

Guatemala Human Rights *UPDATE*

Guatemala Human Rights Commission/USA

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POLITICAL RIGHTS

Florida to Continue as Attorney General

12.21.07. President-Elect Álvaro Colom confirmed that Attorney General Juan Luis Florida would continue in his post as the head of the Public Prosecutor's Office (MP). After a tour of the MP's operations and facilities, Colom held a press conference with Florida, in which Colom affirmed that it is an arduous process to reengineer the MP and that Florida is the right individual for the job. Colom stated that he hoped the MP would be run with efficiency. When asked by reporters what if the opposite happened, Colom looked at Florida and responded, "Then we would speak with the Attorney General."

Nonetheless, Colom's decision to allow Florida to stay on as the Attorney General has many human rights organizations and defenders concerned. Helen Mack of the Myrna Mack Foundation acknowledged that it was good to respect Florida's four-year term of office, of which he has only completed two. However, she added, Florida should improve the performance of the MP and purge the institution because it is as corrupt as the police.

Carmen Rosa de León, a representative from the Teaching Institute for Sustainable Development (IEPADES), commented that while it is good to respect terms of office, Colom should take into account the past performance of the MP under Florida's watch. She added that in the last two years, the MP has carried out very few investigations demonstrating the lack of results from Florida.

RIGHT TO LIFE AND HUMANE TREATMENT

Congressman-Elect Murdered

12.22.07 Marco Antonio Xicay, 44, a member of the Patriot Party (PP) recently elected to the Guatemalan Congress to represent the department of Quetzaltenango, was murdered while traveling to the town of Zunil near the city of Quetzaltenango. Víctor Ruiz, the chief of the police's Criminal Investigation Division (DINC), said that no motive had yet been established for the crime.

Otto Pérez Molina, the PP's general secretary and former presidential candidate, expressed his sorrow for Xicay's death, noting that he had worked very hard during the electoral process. The PP urged the Ministry of the Interior to arrest those responsible and urged the Public Prosecutor's office (MP) to investigate the murder promptly and thoroughly.

Xicay is the third member of the PP to be murdered in two years. Rodolfo Vielman Castellanos, a PP consultant, was murdered in March 2006, and Aura Marina Salazar, secretary for the PP, was killed in October 2007. Congressional representatives from the National Unity for Hope (UNE) party have also been killed recently, including Carlos Hipólito Miranda and Mario Pivaral, elected to represent the departments of Santa Rosa and Alta Verapaz, respectively. During the 2007 presidential election cycle, called the "bloodiest campaign in history," more than forty attacks occurred against politicians and political activists.

CHILDREN'S RIGHTS

Adoption Law Established

12.21.07 Guatemala's new Adoption Law was legally established through its publication in the official record, titled the Diario de Centroamerica. Registered as Decree 77-2007, the new law will take effect on December 31, 2007. The legislation requires the government to provide protection and supervision for all children and adolescents cleared for adoption, through the creation of the National Adoption Council (CNA). The Council will act as the centralized authority for all adoptions and will be composed of three representatives appointed from the Supreme Court of Justice, the Ministry of Foreign Relations, and the Secretariat for Social Wellbeing.

To side step the new adoption requirements and protocols, thousands of adoption cases were recently opened in the hopes that they would be grandfathered in under the old laws. However, Human Rights Ombudsman Sergio Morales filed a petition in the Constitutional Court (CC) to block the Attorney General's office from continuing to make decisions in adoption cases that were opened at the end of December.

Alejandra Vásquez, a representative from the Social Movement for the Rights of Children and Adolescents, stated that her organization was satisfied with the implementation of the law but emphasized that the CNA should be established quickly so that it can begin to work immediately. Delegates from Covenant House-Guatemala and the Human Rights Office of the Archdiocese of Guatemala (ODHAG) have held meetings to strategize how they can assist in the law's implementation.

INDIGENOUS RIGHTS

Religious Discrimination Registered

12.22.07 The Presidential Commission against Discrimination and Racism (CODISRA) registered thirty reports of discrimination in 2007, the majority of which were against the practice of Mayan spirituality. In one recent case, the residents

of San Pedro La Laguna, Sololá, reported that the parish priest, Oliver Antonio Meléndez, suspended spiritual activities in the site known as Chiquicajay, and allegedly ordered the site to be destroyed.

Marco Antonio Curruchich, a member of CODISRA, said that the Commission documents the cases and then channels them to the appropriate institutions. He added that CODISRA provides consultation to governmental and private institutions in order to create mechanisms to combat racism and discrimination.

MIGRANT RIGHTS

New Shelter Opened for Migrants

12.18.07 Undocumented migrants detained in Guatemala now have a more humane place to stay while they await deportation. The new shelter was inaugurated by President Óscar Berger, Interior Minister Adela Camacho de Torrebiarte, and Director of Immigration Santos Cuc. The five story shelter houses up to 150 people, while the old building held only thirty, in dismal conditions.

In the past, when undocumented migrants were detained, they were locked up in seedy hotels in Guatemala City's zone 1, under police surveillance. They were not allowed outside, even to breathe fresh air. Others were housed in an antiquated building in zone 9. Women suffered the most since the zone 9 building did not have segregated spaces; many became victims of sexual harassment or abuse at the hands of other migrants. Under the old system, human trafficking victims taken into custody were locked up with other migrants, with no consideration of the special needs they might have. The new building provides them with individual rooms, private bathrooms, and psychological support.

A new data registration system has also been put into place that allows all Immigration agents to consult online files regarding the migratory status of visitors. The software also permits agents to verify the authenticity of passports, view the exact date that individuals enter and leave the country, and attend to visitors in a more expedient manner.

The system was donated by Mexico in 2006 and subsequently adapted to the needs and regulations particular to Guatemala. Immigration officials were provided with new computer equipment and special training on how to use the software.

Government Blamed for Immigration to US

12.19.07 The National Immigration Council for Guatemalan Immigrants living in the US (MENAMIG) publicly blamed the Guatemalan government for the increase in emigration to the US. They asserted that the Guatemalan government has failed to respect the International Convention to Protect the Rights of Migrant Workers and has also failed to adequately retain workers. Ubaldo Villatoro, a MENAMIG representative, explained that the Convention obliges countries to improve the quality of life for its residents. MENAMIG calculates that each year, more than 125,000 Guatemalans attempt to cross the border into the US but only 20% make it. The other 80% are intercepted in Mexico or at the US-Mexico border.

Record Number of Guatemalans Deported

12.23.07 Official Guatemalan records documented the deportation of 22,776 Guatemalans from the US in 2007, including more than one thousand minors. This data represents a twenty-four percent increase from 2006, when 18,305 Guatemalans were deported. Vice Minister of Foreign Relations Marta Altolaguirre said that the increase in deportations is due to the crackdown by the US immigration officials along the borders and along the highways.

CNDH Condemns Abuses Against Migrants

12.26.07 The Mexican National Human Rights Commission (CNDH) condemned the abuses recently committed against fourteen undocumented Guatemalans detained in Mexico by the Private Security for Civil and Commercial Protection Company (SPCE). According to the CNDH report, "The agents forced the Guatemalans to strip, raise their arms, crouch on floor, and jump around."

Venezuelan Doctors Provide Screenings

12.17.07 A group of Venezuelan ophthalmologists offered free eye exams to residents in the departmental seat of Sololá, and in neighboring Santa Lucía Utatlán and San Juan La Laguna, as part of a humanitarian effort to prevent blindness. Those in need of surgery will be taken to a hospital in Venezuela, where the operation will be performed. Jenny Figueredo Frías, Venezuelan ambassador to Guatemala, said that the endeavor is part of a larger project called the "Miracle Mission," carried out in conjunction with the Guatemalan Ministry of Health and Habitat for Humanity.

Stan Victims Still Living in Shelters

12.19.07 More than two years after Hurricane Stan ripped through and destroyed the hamlet of Panabaj, located in the municipality of Santiago Atitlán, Sololá, 741 families are still living in provisional shelters, waiting for the government to fulfill their promise of providing them with homes. The shelters, built from sheets of corrugated metal, do not provide adequate living conditions. According to Luis Antonio López, a survivor of Stan, many children have become ill as a result of the environment in the metal shacks, which are too hot during the day and too cold at night.

Just before Christmas, President Óscar Berger inaugurated the first of four reconstruction projects. As part of the first phase, seventy-five families received new houses. Authorities hope that eighty more houses can be constructed in the first few months of 2008, out of the 291 scheduled for the second phase. The third phase, planned for four hundred families, will include buying land, paving streets, and installing basic services, in addition to constructing permanent structures. The fourth phase has not yet begun.

Colom Dialogues with Multinational Banks

12.22.07 President-Elect Álvaro Colom and Vice President-Elect Rafael Espada met with representatives from the International Monetary Fund (IMF), the World Bank (WB), and the Inter-American Development Bank (IADB). In the meeting, Colom and Espada confirmed their commitment to reduce poverty levels, increase social funding, promote civic participation, and “try not to fall into too much debt.” The president-elect promised to take into account the observations made by the three institutions regarding poverty reduction and the prioritization of marginalized sectors, while Espada expressed a desire to maintain a “fluid, transparent communication” with them over the next several months.

Berger Increases Minimum Wage

12.31.07 After negotiations between business sector representatives and union leaders reached a stalemate on the minimum wage issue for 2008, President Óscar Berger decided to implement slight increases in the per diem wages for both agricultural and non-agricultural workers. Sources within the executive office said that the increase for agricultural workers would be 5.5%, or Q2.45 more per day (US \$0.33), equivalent to a Q1660.90 increase per year (US \$221.45). This amount would include an incentive bonus of Q250 (US \$33.33). For non-agricultural workers, the minimum wage would rise 4.5%, or Q2.06 more per day (US \$0.27), adding up to a Q1686.40 increase per year, (US \$224.85), including its respective bonus.

Nonetheless, Berger exempted export companies, factories, and businesses established in duty-free zones from paying the minimum wage increase. Berger allowed companies working under Decree 29-89, the “Law to Stimulate and Develop Exportation and Factory Work,” to sidestep the new increase in wages. Carlos Arias, a business sector representative, commented that any increase in the minimum wage needs to be tied to productivity in order to make it sustainable, rather than the cause for increased unemployment levels when employers are unable or unwilling to pay the increase.

RIGHT TO JUSTICE

Guatemala Joins the Central American Court

12.17.07 The Guatemalan Congress approved decree 79-2007, making Guatemala a member of the Central American Court of Justice (CCJ), effective January 15, 2008. At the request of any member state, the CCJ will mediate controversies that arise among members and resolve cases that affect any agreements or treaties designed to integrate Central America, with the exception of border conflicts or territorial or maritime disputes. The Guatemalan Congress must establish a nomination committee made up of representatives from academia, the Bar Association, and judges from the Court of Appeals in order to select who will represent Guatemala to the CCJ for a period of ten years.

LEGAL CASE UPDATES

Update on Assassination of Salvadorans

12.20.07 New developments in the assassination case of three Salvadoran representatives to the Central American Parliament (PARLECEN) and their chauffeur in February 2007 show that Manuel Castillo Medrano, an outgoing Guatemalan Congressman and Mayor-Elect for Jutiapa, is intimately connected to the assassinations. However, government representatives in Guatemala enjoy immunity from investigation and prosecution, unless it is stripped by a judicial order through a grand jury investigation. This status has often been taken advantage of by corrupt officials in Guatemala, most notably Efraín Ríos Montt, who has maintained a seat in Congress to avoid being tried for genocide and other crimes against humanity committed during the civil war.

Recently, Judge Telma Del Cid, designated by the Supreme Court of Justice (CSJ) to investigate the new developments regarding Castillo, ruled that there is enough preliminary evidence to implicate Congressman Castillo in the crime. In an extraordinary session, the CSJ magistrates decided to strip Castillo of his immunity as a member of Congress. If the court had not decided this prior to the end of 2007, then Castillo would have

automatically lost his immunity on January 14, 2008, when the new congressional representative for Castillo's district would have taken office.

Nevertheless, there are still many legal hurdles to overcome before Castillo can be arrested or tried for his alleged participation in the assassinations. Castillo boasted, in effect, double immunity since he is a member of Congress until January 14, 2008 and Mayor-Elect for Jutiapa, providing him yet another layer of immunity. According to the chief of the Public Prosecutor's Homicide Unit (MP), Álvaro Matus, the MP must now await Castillo's immunity as Mayor-Elect of Jutiapa to be stripped by the courts. If Castillo's immunity is stripped, then the official investigations against Castillo can begin in order to determine his level of participation in the assassinations of the Salvadorans.

The three judges in the regional Appellate Court of Jalapa, who have the authority to strip Castillo of his immunity as the Mayor-Elect of Jutiapa, have been provided protection from members of the National Civil Police (PNC) and the Justice Department (OJ). The chief justice of the Court, Judge Zina Guerra Giordano, reported that she and two other magistrates, Greta Monzón and Édgar Abel López, have received death threats over the telephone.

According to the MP, the cover-up for the assassination began when Castillo refused to identify the person whom he had spoken with by telephone more than sixty-one times before, during, and after the assassinations occurred. The suspected caller was dubbed "Montaña 3" by authorities, believed to be one of the intellectual authors of the crime.

CC Denies Extradition of Ríos Montt and Others

12.26.07 The Guatemalan Constitutional Court (CC) recently announced its decision to deny the extradition of Ríos Montt and former military officials accused of genocide in the Spanish National Court. The CC asserted that Spain did not have jurisdiction over crimes committed in Guatemala and therefore, refused to extradite the former military officials so they could stand trial. This ruling in favor of military officials responsible for some of the most egregious human rights violations during the civil war is a blow to justice, according to victims' family members and human rights organizations.

As a result of the CC's ruling, retired military officials, Ángel Aníbal Guevara and Germán Chupina Barahona were released from prison on December 22, after spending one year and fifteen days in jail on charges connected to Spain's case. The Fifth Sentencing Court, who had ordered their arrest for their alleged participation in the burning of the Spanish Embassy in Guatemala on January 31, 1980, ordered their release. The ruling also favored Generals Efraín Ríos Montt and Benedicto Lucas, as well as civilians Donaldo Álvarez and Pedro García Arredondo, who were exempted from being criminally prosecuted in Spain by the CC.

The International Commission of Jurists (ICJ) criticized the CC's decision. The ICJ contended that the CC incorrectly interpreted international law and did not recognize Spain's extradition treaty with Guatemala and the establishment of universal jurisdiction. The ICJ commented that Guatemala is obligated to investigate and hold accountable those responsible for crimes of genocide under the Convention for the Prevention and Sanction of the Crime of Genocide, signed by Guatemala in 1950. Since Guatemala has failed to investigate and process those responsible for these crimes, the ICJ asserted that the jurisdiction of the Guatemalan Penal Code is not valid and that the victims had every right to file the case in the Spanish courts.

Numerous human rights organizations also criticized the ruling. The Myrna Mack Foundation (FMM), the Rigoberta Menchú Foundation, the Association for Justice and Reconciliation (AJR), and the Center for Legal Action on Human Rights (CALDH) all stated that the ruling was handed down for political benefit. The lawyer for Rigoberta Menchu, who began the legal proceedings in Spain roughly nine years ago, plans to appeal the CC's ruling and attempt to push forward the cases.

News of this ruling disappointed Spanish Judge Santiago Pedraz, who had ordered the arrest of the accused in 2006. According to the news agency Europe Press, Judge Pedraz reacted with surprise, consternation, and "deep disappointment" at the lack of collaboration by Guatemalan authorities to resolve the cases.

Court Reopens Massacre Case

12.27.2007 The trial for the Río Negro massacre was reinitiated in late December in the Sentencing Court of Baja Verapaz, where testimonies were heard from two of the six accused of participating in the massacre. The trial had been suspended since October 2004, after the criminal proceedings had originally been initiated in 1993.

On March 13, 1982, Guatemalan soldiers and Civil Defense Patrollers (PACs) from the village of Xococ, in the municipality of Rabinal, Baja Verapaz, killed seventy women and 107 children from the village of Río Negro. The eighteen children who survived were forced to live for almost two years with the patrollers who killed their families. Seven people have been arrested in this case, and an eighth person, Carlos Chen López, died in jail from diabetes. Captain José Antonio Solares González, commander of the army unit that day, is still at large.

OTHER INFORMATION

New Peace Accord Proposal Scheduled

12.29.07 The National Peace Accords Council (CNAP) approved a new proposal for the fulfillment of the Accords, which were signed in 1996. Héctor Nuila, the coordinator for State Reforms for the CNAP, reported that two phases have been implemented for the fulfillment of the Accords: the first to be completed by 2010 and the second to be completed by 2014. Nuila explained that 70% of the reforms could be accomplished in the first phase since they do not require constitutional reforms. He commented that what they really need is “political will” from the new government.

One reform that does not need constitutional changes is the restructuring and professionalization of the National Civil Police (PNC) in order to guarantee the respect for human rights, especially for women. Other reforms include new taxation policies and better gun control laws, specifically aimed at reducing the number and caliber of weapons in the hands of civilians. With regard to rural development, the new government needs to

reduce poverty by implementing productive projects and make changes in the Land Fund organization (FONTIERRA), according to Nuila.

Other reforms that should be completed by 2010 include the reduction of the number of congressional representatives and the prohibition of the army’s participation in internal security matters. In addition, Nuila commented that a civilian could be appointed as the Minister of Defense.

Analysts See Few Advances in Peace Accords

12.29.07 Eleven years after the signing of the Guatemalan Peace Accords, which ended more than thirty-six years of armed conflict, there have been more delays than advances, according to several key analysts who participated in the process.

Alba Estela Maldonado, congresswomen for the Guatemalan National Revolutionary Union (URNG) and former guerrilla, and Gustavo Porras, a government negotiator for the Accords, agreed that the Accords are currently used as references for goals instead of being used as the principal goals. Maldonado said that, despite the signing of the peace accords, generalized violence has increased and the justice and security sectors in Guatemala have failed to combat it.

Porras stated that the new Colom administration needs to prioritize the socioeconomic situation first, the reduction of poverty second, and the implementation of tax reform third. Porras affirmed that some of the most important accords have been fulfilled, like the end to political violence and persecution, the opportunity for civic engagement, and respect for free speech. However, he acknowledged that other important aspects of the Accords, like the modernization of the State, have yet to be dealt with.

Raquel Zelaya, who formed part of the Commission to negotiate between the government and URNG forces, said that human rights, social spending, reconciliation, social and intercultural development, fiscal discipline, security, and justice are all topics that continue to be on the national

agenda. According to Zelaya, any project that is oriented towards societal change also requires a generational change in order to allow the time needed for people's attitudes and thought processes to evolve within the general population. One example that she cited is that of racism and discrimination, elements that do not change due to laws but to attitudes.

The analysts agreed that the agrarian situation has yet to be addressed and that reconciliation efforts have not been very effective. Compensation programs for victims have stalled, despite the fact that payments made to the former Civil Defense Patrols (PACs) have been accelerated. Judicial proceedings initiated against military officials for human rights violations have also stagnated in the courts. The analysts also observed that no efforts have been made to increase social spending, which continues to be one of the lowest in the region. Guatemala has the second worst index of development in the hemisphere, second only to Haiti, according to the United Nations Development Programme (UNDP). Guatemala also has the lowest tax base in the region because it has failed to implement tax reforms that would force those who earn more to pay more.

Zelaya hopes that Álvaro Colom's arrival to the presidency could bring the necessary push needed to achieve the Accords since the president-elect knows them well. Colom directed the National Peace Fund (FONAPAZ), making him intimately connected to the peace process.

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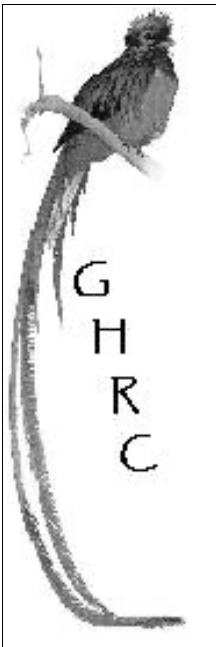
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