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The night before the signing of the final Peace Accords. Guatemala City, December 28, 1996.

A Long Road: *Progress and Challenges in Guatemala's Intelligence Reform*

By Iduvina Hernández¹

High levels of crime in Guatemala—including common crime, organized crime, drug trafficking, and youth gang violence—have once again brought debates over intelligence and security issues to the front page. Controlling crime and violence will require effective, strategic policies.

Within the conceptual framework of a model of “democratic security,” Guatemala’s 1996 Peace Accords sought to implement more effective ways of combating and preventing crime and violence. At the same time, the Accords sought to establish mechanisms that would transform the security and intelligence apparatus to ensure that security demands would not threaten human rights and/or individual freedoms.

This report describes the current state of intelligence system reform nine years after the signing of the Peace Accords and argues that the process of reforming the old intelligence structures has produced mixed results.

Since the ceasefire almost a decade ago, successive governments have taken steps to dismantle the old security structures and establish new ones. The Óscar Berger Administration (2004–present) has made significant progress toward shrinking the size of the military. However, other important steps must still be taken to fully comply with the spirit of the Peace Accords and carry out a complete restructuring of the intelligence system.

The absence of checks and balances, transparency, and an agreed upon set of norms has allowed the various intelligence entities to continue operating under only rudimentary



Abbreviations

AFPC	Acuerdo de Fortalecimiento del Poder Civil y Función del Ejército en una Sociedad Democrática <i>Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society</i>
CC	Corte de Constitucionalidad <i>Constitutional Court</i>
CEH	Comisión de Esclarecimiento Histórico <i>Historical Clarification Commission</i>
CICIACS	Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad <i>Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatuses</i>
CorteIDH	Corte Interamericana de Derechos Humanos <i>InterAmerican Court of Human Rights</i>
CNI	Centro Nacional de Inteligencia <i>National Intelligence Center</i>
CNS	Consejo Nacional de Seguridad <i>National Security Council</i>
CSI	Coordinadora de Servicios de Inteligencia <i>Office for the Coordination of Intelligence Services</i>
D-2	Dirección de Inteligencia Militar <i>Military Intelligence Directorate</i>
DICAI	Departamento de Inteligencia Civil y Análisis de Información <i>Civilian Intelligence and Information Analysis Department</i>
DIGICI	Dirección General de Inteligencia Civil e Información <i>Civilian Intelligence Directorate</i>
DSN	Doctrina de Seguridad Nacional <i>National Security Doctrine</i>
DSP	Departamento de Seguridad Presidencial <i>Department of Presidential Security</i>
EMP	Estado Mayor Presidencial <i>Presidential General Staff</i>
UN	<i>United Nations</i>
REMHI	Proyecto Interdiocesano de Recuperación de la Memoria Histórica <i>Recovery of Historical Memory Project</i>
SAAS	Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia <i>Secretariat for Administrative Affairs and Presidential Security</i>
SAE	Secretaría de Análisis Estratégico <i>Secretariat of Strategic Analysis</i>
SAIA	Servicio de Análisis e Información Antinarcóticos <i>Anti-Narcotics Analysis and Information Service</i>
SIC	Servicio de Investigación Criminal <i>Criminal Investigations Service</i>
SIS	Servicio Israelí de Seguridad <i>Israeli Security Service</i>
SIP	Sistema de Información Policial <i>Police Information System</i>

legal controls, which do not necessarily guarantee that they will operate within the rule of law. Furthermore, the fact that intelligence operations are not fully regulated leaves citizens vulnerable to having their rights and liberties violated.

Before this report went to press, two competing legislative initiatives on the Intelligence Framework Law were presented in the Guatemalan Congress. One of them represents a serious challenge to the consolidation of a democratic security system. The legal framework and restructuring of intelligence services proposed by the initiative not only violate commitments made in the Peace Accords but also give excessive power and a disturbing degree of autonomy to intelligence structures.

Background

The Historical Clarification Commission (CEH), a UN supported truth commission, released a report in 1999 that provides information on how, during the armed conflict, Guatemala's intelligence system acted as the control and operations arm of the counterinsurgency apparatus. The National Security Doctrine adopted by the Guatemalan state to guide its counterinsurgency efforts considered legal activity by the political opposition a threat to security. Those people involved in political activity were considered military enemies and were therefore subject to attack by military means. The massive repression that occurred as a result led to the death or disappearance of at least 200,000 Guatemalans.²

Both the CEH and the Recovery of Historic Memory (REMHI) Project³ name the Guatemalan intelligence services as the groups primarily responsible for the extensive human rights violations during the internal armed conflict.

Though one cannot ignore the fact that the intelligence [services] carried out their own activities related to the armed conflict, this system primarily served interests other than those involved with counterinsurgency. The intelligence [services] were the axis of a government policy to use the armed conflict to control the population, society, the State and the military and which was executed through a political-military strategy founded on mechanisms that did not recognize the Constitution or the law and violated human rights.⁴



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Relatives and supporters carry the remains of 120 people who had been massacred in the 1980s through the principal streets of Nebaj, Quiché Department, 2001.

The absence of checks and balances in the intelligence services, combined with their operational autonomy and the secret nature of their structures and activities during the armed conflict, led to the consolidation of an intelligence system in Guatemala that violated the basic tenets of democracy.

The design of Guatemala's military intelligence system was based on the National Security Doctrine applied in Latin America within the context of the East-West conflict and under the parameters of a total war between the State and communism. This system did not differ from the models of other Latin American countries, as dictated by counterinsurgency policy.⁵

Basic Criteria for an Intelligence System

Security and democracy are not mutually exclusive. States need to have intelligence systems, but they must also uphold the principles of democracy. All democratic states are required to operate in an open and public fashion, yet any intelligence service must, by definition, operate with a certain level of secrecy. Given the need for confidentiality, it is imperative to establish effective

control mechanisms that keep secret intelligence services from becoming a threat to democracy and/or human rights and keep the demands of national security from trumping individual freedoms.⁶

In technical terms, there is a need to establish an intelligence system (and its respective subsystems) in a way that clearly defines its responsibilities and jurisdiction and establishes mechanisms to guarantee accountability. Intelligence generally refers to information used for military operations, criminal investigations carried out by police (e.g. against organized crime) and executive level decision making.⁷ This is to say that intelligence is defined not by whether it is conducted by military or civilian actors, but by the function it performs.

Military intelligence services operate within the framework of defending against external armed threats. Their intelligence operations are for the purposes of analysis and decision making at the strategic, operative, and tactical levels.

Police investigation, on the other hand, is always directed towards generating criminal court cases where results must be presented before judicial authorities. Any undercover tasks that might invade privacy must have judicial authorization, and there is judicial control over the special investigative powers authorized by law.

Police investigation includes work on common crime, organized crime, and drug trafficking, as well as cases involving individuals or groups who may be planning to commit crimes (e.g. attacks on human rights defenders for political or ideological reasons). However, the police cannot justify actions against members of the political opposition or investigations against legally constituted organizations based solely on the suspicion of conspiracy. Intelligence work should not be used, under any circumstances, for the benefit of partisan interests.

The analysis necessary for presidential decision making is the responsibility of civilian structures, whose information, investigations, and conclusions are for the direct and exclusive use of the executive branch.

The Peace Accords and the Intelligence System

In September 1996, the Guatemalan government and the guerrillas, represented by the Guatemalan

National Revolutionary Unity (URNG), signed the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society (AFPC). This is the primary, though not the only, text that contains recommendations for reforming the Guatemalan security and intelligence services.⁸ This agreement spelled out the series of steps the government would need to take in order to guarantee the substantive reform of the country's intelligence apparatus in both organizational structure and personnel and to prevent the kind of abuses committed by authorities during the internal armed conflict.

In essence, the agreement sought to reorient military intelligence activities towards external security. At the same time, it sought to provide authorities in the Ministry of the Interior with a civilian entity responsible for investigating organized crime as well as common crime.

The AFPC also contains a commitment to reform presidential intelligence and security by structurally separating the presidential security functions and services and by strictly regulating the work of strategic analysis. Especially important was separating intelligence gathering and analysis work from the ability to use that information to conduct covert operations, such as making arrests and provisional detentions.

The Accords proposed a congressional oversight commission as part of an effort to develop an effective system of checks and balances. In order to guarantee the commission access to intelligence information, it proposed a strict regulation of the circumstances under which information could be defined as a state secret.

The commitments also sought to ensure that as authorities performed their duties, they would uphold the guarantees and rights established in the Guatemalan Constitution as well as the international treaties and agreements on human rights that Guatemala has signed.

Thus, the central points of Guatemala's commitment to intelligence reform include changes in military intelligence, presidential intelligence, and police investigation, as well as the development of mechanisms and procedures for democratic checks and balances.

The Clandestine Groups, an Unresolved Legacy

The Peace Accords also called on the Guatemalan government to combat the existence of illegal armed groups created during the internal armed conflict. These groups were an integral part of counterinsurgency efforts and had close ties to the military intelligence apparatus.

In the absence of an effective evaluation of the security and intelligence services, the clandestine groups have been able to maintain their structural relations with the State. Over the course of time, they developed and strengthened their links to organized criminal networks.

Hiding behind a veil of impunity, the clandestine groups are believed to have been responsible for numerous attacks and threats against human rights defenders and justice officials in the last several years.⁹

In an effort to better combat these groups, the Human Rights Ombudsman and leading human rights organizations signed an agreement with the Guatemalan government during the administration of Alfonso Portillo (2000-2003) to establish a commission to dismantle these structures.

In December 2003, the government of Guatemala and the United Nations signed a landmark agreement to establish the Commission for the Investigation of Illegal Armed Groups and Clandestine Security Apparatuses (CICIACS). The agreement granted the Commission special authority to conduct investigations on the structure of these groups and their links to the State and organized crime with a view toward their prosecution in local courts.

Strong opposition from various sectors, however, blocked the ratification of the initiative in the Guatemalan Congress. In August 2004, the Constitutional Court (CC) rendered key aspects of the agreement unconstitutional, including those that granted the CICIACS the independence necessary to fulfill its mandate.

As a result of the Guatemalan government's inability to address this problem, the clandestine groups continue to operate with complete impunity. The government has stated its willingness to negotiate a new agreement with the UN. However, it has yet to be determined whether or not the commission (as renegotiated) would enjoy the independence, international support and human rights focus necessary to successfully combat the threats posed by the clandestine groups.

Current Situation of the Intelligence System

According to the AFPC, the intelligence system should be composed of the Military Intelligence Directorate of the High Command of National Defense (D-2), the Civilian Intelligence and Information Analysis Department (DICA) in the Ministry of Interior (the body responsible for coordinating police investigations) and the Secretariat of Strategic Analysis (SAE) in the office of the President. The process of establishing and consolidating that structure, however, has been long and arduous.

Military Intelligence

During the armed conflict in Guatemala, all of the intelligence services were essentially military in nature and were affiliated with the D-2.

Military intelligence was a major topic of discussion for the AFPC, and the goal was to create a clear division between military and civilian functions in order to keep the types of abuses committed during the armed conflict from reoccurring.

The agreement commits the state to promoting constitutional reforms that would limit the new



Army Day in front of the National Palace, Guatemala City, June 30, 1995

functions of the armed forces to “protect[ing] the sovereignty of the State and its territorial integrity.”¹⁰

At the same time, it sought to limit military intelligence to this new mission:

The scope of the activities of the Intelligence Directorate of the Office of the Chief of Staff for National Defense shall be restricted to the role of the armed forces as defined in the Constitution and in the reforms envisaged in this Agreement. Its structure and resources shall be limited to this scope.¹¹

The reforms aimed to strictly define the acceptable spheres of operation for military and civilian intelligence, limiting the former to external defense and the latter to citizen security and criminal investigation. However, the constitutional reforms needed to implement this separation were defeated in a national referendum in May 1999,¹² and the Army continues to consider itself the primary defense against both internal and external threats. Given the results of the referendum, authorities have not expended much effort to deepen the reform process and limit military intelligence functions to strictly national defense aspects.

One worrisome example that illustrates this point is that the D-2 now contains a so-called Anti-kidnapping Unit that investigates kidnappings in spite of the fact that this function clearly corresponds to that of a police investigative body, not the military.

Moreover, the previous three presidential administrations have insisted that the Army

participate alongside police security forces in law enforcement operations. These so-called “combined forces” even have a legal framework that legitimizes them (Decreets 90-96 and 40-2000). The Berger Administration has also made use of these combined forces, and President Berger recently announced the creation of a joint army-police taskforce called the Special Rapid Reaction Force, made up of 500 soldiers and 512 police officers, who will be permanently housed in military installations.¹³ In the same statement, the Minister of the Interior, Carlos Vielmann, announced that military intelligence would fulfill the intelligence needs of the group.¹⁴

Thus, far from complying with the requirement to clearly determine appropriate spheres of action for the various intelligence services and to limit the functions of military intelligence, there have been many cases since the signing of the Peace Accords that illustrate the participation and use of military intelligence in matters of internal security. These cases are cause for concern.

Presidential Security: The Presidential General Staff (EMP)

The Peace Accords’ insistence that internal security issues fall under the mandate of civilian rather than military entities also influenced reforms in the areas of presidential protection and intelligence.

During the internal armed conflict, the security of the president of Guatemala was entrusted to a military structure that steadily gained autonomy, including budgetary independence, as well as high levels of power.

This structure, called the Presidential General Staff (EMP), had its own intelligence apparatus, which was staffed by officers who came from the D-2. The officers, though nominally under the command of the D-2, actually reported to the head of the EMP. The unit in question provided intelligence information and analysis to the head of the EMP, which he could share, at his discretion, with the President and his staff. It also maintained a surveillance network that gathered information on people considered to be enemies of the state. In some instances, this intelligence apparatus actually carried out extrajudicial executions, torture, and forced disappearances of these people.

Some declassified U.S. government documents corroborate the fact that the EMP carried out

Myrna Mack vs. The Guatemalan State: Challenging Impunity

Guatemalan anthropologist Myrna Elizabeth Mack Chang was brutally stabbed 27 times outside her office on September 11, 1990. At the time of her murder, Myrna was conducting academic research on refugees and internally displaced groups, victims of the army's counterinsurgency efforts during the internal armed conflict.

In December 2003 the Inter-American Court on Human Rights handed down a clear verdict against the State of Guatemala for the murder of Myrna Mack, a verdict that details the role of the intelligence services in the decades of state-sponsored repression. The Court's sentence not only provides a detailed description of the murder but also recounts, step by step, the mechanisms, procedures and modus operandi of the intelligence services.

The death of Myrna Mack Chang was the result of a covert military intelligence operation carried out by the Presidential General Staff and tolerated by various authorities and institutions. This military intelligence operation had three phases. The first phase was to single out the victim in view of her professional activity, an activity that bothered various authorities and institutions in Guatemala... The second phase of the military intelligence operation consisted of keeping watch on, following, and extra-legally executing the victims... The execution of Myrna Mack Chang was not an isolated act carried out by the Presidential General Staff specialist Noel de Jesús Beteta Alvarez, but rather the result of a careful operation developed by the high command of that body... The third phase of the military intelligence operation consisted of covering up, insofar as possible, all the direct perpetrators and accessories of the operation, so as to ensure their impunity.¹⁶

Reaching this momentous verdict required more than ten years of hard work and persistence. The case in the Guatemalan courts against the intellectual authors of the crime has still not been fully resolved. The only military officer sentenced for masterminding the killing of Myrna Mack, retired colonel Juan Valencia Osorio, who at the time of the murder served as head of the DSP, remains a fugitive from Guatemalan law. In January 2004, days after the Supreme Court ordered his re-arrest, Osorio escaped from police custody while under house arrest. Military officers allegedly aided in the disappearance.



Myrna Mack

intelligence and counterinsurgency operations in coordination with the D-2 and other state security forces. The EMP maintained a network of informants and carried out operations against "internal enemies" and "suspected subversives." Politically motivated crimes committed as part of these operations were often disguised as common crime.¹⁵

One especially illustrative case was the execution of the renowned anthropologist Myrna Elizabeth Mack Chang on September 11, 1990, in Guatemala City. Noel de Jesús Beteta Álvarez, an army specialist who worked in the Department of Presidential Security

(DSP) of the EMP, was charged with the crime. During his trial in 1993, however, evidence emerged that it was not an isolated action, but rather part of an undercover intelligence operation planned by high level EMP officers during the Vinicio Cerezo Arévalo administration (1986-1989).

In the context of this and hundreds of other human rights violations attributed to the EMP, the AFPC was written to ensure the separation of all strictly protection-related activities from those of presidential strategic analysis. They also sought to separate the former activities from the whole arena of

military intelligence. Thus, the agreement made was to create two separate civilian bodies: the Secretariat for Administrative Affairs and Presidential Security (SAAS) and the Secretariat of Strategic Analysis (SAE).

Replacing the EMP with the SAAS and the SAE

In 2000, during the Alfonso Portillo Administration (2000-2003), the Secretariat for Administrative Affairs and Presidential Security (SAAS) was formally created by Presidential Decree “in order to guarantee the security of the President, Vice-President and their families and provide logistical support for the activities carried out by the Presidency of the Republic.”¹⁷

The international community supported the idea of creating an efficient security body to replace the EMP and invested heavily in the process; between the years 2000 and 2003, six hundred and forty four SAAS agents were trained at the approximate cost of US\$56,000 each.¹⁸

For more than two years, the SAAS worked on building a team of non-military agents in a civilian force specialized in the area of presidential protection. SAAS graduates came out of a process that included not only technical training but also theoretical training on democratic doctrine and the history of the armed conflict in Guatemala.

In spite of the fact that the SAAS was up and running, the official dismantling of the EMP was postponed until October 2003. The final dissolution of the EMP was announced one month after the Guatemalan Congress passed the Organic Law of the SAAS, which provided this effort with long-term legal backing.

While many saw the dismantling of the EMP in a favorable light, there were continued concerns about the possible influence of the military in the new body. In fact, the SAAS law allowed former members of the EMP to transfer into this new, supposedly civilian entity,¹⁹ the result of which has yet to be fully investigated.

The SAAS faced another substantial setback in early 2004, at the beginning of the Óscar Berger Administration. According to reports, in less than one month, approximately half of all SAAS officers were fired.²⁰ The official reason given for the dismissal of SAAS personnel was budgetary limitations. However,

according to confidential sources, new agents hired for the organization came from a private security service, *Servicio Israelí de Seguridad* (SIS), whose owner acted initially as the chief officer and later as the second in command at the SAAS.

The decision not to adhere to the original criteria for personnel selection and the replacement of trained and qualified personnel weakened the SAAS. In order to ensure the institutional integrity of the SAAS, it is necessary to create mechanisms that will guarantee ongoing training and continuity of personnel with a high level of professionalism. It is particularly important to ensure that personnel changes that occur as a result of changes of administration do not negatively affect either the functioning of the organization or the training programs in progress. At the same time, in order to uphold the spirit of the Peace Accords and prevent any unnecessary overstepping of the role of the SAAS, efforts must be made to maintain its civilian nature and guarantee strict adherence to the tasks assigned it. The presence of private police force agents could lead to the SAAS overstepping its boundaries.

The Secretariat for Strategic Analysis (SAE)

The restructuring of the EMP as outlined in the Peace Accords also included the creation of an organization to conduct strategic analysis, the SAE. The Accords established that:

This body shall be purely civilian in character and may secure access to information available from public sources as well as information collected by the Civilian Intelligence and Information Analysis Department of the Ministry of the Interior and the Intelligence Department of the Office of the Chief of Staff for National Defense. It shall not be empowered to undertake its own covert investigations.²¹

The SAE was to become a civilian analysis entity at the service of the presidency, with the function of “anticipating, preventing and resolving situations posing any type of danger or threat to the democratic State.”²²

Since the creation of the SAE, efforts to consolidate the organization have been confronted with a number of setbacks. In the first years, during the Alvaro Arzú administration (1996-1999), the SAE employed

several army specialists and military officers in key positions in spite of the fact that the agreement had established the SAE as a civilian entity. Of even greater concern was the March 2000 discovery of an illegal electronic archive in the SAE with information on more than 650,000 people. According to the SAE technicians who discovered the dossier, the original information was likely part of a larger database which may have been transferred out of the SAE and into other government offices before the change in administration on January 14, 2000.²³ Five years after then-SAE director, Edgar Gutiérrez, reported the dossier's finding, the case remains without progress in the Public Prosecutor's Office. To date, no investigation has been ordered, nor has the complete database or the people responsible for its compilation and removal been found.

Between 2000 and 2004, the Secretariat's operations were restructured and efforts were made to develop a training process to help agency personnel take on the specific functions of strategic analysis for the presidency. Several times during this period, though, the SAE slipped back into playing the political role it had in previous administrations. During this period, the SAE was involved in various activities of a political nature which put it at risk of overstepping its limits.

As government administrations have brought new leadership to the SAE, there has also been personnel turnover in the trained technical team. This kind of turnover has continued to occur under changes in the leadership of both the former and current head of the Secretariat during the Berger Administration.

The consolidation of the SAE's intended role will depend to a certain extent on the emphasis given to training and strengthening the civilian capacity in this field. Appropriate training and the inculcation of democratic values would contribute to efficiency and professionalism as well as to the idea of service to the state rather than to particular personal or partisan interests. In addition, there is a need to build consensus on broad government policies to ensure that they do not respond only to the interests of any single administration and to reduce the likelihood of involuntary turnover in the institution.

Of even greater concern, however, is a legislative initiative for an Intelligence Framework Law (No. 3287) recently presented to the Guatemalan Congress by retired general Sergio Arnoldo Camargo, a congressional representative of the National Solidarity

Party (PSN). This legislative initiative, which will be examined in greater detail later in this report, changes the role of the SAE and contravenes what is established in the Peace Accords. The initiative seeks to expand the role of the SAE by allowing it to carry out intelligence operations and allows it to gather information on "social intelligence," information on social and political movements.²⁴ If passed into law, it would give the SAE a dangerous level of autonomy over intelligence operations.

A competing legislative initiative (No. 3314) grew out of a dialogue between civil society and the Guatemalan government and offers a more appropriate response to what is established in the Peace Accords, respecting the separation between military and civilian intelligence spheres.

Police Investigation

A basic part of the intelligence reform process is building the public security forces' capacity to do police investigation and intelligence. The AFPC resolves that:

A Civilian Intelligence and Information Analysis Department to be established under the Ministry of the Interior shall be responsible for obtaining information to combat organized crime and ordinary crime, utilizing the means available and acting within the limits allowable under the legal system, and shall ensure full respect for human rights.²⁵

The DICA should function as the central body specializing in the area of police intelligence and investigation. It should be noted that the DICA is specifically charged with gathering information on crime and specifically prohibited from engaging in any political intelligence.

The DICA's creation has encountered numerous obstacles, however, and has yet to be established as dictated by law. The first effort to establish the DICA was made unexpectedly through a Presidential Decree during the Portillo Administration. The project was designed by the Ministry of the Interior, the head of which is a former military intelligence official linked to human rights violations committed during the internal armed conflict and is currently being tried for acts of corruption. Weeks after the decree was issued, and faced with a challenge to its constitutionality presented before the Constitutional Court (CC), the President decided to withdraw the decree.

As Portillo's term drew to a close, his administration proposed a legislative initiative for the creation of a Civilian Intelligence Directorate (DIGICI). The DIGICI proposal sought, on one hand, to elevate the rank of the institution from a "department" to a "directorate" in order to put it on par with the Military Intelligence Directorate. On the other hand, it would give the DIGICI a "national counter-intelligence" role and powers to investigate groups planning activities against the State. No action has yet been taken, although the bill is currently under debate.

For the moment, police intelligence is carried out through the Criminal Investigations Service (SIC), the Police Information System (SIP), and the Anti-Narcotics Analysis and Information Service (SAIA).²⁶ The SIC does investigative work for criminal cases and must coordinate its work with the public prosecutors of the Attorney General's Office. The SIP is responsible for obtaining, producing, and analyzing data to identify threats that might affect citizen security, while the SAIA specializes in investigating drug trafficking activities.



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Both the SIC and the SIP have limited powers. The SIC, for example, has few investigators and limited technical resources, and there is a growing number of complaints about corruption among a significant number of its members. The SIP, on the other hand, lacks resources, equipment, and a clearly defined role. Currently, it lacks even the basic equipment necessary for the gathering of information. Complaints are processed manually and to date there is no computerized system to facilitate information sharing. The SAIA, for its part, has recently conducted a thorough vetting of personnel in the wake of scandals involving the participation of some agency members in extortion and accusations of having planted evidence.

Currently, as crime levels remain high, there is heavy pressure for Congress to pass the DIGICI law, which, as previously mentioned, was being debated as this report went to press. In general terms, the legislative initiative complies with the Peace Accords by creating a model for police investigation and intelligence.

However, civil society sectors have pointed to several weaknesses related to the rules for checks and balances, especially regarding the invasion of privacy. For example, the initiative leaves open the possibility of wiretapping but does not establish clear regulatory guidelines for its implementation. In addition, the current set of regulations that govern such privacy issues is part of the Criminal Procedural Code, which has been suspended pending review by the Constitutional Court. The use of wiretapping, therefore, would first require a decision by the Court and subsequently a redrafting of the Code to include specific regulations for wiretapping. The one sure point is that this issue should be regulated by the Procedural Code, not by internal regulations within the intelligence services.²⁷

It is also extremely important to clearly define the mandate of this institution, and in particular the power it would have vis-à-vis "national counter-intelligence." Without a clear definition of parameters, there is a risk of reviving a policy where the police exercise political power in investigating dissidents and members of the opposition. It is also necessary to establish strict democratic controls and accountability systems to guarantee that police intelligence operations do not violate individual rights. For example, strict rules should be established for actions that would invade privacy. While an intelligence

Recent Intelligence Reform Initiatives

Legislative Bill for the Creation and Functioning of the Civilian Intelligence Directorate (#2860)

- Contains several weak provisions but generally adheres to the spirit of the Peace Accords.
- Adequately structures intelligence functions within the Ministry of Interior.
- Effectively describes criteria under which information gathering can be used by authorities within the Ministry of the Interior to develop policies to combat and prevent common and organized crime.
- Requires stronger democratic controls, a clearer definition of the parameters of intelligence gathering operations, and the removal of language regarding the investigation of political activities.

Legislative Bill on the Intelligence Framework Law (#3287)

- Lacks the support of civil society.
- Violates the commitments made in the Peace Accords.
- Creates an autonomous entity with the capacity to gather and analyze information and also undertake intelligence operations.
- Redefines the mandate of the SAE, granting it the authority to conduct intelligence operations, including “social intelligence” operations.
- Concentrates all information gathered in the National Intelligence Center (CNI).
- Grants the intelligence services the ability to classify all activities, organization, procedures, methods, personnel, installations, sources, and information gathered as State secrets in the interest of national security.
- Lacks clearly defined internal and external democratic controls.

Legislative Bill on the Intelligence Framework Law (#3314)

- Product of a dialogue process between civil society and government officials.
- Approaches the reform of the intelligence system from a democratic security perspective.
- Is consistent with the Peace Accords in regard to the intelligence bodies that are to be established.
- Limits the role of the Office for the Coordination of Intelligence Services (CSI) to the coordination and technical direction of the intelligence system.
- Clearly delineates the intelligence functions between military, police and the SAE.
- Establishes external and internal democratic controls.

service could carry out foreign undercover operations, the investigatory arm of the police could only do so under strict judicial control.

Investigation and information analysis are both key elements for improving and guaranteeing the quality of life and citizen security. The lack of a coordinating body with clear regulations defined within a democratic framework seriously limits the ability of organizations responsible for criminal investigation to operate effectively.

Democratic Control

Democratic control is understood as the existence of a series of mechanisms that provide checks and balances on the powers given to intelligence services. It seeks to resolve the inescapable dilemma between the obligation to respect rights and guarantees and the need to allow intelligence services to function with a degree of secrecy. A system of democratic controls is designed to limit the abuses that may arise from the enormous powers (especially the power of confidentiality)

invested in intelligence services. The services should have internal controls including criteria for selection, training, and careers. There should also be external checks and balances exercised by Congress and the justice system, as well as by civil society, including the press.

As a complement to the reforms envisioned, the AFPC sought to lay a foundation for democratic controls. Along these lines it defines the following:

With a view to preventing any abuse of power and guaranteeing respect for the freedoms and rights of citizens, the Government undertakes to encourage the Guatemalan Congress to adopt the following: A law establishing modalities for the supervision of State intelligence bodies by a designated commission of the legislative branch.²⁸

This commitment has not yet been fulfilled. Congress continues to function with the same commissions approved in 1994. In spite of the fact that it could, with little difficulty, create a commission to supervise intelligence services, it has not taken the initiative to do so. The legislative branch should play a key role in designing the rules that define the spheres of action of the intelligence system as well as in the subsequent supervision and monitoring of that system.

Other fundamental elements in a system of democratic control are the distinction between external and internal intelligence and the separation of intelligence gathering services from the official government entities that have the power to detain people based on the information obtained. Given the profound impact that intelligence structures had on committing crimes against humanity against the Guatemalan population during the armed conflict, the AFPC clarifies these distinctions. In a democratic state, police investigation should be oriented toward criminal prosecutions, and any undercover work necessary to that end must have judicial authorization and abide by relevant legal statutes. Similarly, police authorities who have the power to arrest and detain also fall under strict judicial control.

In August 2005, two competing legislative initiatives aiming to establish a framework for the intelligence services were presented for debate in the Guatemalan Congress. These initiatives represent a step forward because there is currently no law that clearly defines the functions, jurisdiction, and permitted methods for the various intelligence bodies to gather information. The danger exists that the various intelligence agencies

will operate with only rudimentary guidelines and with no guarantees that they would adequately protect citizens from possible illegal actions or abuses.

Nevertheless, one of the proposals presented to Congress contains a series of disturbing articles that not only contravenes what is established in the Peace Accords but also puts at risk the consolidation of a democratic rule of law.

Legislative Initiative No. 3287 presented by retired General and congressional representative, Sergio Camargo, creates an autonomous entity called the National Intelligence Center (CNI) under the leadership of a director who would have cabinet-level authority and answer only to the President. The director could hold the post for up to twelve years. If the initiative is passed, the CNI would have the capacity not only to gather and analyze information but also to carry out intelligence operations.

This legislative initiative does not limit the kind of information that can be subject to intelligence gathering. Rather, it authorizes the CNI to gather and analyze information on any aspect of national life. As mentioned previously, this is particularly a cause for concern since the initiative would give the SAE, under the CNI, the power to gather information on “activities related to human, social, and economic development” that would help, among other things “to prevent effects and consequences of applying public policies that may not have desired results and that might generate activities or attitudes of rejection, inconformity, dissatisfaction, or popular unrest and disorder (...).”²⁹ This language is subject to many interpretations and could open the door to abuses such as putting political or journalistic opposition activity under a magnifying glass even when it presents no legitimate threat.

Furthermore, the initiative allows the CNI to categorize an extremely broad range of activities as national security matters, including any and all activities, organizations, methods, procedures, personnel, installations, sources, and information gathered or studied. This sweeping power exempts such information from the constitutional right of access to public information.³⁰ This means that when the CNI receives a request for information, it can simply declare the information a State secret, thus making it very difficult for any kind of effective control over the institution.

In the same way, the CNI would enjoy minimal oversight by the three branches of government. While

the legislative initiative mentions a special legislative oversight commission in the legislative branch, it also limits the access the commission would have to certain types of information. Nor does the initiative include any effective control from the judicial branch.

Representatives Otto Pérez Molina (Patriot Party) and Alba Estela Maldonado (URNG) have presented an alternative legislative proposal, No. 3314. This bill was originally the product of a dialogue between civil society and government officials. While there are some substantive aspects of the bill that need improvement, this initiative approaches intelligence reform with a democratic vision in a way more consistent with the Peace Accords. Whereas the other legislation proposes the creation of an autonomous entity to control intelligence functions, this initiative recommends the creation of an advisory board (the National Security Council [CNS]) and a coordinating body (Office for the Coordination of Intelligence Services [CSI]) to govern intelligence matters. The CNS would be made up of Ministers and would serve to advise the President on intelligence matters.³¹ The CSI would coordinate among the various entities within the intelligence community rather than serve as an autonomous agency.³² This delegation of responsibility between the two organizations limits the possibility that either could independently direct an intelligence operation. This specificity also clearly draws the line between military, police, and strategic intelligence and implements a system of democratic checks and balances by the executive, legislative, and judicial branches.

In terms of transparency, the AFPC also includes a law that would guarantee access to “military or diplomatic information relating to national security, as provided for in Article 30 of the Constitution, and containing provisions on classification and declassification procedures and levels.”³³ While a legislative initiative on this subject was presented to Congress in 2003, the final passage was not possible due to the introduction of numerous changes in the final version of the bill. A new legislative initiative designed with the support of various sectors has been presented to Congress, but is not expected to reach the floor for debate this year. Encouragingly, the CC has already issued two rulings in which it declares that the military budget does not constitute a matter of national security and therefore cannot be considered secret.³⁴

In addition to the previously mentioned law governing access to information, the Accords also include a *Habeas data* provision that highlights the need to

address other problems involving access to information, specifically the need to catalog old security records according to subject matter and turn them over to the appropriate offices—the Ministry of the Interior or the Defense Ministry—according to the nature of the information.³⁵

Little progress has been made in this area. In general, records reside within the offices where they originated. One proposal presented by the Association for the Study and Promotion of Security in Democracy (SEDEM) and supported by civil society organizations would create an independent commission charged with reviewing the records and defining the criteria for distribution and classification. This proposal has not advanced, however. The recent discovery of National Police and Army archives underscores the need to define clear procedures for organizing and distributing information.

Recommendations

The Peace Accords sought to establish clear mechanisms to transform the old security and intelligence apparatus within a framework of democratic security. While intelligence reform has advanced somewhat, it has also encountered serious challenges that threaten the consolidation of the new democratic institutions responsible for intelligence. Given Guatemala’s current challenge of finding effective and viable mechanisms to combat the scourge of common crime, organized crime, drug trafficking, and youth gang violence, it is necessary to define comprehensive and strategic policies. A fundamental component of this process is the conceptualization and definition of an intelligence system clearly framed within democratic principles.

One of the challenges that Guatemala currently faces is the lack of clear and defined state policies. An intelligence system governed by democratic principles must have two key elements: a legal framework and a system of democratic checks and balances. This legal framework should also ensure that the intelligence system functions in such a way that it respects international human rights norms.

Intelligence policy should emerge from a process of dialogue and fit within the vision for democratic security established in the Peace Accords. It is therefore necessary to strengthen the capacity of civil society in this area. Civil society can contribute both to the

formulation of intelligence policies and to the tasks of monitoring the functions and activities of the intelligence system.

In addition, the implementation of internal and external checks and balances is essential for the democratic system to function adequately and for the constitutional rights and freedoms of the citizenry to be fully guaranteed and respected.

Given concerns about the possible transfer of former security service personnel to the new intelligence system, a careful vetting of employees is in order. In order for the relevant authorities to avoid the possibility of corrupting the new system, the vetting process should be based on both a review of service records from the old intelligence apparatus as well as performance evaluations.

In order to successfully and effectively consolidate intelligence services, it is imperative that the Government of Guatemala take the following steps:

- Comply with pending AFPC commitments regarding the intelligence system;
- Consolidate the institutional structure of the Secretariat of Administrative Affairs and Presidential Security (SAAS);
- Strengthen the institutional nature of the Secretariat of Strategic Analysis (SAE) by

defining its mandate and functions, by establishing mechanisms that ensure consistency and insulate analysts from pressure and changes in the government.

- Establish the Civilian Intelligence and Information Analysis Department (DIGICI), clearly defining its mandate and jurisdiction and setting parameters to prevent the abuse of civil liberties.
- Pass a Framework Law that adheres to the commitments made in the Peace Accords and to international democratic standards in the area of human rights and civil liberties as a first step toward defining the normative and functional framework of the intelligence system. Also, institutionalize mechanisms to guarantee their effective implementation, supervision, and monitoring.
- Develop adequate systems of internal and external democratic controls for the intelligence service. These should include the appropriate and active participation of the various branches of government. Create a congressional commission to supervise intelligence services, establish judicial controls for carrying out undercover operations, and define clear mechanisms to regulate access to information on military or diplomatic matters of national security as well as procedures for the classification and declassification of information.

WOLA Staff

Joy Olson
Executive Director

Geoff Thale
Program Director and Senior Associate for Cuba and Central America

Lori Piccolo
Development Director

Jason Schwartz
Operations and Financial Manager

Gastón Chillier
Senior Associate for Human Rights and Security

Jeff Vogt
Senior Associate for Rights and Development and Brazil

John Walsh
Senior Associate for the Andes and Drug Policy

Adriana Beltrán
Associate for Guatemala and Media Coordinator

Laurie Freeman
Associate for Mexico, Security, and Drug Policy

Elsa Falkenburger
Program Officer for Cuba and Youth Gangs

Ana Paula Duarte
Development Assistant

Katie Malouf
Program Assistant for the Andes and Hemispheric Security

Kristel Muciño
Program Assistant for Mexico and Drug Policy and Intern Coordinator

Joel Fyke
Program Assistant for Central America, Rights and Development, and Brazil

Coletta Youngers
Senior Fellow

Rachel Neild
Senior Fellow

George Withers
Senior Fellow

Edited by **Adriana Beltrán**

Translated by **Kathy Ogle**

Notes

- ¹ Iduvina Hernández is the director of the Association for the Study and Promotion of Security in Democracy (SEDEM), a non-governmental organization founded in Guatemala in 2000 that promotes oversight and control of Guatemala's security services.
- ² Historical Clarification Commission, "Conclusions and Recommendations," *Guatemala, Memory of Silence* (Guatemala City: 1999), p. 17, paragraph 2. <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>.
- ³ The Recovery of Historical Memory (REMHI) Project was carried out by the Human Rights Office of the Guatemalan Archdiocese. The final report was released on April 24, 1998 in a ceremony conducted by Monsignor Juan Gerardi, who, two days later, was found murdered at his home in Guatemala City, his head crushed by a concrete block.
- ⁴ *Guatemala: Memoria del Silencio*, op. cit., Volume II, p. 75.
- ⁵ *Ibid.*, p. 74.
- ⁶ Kate Martin and Andrej Zreplinsky, *Servicios de seguridad en una democracia constitucional: principios de supervisión y rendición de cuentas* (Guatemala City: March 2002), pp. 7-8.
- ⁷ Because "police investigation" and "police intelligence" are generally used synonymously, it is necessary to distinguish between them here. Activities aimed at gathering information to take particular criminal cases to court are essentially police investigation or criminal investigation activities, and these require special investigative powers. The compiling and analysis of information needed for making decisions on matters of security policy fall under police intelligence. These activities should not be based on intrusive actions and should be focused on analyzing statistics or identifying patterns. In this report we use the term "police investigation and intelligence" to refer to the system that fulfills both functions.
- ⁸ Both the Overall Agreement on Human Rights, signed in 1994, and the Historical Clarification Commission (CEH) Report also contain basic commitments that require state action to reform the security and intelligence services.
- ⁹ The Unit for the Protection of Human Rights Workers reports that more than 100 attacks took place between January 1 and June 22 of 2005. A July report released by the Myrna Mack Foundation documents attacks and threats against judges, lawyers and other participants in the legal process, some of whom are also victims of these illegal groups.
- ¹⁰ Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unity (URNG), *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, (Mexico City; September 19, 1996, Commitment #36) <http://www.c-r.org/accord/guat/accord2/strengthening.shtml>.
- ¹¹ *Ibid.*, Commitment #47.
- ¹² The packet of constitutional reforms included measures to restrict the armed forces to the area of external security, strengthen civilian control over the National Civilian Police (PNC), limit the powers of the presidency, and guarantee the rights of indigenous peoples, among others. Nevertheless, due to the number of changes proposed, the lack of a public education campaign, a well-financed opposition campaign, and a low level of electoral participation, the constitutional reforms were voted down in a referendum.
- ¹³ Lorena Seijo and Francisco González Arrecis, "Grupo especial de reacción," *Prensa Libre*, 8 March, 2005, p. 2.
- ¹⁴ *Ibid.*, p. 2.
- ¹⁵ Susan Peacock and Adriana Beltrán, *Poderes Ocultos en la Guatemala Post-Conflicto* (Washington D.C.: January 2004), p. 21.
- ¹⁶ Inter-American Human Rights Court, Myrna Mack Chang vs. Guatemala (Costa Rica: Inter-American Human Rights Court, November 25, 2004), pp. 88-91, http://www.corteidh.or.cr/serieicpdf_ing/serieic_101_ing.pdf.
- ¹⁷ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #46.
- ¹⁸ Reports from international donors indicate that the total investment for the training of SAAS agents reached US\$ 36.06 million.
- ¹⁹ Congress of the Republic of Guatemala, *Dictamen Favorable a la Iniciativa de Ley que Dispone Aprobar la Ley de la Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia de la República*, No. 2782 (Guatemala City: 2003), p. 6.
- ²⁰ A letter signed by the fired SAAS agents informed the press about the situation, which the authorities claimed was necessary in order not to incorporate former members of the Presidential General Staff (EMP) into the new organization.
- ²¹ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #47.
- ²² *Ibid.*, Commitment #47.
- ²³ Miguel González Moraga and Pavel Arellano, "Complejo control militar de civiles," *Prensa Libre*, 8 May 2000.
- ²⁴ Myrna Mack Foundation, "Análisis de las Iniciativas de Ley: Ley Marco de Inteligencia, No. 3287, Ley de Creación y Funcionamiento de la Dirección General de Inteligencia Civil -DIGICI No. 2860," September 2005, p. 4.
- ²⁵ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #48.
- ²⁶ The SAIA was created in October 2000 to take the place of the Anti-Narcotics Operations Department (DOAN). DOAN was dissolved after it was discovered that Department officials had participated in the March 2000 disappearance of 1,600 kilos of confiscated cocaine from their warehouses, and because of DOAN agents' participation in the extrajudicial execution of two people in the Department of Izabal.
- ²⁷ "Análisis de las Iniciativas de Ley," op. cit., p. 6.
- ²⁸ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #52.
- ²⁹ Congress of the Republic of Guatemala, *Iniciativa que dispone aprobar Ley Marco de Inteligencia*, No. 3287 (Guatemala City: August 1, 2005), p. 7.
- ³⁰ *Ibid.*, p. 9.
- ³¹ Congress of the Republic of Guatemala, *Iniciativa que dispone aprobar Ley de Inteligencia*, No. 3314. (Guatemala City: August 25, 2005) p. 6.
- ³² *Ibid.*, p. 7.
- ³³ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #52.
- ³⁴ On March 8, 2005, the Constitutional Court (CC) ruled that administrative actions related to Army purchases and contracts cannot be considered military secrets, increasing the possibility that the Public Ministry could continue the investigations of the members of the military linked to the embezzlement of US\$ 117,906 million (906 million quetzals) from the military coffers. Five months later, the CC also ruled that it was not unconstitutional to include the Army's financial archives in the process of investigating embezzlement from the Defense Ministry. This decision allows the possibility of continuing investigations into the actions of former president Alfonso Portillo, who is accused of making irregular transfers to the Army and a specific transfer related to the embezzlement case. Sonia Pérez, "CC limita alcance del secreto militar," *Prensa Libre*, 9 March 2005 and Sonia Pérez, "CC despeja ruta para extraditar a Portillo," *Prensa Libre*, 26 August, 2005.
- ³⁵ *Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society*, op. cit., Commitment #52. Archives of the National Police (PN), which operated until 1996, were recently discovered. These archives could contribute to shedding light on many of the actions of the security and intelligence apparatuses during the armed conflict. There is heavy resistance to making this information public, however. According to the Human Rights Ombudsman, the archives go back to 1905.

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To Contact Us

Washington Office on Latin America
1630 Connecticut Avenue, NW, Washington, D.C. 20009
Telephone: 202.797.2171 • Facsimile: 202.797.2172
Email: wola@wola.org • Web: www.wola.org

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Washington Office on Latin America
1630 Connecticut Avenue, NW, Washington, D.C. 20009