, housing, education, health and anything that will permit them to raise their standard of living and that or their families."

Article 145

"The public officials are the depositories of the authority, legally responsible for their official conduct; they are subject to, and are never above, the law."

Article 146

"No civilian or military official or employee is obligated to carry out orders that are manifestly illegal or that imply the commission of a crime."

Article 147

"The authorities are obligated to take action to protect persons and their rights without delay and any omission in the fulfillment of this duty renders anyone who has been derelict responsible therefor."

Article 148

"If a public official or employee violates the law to the prejudice of individuals in the performance of his duties, the State or the State institution in which he serves shall be subsidiarily liable for damages that may have been incurred."

Article 151

"It is the duty of the authorities to maintain the inhabitants of the Republic in the full enjoyment of the rights guaranteed by the Constitution."

Article 154

"Any person has the right to take legal action regarding liabilities deriving from unnecessary acts and measures intended to restrict guarantees if they are not authorized by the law on public order."

Article 215

"The organizing or functioning of militias other than the army of Guatemala is punishable."

Legal System

Under the Constitution, the president of the judicial branch of government is also president of the Supreme Court of Justice. The acting president, 41 year-old Apolo Mazariegos, has served as a judge of civilian and military courts for 20 years as well as teaching criminal law at the University of San Carlos. The Supreme Court, which occupies a newly constructed and magnificent courthouse, consists of 8 judges divided into a civil and criminal section. It hears appeals as a court of cassation, with the responsibility of ruling on specific legal issues raised by the parties to ensure the correct application of the law and its uniformity. These appeals arise from civil and administrative determinations. The appellate courts, each consisting of 3 magistrates, occupy the next level of the judicial system. They hear appeals from the court of first instance, each of which consists of one judge hearing civil, mercantile and administrative complaints. At the bottom of the hierarchy is the justice of the peace, who hears disputes involving less than Q 500 and who is usually a law student. In addition, there is a system of family courts and of municipal courts. Finally, there is a system of

labor courts consisting of conciliation and arbitration bodies as well as appellate jurisdictions.

In general, the constitutionally established system of justice is modern and offers substantial protections to the accused. For example, under the new code of criminal procedure, any arrested person must be brought before a judge within 24 hours. There are certain complaints against the efficacy of the system, but these are usually directed towards the justices of the peace. Recently Major David Cordon Hichos, Director of the Border Patrol, complained that his police spent more time in capturing delinquents than the court spent in returning them to liberty, specifying that mayors who filled the additional responsibility of judges in some of the villages let their associates off for corrupt reasons.^{37/} The official reply of the Supreme Court is that the usual reason for releasing prisoners is that inadequately trained police do not take the trouble to put together the proof necessary to hold the prisoners.^{38/}

One of the particular features of Guatemalan justice is the combination of the laws of amparo, habeas corpus and constitutionality.^{39/} This law develops the constitutional

^{37/} Prensa Libre, junio 29 de 1979 at p.13.

^{38/} Ibid.

^{39/} Decreto Numero 8 of the Constituent Assembly of the Republic of Guatemala (Publicaciones del Ministerio de Gobernación 1977).

right of amparo and establishes a special court consisting of members of the appellate court to hear certain proceedings and of the Supreme Court to hear others. Article 75 of this decree develops the procedures of habeas corpus (exhibición personal). Chapter 10 provides a procedure in which a party may raise the issue of unconstitutionality in any particular case. Chapter 11 provides a procedure for contesting on constitutional grounds laws or decrees of the government. This chapter permits the Council of State and the Public Minister to begin such proceedings for declaration of unconstitutionality and also extends this privilege to the Bar Association and to any person who is directly affected by the unconstitutionality of the law.

Although this system of legal protection for the rights established in the Constitution is complete, its application is affected by political considerations. For example, although the amparo proceeding is frequently used, decisions are usually reached on technical rather than substantive grounds and the proceeding is generally not admitted in the case of high governmental officials.

The Colegio de Abogados (Bar Association) has a special position of responsibility both under the Decree No. 8 and under the Constitution. This is a national organization to which all 2,000 lawyers in the country belong. Its funds

are provided by a stamp tax on all legalized documents as well as dues paid by the members. The Association hears complaints of the public against lawyers and provides members for a part of the jury that hears libel complaints. In view of the fact that a large number of the people who have been the subject of political assassinations have been lawyers, the Association laments the fact that none of the perpetrators have been captured, but has not taken vigorous action to investigate the assassinations or to require that the government do so.

Recently, the Association has been presented with a special opportunity to take an active role in condemning extra-legal acts of the government. This involves the recent criminal complaint brought ^{for determination by magistrates without a jury} against a member of the Association and his sister for their published complaint about the slaying of their brother Colom Argueta.^{40/} The Bar Association has been asked to state officially that the criminal action for "desacato y desobediencia" has no proper legal basis and should have been brought before a jury provided by law to hear such complaints alleging libel. Whether or not the Bar Association responds to this application will demonstrate whether or not it will live up to its constitutional responsibilities and play a positive role in the development of the legal system.

^{40/} El Grafico, 28 de junio de 1979, p.8.

Labor Law

In order to derive some understanding of how the rights specified in the Guatemalan Constitution are carried out in practice, it is useful to concentrate on a specific area of the law. Labor law is perhaps the most representative area of the law for this purpose since the economic interests of the parties are in conflict and opposing ideologies are called into play. Also, labor relations constitute an area of great importance in the life of the country and the way in which the laws function to regulate or resolve the growing conflicts in this area may be instructive.

The first labor code of Guatemala was in effect during the period of the presidencies of Arevalo and Arbenz, from 1947 to 1954. This was the first time in the history of Guatemala that labor relations and unions were governed by a code of laws. It does not appear that during this period the decisions in matters raised under this code were preponderantly in favor of the worker or of the union, but they do reflect the concept that "labor law is a guardianship law for the workers in that it seeks to compensate for their economic inequality providing them a preferred legal protection . . ."^{41/}

^{41/} Opinion of coordinating magistrate to the labor court judge in the sixth economic zone, cited in the collection of jurisprudence of the Supreme Court of Justice by Lic. Francisco Villagran de Leon. 3 Revista del Colegio de Abogados de Guatemala 79 (1976).

The current labor code is Decree 1441 of April 29, 1961, which has been amended by four succeeding decrees or decree-laws. The current Minister of Labor, Lic. Carlos Alarcon Monsanto, has announced that he will present a new labor code to the Congress in the near future.^{42/} Although the new code is said to make several additions, such as that contemplating the augmentation of salaries according to an index of inflation, it is not expected to be a radical reform of existing law.^{43/}

It is interesting to note that the 1961 labor code repeats as one of its "ideological characteristics" the principle referred to above; that is, that labor law is a law safeguarding workers because it seeks to compensate for the economic inequality of such workers, granting them a preferred judicial protection. The Congressional Decree No. 1441 continues to state that radical reforms are being brought to the procedure of the labor code toward the end of expediting the decisions of the various labor disputes, establishing a group of procedural rules that are clear and simple and without

^{42/} Prensa Libre, junio 29 de 1979 at p.13.

^{43/} The Constitution itself provides for the periodic fixing of a minimum wage. Since 1977 this has been Q 1.77 a day for urban workers and Q 1.15 a day for rural workers. One of the ways in which even this minimal standard is violated is by paying cane cutters Q 1 per ton of cane. Working in the normal groups of five, each laborer cannot make as much as the minimum wage. The prevailing way of paying cotton harvesting workers less than the minimum wage is by falsifying the weights which determine the amount of daily pay.

greater formalism. Finally, before setting forth the articles of the code, the Congress states that the rules of the code must be inspired by the principle of being essentially conciliatory between capital and labor.

In general, it seems that these intentions are carried out in the law. In setting forth the obligations of employers, Article 61(c) states that they will show proper consideration for the workers, abstaining from mistreatment in word or in deed. Article 62(c) prohibits employers from requiring workers by any means to withdraw from unions or other legal groups to which they belong or to join one group or another.

On another level, according to the late Mario Lopez Larrave, who at the time of his assassination was the most distinguished Guatemalan scholar in this area, there are certain defects in the labor code. In the first place, the courts refuse to hold the proceedings in public, contrary to the general practice of Guatemalan courts, which prejudices the workers, who have an interest in public proceedings and prevents the community from judging the quality of justice.^{44/}

Also, according to Larrave, the law permitting parties affected by the unconstitutionality of a law to bring

^{44/} Larrave, Procedencia de la Vista Pública en el Proceso Laboral Guatemalteco, 8 Revista del Colegio de Abogados de Guatemala 1 (1978).

a proceeding to declare that law null with respect to all parties, makes it practically impossible for working people. This is because Article 107(4) which permits individuals to bring such a proceeding must do so "with the help of 10 practicing lawyers". Larrave notes that it is difficult for someone in the working class to get one lawyer, much less 10. Furthermore, Chapter X of Decree No. 8, which creates the possibility for a party in any proceeding to defend on the ground that a law is totally or partially unconstitutional, doesn't apply to the commission of a judicial error in the determination of its competency because this is not a problem of an unconstitutional law. Larrave also points out that in general the right of appeal to the Supreme Court is of very little value in labor cases because of the excessive technicality of the remedy.^{45/}

In his book on labor law procedure, Larrave points out that the majority of labor law problems are solved in proceedings involving individual workers because the incipient industrialization of the country and the lack of working class sentiment doesn't permit the preponderance of collective bargaining procedures. In these proceedings, he alludes to the growing complaints of the workers based on the failure of

^{45/} Larrave, La Inconstitucionalidad de las Leyes en Materia Laboral y Como Motivo de Casación, 8 Revista del Colegio de Abogados 11 (1978).

the courts to give importance to Article 17 of the labor code which states:

"For the purposes of interpreting the present code, its regulations and other labor laws, it must be taken into account fundamentally the interest of workers in harmony with the social welfare."^{46/}

As labor militancy has grown, there has been increasing recourse to Title 7 of the labor code entitled "Collective Conflicts of the Economic Character". Under the provisions of this chapter, a strike becomes legal only after the provision for conciliation hearings have been complied with and after two-thirds of all the employees vote to strike. This has been interpreted to mean two-thirds of all the employees, including the office workers in any particular factory. Within twenty days of a strike vote supported by two-thirds of the personnel a strike may begin. Once under way either the workers or the management can ask the court to determine whether or not the strike is justified, in which case an economic study is made of the enterprise to determine whether or not it is capable of meeting the workers' demands. According to the current leadership of the CNT, the only labor dispute in the history of the labor code that reached this stage concerned the Incatecu shoe factory. In that

^{46/} Larrave, Introducción al Estudio del Derecho Procesal del Trabajo Guatemalteco 23 (Asociación de Estudiantes "El Derecho" 1978-79).

case the legal strike was declared and lasted 49 days until the court decided in favor of the workers and decreed protection for the strike committee. Under Article 242, if the strike is declared just, the owner is decreed to pay the workers' salaries during the period of the strike. This was also done, but it appears that thereafter reprisals were taken against the union members who were dismissed. Efforts to secure their reinstatement were unsuccessful.

In order to comply with the conciliation proceedings, the workers must elect 3 representatives who petition the labor court in the applicable economic zone of the country. The court is to notify the owners to designate their bargaining representatives and to issue a decree prohibiting dismissals during the bargaining period. Thereupon the judge establishes a conciliation panel consisting of a management representative, a worker representative and the judge. Then hearings are established in which each side is heard separately and then both together. An attempt is made to arrive at a collective agreement. If this is unsuccessful the court makes a recommendation which either of the parties is entitled to reject.

In practice, the problems with this procedure are the following:

1. Members of the organizing committee frequently are fired despite the court decree. Article 223 of the labor

code provides that up to 5 members of an executive committee of a workers group seeking recognition of a union cannot be fired except for specified just cause determined by a labor court. Under Article 379 the sanctions for this action can be from Q 100 to Q 500 and 1 to 10 days in jail. However, the courts rarely impose the fine, in any event not for each one of the workers that is fired, and have never imposed a jail sentence on a member of management.

2. The conciliation procedure extends beyond the time limits provided in the statute, frequently because management representatives decline to serve. In the recent case of the security guards, 10 of those on the list of management representatives declined to serve until the court finally issued an order integrating the conciliation panel. During this intervening delay management frequently brings various forms of pressure to bear on the workers. In the case of Frigorificos, a fish-packing concern in which the workers began to organize in August of 1978, the delays were utilized to bring pressure to bear on the workers to withdraw their request. Similar threats during the supposed bargaining period, occasionally assisted by military forces, took place with respect to the textile factory Matex, the flower-growing firm of Milflores in Amatitlan and in Laboratorio Químicas Henkel.

3. Finally, even in events in which a collective agreement has been signed, the management has succeeded in

firing the union representatives. According to the Federacion de Trabajadores de Guatemala (FTG) the Fabrica Blue Bird Centroamericana, a manufacturer of truck bodies, provided a recent example. Although a collective agreement had been signed in October of 1978, on May 14, the manager notified all workers that if they didn't withdraw from the union within 15 days the plant would be closed. On May 28, 1979 the factory was closed and the workers were fired and forced to leave by the riot police.

It is becoming increasingly clear that the failure of the courts to enforce the letter of the labor law, much less its declared purpose to assist the working class, is leading to an increased radicalization. In effect, the circumstances are demonstrating the prophetic nature of the statement by Mario Lopez Larrave, which is now used as a slogan and can be seen on the walls of several labor federations:

"The loss of faith in the law and those who apply it lead to measures of action."

This is evident in the formation of more influential umbrella groups like CNUS which politicize labor unrest and in which Marxist rhetoric and tactics are increasingly evident. The most recent of these groups, the Frente Democrático Contra la Represión which was formed in February of this year, incorporates not only worker groups but political parties as well. Failure to enforce the law against acts of exploitation

and against the rising level of violence that accompanies this exploitation drives all men of goodwill to join such groups which, in effect, oppose the existing order. It seems inevitable that acts such as the recent occupation of the Mexican Embassy will become increasingly common resorts in an effort to uphold the workers' rights.

The only way to oppose effectively this trend is to restore faith in the law and those who apply it, in the words of Mario Lopez Larrave. In the area of labor law, as in all other areas of public policy, this requires a political will on the part of the government. Although the law provides that judges of the labor courts have specialized training, this is not the case. In fact, the judges are changed from court to court and region to region in the country, which neglects their specialized training and makes them more subject to pressures. There is no possibility of life tenure for judges below the level of the appellate court. Furthermore, anyone who makes a nuisance of himself in applying the law can be sent to an outlying region of the country where conditions of life are not pleasant. Even on the level of the appellate court, three periods of election by the Congress are necessary before securing life tenure (Constitution Article 244).

CONCLUSIONS

1. The 1965 Constitution of the Republic of Guatemala is a genuinely liberal document providing a solid basis for a democratic and just society.

2. Despite substantial industrialization and a growing middle class, inherited socio-economic conditions in Guatemala have resulted in a large area of institutionalized exploitation and injustice.

3. A radical reformation of political will is required both to permit a rational exploitation of the country's economic resources and a realization of the rights guaranteed by the Constitution.

4. In the year since its accession to power in 1978 the current government has embarked on a systematic campaign to suppress dissent which has, in fact, generated a widespread climate of fear, demoralization, and the growth of clandestine opposition.

5. The deployment of military force, particularly against labor union activity and the Indian community, together with the failure to take any action to control or punish the criminal acts of paramilitary forces against popular leaders create serious impediments to accepting the legitimacy of the government and to its creation of a public consensus.

6. In view of the conditions in the neighboring countries of El Salvador and Nicaragua, the inevitability of change in Guatemala, either destructive or constructive, is apparent. In El Salvador, the polarization of classes, the flight of capital and the generalized violence, and in Nicaragua the devastation attendant on a civil war to overthrow a regime that had become destructive of the ends for which governments are instituted, demonstrate two ways in which the situation in Guatemala could develop.

7. There is no apparent evidence of any likelihood that revolution will be imported into Guatemala, but there is substantial evidence that a pre-revolutionary situation may be developing within Guatemala. This derives in part from a growing perception that power has led to corruption in the government, venality in the armed forces, and overreaching greed on the part of the dominant economic class.

8. Many factors exist in Guatemala that could serve as the basis of a constructive development toward a peaceful and prosperous future. These include the facts that the majority of the country's population consists of inherently peaceful Indian tribes; that the country has a substantial middle class and a large number of highly trained professionals; that the constitutional and legal structure

of the country provide a solid foundation for a democratic society; that the positive orientation of its legal structure is confirmed by the entry into force in Guatemala on July 18, 1978 of the American Convention on Human Rights, expressing the intention to establish within a framework of democratic institutions a system of personal liberty and social justice based on respect for the essential rights of man; and that the National Council of Economic Planning has published a report on the objectives and strategy of long-term development which sets forth in reasonable detail a strategy for reaching the objective of raising the level of material, cultural and spiritual well-being of the majority of the Guatemalan population in order to achieve a just and stable social peace.

If the privileged groups of Guatemala do not build a just society upon such a foundation they will bring the adverse judgment of history on themselves and retribution, at least against their descendants.

Donald T. Fox

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Published by the International Commission of Jurists and the Swiss Committee
Against Torture, Geneva, 1979, 44 pp.

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This pamphlet argues the case for an Optional Protocol to the proposed Convention against Torture now under consideration by the UN Commission on Human Rights. It contains in full the text of the Draft Optional Protocol and the original text of the Swedish Draft Convention. The Draft Optional Protocol proposes a regular system of visits by delegates of an international committee to any place of interrogation, detention or imprisonment in a member state. The advantages of this procedure over other means of implementation are explained.

Le Développement et les Droits de L'homme

Edited by the International Commission of Jurists and published as a special issue of the
"Revue Sénégalaise de Droit", 255 pp.

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A report of an international seminar convened by the International Commission of Jurists and the Association Sénégalaise d'Etudes et de Recherches Juridiques and held in Dakar in September 1978. The 48 participants included senior government officials, judges, lawyers, sociologists, economists, trade unionists and churchmen from 12 francophone African countries. The report includes the keynote address by the President of the ICJ, Mr Kéba Mbaye, the working papers, a summary of the discussions, and the forceful conclusions and recommendations. Appendices contain the text of the International Bill of Human Rights. The working papers and discussions deal with the relationship between civil and political rights and economic, social and cultural rights, possible regional human rights organisations for Africa, the new international economic order, the participation of the people in development, the rights of minorities, of women and of the child, ombudsman institutions, and the independence of the judiciary.

Bulletin No. 3 of the Centre for the Independence of Judges and Lawyers

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The third Bulletin of the CIJL was published in March 1979 in English. It describes the weakening of the judiciary in Chile, El Salvador and South Africa, and cases of persecution of defence lawyers in Argentina, Czechoslovakia, Paraguay, Swaziland, Tunisia and Yugoslavia. Other articles and notes concern the UN Seminar on the role of national institutions in the protection of human rights, the question of immunity in respect of judicial acts, and the erosion of the independence of judges in Sri Lanka.

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