

April 8, 2009

To: Carlos Garcia, Greg Maggio, and Catherine Newling, State Department.

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Re: Guatemala Policy

As the Obama Administration defines its Western Hemisphere policies, we believe that U.S. policy towards Guatemala should strengthen its focus on human rights. Particular attention should be paid to bringing the perpetrators of mass atrocities to justice, protecting human rights defenders, strengthening labor rights, and supporting the efforts of the International Commission against Impunity in Guatemala (CICIG) to investigate and prosecute organized crime and develop Guatemalan judicial capacities to address this escalating problem.

1. Combat Impunity through Support of the CICIG

The U.S. government showed strong leadership in supporting the establishment of the International Commission against Impunity in Guatemala (CICIG) in 2007. Since then, the CICIG has achieved limited gains in combating impunity and has proven ready to assist the Guatemala government in investigating and prosecuting organized crime. Yet the challenges of fighting organized criminal networks are many and will be difficult to overcome without continued strong, active support from the U.S. government.

Recommendations:

The Obama Administration should:

- Emphasize that for CICIG to be effective, the Public Prosecutor's Office (*Ministerio Publico*) must fully cooperate by prosecuting criminal complaints filed by CICIG and implementing its policy recommendations.
- Provide operational and technical assistance to support the work of the CICIG, and collaborate closely with the CICIG in sharing relevant information and evidence on cases of mutual interest.
- Insist that the Guatemalan government meets its obligations to protect witnesses and victims whose testimony and courage are needed to bring criminals to justice.
- Continue financial support for CICIG in the administration's Latin America aid request for FY10, if CICIG's two-year mandate is renewed.

2. Help Bring Perpetrators of Past Mass Atrocities to Justice

The atrocities committed during Guatemala's 36-year civil war—including 200,000 killings, mostly of indigenous Mayans—were some of the worst committed in the region during the 20th century.

Unlike in Chile, Argentina, and other Latin American countries, in Guatemala there has been no serious judicial reckoning with the past, which has left free those accused of mastermind past atrocities.

In a recent ruling by the Guatemalan Constitutional Court barring extradition to Spain of top officials implicated in the atrocities, the court recognized the Guatemalan state's obligation to prosecute these crimes. A Guatemalan judge recently heard extensive witness testimony relating to these crimes and reported to the Public Prosecutor's Office that sufficient evidence exists to prosecute former police and military officials. The Obama Administration has a historic opportunity to support efforts to bring perpetrators of mass atrocities to justice in Guatemala.

Recommendations:

The Obama Administration should:

- Urge the Colom government to ensure that the Public Prosecutor's Office promptly investigates criminal complaints against senior police and military officials for mass atrocities and prosecutes those responsible.
- Encourage the Defense Ministry to disclose military archives from the period of the internal conflict that may aid in the investigation and prosecution of these crimes.
- Encourage support for a bill currently before the Guatemalan Congress that would curb abuse of the *amparo* (injunction) procedures that allow criminal defendants to endlessly delay proceedings.

3. Protect Human Rights Defenders

Attacks against human rights defenders are alarmingly frequent. Guatemalan organizations estimate more than 200 attacks against human rights defenders in 2008 alone. Human rights defenders at particular risk are those upholding economic, social, and cultural rights, and those seeking accountability for past mass atrocities. The Guatemalan state bears some responsibility for these attacks, given its consistent failure to investigate or punish those who commit such crimes.

Recommendations:

The Obama Administration should:

- Respond publicly and immediately to threats or attacks on human rights defenders, via statements by the ambassador and the State Department.
- Expand the existing U.S. embassy outreach with civil society organizations and strengthen supportive relationships with organizations that defend human rights.
- Encourage the Public Prosecutor's Office to prioritize the investigation of threats and attacks against human rights defenders and prosecute those who commit such acts.
- Support, strengthen, and create new mechanisms to protect human rights defenders such as an early warning system and a comprehensive system of protective measures.

- Publicly support those human rights defenders who are subject to baseless criminal accusations.

4. Reshaping the Merida Initiative and Strengthening Citizen Security

The Merida Initiative recognizes that citizen insecurity in Central America is the result of a number of factors and that a response to this insecurity must be comprehensive. We believe that the focus on gang violence in addition to drug trafficking in the Merida Initiative is important, as is the funding for youth violence prevention. We are concerned that the aid package offers little support for comprehensive, structural reforms of Central American police forces and instead overemphasizes specialized units without a comprehensive analysis of the needs of the police.

Recommendations:

For future years of funding for the Merida Initiative, beginning with FY10, the Obama Administration should:

- Substantially increase non-military funding for Central American countries under the Merida Initiative.
- Maintain the focus on comprehensive support for youth violence prevention, rehabilitation and law enforcement. Support municipal-level violence prevention efforts and associations.
- Support institutional police reform in Guatemala. This should include funding for basic police training, as studies suggest that Guatemalan police have little ability to protect crime scenes or handle evidence. Support should also be provided to enhance internal accountability mechanisms. For example, the U.S. government should support the prompt adoption and implementation of the Interior Minister's Executive Accord to reform the national police. The U.S. government should undertake a closer analysis of the strengths and the weaknesses of the programs in Villa Nueva. Critiques of this "model precinct" include reports that the program identifies gang members, many of whom are later extrajudicially executed.
- Support the development of a comprehensive strategy to address organized crime, in conjunction with CICIG, which improves the authorities' investigative capacity in the areas of financial crimes and money laundering.
- Use the reporting requirements in the Merida Initiative and the percentage of aid withheld to influence the Guatemalan government so that it investigates and prosecutes police and military officials who committed abuses during the country's civil war as well as those responsible for recent threats and attacks against human rights defenders. Vigorously apply the Leahy Law vetting restrictions.

5. Encourage the Guatemalan Government to Combat Violence against Women

In April 2008, the Guatemalan Congress passed a law against femicide, which establishes up to a 50-year maximum sentence for femicide and supports several governmental bodies to prevent domestic violence and violence against women, including increasing the number of specialized

prosecutors in violence against women. However, to date, no convictions have been made under the new law.

Over 3,800 women have been murdered in Guatemala in the past seven years. Many of the victims were raped, sexually assaulted, and tortured. Since 2005, 2,113 women have been murdered, with only 52 murder convictions; the murder rate for women is increasing each year.

Recommendations:

The Obama Administration should:

- Incorporate gender-based violence concerns in U.S. programs aimed at strengthening law enforcement and judicial sector institutions.
- Provide assistance to strengthen the Guatemalan government's capacity to respond to violence against women, including enhancing their capacity to investigate and resolve murders of women. This should particularly focus on the National Civilian Police and Public Prosecutor's Office.
- Through USAID, provide funding for national campaigns for women's rights and to raise awareness about the Guatemalan Law against Femicide and Other Forms of Violence against Women. Specific training on the implementation of the new law should also be offered for officials from the Public Prosecutor's Office, the judicial sector and the National Police (PNC).
- Through USAID, provide funding for efforts to support and accompany families and victims in their legal proceedings so that more victims and their families decide to speak out against these abuses and seek justice for their cases. This should include funding for victim and witness protection programs.

6. Support Community Rights to Free, Prior Informed Consent and Peaceful, Democratic Opposition to Resource Extraction Projects

Resource extraction has rapidly expanded in Guatemala with the government granting over 400 mining licenses on indigenous territory in recent years. Open-pit, cyanide-leeching mining destroys the environment and harms local communities.

Those peacefully protesting resource extraction are frequently prosecuted. Over the last two years, 15 poor rural individuals in San Miguel Ixtahuacán have been prosecuted for protesting the damage caused by the Marlin mine in San Marcos. Environmental activists have also faced increasing threats and intimidations. For example, Yuri Melini, director of the Center on Environmental and Social Legal Action (CALAS), was shot numerous times and nearly died. In another case, the municipal mayor of Colotenango, San Marcos, Antonio Morales, was killed on August 7, 2008.

Recommendations:

The Obama Administration should:

- Urge the Guatemalan government to respect popular consultations that reject mining and the construction of hydroelectric dams on their territory. These local consultations are a right guaranteed to indigenous peoples in Convention 169 of the ILO, which Guatemala ratified in 1996, and the UN Declaration on the Rights of Indigenous Peoples.
- Discourage the use of military force and excessive use of force by police, as well as the use of martial law, to deal with social conflict around controversial development projects.
- Create a monitoring body for U.S. multinational companies operating in Guatemala to assess the companies' actions, investments, and their effect on communities and the environment.

7. Renegotiate the Central America Free Trade Agreement (CAFTA-DR)

This trade agreement, which went into effect in Guatemala in 2006, has not delivered the benefits promised with poverty rates continuing to surpass 70 percent in the rural areas. Since the agreement went into force, Guatemala has experienced a tremendous influx of U.S. corn imports, which has undercut small farmers in a country where agriculture is still the primary source of employment. CAFTA-DR also facilitated foreign investment in open-pit mining, an activity that is environmentally destructive and widely opposed by people living in the affected areas, while at the same time limiting the government's authority to place controls on foreign investment to ensure that the benefits are equally shared by the Guatemalan people.

Recommendations:

The Obama Administration should follow through on the promises made by the President during his election campaign to renegotiate CAFTA-DR. The new administration should open a dialogue with government officials and civil society in Guatemala and the other CAFTA-DR countries to develop new rules to guide trade and investment that:

- Adopt, maintain and effectively enforce ILO core labor rights.
- Allow developing countries to protect their farmers from the dumping of U.S. corn, rice and other commodities, and to use adequate safeguards to ensure food and livelihood security and rural development.
- Eliminate intellectual property rights rules that impede the transfer of technology and knowledge, and that impede the production of generic medicines in each country in order to guarantee the human right to health care.
- Safeguard sovereignty over natural resources, especially energy and its use for just and sustainable national development.
- Eliminate investment rules that give investors the right to sue governments to obtain compensation for measures, including public interest and environmental regulations, which they deem may diminish the value of their investment.

- Protect the rights of indigenous peoples, including the right to prior and informed consent on development projects, as mandated by International Labor Organization (ILO) Convention 169, to which the Guatemala is a signatory.

8. Support Fundamental Worker's Rights and Protect Trade Unionists

Over the past three years, Guatemala has experienced a notable rise in violence against trade unionists, including the murder of four trade unionists in 2008. These crimes have not been investigated and the perpetrators have not been brought to justice. The violation of core labor rights is also prevalent throughout the country, including the widespread and systematic failure to respect the freedom of association and the right to organize and bargain collectively. The government remains incapable of enforcing its own domestic labor laws and the Ministry of Labor does not have the authority to sanction employers who commit labor violations.

Recommendations:

The Obama Administration should renegotiate CAFTA-DR to include provisions that will:

- Require the Guatemalan government to adopt and maintain in its laws and regulations the rights as stated in the International Labor Organization (ILO) core conventions and effectively enforce those laws.
- Strengthen the trade agreement by making sanctions of labor rights violations equal to violations of commercial agreements such that the same penalties are applied.

In addition, the administration should:

- Support qualified organizations to provide effective training and technical assistance to strengthen trade unions and workers in their ability to exercise their fundamental rights. Provide additional resources and training to Ministry of Labor staff and judicial authorities to ensure prosecution of violence against labor unionists and increased compliance by all employers with labor laws; however, funds provided directly or indirectly to governments should be conditioned on measurable and sustained progress on inspection and enforcement.
- Establish timelines and benchmarks for the government to implement the recommendations outlined in the January 16, 2009 report of the Office of Trade and Labor Affairs regarding the April 2008 CAFTA-DR complaint submitted by six Guatemalan trade unions and the AFL-CIO, including:
 - Enforcing the outstanding arrest warrants in the murders of union members and conducting criminal proceedings.
 - Advancing the investigation of pending cases of violence against trade unionists and issuing arrest warrants as warranted.
 - Strengthening the Special Prosecutor's Unit for Crimes against Trade Unionists.
 - Enforcing court orders for the reinstatement of unlawfully dismissed workers, including prosecution of employers who ignore the orders.

- Require that the government immediately and fully enforce its laws in each of the five cases outlined in the April 2008 CAFTA-DR complaint, submitted by six Guatemalan trade unions and the AFL-CIO, and make substantial progress on addressing the systemic problems outlined in the January 16, 2009 report of the Office of Trade and Labor Affairs within the six-month probationary period.

9. Immigration Policy

In addition, we encourage your administration to act decisively in support of fair and equitable immigration reform. The current economic and social situation in Guatemala has made it difficult for many citizens to support their families, which should be recognized in our immigration policy.

- Grant Temporary Protected Status for Guatemalan people residing in the United States. TPS is warranted given the series of natural disasters that has affected the country, just as it has been applied to other Central American countries.
- Declare a halt to immigration raids and deportations that cause undocumented Guatemalans and their families to live in a state of fear. Over 26,000 Guatemalans were deported in 2008; Guatemalans working and paying taxes in the United States should not be sent to detention centers, charged with identity theft, or separated from their families. Support and expand programs that provide humane alternatives to detention for individuals and families awaiting immigration proceedings.
- Suspend programs that promote and formalize the participation of state and local law enforcement in the enforcement of non-criminal federal immigration law. Such programs too frequently result in racial profiling and jeopardize police-community relations. Funding for local law enforcement should not be contingent upon participation in such programs. Federal immigration law is highly complex and its enforcement should be the exclusive domain of federal authorities. Funding for local law enforcement should not be in any way contingent upon participation in these programs.
- Protect the rights of all workers, including the right to organize, regardless of immigration status.

**For reasons of mandate, Human Rights First does not sign on to sections 7 and 9.*