

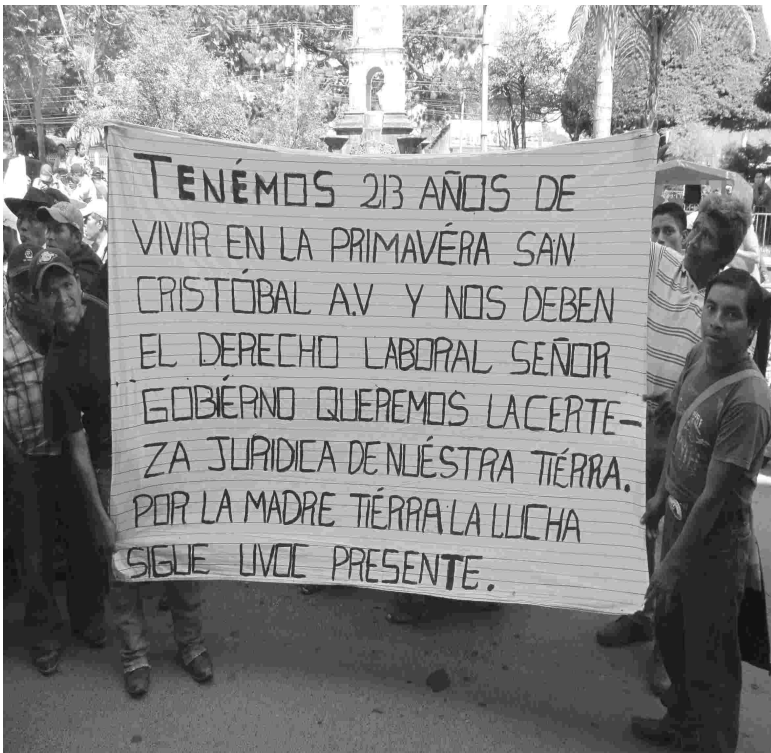


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PEACE
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GUATEMALA PROJECT

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The case of the Primavera estate, San Cristóbal, Alta Verapaz

Interview with Jorge Luis Morales, Lawyer for the Verapaz Union of Campesino Organisations (UVOC).

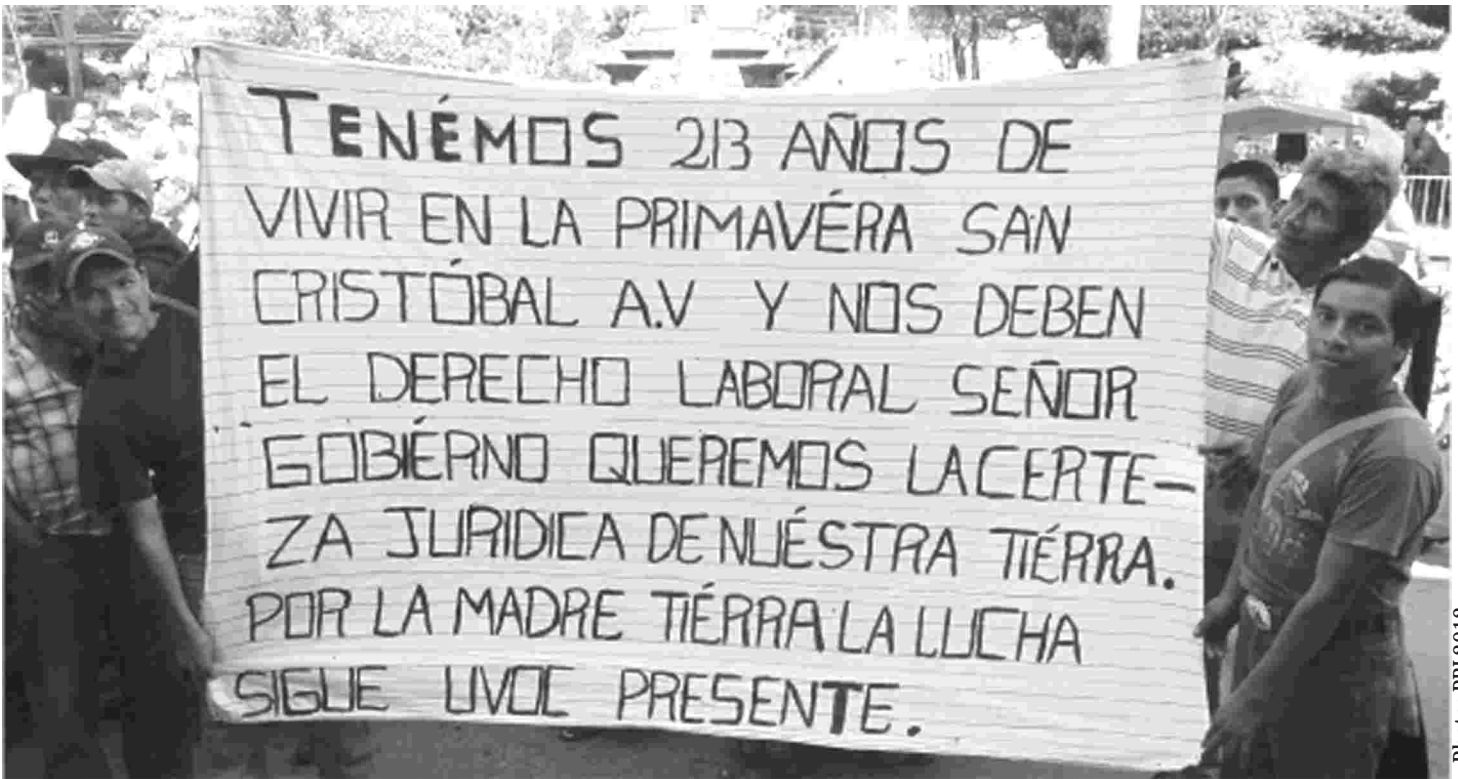


Photo: PBI 2012

Community members from the Primavera estate, San Cristobal, protest against the forced eviction of the '20 de Octubre' community, Cahabón. Cobán, Alta Verapaz, 19.11.2012

Jorge Luis Morales Fuentes, Guatemalan lawyer, gives legal support to a range of rural communities that are members of UVOC, a social organization that focuses its efforts on defending the rights and access to land of the indigenous and campesino populations in the departments of Baja and Alta Verapaz. PBI has accompanied UVOC since 2005, after threats and intimidations against some of its members due to their participation in the struggle of local communities to access land. Over the years, the organization has been carrying out this work through judicial processes, dialogue and negotiation.

In an interview with Carlos Morales (coordinator of UVOC) in 2011 (1), in an Alert in 2012 (2), as well as according to information received while accompanying UVOC in 2013 and during international observation in Alta Verapaz (3), PBI highlighted the escalation of threats and acts of aggression affecting various communities in this region—in particular, the community members living on the La Primavera estate in the municipality of San Cristóbal.

In an interview with lawyer Jorge Morales in November 2013, he addressed the recent history of the agrarian conflict on the finca La Primavera from a legal perspective. He shared his experience as a lawyer in a context where threats and criminalization profoundly affect the community he legally represents. Moreover he identified issues that continue to affect indigenous and campesino social movements whose focus is on protecting their land and resisting violations of their rights.

(1) PBI, "Interview with Carlos Morales (UVOC): Tierra, conflictividad agraria y derechos humanos en la región de las Verapaces", Third Buletín 2011. Guatemala, 2011.

(2) PBI, "Alert: Threats against UVOC, it's members and the communities that they support and accompany in Alta and Baja Verapaz". Guatemala, 06.02.2012.

(3) Monthly reports: PBI, "Monthly Information Package". Guatemala, 2013.

A historic perspective of indigenous peoples' land ownership, the possession and transfer of their property rights – particularly in La Primavera-, have not been addressed up until now and these go beyond the expectations of this interview. However, one of the starting points that put this interview in context, in general, is the history of land expropriations and forced displacements of communities and indigenous and campesino populations. Rural communities and social organizations denounced and thoroughly documented these events.

Could you summarize the nature and the root causes of the land conflict in the finca La Primavera?

The case of La Primavera is emblematic of the issue of agrarian disputes in Guatemala: it is a situation that we have lived through time and time again. The workers and their families' land tenure rights are a legitimate result of a working relationship and were violated when this property changed hands. The new landowners do not recognize this land tenure right and try to evict communities from the land.

La Primavera extends over an area of 43 caballerias (1 caballeria = 45 hectares), housing at least 400 mayapocomchí families. The land is extremely fertile and especially sought after by companies that specialize in mono-cultivation.

The companies Maderas Filitz Diaz S.A. and Eco-Tierra have claimed joint ownership of La Primavera since 2011. The former is a logging company whose objective is to use the finca for growing and cutting down trees. For this reason, the communities' presence on the finca that was established more than 200 years ago, is not in the company's interest.

The firm, Eco-Tierra, has been offering legal registration of the land with the help of credits proportioned by the bank, Banrural. If the debt owed cannot be paid back, the land can be repossessed by the company, which raises serious concerns. It is, in my opinion, another strategy of land expropriation and displacement.

One of the biggest problems in Guatemala is the lack of access to land, linked to its unequal distribution. Its exploitation at the expense of the communities who occupy and work it, or their forced eviction, is not a recent phenomenon given the country's colonial history. The policy of state development and the increase of crops cultivated for export on a large scale by national and transnational companies operating in the country, have worsened the agrarian problems. A trend characterized by a greater demand to get access to land traditionally occupied by campesino and indigenous communities.

According to the Secretariat for Agrarian Issues (SAA), 10 years ago nearly 200 cases of land conflicts were registered with the Presidential Land Commission; by mid-2012 this number reached 1,400. As a recent UN (4) study illustrates few countries' histories have been dictated by policies of private investment as has been the case in Guatemala.

What legal basis exists in support of the La Primavera community's right to stay on the finca?

The majority of the families that live in the Primavera are “mozos colonos”, a type of permanent worker that serves the “patrón” (landowner). In La Primavera, the owners refused to pay these workers salaries and benefits during their work relationship. This leads to a “stake in the ownership” (a type of in-kind payment) in a portion of the land owned by the patrón, where the worker has the right to live with his family. They are also granted additional auxiliary rights (among others, to raise animals, use land for pasture, grow crops and take advantage of the fruits of the land) (5).

The land tenure right comes from a contractual agreement – protected by the law – that continues to be valid even if the land where the worker and his family have established themselves is sold. The contract can only be concluded through a process called “finquito”, meaning with explicit consent, and in written form submitted by the worker and the patron.

Code of Work of Guatemala, Article 23, states:
“The change in ownership does not alter the current existing work contracts, in detriment to the worker.”

(4) Study referred to: United Nations Conference on Trade and Development, “Investment Policy Review: Guatemala”, 2011. See, in particular page 3.

(5) These aspects are also mentioned in the article 61 of the Guatemalan Work Code, among others, as part of the patron's obligations.

However, this is not convenient for the new patron, Maderas Filitz Diaz S.A. in this case, because it requires a substantial payment to compensate the worker's loss of his stake in his land.

Although little documented evidence exists to prove ownership, a letter written by the landowners on 23 January 1978, explicitly recognizes those *mozos'* right to use the land, to live and grow crops in parts of the estate that had always been used for this purpose.

The company denies the existence of a relationship between the *mozos* and the patron, arguing that they have not worked the land for the patrons' benefit since 1998. However, this is not a factor to take into account when it comes to terminating the contract; once a stake in the land exists, the *mozos* become "quasi-owners".

How can one prove that a *mozo-patrón* relationship exists?

The company maliciously destroyed the La Primavera workers' registry documents. I have seen them, but they no longer exist. Nonetheless, the testimonies given by the community and its members who lived on and worked in this land, are very valuable.

The size and history of the settlement, as well as the fact that the state itself built a health centre and a school in the finca, are a few of the many factors supporting the argument that the workers are not the "usurpers" that the company accuses them of being.

How would you characterize the conflict between the company and members of La Primavera?

The inhabitants of La Primavera are under constant threat and intimidation by private security personnel hired by the two companies. They carry arms illegally in the community (6), arrive armed to community meetings and threaten the participants with violence in an attempt to disrupt their activities.

The murder of two members of the Santa Rosa community in La Primavera in January 2013 – Sebastian Xona, 82, and Petrona Moran Suc, 72 (7) – still goes unpunished because the Public Prosecutor's Office (MP) has not complied with its obligation to investigate the crime. Although the media presented the incident as a robbery, the community remains concerned about the role of the company and its private security in the couple's death, given the local context and signs of torture on the bodies (8).

One of the strategies these companies use to weaken the social movements is to foment division in the community. Legal representatives of the companies have approached various members of the community, promising legal registration for their plot of land if they become their allies.

Despite threats and acts of aggression, the La Primavera community chose to take the legal route and enter into dialogue with authorities at regional and national round-table talks in order to achieve a peaceful resolution to the conflict. Unfortunately, more than 10 years of dialogue has not produced any results, this demonstrates the lack of political will by the state to resolve the conflict in a satisfactory manner for the community.

Can you identify other obstacles to the community's peaceful struggle for land in La Primavera?

The community has lived through a strong criminalization campaign, very much in line with the general phenomenon of criminalization of peaceful social protests across the country. Despite the long trajectory of a peaceful struggle for land in La Primavera:

- There are 15 legal cases open against community leaders.
- The accusations tend to represent supposed aggressions against company workers.
- Lack of evidence and lack of adequate investigation by the MP is common place.
- The MP is willing to process these types of accusations, however the investigations of the acts of aggression suffered by the La Primavera community do not progress.

(6) According to the article 66, of the Law that Regulates the Services of Private Security (Decree 52-2010), if a company is not on the register, it is not allowed to carry arms, which means that the company Eco-Tierra is currently carrying arms illegally in the La Primavera community.

(7) UVOC, "Condemn the murder of Sra. Petrona Morán Suc and Sr. Sebastián Xona on La Primavera estate, San Cristóbal, Alta Verapaz". Guatemala, 27.01.2012.

(8) UVOC, "Memorial of La Primavera community". San Cristóbal, Alta Verapaz, 12.01.2012. It mentions these aspects as well as others about the role of the Patron.

How have other public institutions reacted to this conflict?

The Human Rights Ombudsman (PDH) has promised to accompany the meetings between the SAA and the UVOC on the national level. Since then, especially since October 2013, the PDH office in Cobán has started to receive complaints from La Primavera community but has not dealt with any of these complaints filed.

The response of the National Civil Police (PNC) has been repressive and irregular. In March this year for example, two community leaders of La Primavera appeared in the Court of Cobán to respond to the accusations made by the workers of Maderas Filiz Díaz S.A and Eco-Tierra. At the entrance, they were detained by members of the Special Division of Criminal Investigation (DEIC). The DEIC did not have an arrest warrant nor an explanation about where the two were taken; they were freed a few hours later. The detention was meant to intimidate and represents a form of acting outside the law, as the two community leaders were detained for the same accusations that they had come to respond to voluntarily in court.

What is your assessment of the negotiation and dialogue processes with the competent authorities?

The state has responded inadequately and demonstrated negligence in terms of developing any strategies to prevent the land expropriation from the communities of AltaVerapaz. In this context, a forced eviction from the finca La Primavera continues to be a very real possibility.

The corresponding authorities, the SAA and the Land Fund (FONTIERRA), have not taken the responsibility to find a solution to the conflict, while they always prioritize the companies' economic interests over the needs of the community. On countless occasions this past year, the SAA has broken its promise to join the round-table talks. The SAA study concerning La Primavera presented in September 2013, lacked relevant details of the agrarian conflict and also failed to expand on its complexity.

As in the case of the forced eviction of 700 families in the Valley of Polochic in March, 2011, the state has continued with its policy of ordering evictions without soliciting information from the Land Registry (RIC). It also has not taken into consideration the accusations made by the communities against those who ordered the evictions, instead favouring the companies' interests.

The same happened at the eviction of the 20 de Octubre community, in November 2012, where 260 families were violently evicted from the estate of Secanquim in Cahabon in Alta Verapaz (9).

There is an ongoing legal process on La Primavera estate and community members live under a constant threat of eviction. In fact, on 19 July 2004 an order permitting the eviction was issued. Fortunately, it was considered invalid due to a legal appeal that we brought against it. During hearings at the MP, the company owners never fail to point out the possibility of reactivating that order, should the conflict not be resolved promptly.

What protection exists to prevent forced evictions?

According to international human rights standards, the mandatory displacement of a community should be limited to exceptional situations, only as last resort, and it cannot be executed violently (10).

Among other obligations, the Guatemalan State should adopt strategies, policies and preventive programs to address the problem. When there is no solution, the state is obliged to find alternative land and organize the resettlement process before any eviction would take place. More than 18 months after the eviction in the valley of Polochic, 500 families are still homeless, and more than a year after the eviction of the 20 de Octubre community, the 200 families are still awaiting resettlement.

According to Guatemalan legislation, the judge's order and the MP's recommendation to issue that order are required for a legal eviction. The judge should make sure that a thorough investigation had been conducted, exploring all legal claims that exist to that particular land. The reality however is the opposite; an order for eviction is issued without adequate investigation and in many occasions arrest warrants are issued against community leaders for "aggravated usurpation".

(9) PBI, "Alert: Forced evictions and economic investment projects without community consultations: Concerns and petitions to the international community to protect human rights defenders working on agrarian conflicts". Guatemala, 16.01.2013

(10) Office of the High Commission for Human Rights in Guatemala (OHCHR), "Basic principles and guidelines about the evictions and the displacement generated by development", Annex I to the report from the Special Rapporteur for adequate housing, as part of the right to an adequate living standard, 11.06.2007

What does the felony of aggravated usurpation entail and how is it used?

In 1996, the penal law was reformed to include the felonies of “usurpation” and “aggravated usurpation” in the legislation (definitions in the articles 256 and 257 of the penal code). As a result, it became possible to resolve conflicts over land occupation through the penal route. This felony is used to criminalize the occupation of private lands, which poses a problem for those *mozos* who lack documentation of their title to a land that the current owner plans to evict.

It is an 'in flagranti' crime, where the sole presence on the land for which an eviction was issued, leads to the presumption of an illegal occupation, without exploring the potential rights of those occupying it. The introduction of this crime has opened the way to a process where the assumed land owner files a complaint for usurpation with the MP, presents papers proving his ownership of the land and some evidence that alleged invaders occupied his property (11).

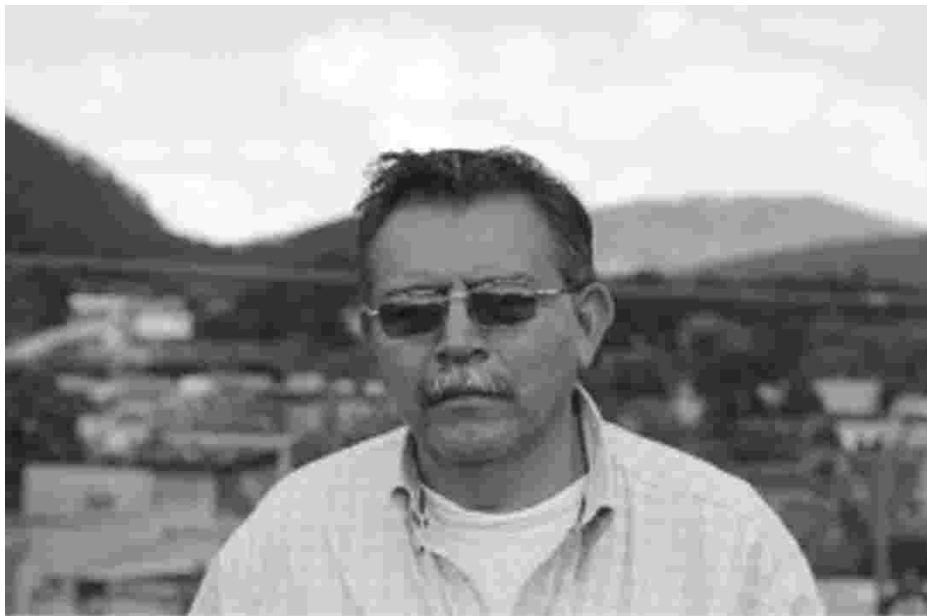


Photo: PBI 2013

Jorge Luis Morales, lawyer of UVOC.

My work with community members of UVOC and La Primavera is “ad honorem”. I support them because their cause moves me and because I believe in their struggle. Besides, it has allowed me to deepen my understanding of the law and the agrarian conflict in Guatemala.

(11) The OHCHR in Guatemala has criticised this practice in its study “The evictions in the Valley of Polochic. A look at the agrarian problem and the protection of human rights of q’eqchi communities”. Guatemala, 2013.

The ongoing criminalisation of social protest.

Criminal proceedings against human rights defenders: worrying trends, patterns and their impacts.



Photo: PBI 2013

March of the 12 communities of San Juan Sacatepéquez on the day of the inauguration of works at the cement plant. Guatemala, 19.07.2013

“The Inter-American Commission on human rights reiterates that states must ensure that their authorities or third parties will not manipulate the punitive power of the state and its bodies of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders” (12)

The term “criminalisation” has various definitions, but generally involves publicly discrediting human rights defenders and misuse of the criminal justice system through pressing criminal charges and the issuing of arrest warrants against human rights defenders. The desired effect is to instil, in the political sphere and the public consciousness, a sense that defenders are involved in illegal activities. By doing so, their work is undermined and de-legitimised.

Despite the adoption of the UN Declaration on human rights defenders (13), those working in this area in Guatemala continue to be in a vulnerable position. They receive threats, are attacked, and persecuted for the work they carry out. This has the effect of shutting off the political spaces in which they operate.

According to Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, there is a growing labelling of defenders by state authorities, the media and other non-state actors, as “terrorists”, “enemies of the state”, or “political opponents” who “threaten state security, public safety or the protection of health or morals.”

The Special Rapporteur expressed serious concerns regarding this tendency, saying it increases their vulnerability and de-legitimises their work (14). In addition, the State is increasingly resorting to taking legal action against human rights defenders. This legal action takes the form of detentions (on occasion without charge or under false charges), and the criminalisation of their political activities (15).

In October the Guatemalan Human Rights Defenders Protection Unit (UDEFEQUA) published a report in which they registered 60 legal claims brought against defenders in 2013 (16); they registered 65 in 2011 and 86 in 2012 (17).

The International Commission of Jurists (ICJ) has also criticised the use of the law by state authorities, landowners and large national and international companies, to suppress legitimate activism in the areas of land and indigenous rights (18).

(12) IACHR, “IACHR Closes its 149th session”, Annex to the Press Release Issued at the Close of the 149th Session, Washington D.C., 08.11.2013. On 18 November, the American Bar Association’s Center for Human Rights, Georgetown Law’s Human Rights Institute, and the Robert F. Kennedy Center for Justice and Human Rights, issued the report “Tilted Scales: Social Conflict and Criminal Justice in Guatemala” which discusses how systematic challenges in the justice sector impact the rights of defenders.

(13) On 9 December 1998, by virtue of resolution 53/144, the United Nations General Assembly adopted the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”

(14) United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 30 December 2009, A/HRC/13/22, paras. 27 and 28.

(15) Ibid. para. 31

(16) UDEFEQUA, “El acompañante, informe mensual”, Guatemala, October 2013.

(17) UDEFEQUA, “Quitémonos el Tabú, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Enero a Diciembre 2012” Guatemala, January 2013.

(18) ICJ, “Criminalización de la protesta social”, Guatemala, 2010. See also IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas”, March 2012.

Trends/patterns in Guatemala

PBI has noted with great concern over the past year that human rights defenders that we accompany in Guatemala have increasingly been under investigation and subject to criminal proceedings for their alleged involvement in criminal activity, due to their involvement in defending land rights.

The manner in which defenders are criminalised varies and usually has several stages, increasing in severity: stigmatisation and defamation by state authorities; the spreading of rumours by the media calculated to blacken defenders' characters; the issuing of arrest warrants and detentions. This has the effects of inhibiting or impeding participation in political activities in defence of rights recognised at the national and international level.

In the context of criminal proceedings brought against human rights defenders, the following irregularities are often reported as violations of due process: lack of information given to those subjected to criminal proceedings; arbitrary and unlawful detention; the issuing of arrest warrants that remain in force for years according to convenience, often without actually being executed; and undue delays in advancing criminal proceedings.



Photo: PBI 2013

Community assembly to welcome home chorti prisoners after their release. Las Flores, Jocotán, Chiquimula, 29.10.2013

Lack of access to information

One of the trends is the lack of, or partial access to case files in criminal proceedings. Several lawyers have commented on the difficulties they have encountered in obtaining their client's files upon requesting them at the Public Prosecutor's office.

The legal representatives of the Twelve Kaqchikeles Communities of San Juan Sacatepequez, have said that, in the cases of the detentions of Mariano Camey Car, Lorenzo Car Hernandez and Margarito Camey Zet and the arrest warrants issued on 6 July 2013 (19) - accused of alleged crimes committed in 2011 - that it was a month before he was granted access to the files held by the San Juan Sacatepequez Public Prosecutor's Office.

Similarly, Lolita Chavez, member of the Kiche People's Council (CPK), told us that she has found it very difficult to obtain information on the accusations made against her; she is aware that there are around 23 allegations of criminal conduct, but has been unable to access the files on her and so is unclear as to what charges she has been accused of.

The difficulties encountered by defenders and their lawyers in accessing information relating to the charges being brought against them represent a violation of due process and does not respect the right of the accused to be informed of the charges against them, making preparation for their defence difficult (20). In addition to this, the uncertainty makes them feel more vulnerable. The issuing of arrest warrants also contributes to creating an environment that allows rumours to spread. In addition to intimidating human rights defenders, these type of rumours create confusion, sow fear, and hinder the activities of the person subject to the arrest warrant (21).

PBI's international observers have seen these trends, on several occasions and in varying locations around the country in the course of the protective accompaniment we offer to members of the Central Campesino Coordination Chortí Nuevo Día, the Twelve Communities of San Juan Sacatepequez, the Peaceful Resistance of La Puya and the Association of Indigenous Women of Santa Maria Jalapa Xalapán (AMISMAXAJ).

(19) PBI, Alert "Legal accusations, arrest warrants and detention of members of the Kaqchikel communities in San Juan Sacatepequez". Guatemala, June 2013.

(20) International Agreement on Civil and Political Rights, Art. 9.

(21) Illescas, G., Los síntomas de autoritarismo del General: La violencia política disfrazada de Gobernabilidad, 'El Observador', Año7, N° 36 y 37, July- November 2012.

Arbitrary detention

Another element of the criminalisation process criticised by members of civil society organisations and communities, are arbitrary detentions and the failure to observe due process and detainee rights, rights guaranteed both nationally and internationally. According to the Inter-American Commission of Human Rights' report, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas," "there shall be sufficient evidence that associate the accused with the facts of the case, in order to justify an order of preventive deprivation of liberty" (22).

Instead, arrest warrants are ever more frequently executed during the very hearings they relate to. This practice has spread to various regions in the country and has a significant psychological impact on the detainee.

In some cases, those detained have been released within hours due to lack of merit, but on other occasions, they have remained in preventive custody for months on end while investigations are carried out. Witnesses have also reported excessive use of force by state authorities. There are also complaints that lawyers assisting the prosecutor - often hired by large companies - have attempted to co-opt prisoners or their families offering freedom in exchange for support of their commercial interests.

- San Cristobal, Alta Verapaz. – 3 March. Two members of UVOC and residents of La Primavera were arrested at the court entrance where they had arrived to attend a preliminary hearing and give their "first statement." After several hours they were freed and could attend court. Their legal representative considers these detentions as arbitrary and an intimidatory tactic.

- San Juan Sacatepéquez, Guatemala – 6 June. Three members of the Twelve Kaqchikeles Communities resisting the construction of a cement plant in their municipality, were detained after a summons to give their "first statement" at the Public Prosecutor's office. On 7 July, after the first hearing in their case, the judge found there was insufficient evidence on three of the four charges (threats, coercion and conspiracy) and they were released. The investigations into the fourth charge, "interrupted possession", continue.

- Jocotán, Chiquimula - 19 June. Opposite the Public Prosecutor's office, four inhabitants of the Las Flores community in Jocotán and members of the Indigenous People's Council and the Central Campesino Coordination Chortí Nuevo Día, were attending court for a pre-trial mediation hearing where they were arrested. After two of them made their "first statement," the judge ordered they be placed into preventive custody while the Public Prosecutor was given three months to investigate them for murder. The remaining two were released due to lack of evidence after few hours. In their case, excessive force was used during the arrests. They see their detention as an intimidatory tactic aimed at limiting the work they carry out in defence of their land rights. The two in preventive custody were freed on 28 September after four months in prison. The judge provisionally closed the case against them due to lack of evidence.

Undue delays in criminal proceedings

We have heard countless first hand accounts of hearings being postponed due to the absence of the prosecuting lawyers or the judge, and/or because the Public Prosecutor asks for more time to investigate. Defenders frequently find themselves involved in cases that go on for long stretches of time but are ultimately dismissed.

Among other concerns, being subjected to protracted criminal proceedings puts a strain on their already limited economic resources, and being linked to grave offences casts serious doubts on their character and de-legitimises their work. According to a report by International Cooperation for Development and Solidarity (CIDSE) on the criminalisation of social protest in Latin America, around 60% of charges levelled against defenders end up being dismissed (23).

This tendency has been reflected in the cases of criminalisation against members of the Twelve Communities of San Juan Sacatepéquez, the Central Campesino Coordination Chortí Nuevo Día, the Verapaz Union of Campesino Organisations, the Peaceful Resistance of La Puya and the Committee in Defence of Life and Peace of San Rafael Las Flores.

(22) IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 13.03.2008.

(23) CIDSE, "Criminalisation of Social Protest Related to Extractive Industries in Latin America – Analysis and Recommendations", June 2011.

Arrest warrants

Another trend that needs to be highlighted is the misuse of arrest warrants, which remain in effect for years but are not executed. These dormant warrants are often resuscitated in strategic moments, typically when those with warrants become more politically active. Activists have said that having an arrest warrant out in their name feels like a form of permanent intimidation that seriously restricts their personal freedom, limits the work they can carry out, and makes them feel like an outcast. One of the most emblematic cases is that of the Twelve Communities of San Juan Sacatepéquez, where it is estimated that there are 10 non-executed arrest warrants, including two from 2009. Notwithstanding the fact that they remain without execution for such long periods of time, these warrants are not withdrawn and remain valid. Having these warrants hanging over their heads like the sword of Damocles permeates every aspect of their every day lives, and makes them feel like prisoners in their own homes.

Here are a few examples of how defenders have been affected:

- a constant feeling of fear and vulnerability in every aspect of your life: we have heard criminalised defenders say things like “I no longer feel free,” “I feel closed off,” or “I have lost my autonomy in my daily life”;
- feelings of loneliness and isolation;
- a change in social status and acceptance by the local community resulting from smear campaigns that often accompany the pressing of charges. The effect is also commonly felt in the defenders’ professional life;
- loss of freedom of movement in cases where arrest warrants have been issued. Sometimes defenders can’t even leave their own campesino communities which has a serious impact on their livelihoods and family life. Comments like the following are typical: “I cannot go to buy seed any more which I need to grow my crops, or sell my produce; I feel completely cut off and unable to earn a living.”
- criminalisation takes it’s psychological toll on the whole family. Often the stigmatization does not stop with the parents, as its effect carry on to their children, which generates panic and instability within the family, making even the most basic of every day family activities, like going for a walk in public, difficult.
- in cases where defenders are remanded in custody for months on end (preventive detention), the economic impact on the family can be devastating. When the main provider is in detention, it sometimes leaves families no choice but to send their children to work. This is particularly so in campesino families where the family’s income tends to come from agriculture.
- detention can be particularly harrowing for women. A concern raised specifically by campesino and indigenous women defenders is the sexual abuse that women have fallen victim to in custody.

In spite of the wave of criminalisation that is sweeping across Guatemala, the peaceful and organised social struggle and mobilisation continues to represent the response of the diverse social agents as they continue to promote the defence and protection of civil, political, social, cultural, environmental and collective indigenous rights through a variety of organisational spaces and processes.

(24) Report IACHR, March 2012, op.cit.

The impact of criminalisation on defenders’ personal lives

Criminalisation not only limits defenders’ ability to continue with their work, but also affect their personal lives. Amongst other organisations, the IACHR (24) and the UN have expressed concerns as to the impact criminalisation can have on defenders, highlighting the emotional strain as an example of a violation of their right to physical and psychological integrity.

Human rights defenders accompanied by PBI have stressed how criminalisation has effected them and their families. Although each defenders’ experience is different, they all express pain, and constant changes to their daily routines.

CONAVIGUA 25 years fighting for the rights of Mayan women

Origin and early CONAVIGUA

On 12 September 1988, after three days of meetings, the National Coordination of Widows of Guatemala (CONAVIGUA) was created. Rosalina Tuyuc, a member of the National Executive of the organisation and one of its founders, recalls two contradictory feelings experienced during this time: Firstly, of great joy and happiness, at the creation of a platform for women the likes of which had never been seen before in the country. At the same time there was fear, not only because it put her life and the lives of the many leaders in danger, but also because it put their children at risk.



Photo: PBI 2013

Maya ceremony at the 25th anniversary of CONAVIGUA, Guatemala City, 12.09.2013

The roots of the organisation emerged a few years earlier. In 1985, across three departments of Guatemala; Quiché, Chimaltenango and Totonicapán, widows who had lost their husbands during the internal armed conflict began to work together to denounce the oppression of the Maya people. Their main objective was to strengthen the capacity and mobilisation of women, especially in rural areas. They focused on the defense of life and raising awareness of individual and collective rights, in a context of extreme poverty, human rights violations, high illiteracy rates, lack of access to health care and justice, and exclusion from decision-making.

Gradually, the movement gained recognition throughout Guatemala. A National Assembly held from 10 to 12 September 1988 led to the formal establishment of the organisation CONAVIGUA and the creation of the first National Executive Committee. "Dealing with the media was a big challenge for us" says Rosalina, "We knew how to fight for our rights, we knew resistance work, but many of us couldn't speak any Spanish and we knew little of how the national and international press worked. Over time we all learned how to deal with this situation" (25).

Since then, the work of women in the organisation has covered various areas. During the early years, CONAVIGUA played a leading role in the fight against forced military recruitment. In fact, during the first half of the 90s, it proposed an initiative for the option of serving the state through social work as an alternative to compulsory military service for young people. In March 1993, the proposal was submitted to Congress and backed by more than 35,000 signatures as part of an organised national and international campaign.

As one of the Oslo Accord commitments, the Commission for Historical Clarification (CEH) was created in 1993. Its objective was to carry out a truth commission that would provide objective information about what had happened during the period of armed conflict. Five years later (1998) "Guatemala: Memory of Silence" was published. CONAVIGUA and other Guatemalan organisations contributed greatly to the recognition in the commission's report of "genocide", as well as human rights violations against women, widows and orphans.

"Thousands of women lost their husbands, becoming widows and the sole supporters of their children, often without material resources after the destruction of their homes and crops in the scorched earth operations. Their efforts to rebuild their lives and support their families deserve special recognition"
(26)

(25) Interview with Rosalina Tuyuc, PBI November 2013

(26) Conclusions and recommendations under, srhrl.aaas.org/projects/human_rights/guatemala/ceh/sp/cap4pdf

The context of the Peace Accords and the demand for dignity



Photo: PBI 2013

Exhumation in Xepalamá, San José Poaquil, Chimaltenango, 18.06.2013

CONAVIGUA also took an active role in the framework of the Peace Accords, signed in 1996. At this time the Coordinating Body for the Reparation of the Mayan Peoples (CORPUMA) was created, of which CONAVIGUA was a member. Its objective was to regain dignity for the victims of human rights violations, urging the government to fulfil its obligation to fair and honourable compensation.

Following the signing of the peace agreement, the National Reparations Programme (PNR) was created. The Programme included the following measures: (27)

- Material restitution: legal registration of the land, restitution of property and investment;
- Financial reparations; individual and collective compensation;
- Psycho-social care and reparation: individual, family and community rehabilitation;
- Conservation and recovery of historical memory, exhumations and burials of victims of human rights violations, monuments honouring victims, among others;
- Cultural redress: rebuilding the social fabric and culture of indigenous communities and peoples.

Although the constitution of the PNR represented a positive step, CONAVIGUA and other social and human rights organisations have expressed concern about the lack of implementation of most of these measures. First, there is a limited budget for the program, the initial allocation was to be no less than 300 million Quetzales per year (28), however, in practice it never reached this figure and the budget was cut by half several years later (29).

The lack of funding meant it was impossible to implement all of the planned measures of the PNR. CONAVIGUA also feels that the PNR's focus has not been on all aspects of compensation. Economic compensation and the coordination of exhumations and burials has been given priority over other important measures such as cultural redress and psycho-social support.

(27) <http://www.pnr.gob.gt/index.php/medidas-de-resarcimiento>

(28) Pto 154 National Reparations Program ciidh.org.gt/sites/default/files/files/prog-nac-resarcir.pdf

(29) Pto 12 Situation of the Public Repair Policy of Guatemala. Network of Social Organisations and Victims of the Internal Armed Conflict Guatemala, March 2012

Exhumations and burials

In the framework of CONAVIGUA's struggle for the recuperation of historical memory and search for justice and dignity, PBI has accompanied its members regularly in exhumations and burials undertaken in several regions.

To carry out exhumations and burials, CONAVIGUA must first receive a request from families of victims of the internal armed conflict. The organisation then provides them with legal advice (e.g. obtaining authorisation from the relevant authorities) and coordinates activities with families, the Guatemalan Forensic Foundation of Anthropology (FAFG) and local authorities.

The first exhumations began in the early 90's through the work of CONAVIGUA and other organisations such as the Coordination of Organisations to counter Repression and Impunity and the Assembly of Civil Society. Feliciano Macario, CONAVIGUA's general secretary, remembers that these activities were very tense, in the midst of the ongoing armed conflict and the presence of Civil Defence Patrols (PAC) in the communities. CONAVIGUA continues to coordinate these processes.

"Women, although seemingly weaker, have been the most daring in facing the obstacles that exist in the communities," she says. Gradually, their work has extended to various departments.

Psycho-social support has been the most important dimension in these burial and exhumation processes. Since 1997 CONAVIGUA has worked with organisations that provide psychological support and since 2006 has its own psycho-social support team.

This team works before, during and after the process, giving psychological care to individuals, group workshops, as well as translating where necessary.

CONAVIGUA's work is based on the Maya world-view and this influences their exhumation and burial work, in the way that they support these processes, the way they remove remains from clandestine graves, psycho-social work, and so on.

"For us, even though the dead are no longer physically in this world, their spirits are with us at all times, supporting projects in our lives, helping us to feel calm and well, so it is important to understand that we are not alone " says Rachel, "we always walk together and are accompanied by our deceased relatives."

25th anniversary of CONAVIGUA

In the 25 years CONAVIGUA has existed its members have learned to read and write through literacy campaigns, they have trained thousands of women to recognise and defend their rights, have led the fight against forced military recruitment, against the presence of PACs and against militarisation. They have sought justice in international courts, and have overcome the fear of publicly speaking out against human rights violations committed in Guatemala.

On 12 September 2013 the organisation celebrated its twenty-fifth anniversary. 25 years since that National Assembly in which women who suffered the injustices of the armed conflict organised formally to fight for their rights at a national level.

Today CONAVIGUA is present in 12 departments, and has more than 60,000 members. It has opened up to other women who are not widows, but who are committed to the struggle for their rights as women and as indigenous people.

"It was twenty-five years since the establishment of CONAVIGUA and the start of the long journey towards justice and truth, and it has moved from strength to strength with various groups around the country, just as the trees are strengthened with deep roots in the hearts of the women members" (30).

(30) CONAVIGUA: On the Unity and Dignity of Women

News of our work



Photo: PBI 2013

Banners at the permanent protest camp at the peaceful resistance of La Puya, 03.03.2013

Between August and November of 2013, the work of the PBI Guatemala Project was to a large extent characterized by the context of the recent criminalization of social protests and the accompaniment of leaders of these social movements. During this period, we accompanied human rights defenders in many regions across the country who have had legal processes brought against them by various companies, their employees or by individuals related to them. This situation is of serious concern to social organizations, communities and indigenous people who are committed to peaceful protection of their land and its natural resources.

In the Golf of San José and San Pedro Ayampuc (Guatemala):

As part of the accompaniment of the Communities in Resistance of the Puya, we observed two judicial hearings in the capital. Various members of the organization are accused of kidnapping, coercion, issuing threats and illegal detention, relating to events that happened in November 2012 (31).

The continued absence of the accusing party at the hearings delayed the process and the first testimonies on the incidents, despite the fact that the accused continued to present themselves in the court. At the conciliatory hearing on 14 August in Palencia, the three plaintiffs and their legal representative insisted on upholding the charge, which they eventually presented at a hearing on 18 September. The judge dismissed the charges of kidnapping and the next hearings will address the remaining accusations.

On 14 November, we observed a hearing where four out of the eight defendants appeared, while according to the organization the other four had not received personally a notification about the hearing.

The Public Prosecutor's Office requested the issue of an arrest warrant against these four individuals who were absent from the hearing as well as against other Communities of Resistance members.

(31) In November 2012, employees of the mine 'El Tambor' arrived day after day to the entrance of the permanent encampment in front of the mine. They aggressively provoked the members of the pacific resistance. PBI Monthly Information Package No.110, Guatemala, November 2012.

In Jocotán (Chiquimula):

Towards the end of October, we accompanied various members of the Central Campesino Coordination Chortí Nuevo Día as well as the Lutheran minister José Pilar Álvarez Cabrera during his visit to the Public Prosecutor's Office in Chiquimula. This was part of the follow-up to the accusations against members of the Las Flores, Jocotán community, who had been in provisional detention for more than four months after being accused of serious crimes (32).

Due to lack of evidence, the case was provisionally closed and both individuals were released from detention on the same day. At the same time a two-month period was granted to the Public Prosecutor's Office to investigate the case and present evidence.

In San Juan Sacatepéquez (Guatemala):

We continue to accompany the 12 Kakchiquel communities of San Juan Sacatepéquez. Within the context of peaceful resistance against the construction of a cement factory in the municipality, three community leaders are accused concerning events that occurred in October 2011 and are facing a legal procedure. After their July 2013 detention, the judge deemed three of the four felonies to be without merit (threats, coercion and illegal association).

However, he opened the order of committal procedure for criminal charges, granting the Public Prosecutor's Office a three-month investigation period. In this context, we observed two legal hearings in October and November. The suspension of both hearings delayed the trial until December when the next meeting with the judge is planned. Apart from the three detained individuals, three other community leaders are also accused of the same crimes.

Cahabón y San Cristóbal (Alta Verapaz):

The communities of Alta Verapaz have also suffered the criminalization of their struggle to protect their land.

As part of the accompaniment of the Verapaz Union of Campesino Organizations (UVOC), on 22 August we accompanied lawyer Jorge Luis Morales to a hearing related to the eviction of the 20 de Octubre community. Four days later, we also accompanied him at his visit to the Public Prosecutor's Office in Cobán. He was summoned to answer accusations made by the company, Maderas Filitz Díaz S.A., against members of the La Primavera, San Cristóbal community. The company accuses them of misappropriations and demands that the La Primavera community leave the occupied area. Various community members had been detained and charged over events which occurred in January 2012, but continue to wait for the trial which is planned to take place in 2014.



(32) PBI, News of our work, Bulletin no.29, Guatemala, 2013.

PBI is an international non-governmental organization (NGO) which protects human rights and promotes non-violent transformation of conflicts.

At the request of threatened social organizations, it provides international accompaniment and observation. The presence of international volunteers backed by a support network helps to deter violence.

In this way, PBI creates space for local activists to work for social justice and human rights.

PBI in Guatemala

PBI maintained a team of volunteers in Guatemala from 1983 to 1999. During those years, it carried out accompaniment work with human rights organizations, unions, indigenous and campesino organizations, refugees and churches. In 1999, after an evaluation process, it was decided to close the project since the country had greatly advanced in the opening of space for the work of human rights organizations. Nevertheless, PBI continued attentive to the happenings in Guatemala through a follow-up committee.

From the middle of 2000, PBI began receiving a number of requests for international accompaniment. Due to these requests, PBI carried out an investigation in the field that made evident a turn in the direction and a losing of space for human rights defenders. In April of 2002, PBI decided to reopen the Guatemala Project in order to carry out international accompaniment and observation in coordination with other international accompaniment and observation in coordination with other international accompaniment NGOs. In April 2003, the new PBI office was opened in Guatemala.

The accompaniments realized by PBI after receiving a petition by the Guatemalan organizations are focused in three areas: fighting impunity, right for land and negative effects of the economic globalization on human rights.

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Mission

To improve the human rights situation in Guatemala and contribute to the democratizing process of the country through an international presence that works to maintain open political space for human rights defenders, lawyers, union members, campesino and indigenous organizations, and civil society groups that are suffering repression due to their work supporting human rights.

Objectives

1. To provide an international presence that contributes to the opening and protection of the political space of Guatemalan organizations that are working for an end to impunity, national reconciliation and compensation to the victims of human rights violations and the fulfillment of the commitments achieved through the Peace Accords.
2. To sensitize the international community of the human rights situation in Guatemala through the regular communication of information as well as frequent contact with international authorities and the diplomatic community both within and outside the country.
3. To sensitize the International Community of the need for creating and applying policies, tools, and mechanisms for the protection of human rights defenders.
4. To sensitize the Government of Guatemala that the international community remains alert and attentive to the human rights situation in the country through the diffusion of information and regular contact with the relevant national authorities.
5. To share experiences and tools with Guatemalan Organizations that help in achieving the general objectives of PBI in Guatemala.



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