

## JOINT HUMAN RIGHTS FIRST AND FRONT LINE SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

### UNIVERSAL PERIODIC REVIEW: GUATEMALA MAY 5 -16, 2008

#### 1. Introduction

This report is a joint Human Rights First and Front Line submission to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for Guatemala's appearance before the second Universal Periodic Review session, scheduled from 5 to 16 May 2008.

This submission is consistent with the guidelines approved by the Human Rights Council<sup>1</sup> and the Civil Society Unit of OHCHR.<sup>2</sup> This submission focuses primarily on the situation of **human rights defenders** in Guatemala, which is of particular relevance to sections I.A(B) and (C) of the Human Rights Council's Guidelines, and to sections 7(d) and (e) of the Civil Society Unit's Guidelines.

#### 2. Executive Summary

In addition to the recommendations contained in section 4, the submission makes the following key points:

- Attacks against human rights defenders in Guatemala are alarmingly frequent. Almost 300 attacks against human rights defenders were documented in 2006 alone, and from 2000 to 2006 the number increased almost six fold.<sup>3</sup> 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 responsibility for attacks against human rights defenders given its almost total failure to investigate or punish those who commit such crimes.
- The newly created International Commission against Impunity in Guatemala (CICIG) has the potential to end the culture of impunity and assist in dismantling and prosecuting illegal security organizations that often attack human rights defenders. However, in order for CICIG to successfully consolidate the rule of law, the Guatemalan state must fully cooperate with it in investigations and prosecutions, witness protection, and implementing policy recommendations.
- The Guatemalan state should ensure that accusations of the commission of mass atrocities during Guatemala's internal armed conflict, which lasted from 1960 until 1996, are promptly investigated by the Attorney General's office (*Ministerio Público*). The Attorney-General's office must also prosecute those responsible, or extradite them to a jurisdiction where such a prosecution is possible.

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<sup>1</sup> Human Rights Council, *Organizational and Procedural Matters, Human Rights Bodies and Mechanisms, Universal Periodic Review*, UN Doc. A/HRC/6/L.24 (September 24, 2007).

<sup>2</sup> OHCHR, *Guidelines for 'Relevant Stakeholders' Wishing to Provide Information to the Universal Periodic Review* (January 9, 2008).

<sup>3</sup> Front Line together with the National Movement for Human Rights, *Front Line Guatemala: Attacks against human rights defenders 2000 – 2005* (2006)..

### 3. The State's Failure to Adequately Protect Human Rights Defenders in Guatemala<sup>4</sup>

#### A. Overview

In February 2007, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, aptly encapsulated the challenges facing Guatemalan human rights defenders and demonstrated why the treatment of human rights defenders is an important indicator of Guatemala's human rights problems:

The situation of human rights defenders in Guatemala is indicative of the broader human rights problems in the country. Death threats, fears of imminent extrajudicial execution and assassinations of human rights defenders are alarmingly common. From 2000 through mid-August 2006, at least 64 human rights defenders have been murdered. Those defenders most frequently assassinated, such as trade unionists, peasant workers (*campesinos*), indigenous leaders or environmental activists, have been upholding economic, social or cultural rights. Defenders seeking truth and justice for human rights violations committed during the internal armed conflict have also been particularly targeted.

Few attacks against human rights defenders are investigated and even fewer result in convictions, and the killing of human rights defenders has increased in large part due to the failure to investigate and punish those responsible. A large number of killings are preceded by death threats or acts of intimidation which are not investigated. Effective investigation of these death threats could prevent a subsequent killing. More broadly, if coupled with effective prosecution for assassinations, it could rupture the culture of impunity and deter future killings.<sup>5</sup>

The Guatemalan state's responsibility for attacks against human rights defenders is not usually direct, although, in some cases, members of the armed forces or the police have reportedly been responsible.<sup>6</sup> However, state responsibility for human rights violations extends to actions of non-state actors especially when the state fails to exercise due diligence to prevent, punish, investigate, or redress the harm caused by non-state actors.<sup>7</sup> The Human Rights Committee and Inter-American human rights system have consistently held that States Parties to the *International Covenant on Civil and Political Rights*<sup>8</sup> and *Inter-American Convention on Human Rights*<sup>9</sup>, such as Guatemala, have a positive duty to investigate and prosecute especially when the right to life is breached and especially in relation to mass atrocities.<sup>10</sup> "The State Party is

<sup>4</sup> This section is relevant specifically to OHCHR, *Guidelines for Relevant Stakeholders*, section 7(d): "Cooperation of the country under review with human rights mechanisms, and with NHRIs, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders".

<sup>5</sup> Human Rights Council, *Civil and Political Rights, Including the Questions of Disappearances and Summary Executions Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston Addendum Mission to Guatemala*, UN Doc. A/HRC/4/20/Add.2 (February 19 2007), paras. 35-36.

<sup>6</sup> See, e.g., *Report by Ms. Hina Jilani on the Situation of Human Rights Defenders: Mission to Guatemala*, UN Doc. E/CN.4/2003/104/Add.2 (December 6, 2002) 18.

<sup>7</sup> See, e.g., Human Rights Committee, *General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 21 May 2004, CCPR/C/74/CRP.4/Rev.6, para. 8; Inter-American Commission on Human Rights, *Velásquez Rodríguez v Honduras*, Judgment of 29 July 1988, Series C No 4, para. 172; Inter-American Court on Human Rights, *Barrios Altos Case*, Judgment of November 30, 2001, Series C, No. 87 (2001).

<sup>8</sup> December 16, 1966, 999 UNTS 171 (ICCPR). The ICCPR entered into force for Guatemala on May 5, 1992.

<sup>9</sup> November 22, 1969, OAS, Treaty Series, N° 36 (IACHR). The IACHR entered into force on July 18, 1978.

<sup>10</sup> See, e.g., Human Rights Committee, *Concluding Observations on El Salvador*, UN Doc. A/58/40 Vol. I (2003) 61, para 84(6); Human Rights Committee, *Concluding Observations on Peru*, UN. Doc. A/51/40 Vol. I (1996) 48, paras. 347, 358; *Meneses*

under a duty to investigate thoroughly alleged violations of human rights... and to prosecute criminally, try and punish those held responsible for such violations”<sup>11</sup> The UN Human Rights Defenders Declaration also affirms that a State should “conduct a prompt and impartial investigation... whenever there is reasonable grounds to believe that a violation of human rights ... has occurred.”<sup>12</sup> The Guatemalan state therefore bears responsibility for attacks against human rights defenders given its almost total failure to investigate or punish those who commit such crimes. Moreover, intimidation of human rights defenders has worsened in large part due to the state’s failure to prosecute those responsible.<sup>13</sup>

In December 2007, Human Rights First heard extensive testimony in Guatemala alleging that the Attorney-General’s office, and specifically its human rights prosecutor, was largely responsible for the failure to investigate.<sup>14</sup> The office of the human rights prosecutor was accused of failing to pursue investigations or open prosecutions even when provided with well-documented investigations from victims, the police or the Interior Ministry (*Ministerio de Gobernación*). A recent survey by the Guatemalan National Movement for Human Rights found that the Attorney General’s office had failed to identify the perpetrators in any of almost 200 attacks against human rights defenders over a 6 month period in 2007.<sup>15</sup>

## **B. Illegal Security Organizations and International Commission against Impunity**

One of the most serious threats to human rights defenders in Guatemala is the continued existence of illegal and clandestine armed groups, a legacy from Guatemala’s internal armed conflict. These groups are responsible for a large number of threats and attacks against human rights defenders. They now are involved in organized crime, drug trafficking and violence and allegedly have extensive links with the state and public institutions. Guatemala’s 1994 Peace Accords committed the Guatemalan government to combat illegal security groups and to “effectively guarantee and protect the work of human rights defenders and organizations.”<sup>16</sup> In 2003 Guatemala’s Human Rights Ombudsman (*Procurador*) suggested the creation of a U.N. commission to investigate such groups to respond to “the clamor which has been caused by the assassinations, threats and kidnappings of human rights defenders” and other public officials.

On August 1, 2007, the Guatemalan Congress voted to establish such a commission and the International Commission against Impunity in Guatemala (CICIG) is now in existence.<sup>17</sup> The agreement establishing CICIG references the importance of CICIG to human rights defenders, citing the U.N. Declaration on Human Rights Defenders.<sup>18</sup> CICIG has the potential to improve the human rights situation in Guatemala by:

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*Reyes et al v Chile*, Report No. 34/96, OEA/Ser.L/V/II.95 Doc.7 rev at 196 (1997) (October 15 1996) para 106; see also *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, UN Doc. A/Res/60/147 (December 16, 2005).

<sup>11</sup> Human Rights Committee, *Bautista de Arellana v Colombia*, UN Doc. CCPR/C/51/D/322/1998 (August 9, 1994) para. 12.3.

<sup>12</sup> *U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN. Doc. A/RES/53/144 (March 8, 1999) art. 9.5

<sup>13</sup> See, e.g., *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, UN Doc. E/CN.4/2006/10/Add.1 (February 1, 2006) para. 41.

<sup>14</sup> Interviews with human rights defenders, Guatemala City, December 2007.

<sup>15</sup> Unidad de Protección de Defensores y Defensoras de Derechos Humanos, *Impunidad en Casos de Defensoras y Defensores de Derechos Humanos: Respuesta de la Fiscalía de Derechos Humanos* (Diciembre 2007).

<sup>16</sup> *Comprehensive Agreement on Human Rights*, March 29, 1994, art. VII(3).

<sup>17</sup> Human Rights First, *Press Release: Guatemalan Congress Approves Innovative International Commission to Combat Impunity*, August 2, 2007 available at: <http://www.humanrightsfirst.org/media/hrd/2007/alert/356/index.htm>

<sup>18</sup> *Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala* (“CICIG”), December 12, 2006, New York (“Agreement”), preambulatory paras. 2, 4.

(1) uncovering the extent of the illegal security organizations and dismantling their underlying structure; (2) investigating and promoting the prosecutions of members of illegal security organizations; (3) preventing future attacks on human rights defenders by putting an end to the culture of impunity that encourages such attacks; (4) recommending public policies for eradicating illegal security groups and preventing their re-emergence; and (5) supporting and strengthening Guatemalan institutions in their efforts to uphold the rule of law.

However, the success of CICIG depends largely on the degree of cooperation it receives from the Guatemalan state. Cooperation is vital in at least three areas. First, the Attorney General's office (*Ministerio Público*) must collaborate with CICIG in investigating and prosecuting crimes. It must act on the criminal complaints filed by CICIG. Second, as envisioned by article 8 of the Agreement, the Guatemalan state must ensure the security and safety of those witnesses, victims and human rights defenders who assist CICIG. Without adequate measures to protect them, such individuals may lack the confidence to assist CICIG and its ability to build strong legal cases will be hampered. Third, the Guatemalan state must accept and implement CICIG's recommendations of public policies and legal and institutional reforms to eradicate illegal security organizations.<sup>19</sup> The Guatemalan state has agreed to fulfill these obligations in the Agreement it signed with the UN and in this way can best assist CICIG to consolidate the rule of law and improve the situation of human rights defenders.

### **C. The Failure of the Guatemalan State to Address Past Mass Atrocities**

The United Nations Commission for Historical Clarification found that gross human rights violations, including genocide, occurred in Guatemala during its internal armed conflict and that the vast majority of the 200,000 killings were committed by the Guatemalan armed forces.<sup>20</sup> Much of the continued lawlessness in Guatemala stems from the culture of impunity that has grown out of Guatemala's refusal to prosecute the heinous crimes committed during the conflict. As discussed in section 3(A) of this submission, the Guatemalan state has an obligation to investigate and prosecute those responsible for committing mass atrocities. Moreover, Guatemalan human rights defenders who seek justice for past mass atrocities are routinely threatened, harassed and killed.<sup>21</sup> The best way to protect them and allow them to perform their important work is to prosecute those responsible for the original crimes.

In 2000, Guatemalan human rights defenders presented petitions to Guatemala's Attorney General against former General Efraín Ríos Montt (now a member of Congress) and other former leaders alleging that these officials had committed mass atrocities during Guatemala's internal armed conflict. The Guatemalan Attorney General has failed to open a formal investigation into these allegations despite the existence of valid petitions. Some of the delays have been caused by the defendants' abuse of generous *amparo* laws in Guatemala, which allow for a type of protective injunction to be granted by the Constitutional Court to strike down any decision.

Failing to obtain justice in Guatemala, Rigoberta Menchú and others filed petitions alleging genocide, murder and torture against the defendants in the Spanish National Court. Using Spain's universal jurisdiction laws, the Spanish Court formally laid charges against the defendants and issued arrest warrants. After some

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<sup>19</sup> Agreement, art. 2(1)(c).

<sup>20</sup> Commission for Historical Clarification, *Guatemala: Memory of Silence*, February 1999, para. 41.

<sup>21</sup> See Human Rights First, *Letter to US Ambassador*, February 12, 2007 available at <http://www.humanrightsfirst.info/pdf/07212-hrd-guat-ltr-ecap-caldh-state.pdf>; Coalition of Human Rights Organizations, *Letter to Guatemalan Attorney General*, June 4, 2007, available at <http://www.humanrightsfirst.info/pdf/07606-hrd-ltr-att-gen-recent-attacks-hrd.pdf>.

promising developments, including the arrests of two high-profile defendants, in December 2007 the Guatemalan Constitutional Court denied the extradition of former military officials accused of mass atrocities.<sup>22</sup> The Court issued this decision despite a valid extradition treaty between the two countries and a recent decision by the Spanish Constitutional Court allowing the extradition.

The Guatemalan state should ensure that accusations of the commission of mass atrocities are promptly investigated, and it should prosecute those responsible. If it is unwilling or unable to do so, it should extradite them to a jurisdiction where such a prosecution is possible.

#### 4. Recommendations<sup>23</sup>

In close consultation with Guatemalan human rights organizations, Human Rights First and Front Line make the following recommendations which the Guatemalan state should implement in order to protect human rights defenders:

1. Prioritize the investigation of threats and assassinations against human rights defenders as a way of combating impunity and deterring killings more broadly. Investigations should be prompt, comprehensive and impartial and lead to the prosecution of those responsible for committing these crimes. The office of the human rights prosecutor should emulate the best practices implemented by the recently-created human rights defenders unit in the national police Criminal Investigation Division (DINC) overseen by the Interior Ministry (*Ministerio de Gobernación*).
2. The Attorney General's office should promptly investigate accusations of the commission of mass atrocities during Guatemala's internal armed conflict and prosecute those responsible. If it is unwilling or unable to do so, it should extradite the accused to a jurisdiction where such a prosecution is possible.
3. Ensure that all state institutions, especially the Attorney General's office (*Ministerio Público*), cooperate fully with CICIG in investigating and prosecuting illegal security organizations.
4. Promptly provide at-risk human rights defenders with adequate protective measures tailored to their individual security needs with the aim of preventing future attacks.
5. Implement the *Public Policy for Prevention and Protection of Human Rights Defenders* finalized in 2007 by the Presidential Human Rights Commission (COPREDEH), in particular by creating the following mechanisms for human rights defenders as envisioned in that policy: (1) an early warning system; (2) a committee of risk evaluation and protective measures; (3) an observatory for the protection of human rights defenders; and (4) a catalogue of protective measures. Other aspects of that Public Policy which should be implemented are a National Plan of Action for the Implementation of the U.N. Human Rights Defenders Declaration and a law for promotion and protection of the defense of human rights.
6. Reform the *amparo* laws to minimize the potential for their misuse by individuals seeking to avoid justice. Congress should approve the Bill reforming the *amparo* laws which has been stalled for years.

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<sup>22</sup> Human Rights First, *Press Release: Guatemalan Court's Refusal to Extradite Those Accused of Genocide a Blow to Justice* (December 17, 2007), available at <http://www.humanrightsfirst.org/media/hrd/2007/alert/398/index.htm>.

<sup>23</sup> This section is relevant specifically to OHCHR, *Guidelines for Relevant Stakeholders*, section 7(e): "Key national priorities as identified by NGOs, initiatives and commitments that the State concerned should undertake".