

GUATEMALA

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WHEN THE STATE INSTITUTIONS THAT ARE SUPPOSED TO MAKE A DEMOCRACY WORK - NAMELY, THE SECURITY FORCES, THE COURTS, THE ATTORNEY GENERAL'S OFFICE, CONGRESS AND THE EXECUTIVE BRANCH - ARE INFLUENCED BY ILLEGAL GROUPS, THIS IS WHEN YOU CAN SAY THAT A STATE HAS BEEN 'CO-OPTED' BY ORGANISED CRIME

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INSIGHT CRIME
- INVESTIGATION AND ANALYSIS OF ORGANISED CRIME

IN GUATEMALA, AN INSTITUTIONAL CRISIS¹⁰⁴ IN THE STATE HAS INTENSIFIED IN RECENT YEARS, which has brought the country to a political and social crossroads. Debates have begun between those who favour transition from old, violent and corrupt structures entrenched in state institutions and those sectors that seek to return to a clientelist model of privilege for a small but powerful economic elite. This crisis has provoked a series of conflicts that have generated violence against the population and more specifically against those who defend fundamental rights and freedoms. In many instances, the absence of a strong state presence across vast territories has meant that organised criminal gangs, particularly those involved in drug activity and the trafficking of persons, have established themselves and taken control of communities in large areas of the country, especially near the borders. They have close connections with the police and the army which means that they are effectively above the law.¹⁰⁵ According to the International Commission Against Impunity in Guatemala (CICIG) “these groups pose a grave menace to the rule of law and threaten to undermine the progress arduously achieved by the country in the democratisation process. The state faces a serious challenge in its work to ensure the rule of law and protect fundamental human rights, such as its citizens’ right to life and physical integrity”.¹⁰⁶

The 36 years of civil war had a devastating impact on Guatemala, characterised by mass displacement and gross human rights violations especially against indigenous peoples, women and children. For many Mayan communities, torture, targeted killings, disappearances and displacement were a daily experience.¹⁰⁷ Since the signing of the Peace Agreements in 1996, there has been a certain amount of social and political progress, but most Guatemalans are still deprived of the full range of basic human rights. Many peace accord commitments remain unfulfilled and there are still enormous problems of poverty, an absence of social and political participation, and economic opportunity. An analysis of the human rights situation in Guatemala published by the Inter-American Commission on Human Rights in December 2017, details how the Guatemalan government has systematically failed to address the numerous human rights issues facing the country: “more than twenty years after the signing of the Peace Agreements, various problems that generated the internal armed conflict still exist: an economy that is based on the concentration of economic power in the hands of few, a weak state structure with few resources for tax collection, and high levels of corruption. Structural problems such as racial discrimination, social inequality, a profound level of poverty and exclusion, and a lack of access to justice, constitute obstacles to the full respect of human rights in Guatemala”.¹⁰⁸ Sectors of the population that have historically been marginalised, such as women, LGBTI people, young children and adolescents, indigenous peoples and communities, and Afro-Guatemalans, among others, face specific obstacles that limit their effective access to justice.¹⁰⁹

THE 36 YEARS OF CIVIL WAR HAD A DEVASTATING IMPACT ON GUATEMALA, CHARACTERISED BY MASS DISPLACEMENT AND GROSS HUMAN RIGHTS VIOLATIONS ESPECIALLY AGAINST INDIGENOUS PEOPLES, WOMEN AND CHILDREN

Previous advances towards consolidating a criminal justice system and promoting the rule of law have faced major obstacles. A number of key cases bringing perpetrators of major human rights abuses to justice continue to be stalled.¹¹⁰ These include the Blanco Lapola Case, involving a former national police director charged in 2012 with ordering the execution of suspected criminals. Five years later, the case has yet to go to trial. In the “Corrupt Military Officers Case”, eight former defence ministry officials were charged in 2009 with embezzling more than US\$70 million from the government. Eight years later, the case has yet to go to trial.¹¹¹ These are among the best documented cases, pursued under international pressure and with clear evidence of criminal behaviour, yet they remain stalled in the system because of official inaction.¹¹² These cases are emblematic of the challenges facing HRDs in trying to secure justice in Guatemala. Of particular concern to HRDs is the trial of General Ríos Montt. Former dictator Ríos Montt was charged in 2012 with genocide for the mass slaughter of Mayan communities in the early 1980s. He was tried and convicted in 2013, but the Constitutional Court nullified the verdict and ordered a new trial. After a delay of more than two years, a judge ruled in 2015 that Ríos Montt’s deteriorating mental health had rendered him unfit for a regular trial, and ordered that he instead be subject to special proceedings that did not allow for a guilty verdict. After two years of delay, these proceedings began in October 2017. He died in April 2018 while being tried in absentia.¹¹³

CORRUPTION AND CRIMES COMMITTED IN THE PAST

The high level of impunity enjoyed by the perpetrators of human rights abuses significantly increases the risks currently posed to HRDs. Few attacks against HRDs are investigated and fewer still result in sentences. This lethal combination of entrenched violence, state indifference to attacks against HRDs and the lack of investigations into complaints, creates a situation in which HRDs are killed with impunity. Despite a recent drop in the general level of impunity for homicides in Guatemala, the figure still remains unacceptably high. Between 1996 and 2006, Guatemala suffered from an overall impunity rate of 95% for all homicides. Since the formation of the UN-backed International Commission against Impunity in Guatemala (CICIG)¹¹⁴ this rate has fallen to 72%.¹¹⁵

Although Guatemala has made some advances in cases regarding human rights and corruption, mainly due to the collaboration between the *Ministerio Público* and the CICIG during 2017,¹¹⁶ the work of the CICIG has provoked a strong negative reaction among civil servants. The fact that more than 300 persons have been detained in cases of corruption and more than 20 military personnel have been implicated in cases of grave human rights violations and are facing justice, has resulted in many witnesses, relatives, joint complainants, co-plaintiffs (*querellantes adhesivos*), and the lawyers who represent them, becoming the targets of violence and acts of aggression orchestrated by groups operating from within the prisons. There are additional problems with the intimidation of judges and public prosecutors, and corruption within the justice system.¹¹⁷ This situation has been exacerbated by the ready availability of guns, the activities of organised crime and the way in which criminal gangs have been able to permeate the political structures and institutions of the state.¹¹⁸ According to Insight Crime,¹¹⁹ a research body specialising in the study of the role of organised crime in Central and South America, “When the state institutions that are supposed to make a democracy work – namely, the security forces, the courts, the attorney general’s office, congress and the executive branch – are influenced by illegal groups, this is when you can say that a state has been “co-opted” by organised crime”.¹²⁰

As a result of the combination of all these elements, cases of harassment and threats against HRDs have been on the rise since Otto Pérez Molina became President in January 2012, and continue with the current administration under President Jimmy Morales. HRDs in Guatemala are subjected to death threats, physical attacks, acts of harassment, surveillance, stigmatisation, judicial harassment, arbitrary detention, enforced disappearance and killings. Many of the violations are carried out by clandestine security structures and illegal groups. This systemic use of direct violence against HRDs is compounded by the unfair use of criminal proceedings in order to prevent HRDs from carrying out their legitimate human rights activities. Many criminal proceedings are launched by the authorities on the basis of complaints by private companies related to the mining sector and the construction of dams, spuriously accusing HRDs of crimes such as acts of terrorism, usurpation of land or kidnappings. As part of the criminalisation process, campaigns of defamation and stigmatisation have been carried out by both state and non-state actors, particularly transnational companies and right-wing media publications. State authorities continue to publish statements and press releases in which they make unsubstantiated charges against HRDs.¹²¹

INCREASE IN HATE SPEECH AND THE IMPACT ON HRDs

THE INCREASE IN THE USE OF HATE SPEECH AND THE PREVALENCE OF SMEAR CAMPAIGNS ARE OFTEN THE PRECURSOR TO A DIRECT ATTACK ON A HRD

The increase in the use of hate speech and the prevalence of smear campaigns are often the precursor to a direct attack on a HRD. Hate speech has the effect of putting a question mark over the credibility of HRDs and identifies them as targets. It also means that when an attack does take place, the killing can be explained away as being linked to these other issues. In 2013, the Human Rights Ombudsman condemned the use of hate speech and requested that the public prosecutor’s office investigate Ricardo Méndez Ruiz, director of the Foundation against Terror¹²² for “hate speech that attempted to degrade, intimidate and promote prejudice” against HRDs.¹²³ Despite this, hate messages continue to circulate in social media and in the press inciting violence against HRDs. In 2017, a series of paid advertisements appeared in leading Guatemalan newspapers, as

SULMA ALEGRIA ROBLES



Sulma Alegria Robles (also known as Evelyn) was a transgender woman and LGBTI rights defender. She was a member of OASIS (*Organización de Apoyo a una Sexualidad Integral frente al SIDA*). Her lifeless body was found on Friday, 18 November 2016, with signs of torture and extreme physical violence. Sulma had been granted precautionary measures by the Inter American Commission on Human Rights in 2006, along with the Executive Director of OASIS, Jorge López Sologaitoa. On 17 December 2005, Sulma was a key witness to the killing of OASIS Communications

Assistant, Paulina Marrot, by four members of the National Civilian Police. As a key witness, it is believed that the attackers wanted to silence her. OASIS had requested police protection for Sulma and the Human Rights Ombudsman’s office had also reportedly requested protection from the Interior Ministry. However no protection was provided. Several other transgender sex workers witnessed the shooting, but are too scared to give evidence, fearing police reprisals.

EUGENIO LÓPEZ Y LÓPEZ



On 23 June 2017, HRD Eugenio López y López was shot dead while participating in a protest of former workers of the San Gregorio Piedra Parada estate, in Coatepeque, Quetzaltenango. Eugenio was a member of San Gregorio Piedra Parada estate former workers’ movement which was created in 2008. The estate had never paid social security for its 260 workers. The movement has struggled to get justice for the workers who spent more than 30 years working on the estate. On 23 June, a group of approximately 25 former estate workers and their relatives gathered on the road to

Pacayá village, to protest peacefully for their rights. An unidentified man came from the estate with part of his face covered and fired four shots at the protesters. Eugenio López y López was killed on the spot, while Israel Méndez Vásquez and Berta López Escobar were severely injured. Human rights defenders and organisations in Guatemala believe that the attacker was a member of the private security of the estate.

part of a renewed smear campaign against members of the Centre for Environmental, Social and Legal Action (*Centro de Acción Legal, Ambiental y Social de Guatemala, CALAS*) calling them “opponents” and “manipulators” who “have polluted the minds [of the community] with its lies”,¹²⁴ after the organisation challenged the license of the San Rafael Mining Company in San Rafael Las Flores. It is important to note that CALAS has been repeatedly targeted with raids and violence, including fatal and near fatal attacks over the years and such statements intensify the risk for CALAS members. In 2008, Yuri Melini,¹²⁵ Director of CALAS, survived an attempt on his life in which he was gravely injured. In 2015, a gunman opened fire on the offices of CALAS.¹²⁶ On 12 November 2016, CALAS staff member Jeremy Abraham Barrios Lima was shot dead in Guatemala City.¹²⁷ Hate speech is also often used by state officials, as in the case of the President of the Supreme Court of Justice, who was disciplined¹²⁸ for sharing a defamatory Whatsapp message about HRD Helen Mack, in connection with a case dealing with historic human rights abuses that was then before the courts.¹²⁹

THE EXTRACTIVE DEVELOPMENT MODEL AND ITS IMPACT ON HRDs

The current development model in Latin America promotes and prioritises economic growth above other dimensions of development, notably environmental sustainability, equity, social justice and respect for human rights. As a result of this approach, and because of endemic corruption, companies have increasingly exerted pressure on states to open up territory to natural resource extraction, mega projects and agribusiness. This has put pressure on what are often fragile environments and vulnerable people.¹³⁰ In the case of Guatemala, this development model has been characterised by the granting of extensive extractive mining concessions and licenses; the misappropriation and use of rivers to plant monocultures (in particular African palm and sugar cane) and the generation of energy through large scale hydroelectric energy projects, the final product of which is destined for an international market.

This model does not comply with the minimum guarantees outlined under international human rights standards, in particular, the right of Indigenous peoples to free, prior and informed consent. This has provoked acts of aggression and violence across the country, in which HRDs have been killed. In January 2017, 72-year-old Sebastián Alonzo was shot dead when unidentified gunmen opened fire on a peaceful demonstration against a proposed major hydroelectric scheme.¹³¹ On 26 June 2017, Eugenio López was one of a group of former workers from the San Gregorio Piedra Parada ranch, that was protesting opposite the entrance to the ranch to demand their social security payments. A masked gunman approached the group of protesters and their families and opened fire, killing Eugenio instantly.¹³² There have also been numerous instances of criminalisation of HRDs, such as the case of Professor Abelino Chub Caal.¹³³ On 6 June 2017, the judge of the Criminal Court of First Instance of Puerto Barrios ruled that Abelino should remain in detention even though both the defence and the prosecution had agreed that no evidence had been found against the HRD to justify the charges of aggravated land grabbing and arson. Abelino works with 29 communities in Sierra Santa Cruz, Izabal, whose land, environmental and cultural rights are threatened by mining interests, particularly the

WHEN THEY THREATENED ME THEY USED TO SAY THAT THEY WOULD KILL ME, BUT THAT BEFOREHAND THEY WOULD RAPE ME. THEY DIDN'T SAY THIS TO MY MALE COLLEAGUES. THESE THREATS ARE SPECIFICALLY AIMED AT INDIGENOUS WOMEN

JEREMY ABRAHAM BARRIOS LIMA



At around 5pm on 12 November 2016, HRD Jeremy Abraham Barrios Lima was shot dead in Guatemala City. None of his personal belongings had been taken. Jeremy worked as Assistant to the General Director of the Center for Environmental and Social Legal Action of Guatemala - CALAS (*Centro de Acción Legal Ambiental y Social de Guatemala*). CALAS has been active in denouncing abuses committed by mining companies in the region and works to protect environmental rights. Jeremy was in charge of administration and the management of sensitive information

related to several legal cases CALAS was taking against powerful mining companies, as well as the preliminary hearing in a case against the government. CALAS has been the target of an extended smear campaign in right-wing media, has been repeatedly targeted with raids and violence and in 2008, Yuri Melini, Director of CALAS, survived an attempt on his life in which he was gravely injured. In 2015, a gunman opened fire on the offices of CALAS. No one has ever been brought to justice for these attacks.

BRENDA MARLENI ESTRADA TAMBITO



On 19 June 2016, HRD Brenda Marleni Estrada Tambito was shot 5 times and killed as she drove through Guatemala City. Brenda was driving through Zone 1 when a vehicle drove up beside her. The occupants of the vehicle then opened fire. Brenda was hit by 5 bullets and died at the scene of the attack. Brenda was a member of the Coalition of Workers' Unions of Guatemala (*Unión Sindical de Trabajadores de Guatemala - UNSITRAGUA*) and the Sub-Coordinator of the Legal Aid Commission within the union. UNSITRAGUA brings together workers'

unions from the manufacturing, services and agricultural industries as well as self-employed workers and independent farmers. Brenda was also the daughter of lawyer Jorge Estrada, a long time member of UNSITRAGUA and an advocate for labour rights. He is currently involved in investigating and assessing labour rights in several banana plantations across Izabal department.

operations of the *Compañía Guatemalteca de Níquel (CGN)*, and ranchers. When Ronal David Barillas Díaz,¹³⁴ from the Xinka people, was killed in January 2018, the Observatory for the Protection of Human Rights Defenders noted “these acts are taking place within the context of an alarming intensification of the gravity and intensity of acts of aggression against human rights defenders in Guatemala, particularly over the last two years”.¹³⁵

RACISM AND VIOLENCE AGAINST WOMEN HRDs

Violations are aggravated when gender discrimination intersects with racial and ethnic discrimination. Lolita Chávez,¹³⁶ an indigenous WHRD explained, “when they threatened me they used to say that they would kill me, but that beforehand they would rape me. They didn’t say this to my male colleagues. These threats are specifically aimed at indigenous women. Furthermore, there is a very pronounced form of racism against us. They refer to us as rebellious Indian women who have nothing to do and are considered less human”.¹³⁷ These attacks occur within a more generalised context of stigmatisation and undermining of WHRDs’ work, especially through social media. This was evident in the case of Idivina Hernández,¹³⁸ who was harassed on social media in relation to her work on the Molina Theissen case, in which five retired soldiers were being prosecuted for their involvement in the forced disappearance of Marco Antonio Molina Theissen and the illegal detention, torture and rape of his sister, Emma Guadalupe, 37 years ago.¹³⁹

KILLING OF HUMAN RIGHTS DEFENDERS

The combined effect of the failure to address the problems of the past, defamation campaigns against HRDs, the absence of protection for HRDs and the failure to adequately investigate attacks against them, has created a situation in which HRDs are killed with impunity. In its Annual Reports for the years 2014¹⁴⁰ 2015¹⁴¹ 2016¹⁴² and 2017¹⁴³, Front Line Defenders reported that a combined total of 45 HRDs were killed in Guatemala. In 2017 UDEFEGUA also documented the deaths of 41 young women following a fire in the Virgen del Hogar state run home for minors. The girls were protesting against physical and sexual abuse in the centre which the authorities had failed to address despite numerous complaints. This would bring to 86 the number of deaths directly attributable to the state’s failure to confront glaring abuses of human rights and the risks facing HRDs. The victims include journalists, indigenous peoples, trade unionists, defenders of transitional justice mechanisms, and those who defend

land, territory and natural resources. During 2017, UDEFEGUA registered 483 acts of aggression against HRDs, of which 131 were against those who defend the environment, nature, natural resources and water, an increase in comparison with the 37 acts of aggression perpetrated against this same group of defenders throughout 2016. On 30 June 2017, a group of Special Rapporteurs of the United Nations and the Inter-American Commission on Human Rights condemned the attacks and killings of environmental defenders in Guatemala and stressed that these defenders face “the greatest danger on a global scale due to their activities in defence of territory and the

THE COMBINED EFFECT OF THE FAILURE TO ADDRESS THE PROBLEMS OF THE PAST, DEFAMATION CAMPAIGNS AGAINST HRDs, THE ABSENCE OF PROTECTION FOR HRDs AND THE FAILURE TO ADEQUATELY INVESTIGATE ATTACKS AGAINST THEM, HAS CREATED A SITUATION IN WHICH HRDs ARE KILLED WITH IMPUNITY

environment, facing the challenges that originate from large-scale development projects that threaten their right to a healthy environment.”¹⁴⁴

RESPONSE BY THE STATE

In 2004, after calls from national and international civil society groups, the government created the Coordinating Unit for the Protection of Human Rights Defenders, Legal Administrators and Officers, Journalists, and Media Commentators (*Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales*) with the aim of articulating the state’s response to requests for protection of HRDs in situations of risk.¹⁴⁵ In 2008, this unit was complemented by the Office for the Analysis of Attacks against Human Rights Defenders (*Instancia de Análisis de Ataques Contra Defensores de Derechos Humanos en Guatemala*), to establish and analyse patterns of attacks on HRDs. However, according to a 2017 report by Amnesty International “Despite the regulatory framework established in Guatemala to create bodies in charge of the protection of HRDs, among other subjects of protection, and aimed at analysing patterns of attacks against defenders in order to take structural measures to tackle the causes of such attacks, there is no systematic or coordinated approach from the authorities to the protection of HRDs. In addition to impunity, among the major challenges faced by the authorities in providing effective protection are the need to: adopt effective measures to counteract the misuse of the justice system against defenders, and to end the pattern of stigmatisation of their work”.¹⁴⁶ The Protection Division of Persons and Security within the Civilian National Police Force does not sufficiently document or follow up on cases to evaluate continued risks and to determine the effectiveness of security measures. Furthermore, risk analysis processes do not always adequately take into account the culture and gender of HRDs, or the general social and political context in which they work.¹⁴⁷ The government of Guatemala has made an elaborate show of responding to international pressure to address the endemic violence against HRDs. The reality is that to date it has failed to deliver effective protection for HRDs.

RECOMMENDATIONS TO THE GOVERNMENT OF GUATEMALA

The government of Guatemala should:

- ❖ Recognise the key role of HRDs in the construction of a more just and equal society in Guatemala;
- ❖ Take all necessary steps as a matter of urgency, to complete the process of public consultation for the development of the “Public Policy for the Protection of Human Rights Defenders”;
- ❖ Once this process of broad and participative consultation is completed the policy should be approved and implemented without delay;
- ❖ Provide all the necessary political and financial support to the “Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales” to enable it to carry out its mandate to protect HRDs at risk;
- ❖ Address the main structural causes that underpin the risks faced by HRDs, including the lack of adequate investigations and the high rate of impunity for attacks against them, as well as the reform of the legislative framework in matters related to land and territory;
- ❖ Implement the General Instruction to investigate crimes committed against HRDs;
- ❖ Take action to strengthen the actions of the prosecutor’s office that deals with the issue;
- ❖ Comply with the United Nations Guiding Principles on Business and Human Rights, which would be an important impetus for the Guatemalan state to carry out its National Plan of Action on the matter, in order to reduce the violence perpetrated by private enterprises against HRDs;
- ❖ Issue clear instructions to the General Prosecutor of the Republic on the minimum elements required prior to initiating investigations for tax fraud, hearings or the issuing of arrest warrants, to ensure equality before the law for all citizens of the country to prevent abuse of the legal system to harass HRDs.



Indigenous women of Guatemala on a protest march as part of International Women’s Day