

**Human Rights Analysis – Guatemala**  
**Guatemala Human Rights Commission/USA**  
**November 8, 2011**

On Sunday, November 6, Otto Pérez Molina won Guatemala's runoff presidential election, which comes at a time when the nation confronts record levels of violence, infiltration of organized crime into all levels of government, ongoing impunity for human rights violations, and extensive conflict over land.

The prevalence of violence in Guatemala is extremely alarming; in 2010, the rate of violent deaths reached wartime levels with an estimated 52 murders per 100,000 people, over 7 times the world average. The nation also struggles with high rates of poverty, malnutrition, and inequality.

Pérez Molina has promised to focus his presidency on combating crime and violence. Civil society organizations are concerned that his proposals for increased military presence and "iron fist" policies will lead to unjust criminalization, abuse of state power, and repression of indigenous communities. To crack down on crime, Pérez Molina has promised to extend criminal sentences, create a new militarized police force, expand video surveillance, and lower the age of criminal responsibility.

Many view the election of Pérez Molina as a return to military-style rule when the nation is still struggling to construct a functioning democracy. He will be the first president with a military background since 1986, an issue of concern and apprehension for many Guatemalans who lived through the repression and violence of the internal conflict at the hands of the military and paramilitary forces. Pérez Molina was military commander in El Quiché during some of the most violent years of the conflict. Charges have also been brought against him in the case of the forced disappearance of indigenous guerrilla leader Everardo Bámaca.

In this context, it will be important for the U.S. Congress to be aware of ongoing human rights violations several of which are discussed below.

Key challenges facing Guatemala:

- Tentative advances in cases stemming from abuses committed during Guatemala's internal conflict at risk from weakness and corruption in the justice system, threats against witnesses, and the lack of political will to hold high-level officials accountable.
- Organized crime networks that control huge tracks of territory and co-opt Guatemalan governmental and military institutions and terrorize the civilian population.
- Re-militarization as the army is increasingly used to fight organized crime.
- An under-funded, poorly trained, and notoriously corrupt police force.
- High rates of violence against women, including climbing rates of often brutal murders of women combined with impunity in 98% of reported cases.
- Vast conflicts over land as peasant communities are displaced, at times with deadly violence, to make way for mining, hydro electric and other infrastructure projects, tourism and large-scale, export-oriented agriculture.
- Frequent criminalization of and violent attacks against human rights defenders.

## **Tentative Judicial Advances for Violations from the Internal Conflict**

During the 36-year internal armed conflict (1960-1996), approximately 200,000 people were killed or disappeared. Over a million people were internally displaced and about 200,000 more fled to neighboring countries. There were over 600 massacres and over 400 villages were completely wiped off the map. The UN-backed Historical Clarification Commission report attributed 93% of the violence to the military and paramilitary forces. The Commission concluded that the government had committed acts of genocide against the indigenous Mayan population.

The Guatemalan justice system has been a contradiction in terms: in 94% of crimes reported in Guatemala, no one is ever sentenced<sup>1</sup>, a situation which contributes to the climate of violence and insecurity that prevails throughout the country. The vast majority of the perpetrators of torture, sexual violence, extrajudicial executions, massacres and other crimes against humanity have not been held accountable for their actions. On the contrary, many hold positions of political and economic power, or are involved in powerful organized crime and trafficking networks.

However, due to persistent pressure from civil society organizations, fifteen years after the signing of the Peace Accords, the walls of impunity for perpetrators of egregious human rights violations are beginning to crack. Though over 90% of cases trying human rights violations from the armed conflict remain in impunity, this situation is beginning to change, thanks in part to an active Attorney General, Claudia Paz y Paz, the work of the International Commission against Impunity in Guatemala (CICIG), and persistent civil society organizations.

Recently, a number of precedent-setting cases from the internal conflict have advanced in Guatemalan courts after years of stalling, including the case of forced disappearance of Fernando Garcia, the massacre of 250 in Dos Erres, forced disappearances and sexual violence in El Jute, the forced disappearance and torture of Everardo Bámaca, the massacre in Plan de Sanchez. In addition, a case charging General Efraín Ríos Montt and other senior Guatemalan officials with genocide has moved forward in Guatemala. A parallel case is under investigation in Spain.

However, the recent opening for advancement in war crimes trials in the justice system took decades to build and remains vulnerable. The many witnesses in precedent-setting legal cases live in rural areas and face incredible risks with limited resources.

Now is a critical time for U.S. attention to justice in Guatemala. Former Ambassador McFarland has provided important public support by attending hearings, accompanying survivors, and maintaining open communication with civil society organizations, and Ambassador Chacon has expressed a commitment to make human rights a priority. This support will be especially critical during Guatemala's political transition. National and international organizations are particularly concerned about paradigmatic human rights cases and the safety of witnesses and lawyers, especially with upcoming presidency of a former military intelligence officer himself accused of crimes against humanity.

## **Organized Crime and Connections to Guatemala's Military**

Organized crime is one of the most pernicious challenges facing Guatemala today as crime networks perpetrate widespread violence and infiltrate government institutions. (The phenomenon is not new, however, as many of the clandestine networks and trafficking organizations were active during the conflict.) The Zetas' massacre in May 2011 of 27 peasants in Guatemala's northern department of Petén, perpetrated to send a message to a rival, was a tragic display of that group's brutality and power. The Zetas are estimated to control large tracks of territory in Guatemala's northern and eastern departments, and there are an estimated 200-500 members of the group in Guatemala.<sup>2</sup>

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<sup>1</sup> Oscar F. Herrera, "Informe resalta niveles de impunidad e inseguridad en el país," *El Periodico*, 24 Mar. 2011: <http://www.elperiodico.com.gt/es/20110324/pais/192981/>

<sup>2</sup> International Crisis Group, "Guatemala, Drug Trafficking and Violence" Latin America Report N°39, 11 Oct. 2011: [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_2623.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2623.pdf)

The Zetas and other organized crime networks do not limit their scope to the drug trade. In fact, it is estimated that human trafficking currently moves more money than drug trafficking; money laundering is also an important piece of the puzzle that implicates both Guatemalan and international banks. The CICIG has been working with the Public Prosecutors Office to uncover and dismantle these networks; however the Guatemalan government has been unable to combat the increasing power wielded by organized crime groups.

Techniques used by the Zetas mimic those taught to Guatemalan “kaibiles” (the nation’s elite Special Forces unit) during the internal conflict. Former kaibiles have been arrested for their involvement in Zeta activity, including the May 15 massacre, and reports document active recruitment of kaibiles by the Zetas<sup>3</sup>.

### **Military and Militarization**

The Guatemalan military maintains much of the same leadership from the brutal internal conflict when members of that institution committed vast human rights abuses. Only recently have military personnel begun to face charges for their war crimes, and the overall vision and training of Guatemalan military has not changed significantly. In addition, the recent declassification of the military archives has been a superficial process that has not provided real access to important documents and plans from the conflict<sup>4</sup>.

Despite links between the military and organized crime, the Guatemalan government has increasingly used the military to accompany police for policing operations and citizen security initiatives. Pérez Molina has expressed plans to increase the size and scope of the military.

Civil society organizations in Guatemala continue to stress the importance of limiting military actions to border control and national security. Instead of increasing the role and responsibility of the military, it will be important for Guatemala, with the backing of the U.S., to strengthen public institutions, support police reform initiatives, and focus on prevention and improved investigatory capacity.

### **Violence Against Women**

Rates of violence against women in Guatemala are the highest in the western hemisphere. Thousands report sexual and domestic violence every month. Since 2000, over 5,500 women have been victims of femicide in Guatemala. The numbers have doubled over the past decade; on average, two women are brutally murdered each day. 411 have been victims of violent deaths in the first seven months of 2011. In 98% of these cases, no one is prosecuted for the crime. Most go unsolved because of the State’s failure to promptly open investigations, preserve crime scenes, collect evidence, perform adequate forensic tests and analysis, interview key witnesses, pursue leads or make timely arrests. Compounding this situation is a lack of prioritization of femicide cases, re-victimization and harassment of victims’ families, and gender bias in state institutions, including police and judges.<sup>5</sup>

### **Land Conflict: Ongoing tension over “Megaprojects” and Violent Evictions of Indigenous Communities**

One of the nation’s biggest challenges continues to be conflict over land and control of natural resources, with increasing multinational investment turning subsistence farmland into large plantations of sugar cane, African palm, or extractive mining projects. Human rights defenders who protest those projects are

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<sup>3</sup>Associated Press, “Cartel mexicano Los Zetas recluta ex kaibiles por US \$5 mil,” *Prensa Libre*, 4 June 2011: [http://www.prensalibre.com/noticias/justicia/Cartel-mexicano-Zetas-kaibiles-US\\_0\\_457754408.html](http://www.prensalibre.com/noticias/justicia/Cartel-mexicano-Zetas-kaibiles-US_0_457754408.html)

<sup>4</sup>Kelsey Alford-Jones “Debate over Guatemala’s Military Archives Continues,” *El Quetzal*, June/Sept. 2011: [http://www.ghrc-usa.org/Publications/El\\_Quetzal/Issue10.pdf](http://www.ghrc-usa.org/Publications/El_Quetzal/Issue10.pdf)

<sup>5</sup>Kelsey Alford-Jones “Guatemala’s Femicide Law: Progress Against Impunity?” May 2009: [http://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf)

among the most threatened group in Guatemala, according to the Guatemala Human Rights Defenders Unit (UDEFEQUA), which tracks threats against human rights defenders.<sup>6</sup>

According to a recent *Prensa Libre* article, land conflicts affect approximately 1,137,821 people across the country; 5,427 cases have been officially investigated by the Secretary of Agriculture (SAA) since 1997. The departments of El Quiché, Alta Verapaz, Huehuetenango, Izabal and El Petén are most affected – areas that also suffered some of the worst violence of the internal conflict.<sup>7</sup>

Under international law, indigenous communities have the right to free, prior and informed consent for projects carried out on their land; however, numerous hydroelectric and extractive industries projects (particularly gold, nickel and cement mines) have been operating in blatant disregard for the community referendums which have overwhelmingly rejected the presence of those industries. Companies have often acquired their land through questionable land titling or coercion, both open and subtle, of local families, exacerbating existing controversy over historic and collective land rights. Furthermore, inadequate environmental impact assessments have not guaranteed safe and secure closures of projects that use highly toxic chemicals and leave dangerous contaminants in the environment. Despite these problems, there are currently hundreds of licenses pending for new exploration and extraction projects.

- **The Marlin Mine in San Marcos**, operated by Montana Exploradora, a wholly-owned subsidiary of Canada's Goldcorp, Inc., has been one of the most controversial projects in the country. In early 2010, due to evidence of adverse health impacts and water contamination, the ILO recommended that the mine be suspended until adequate consultations had been conducted. In May 2010, the Inter-American Commission on Human Rights (IACHR) ordered the suspension of operations at Marlin to protect the health and lives of 18 communities from imminent and irrevocable harm. The United Nations Special Rapporteur on the Rights of Indigenous Peoples urged Goldcorp to comply directly with the IACHR's order and confirmed the failure to obtain consent from the local communities. And yet today, Marlin's operations continue in direct violation of the suspension orders. Meanwhile, attacks on and persecution of environmental and indigenous rights defenders in the province of San Marcos, where the mine operates, have been on the rise.<sup>8</sup> A recent report by the Global Development and Environmental Institute at Tufts University concluded that the mine was "contributing little to long-term sustainable development" and that that environmental risk is "exceptionally high and likely to increase."<sup>9</sup>
- **Cemento Progreso**, a Guatemalan cement company, has been working to open a cement mine and factory in San Juan Sacatepéquez. Communities have organized against the project, and come under significant threat for their actions. On numerous occasions in the last five years, community leaders and their families have been attacked by company workers. The government has done nothing to mediate the conflict or protect the rights and physical integrity of the community members.<sup>10</sup> The case was presented publicly to James Anaya during the UN Special Rapporteur's visit to San Juan in 2010.

Furthermore, the current administration (not unlike previous governments) has carried out a series of violent evictions of indigenous communities, using hundreds of heavily armed police, military – and open collaboration from private security and paramilitary forces – to displace communities from land of disputed ownership. In many cases, the government has interrupted its own dialogue process with communities in

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<sup>6</sup> UDEFEGUA "Informe Preliminar de Situación de Defensores y Defensoras de Derechos Humanos Enero-Agosto 2011" <http://www.udefegua.org/images/Informes/informeoctubre.pdf>

<sup>7</sup> Leonel Díaz Zeceña, "Conflictos por tierra eran mil 367 a junio" *Prensa Libre*, 12 Aug. 2011: [http://www.prensalibre.com/noticias/politica/Conflictos-tierra-mil-junio\\_0\\_534546545.html](http://www.prensalibre.com/noticias/politica/Conflictos-tierra-mil-junio_0_534546545.html)

<sup>8</sup> Center for International Environmental Law, "Guatemala Defies Human Rights Body, Refuses to Suspend Marlin Mine" 4 Aug. 2011: <http://www.miningwatch.ca/news/guatemala-defies-human-rights-body-refuses-suspend-marlin-mine>

<sup>9</sup> Lyuba Zarsky and Leonardo Stanley, "Searching for Gold in the Highlands of Guatemala: Economic Benefits and Environmental Risks of the Marlin Mine" Sept. 2011: [http://ase.tufts.edu/gdae/policy\\_research/marlinemine.pdf](http://ase.tufts.edu/gdae/policy_research/marlinemine.pdf)

<sup>10</sup> Peace Brigades International, "Emergency Alert about Attacks, Threats and Intimidations Occurring in the Communities of San Juan Sacatepéquez in Guatemala" June 2010: [http://www.peacebrigades.ch/fileadmin/user\\_upload/documents/publikationen\\_pbi\\_international/ALERT\\_PBI\\_Guatemala\\_-\\_San\\_Juan\\_Sacatepéquez.pdf](http://www.peacebrigades.ch/fileadmin/user_upload/documents/publikationen_pbi_international/ALERT_PBI_Guatemala_-_San_Juan_Sacatepéquez.pdf)

order to evict them.<sup>11</sup> The public and private armed forces have not only displaced families, but stolen food and belongings, burned down houses, and destroyed crops.

The pattern of forced evictions, the government's collaboration with paramilitary forces and the violent destruction of homes and crops evokes painful memories of the "scorched earth policy" used against the indigenous population during the most brutal period of the armed conflict.

- In March 2011, **14 Q'eqchi' communities – almost 800 families – in the Polochic valley** were violently evicted by hundreds of military, police and private security of the Chabil Utzaj sugar refinery. Since March, three people have been assassinated, and many more have been injured, attacked and threatened by the company's private security forces and hired paramilitary from surrounding communities. GHRC and a coalition of organizations filed a petition with the Inter-American Commission for Human Rights and Protective Measures were granted but have not been implemented. The government has done nothing to protect the families' physical integrity, access to food and water, and right to dignified housing.
- There is an ongoing threat of a second wave of violent evictions of **communities in and around El Estor**, due to the operations of the CGN nickel mine, Fenix Project (owned by Canadian company HudBay Minerals until August 5, 2011). The communities have suffered a long history of violence. Most recently, 11 Maya Q'eqchi' women were gang-raped by private security of the nickel company, along with members of the police and military, during a forced eviction of Lote 8. In addition, in 2009, school teacher Adolfo Ich was murdered by the security guards of the company. A lawsuit has been brought against HudBay in Canada for these actions.<sup>12</sup> Human rights organizations speculate that the recent sale of the Fenix Project to Solway Group, a Russian company registered in Cyprus, was an attempt to avoid facing these charges.
- In August, **300 people were forcibly evicted from a community in Sierra del Lacandón, Peten**, after being accused of collaborating with drug trafficking organizations. The International Commission of Jurists said Interior Minister Carlos Menocal had used an "illegal generalization" to justify the eviction<sup>13</sup>. The campesinos have publically complained that the evictions come as part of a development plan that includes four hydroelectric dam projects, a university for the study of biodiversity, an electric train and improved tourism facilities at Mayan cultural sites that President Colom hopes will attract 12 million tourists each year. Colom has stated that to achieve the park's development, the region needs to be cleared of "invaders." The region was remilitarized during the State of Siege in May 2011 in order to "protect park lands." Meanwhile, the contract of French company PERENCO to drill oil on lands partially located on national protected areas, was extended in July 2010 despite expected major environmental impacts of the project.

### **Criminalization of Protest and Defenders at Risk**

As communities, human rights defenders, and local organizations speak out against ongoing abuses and violations, they are frequently threatened or killed. In addition, the government has used a "state of emergency" or "state of siege" to quell social movements. For example, in the departments of Alta Verapaz and El Petén, the states of siege were implemented with the stated goal of combating organized crime, but also created conditions to dissipate community organizing efforts happening in protest of multinational projects.

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<sup>11</sup> The Government of Guatemala set up a body, the National System of Permanent Dialogue (SNDP), that is charged with mediating conflict between communities and large land owners, government institutions, or multinationals. This dialogue process, which was designed to resolve conflict before it became violent, has failed in almost every case. One of the most egregious examples was the multi-year process regarding reparations for the communities affected by the Chixoy dam, in which the parties involved agreed on a comprehensive reparations package, but it was never implemented.

<sup>12</sup> "Canadian Mining in El Estor" <http://www.chocversushudbay.com/history-of-the-mine>

<sup>13</sup> Comisión Internacional de Juristas, "Pronunciamento de la Comisión Internacional de Juristas ante el desalojo llevado a cabo en el Departamento de Petén Comunidad Nueva Esperanza el pasado 23 de agosto" 26 Aug. 2011: [http://www.youngcaritas.ch/media\\_features/gf/MM\\_ICJ\\_Guatemala.pdf](http://www.youngcaritas.ch/media_features/gf/MM_ICJ_Guatemala.pdf)

Increasingly, the government is criminalizing protest and arresting community leaders on charges such as terrorism, or trumped-up charges such as theft or murder. According to the Human Rights Defenders Unit (UDEFEFUGUA) there have been hundreds of cases of criminalization of defenders in the last five years and the objective of criminalization is paralyzing and weakening human rights defenders work. This criminalization goes against various recommendations made by organizations such as the Organization of American States, the UN and the Inter-American System for the Protection of Human Rights (the Commission and the Court) which have emphasized the importance of a climate of security for human rights defenders.<sup>14</sup>

In 2008, Hina Jilani, Special Representative of the Secretary General on the situation of Human Rights Defenders, emphasized the increase of criminalization of human rights defenders claiming that “This phenomenon affects all defenders who deal with rights related to land, the environment and the rights of indigenous peoples---rights whose enjoyment is considered to interfere with powerful economic interests.”<sup>15</sup>

- **Ramiro Choc**, perhaps Guatemala’s most well-known political prisoner, was pulled off a bus by the Guatemalan police in February 2008, and later charged with aggravated robbery. The charges have no foundation, and his arrest seems to be directly linked to his activism for rights of Q’eqchi’ indigenous communities in eastern Guatemala.<sup>16</sup> He is serving a six-year term. On July 31 of this year, he was moved from the Preventative Jail in Guatemala City to Pavon, where he has been placed in the general population and fears for his safety.
- The charges brought against **Jorge Luis López Sologaitoa**, Director of the Organization to Support an Integral Sexuality In the Face of AIDS (OASIS), which works to prevent HIV/AIDS and protect the rights of gays, lesbians, bisexuals, transgendered people and other sexual minorities, is another prime example of criminalization. On the Jan. 4, 2008, an arrest warrant was issued for Jorge López for alleged participation in an attempted murder. There was no evidence to support the claim and in June 2009, a judge dismissed the case. Despite the dismissal, this blatant use of unjust criminalization heavily impeded Jorge López’s work, both due to fear of arrest or violence, and the organization’s difficulty in supporting clients while focused on the defense of their own director. Jorge López explains “I stayed in the office for 58 days without leaving. I was afraid that if I left I would be captured, and it would be much harder to defend myself from jail. I was afraid I would be killed, so preferred to stay alone in the office.”

## Rising Violence, Extortion and Lack of Economic Opportunity Fuels Migration

Considering the lack of economic opportunity and rising violence in Guatemala, it is not surprising that every year thousands of Guatemalans seek work in the United States. There are an estimated 1.5 million Guatemalans currently living in the U.S., over half of whom are undocumented. Remittances have become one the largest sources of income for the Guatemala, accounting for 10% of GDP in 2009.<sup>17</sup>

Meanwhile, the number of Guatemalans deported from the U.S. has risen steadily every year over the last decade. In the first half of 2011, U.S. immigration authorities deported 14,478 Guatemalans, an 11.54% increase over the same period in 2010.

On September 24, 2011, Guatemala reiterated its request for Temporary Protected Status after the country was hit hard for the second year in a row by heavy rains and natural disasters. The initial petition

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<sup>14</sup> UDEFEFUGUA “Informe Preliminar de Situación de Defensores y Defensoras de Derechos Humanos Enero-Agosto 2011”

<sup>15</sup> Hina Jilani, “Report of the Special Representative of the Secretary-General on the situation of human rights defenders” Feb. 2009: <http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.10.12.Add.3.pdf>

<sup>16</sup> North American Congress on Latin America, “Guatemala’s New Civil Conflict: The Case of Ramiro Choc” 30 Aug. 2010: <https://nacla.org/node/6706>

<sup>17</sup> World Bank “Migration And Remittances Factbook 2011” 2011: <http://issuu.com/world.bank.publications/docs/9780821382189>.



was submitted in June 2010 after tropical storm Agatha caused widespread flooding, displacement and damage to infrastructure.

### **Recommendations to the U.S. Congress**

- Urge the Guatemalan government to fully implement the Peace Accords, including special attention to issues of indigenous land rights.
- Provide ongoing support to strengthen the Attorney General's Office, particularly the unit devoted to human rights cases, justice sector reform, and the Interior Ministry, as well as ongoing support for the UN-backed International Commission against Impunity in Guatemala (CICIG).
- Continue the ban on military funds for Guatemala maintained by the U.S. Congress. Furthermore, Leahy vetting of funds given to the military through DOD/Southcom should be a priority, particularly funds spent on training exercises with the kaibiles (Guatemalan special forces).
- Support national policies that focus on prevention which include civil society participation, with a focus on regions with the highest levels of conflict, and the dismantling of criminal, armed and clandestine structures operating outside the rule of law.
- Urge police reform initiatives that include a professionalization of the police force, effective internal investigations, specialized training on response to gender-based violence and investigation of femicide, and strengthening of the Specialized Criminal Investigation Unit.
- Push for a halt to all forced evictions until the government performs a detailed analysis of the land registry and the right of indigenous communities to their ancestral lands, and can insure compliance with international human rights obligations.

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