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Human Rights and Intelligence Reform

by Carlos M. Salinas, Amnesty International

The Central Intelligence Agency (CIA) has long been associated with the overthrow of governments and the installation of bloody military regimes. Examples include the unseating of Mossadegh in Iran in 1953, the overthrow of Guatemalan President Arbenz in 1954, the failed invasion of Cuba in 1961, and the toppling of Chilean President Allende in 1973. The overthrow of governments is only one cause for notoriety. Other factors include: the creation, training, and funding of foreign armies and insurgents such as the Laotian Hmong during the 1960s and the Nicaraguan contras and Afghani mujahideen during the 1980s; assassination attempts of foreign leaders such as Cuba's Fidel Castro; giving LSD to unsuspecting U.S. citizens; and other "dirty tricks." There is a vast array of international legal instruments, including the Universal Declaration of Human Rights and the Geneva Conventions, that prohibit extrajudicial executions, "disappearances," torture, and ill-treatment in any circumstance. Yet these violent overthrows and the operations of CIA-associated armed groups routinely involve such crimes.

Key Points

- International law prohibits extrajudicial killings, "disappearances," torture, and ill-treatment under any circumstances, but these are frequent in the intelligence arena.
- The CIA is only one of many components of the vast U.S. intelligence community, which has an annual budget of more than $26 billion.
- Secrecy around intelligence activity has resulted in the public's ignorance about the magnitude and type of intelligence operations and has prevented meaningful participation in this area of government.

The CIA is just one of many components of the U.S. intelligence community, which has an annual budget of more than $26 billion (just disclosed in 1997, due to a lawsuit). Composed of a vast array of interlocking agencies, the complexity of this community can hardly be summarized in an organizational chart. There are, first of all, about a dozen so-called "national" intelligence agencies, the foremost including: the CIA, charged with intelligence analysis, secret human intelligence gathering, and covert action; the Defense Intelligence Agency, which collects and produces intelligence at the Pentagon; the National Security Agency, tasked with obtaining signals intelligence (e.g. electronic eavesdropping) as well as breaking and creating codes; and the National Reconnaissance Office, which manages satellite collections. In addition, national intelligence is produced by components of each of the military branches; by small offices in the Departments of State, Energy, and Treasury; and by the Federal Bureau of Investigation. Then there is "joint military intelligence," which includes numerous programs and agencies designed to provide intelligence for defense-wide military requirements. Finally, there is "tactical" intelligence, comprising hundreds of programs in various agencies that are intended to provide intelligence support to military commanders on the battlefield.

This multifaceted intelligence network gathers information about topics or human "targets," often without the knowledge of the target and managed so that the target remains unaware. This is especially the case with signals intelligence such as electronic eavesdropping. In other cases, intelligence is gathered directly from foreign officials or other individuals who have agreed to provide the human intelligence information in exchange for financial or other compensation. Information is also obtained and exchanged formally through liaison relationships with foreign intelligence agencies.

Covert action is yet another intelligence operation. Not limited to gathering information, a covert action is any operation in which the hand of the U.S. is to remain hidden. A key concept for such actions is that of plausible deniability—the ability of the president to disavow any U.S. knowledge of involvement in the action. The legal basis for covert actions is derived from the National Security Act of 1947, which states that as part of its role the agency will perform "other functions and duties related to intelligence…"

Secrecy is safeguarded by the National Security Act's protection of "intelligence sources and methods from unauthorized disclosures." This secrecy has resulted in the public's ignorance about the type and magnitude of past and current intelligence operations, leaving citizens with little effective means of influencing this area of government. What little is known is due to declassification of intelligence information and, occasionally, to unauthorized leaks. Yet, until last year (and only thanks to a lawsuit) the public did not even have access to the overall budget of the intelligence community.

The CIA and some of the other intelligence agencies have been notorious for encouraging (or otherwise associating with) those committing gross human rights atrocities—i.e. torture, ill-treatment, disappearances, and extrajudicial executions—or similar violations of the laws of war. These crimes may result from a covert operation instigated by the U.S. government, such as a coup d'etat or paramilitary action, or may be committed as a matter of course by a human intelligence source (also known as an "asset") employed by the agency. Intelligence agencies also have liaison relationships with their counterparts overseas, many of which may be notorious violators themselves.

Covert action, as defined by law, is "an activity or activities of the United States government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States government will not be apparent or acknowledged publicly." This includes propaganda operations and other public information or disinformation campaigns as well as the channeling of funds or other support to a political party or group. Covert action also involves military or paramilitary operations that can result in serious human rights violations.

For instance, the 1954 overthrow of Guatemalan President Jacobo Arbenz and the 1973 toppling of Chilean President Salvador Allende were followed by reprisal killings and long periods of military rule marked by human rights violations. CIA-supported insurgencies such as the Nicaraguan contras or Afghani mujahideen have violated humanitarian law by killing noncombatants and recuperating wounded soldiers (*hors de combat*). Thus, the U.S. government, by undertaking such covert activity, is linked to the commission of gross human rights atrocities and violations of humanitarian law.

Human rights violators who are U.S. intelligence sources or "assets" may well conclude that the U.S. government approves of their actions. By continuing relationships with such criminals and not turning them over for prosecution, the U.S. government further encourages criminal activity. Furthermore, by shielding criminals from scrutiny using the "sources and methods" rationale (which argues that sources and methods of obtaining information must be protected), the U.S. government could be considered an accomplice. A similar problem exists in liaison relationships with foreign intelligence agencies, especially those involved in counterinsurgency (e.g. Guatemala's G-2 or Colombia's recently disbanded XX brigade) and steeped in violations. In all such cases, the intelligence community has amassed a wealth of information that could be relevant to human rights investigations and prosecutions. But because of the rationale that sources and methods should be protected, this information is not shared, and the violations and atrocities continue.

The Freedom of Information Act (FOIA), passed in 1966 and amended in 1986, established the right of access to federal records, except when the records (or portions of them) are protected from disclosure by any of nine exemptions or by any of three law enforcement exclusions. Exemption 1, for example, protects national security information concerning national defense or foreign policy from disclosure. A key category of this exemption is—once again—that of sources and methods. Although courts may enforce the public's right to access this information, they usually deny disclosure, accepting the intelligence agency's position that divulging such knowledge would damage national security. In fact, courts have ruled that sources and methods do not even have to be classified to be withheld from the public, thereby drastically curtailing oversight of intelligence.

Top administration officials acknowledge that the FOIA process is long, cumbersome, and—thanks to heavy censorship—rarely yields any useful information in sensitive human rights cases. In spite of this, activists, family members, lawyers, and journalists continue to file FOIAs, because there are few other avenues for obtaining this information.

There have been several recent studies on intelligence reform, but they have not directly addressed the effect of intelligence operations on human rights. Among the most important are studies by: the Commission on Protecting and Reducing Secrecy in Government (March 1997), also known as the Moynihan Commission, which led to a bill calling for the creation of a federal office on declassification; the Commission on the Roles and Capabilities of the United States Intelligence Community (March 1996), or the Aspin-Brown Commission; and the House Permanent Select Committee on Intelligence (April 1996).

The only recent government report to really address the human rights impact of intelligence activity is the Intelligence Oversight Board's Guatemala Report of July 1996. Mandated by President Clinton due to revelations that the CIA was implicated in the murders of innkeeper Michael DeVine (a U.S. citizen) and guerrilla commander Efraín Bámaca Velásquez (husband of U.S. citizen Jennifer Harbury) the report addressed these high-profile incidents and a few cases involving U.S. citizens whose rights were violated in Guatemala. The report failed, however, to make the needed human rights recommendations. In the case of the 1989 abduction and torture of Sister Dianna Ortiz, the report avoided a conclusion, citing an ongoing inquiry by the Department of Justice. But when the Justice Department finished, it classified its report, denying the information to Sister Dianna and the public.

Key Problems

- The CIA, in particular, is notorious for encouraging (or associating with) those engaged in torture, ill-treatment, disappearances, and extrajudicial executions.
- Intelligence "assets" and agencies involved in human rights violations may well interpret their continuing relationship with the U.S. as a tacit endorsement of their activity.
- The shielding from scrutiny of "assets" involved in human rights crimes (citing the sources and methods rationale) may well implicate the U.S. government in those criminal activities.

Policymakers and citizens should support the following measures to ensure that respect for human rights is central to the reform of the intelligence apparatus.

Covert Action

If covert actions are not abolished altogether (see *In Focus: The Intelligence Apparatus*, Vol. 1, No. 13), they must at least conform to international human rights and humanitarian laws prohibiting gross human rights violations. This conformity should be built into the development of the "finding," the mechanism by which the president approves a covert action. All findings should ensure that the operation is consistent with international human rights and humanitarian law by prohibiting those conducting the operation or their agents from violating (or encouraging the violation of) human rights and humanitarian standards. Currently, a finding must meet certain conditions, including timely notification and specification of participants. It cannot authorize "any action that would violate the Constitution or any statute of the United States." Although the Constitution provides for adherence to international treaties, it is possible that such treaties have been interpreted very narrowly and are considered applicable only in U.S. territory.

Key Recommendations

- Covert actions should not be conducted if they will result in extrajudicial killings, disappearances, torture, or ill-treatment.
- There should be no transfer of resources to anyone or any institution implicated in human rights crimes.
- All information relevant to solving a human rights crime should be given to the affected families, judicial authorities, and the public.

Congressional oversight committees should not only discuss the human rights impact of any covert action but should also require a human rights impact report on each executed action to determine whether or not the certification was accurate. If an official, agent, or third party commits a human rights crime, the perpetrator should be handed over for prosecution.

"Assets" and Liaison Relationships

There have been press accounts of the removal of unproductive "assets" implicated in human rights atrocities. Although intelligence agencies are not legally barred from employing human rights violators, if the U.S. government is to fully support human rights and the rule of law, it should not pay or support anyone involved in atrocities. Intelligence agencies must be barred from employing as "assets" any individual involved in human rights violations. Intelligence recruiters must thoroughly screen would-be informants to ensure that they have not been implicated in such activities, and these recruiters must be subjected to penalties if they knowingly employ a human rights violator.

Current "assets" should be reviewed to ensure that they are not implicated in violations. If they are, payments should cease immediately, and they should be delivered to the proper authorities for prosecution. U.S. agencies should also review the human rights behavior of all foreign intelligence agencies with which there is a liaison relationship in order to stop any transfer of resources to those with poor human rights records. The rise and fall of the XX brigade in Colombia might be a good case to study in this regard.

Congressional oversight committees should be informed of the screening of potential informants as well as any case in which an "asset" is implicated in human rights violations. Congress should require the intelligence community to ensure that such informants cease their activities, are removed from the payroll, and are handed over for criminal prosecution.

Declassification of Secret Information

Unless there is an ongoing criminal investigation that would be jeopardized, information that can clarify a human rights violation or abuse should be automatically released to victims' families and their legal representatives as well as to judicial authorities. This should include (but not be limited to): the sequence of events of a crime; the identity of the perpetrator—including intellectual authors—and their motives; and the whereabouts of a victim's remains if the violation is a "disappearance."

Congress should amend the Freedom of Information Act to eliminate exemptions of information about human rights crimes. Victims, survivors, and the public should have access to this information.

Congress should pass the Human Rights Information Act (H.R. 2635/S.1220), which would declassify documents about human rights violations in Guatemala and Honduras and establish a process for the release of other human rights information. Congress should also pass the Government Secrecy Act (S. 712), which would establish a federal declassification entity.

Carlos Salinas (csalinas@aiusa.org) is the Advocacy Director for Latin America and the Caribbean at the Washington Office of Amnesty International USA.

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Editors
Martha Honey (IPS)
Tom Barry (IRC)

Production
Grant Moser

Communications Director
Erik Leaver (IRC)

Orders and subscription information:
Mail: PO Box 4506
Albuquerque, New Mexico 87196-4506
Phone: (505) 842-8288
Fax: (505) 246-1601
Email: resourcectr@igc.apc.org

Editorial inquiries and information:

IRC Editor
Phone: (505) 388-0208
Fax: (505) 388-0619
Email: resourcectr@igc.apc.org

IPS Editor
Phone: (202) 234-9382/3 ext. 232
Fax: (202)387-7915
Email: ipsps@igc.apc.org

Website: http://www.foreignpolicy-infocus.org

Sources for More Information

Organizations

Amnesty International USA
304 Pennsylvania Avenue SE
Washington, DC 20003
Voice: (202) 544-0200, ext. 235
Fax: (202) 546-7142
Email: admin-us@aiusa.org

Center for International Policy
1755 Massachusetts Avenue NW, Ste. 312
Washington, DC 20036
Voice: (202) 232-3317
Fax: (202) 232-3440
Email: cip@ciponline.org

Center for National Security Studies
2130 H Street NW, Ste. 701
Washington, DC 20037
Voice: (202) 994-7060
Fax: (202) 994-7005

Federation of American Scientists
307 Massachusetts Avenue NE
Washington, DC 20002
Voice: (202) 546-3300
Fax: (202) 675-1010
Email: fas@fas.org

National Committee Against Repressive Legislation (GHRC/USA)
3321 12th Street NE, 3rd Floor
Washington, DC 20017
Voice: (202) 529-4225
Fax: (202) 526-4611
Email: kgage@igc.apc.org

National Security Archives
2130 H Street NW, Ste. 701
Washington, DC 20037
Voice: (202) 994-7000
Fax: (202) 994-7005
Email: nsarchiv@gwu.edu

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http://www.amnesty-usa.org/truthnow/hria.html

Center for International Policy
http://www.ciponline.org

Central Intelligence Agency
http://www.odci.gov/cia/

Defense Intelligence Agency
http://www.dia.mil/

Federation of American Scientists
http://www.fas.org

National Reconnaissance Office
http://www.nro.odci.gov/

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