

October 9, 2014

Ambassador Todd Robinson
U.S. Embassy
Guatemala City, Guatemala

Dear Ambassador Robinson:

We write to congratulate you on your recent appointment as the United States ambassador to Guatemala, and we recognize your extensive experience and service in country as well as throughout the Western hemisphere. As U.S.-based human rights and policy organizations, we closely follow the human rights situation in Guatemala and the impacts of U.S. policy in the region.

We appreciate the steps the U.S. Embassy has taken in recent years to support justice and accountability in Guatemala and fervently believe that the protection of human rights must continue to be a top priority.

Unfortunately, over the last two years, the human rights situation has been deteriorating. As you are well aware, Guatemala currently suffers from increasing violence, organized criminal activity, intense conflict over land and natural resources, high rates of poverty and unemployment, and minimal social spending. When addressing these challenges, the Guatemalan government should implement policies that improve the common good; its institutions and public officials should act within the rule of law, and be held accountable when they do not. However, the Guatemalan government, through militarized policies and ineffective mechanisms for civil society dialogue, has exacerbated social conflict. Impunity rates for all crimes remains high—particularly in cases relating to human rights defenders, indigenous peoples, women, and LGBTQ individuals—and corruption within government has not been effectively addressed.

The U.S. Embassy can play a key role in addressing human rights concerns in several areas: promoting justice and accountability; strengthening mechanisms for dialogue; addressing land rights conflicts; supporting human rights defenders; and re-assessing security policy and U.S. foreign assistance. We hope the U.S. Embassy can expand its commitment to the promotion of human rights under your leadership.

Promote Justice and Accountability

U.S. support for a strong, independent judiciary is essential. The U.S. government has provided crucial support to strengthen the rule of law, including backing the creation of the “high risk” courts, as well as efforts by former Attorney General Claudia Paz y Paz to improve the investigation and prosecution of criminal cases. Under Dr. Paz y Paz’s leadership, for example, impunity for homicides was drastically reduced, particularly in Guatemala City where impunity rates dropped by about 25%. Support for the ‘high risk courts’ has also been critical. It will be important for the U.S. and other donors to remain vigilant in order to ensure these advances are consolidated.

The CICIG (International Commission against Impunity in Guatemala) has also played a vital role in investigations of organized crime and the strengthening of Guatemalan justice institutions. The U.S. should maintain its financial and political support for the CICIG and advocate for extension of its mandate past September 2015.

This year, the Guatemalan justice system is in transition. Before October 13, new justices of the Supreme Court will be appointed, along with all appeals court judges. Unfortunately, the judicial selection processes have been marred by significant irregularities, as documented by both local civil

society groups and the American Bar Association. Several of the final judicial appointees and the newly appointed Attorney General were previously identified by CICIG as persons of concern. Most recently, the lack of transparency and objectivity of the process prompted the UN Special Rapporteur on the Independence of Judges and Lawyers to call on Guatemala to repeat the selection process for all judges. The U.S. should condition ongoing collaboration with law enforcement on the demonstration of significant, concrete steps towards full and impartial investigations into unresolved allegations of misconduct by judicial appointees and other criminal justice personnel.

In this context, it will also be important for the U.S. to maintain public support for emblematic human rights cases and support full compliance with international law. As the Byron Lima case has demonstrated, accountability for organized crime, corruption, and drug trafficking is enhanced by efforts to ensure compliance with human rights norms, as there is significant overlap between criminal networks and those alleged to have engaged in past abuses.

The Guatemalan judicial system has not successfully prosecuted the vast majority of atrocities committed during the internal armed conflict, and the 2013 verdict in the ‘Genocide Case’ was quickly annulled. Appeals for amnesty have arisen in a number of key cases. To date, lower courts have all recognized that crimes against humanity—including genocide and forced disappearances—cannot be amnestied under Guatemalan or international law. The issue is unresolved, however, and over 90 judges have recused themselves from Ríos Montt’s appeal for amnesty. The U.S. should monitor this process closely, particularly as new judges are appointed.

Furthermore, the U.S. should urge Guatemala to fully implement rulings by the Inter-American Court on Human Rights (IACtHR). The Guatemalan government has failed to comply with 13 IACtHR rulings regarding gross human rights violations. At a May 2014 court supervisory hearing for 11 of those cases, victims denounced a lack of access to information in the Defense Ministry, lack of transparency, lack of investigation, and procedures to obstruct justice. In the IACtHR’s resolution about Guatemala’s compliance with these judgments, released August 22, the country was declared in contempt of court. Likewise, Guatemala should comply with the recommendations of the Inter-American Commission on Human Rights (IACHR), as well as the terms of the friendly settlements reached with victims of human rights violations in individual cases before the IACHR.

Just reparations are another key element of a successful transitional justice process in Guatemala. The U.S. Embassy should urge the Guatemalan government to follow through on its obligations to provide reparations for past violations. One emblematic case pertains to the 2010 Reparations Plan for the 33 communities affected by the construction of the Chixoy Hydroelectric Dam, which was financed in large part by the World Bank and Inter-American Development Bank. The project caused massive forced displacement and led to state-sponsored violence that took the lives of over 400 men, women and children. A comprehensive reparations package of US \$154.5 million has been neither signed nor implemented, and U.S. appropriations language restricts funding to the Government of Guatemala until there is credible progress on this issue. The U.S. Embassy should make it clear to the Guatemalan government that reaching an agreement with affected communities, and signing an Executive Decree to implement the Plan, is a top priority. It should also ensure that the relevant international financial institutions contribute to the reparations and do not charge interest on any funds provided as part of the reparation plan.

Increase Support for Human Rights Defenders

We ask the U.S. Embassy to take firm and vigorous steps to protect human rights defenders—such as those who promote the rights of women, indigenous peoples, union leaders, LGBTQ people and journalists. Direct attacks against human rights defenders have increased: at least 18 men and women

were assassinated due to their work in 2013. This year to date, eight more have been killed, and there have been almost 700 reported threats or other forms of intimidation. Investigations into attacks against defenders are slow and superficial; impunity remains the norm. Furthermore, recent patterns of public defamation and criminalization through malicious litigation have had a dramatic impact on individuals, their families, and their communities, including other peaceful activists. Public officials have participated in this campaign to discredit and criminalize human rights defenders.

Labor activists have been particularly targeted. Since the passage of DR-CAFTA in 2006, over 70 union leaders have been killed, prompting the International Trade Union Confederation to name Guatemala the most dangerous country in the world to be a trade unionist. Despite Guatemala's commitments under the DR-CAFTA Labor Enforcement Action Plan, the government has proven unwilling to enforce its labor laws and protect labor rights defenders. We welcome the announcement that the U.S. will seek arbitration of this longstanding problem. Nonetheless, it is imperative that the U.S. not rely solely on arbitration, but engage all means possible to increase pressure on Guatemala to enforce the rule of law, protect those who speak out for workers' rights, substantively engage unions' and workers' policy interests, and end impunity for perpetrators of anti-labor violence.

When human rights defenders are victims of threats, kidnappings, assaults, and assassinations, and the perpetrators enjoy near universal impunity, it has a chilling effect on other human rights defenders, as well as their families and communities, thereby preventing citizens from demanding respect for basic rights or advocating for improved livelihoods that could lift their families out of poverty.

The U.S. has supported the *Instancia de análisis de ataques contra defensores* as the state agency responsible for protecting human rights defenders and ensuring adequate investigation into attacks against them. Nevertheless, investigations remain inadequate, the results invisible, and the political will non-existent. We urge the U.S. Embassy to encourage the Guatemalan government to re-vitalize the *Instancia* and ensure full compliance with its mission, or seek alternate mechanisms to provide urgent support of human rights defenders.

Public support is also integral to keeping defenders safe and able to continue their work; the U.S. government should publicly urge increased protections for human rights defenders, call for investigations into threats and attacks, and encourage the full implementation of precautionary measures granted by the IACHR.

Strengthen Mechanisms for Dialogue

The U.S. Embassy has the opportunity to contribute significantly to a reduction in social conflict by demonstrating strong support for effective, inclusive and robust mechanisms for good-faith dialogue between Guatemalan communities and their government. To date, the Guatemalan office in charge of dialogue, the SND (*Sistema nacional de diálogo*), has lacked the impartiality, political will, and transparent protocols necessary to create adequate conditions for dialogue. The absence of avenues for sincere dialogue has led to increasing conflict, violence, and a lack of trust in public institutions. The U.S. Embassy can play a positive role by calling for the SND to make their protocols available to the public and by requesting that the SND report on results from past dialogue processes. When requested by community leaders, the presence of a U.S. Embassy official as an honor witness at SND-led dialogues can be an effective way to show U.S. support for the process.

These concerns were recently presented by Guatemalan community leaders and human rights defenders to the Chief of Mission of the European Union, Norway and Switzerland, and, given the repercussions this conflict has on governability in the country, we strongly recommend that the issue be discussed in other spaces, including the G13.

Address Land Rights Conflicts

The U.S. Embassy should encourage the Guatemalan government to resolve land conflicts peacefully and in a manner consistent with international standards, and support efforts to address the underlying issues of access to land. The imposition of large-scale mines and hydroelectric projects in communities that do not support them has been one of the greatest generators of conflict in Guatemala. Government-led dialogue processes in land rights conflicts have failed time and again. The Guatemalan government blatantly ignores its obligations under national and international law, including ILO 169; furthermore, the Constitutional Court has ruled that community-based referendums are non-binding. Nevertheless, in the absence of government-led consultations, communities themselves have proceeded to carry out good-faith consultations and municipal referendums. Since 2005, over 80 such consultations have occurred, with the vast majority of citizens voting against mining and other large-scale projects in their communities.

Instead of supporting and facilitating legally-required consultations, the Guatemalan government has frequently relied on large-scale police and military operations, and the use of martial law and the suspension of constitutional rights (states of “exception”). The government also continues to carry out violent, forced evictions of indigenous and *campesino* communities in violation of international human rights standards. Forced evictions leave men, women and children without access to food, shelter or protection from future attacks. Local, national, and international human rights bodies have condemned both the use of martial law and violent evictions.

U.S. companies and companies traded on the U.S. stock exchange routinely play a role in these conflicts, and are sometimes directly or indirectly responsible for increased tension and violence when they move forward with development projects despite community opposition. Weak host-state environmental, labor and mining laws should not become an excuse for U.S. companies to lower their standards.

The U.S. could do much more to ensure that U.S. corporations active in Guatemala contribute to efforts that promote the rule of law by ensuring that such entities comply with relevant social, environmental and labor standards and conduct proper due diligence review and investigation of their contractors and suppliers, and that company policies reflect their responsibilities as outlined by the UN Guiding Principles on Business and Human Rights.

We call on the U.S. Embassy to encourage the Guatemalan government and U.S. companies operating in the country to respect community decision-making processes. Where there is evidence of threats, coercion or other violence linked to a project, the U.S. Embassy should encourage companies to halt all operations until the situation has been investigated and resolved.

Increase Transparency, Accountability for Security Policies and U.S. Foreign Assistance

The U.S. Embassy should condemn the use of the Guatemalan military for law enforcement and insist on a thorough reform of Guatemala’s police. The Guatemalan police are the appropriate body to carry out domestic law enforcement duties, in spite of struggling with a police force that is undertrained, underfunded, corruptible, and often incapable of addressing security needs. The police have used excessive force against citizens on numerous occasions over the last few months; in mid-August, a large-scale police operation in Alta Verapaz caused the deaths of three people in Semococh.

Rather than insist on extensive and urgent police reform initiatives, the U.S. government has bolstered support for the Guatemalan military while it expands its role in law enforcement. The security strategies of the Pérez Molina administration have not decreased common crime, and instead have led to

increased conflict and abuses. The 2013 DRL Human Rights Country Report notes that there has been “police and military involvement in serious crimes such as kidnapping, drug trafficking, and extortion; and societal violence, including often lethal violence, against women.” In fact, a 2012 study by the Nobel Women’s Initiative and Just Associates concluded that militarization is a key factor that has “led to more violence overall and more frequent attacks on women.”

Because the Guatemalan government has not met the minimum requirements laid out in the FY14 Foreign Appropriations Law – including limiting the domestic role of the military and complying with Inter-American Court rulings—it is essential to fully enforce the congressional restrictions on funding to Guatemalan armed forces.

Despite these restrictions on aid, funding continues to flow through the Department of Defense. The Southern Command continues to carry out joint trainings with the Guatemalan military, including the Kaibil Special Forces—a unit that was involved in horrific massacres during the armed conflict. In recent years, a number of former Kaibiles have been arrested for participation in Zeta operations.

Our organizations have called on the U.S. Congress to condition all funding to Guatemalan security forces, and at the Embassy level we urge increased transparency of any U.S. funds used to train or support Guatemalan security forces, as well as, strict monitoring of the end use of U.S. assistance. Furthermore, the Embassy should ensure strict application of Leahy Law provisions, which are in place to ensure that U.S. assistance does not go to security forces that violate human rights.

We agree that new and creative efforts are needed to bring about improved human rights conditions in Guatemala. To that end, it will be critical for the U.S. Embassy to reach out to civil society organizations and Guatemalan human rights defenders for ongoing analysis and recommendations.

Thank you for your time and attention to these important issues. We look forward to a continuing dialogue to share concerns and analysis with you over the coming years.

Sincerely,

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