



Recommendations to the Council of the European Union regarding Guatemala

1. Establish a human rights dialogue between the EU and Guatemala.

Through bilateral and multilateral cooperation and political dialogue, the European Union has been one of the most constant sources of external support for the promotion of human rights and compliance with the Peace Accords in Guatemala.

However, twelve years after the Accords were signed, there are still major barriers to the protection of human rights, the fulfilment of the rights of indigenous peoples, and improvement of the socioeconomic situation. One of the main barriers is the lack of political will on the part of several governments and the elites that run the country.

That is why we are appealing to the Swedish Presidency, within the framework of EU directives on human rights dialogue with third countries:

- To promote the establishment of a dialogue with the Government of Guatemala focusing exclusively on the human rights situation and compliance with the Peace Accords. This mechanism should include civil society participation at all stages of the dialogue.

This dialogue should allow analysis of the challenges to implementation of the structural reforms laid down in the Peace Accords, such as reform of the judicial system, transformation of structures for ownership and use of land to include the majority of the population in the socioeconomic development of the country, the dismantling of parallel powers, the promotion of the rights of indigenous peoples, and progressive fiscal reform. This dialogue should also seek to analyse the situation for human rights defenders including defenders of union rights, femicide of women and security policies.

2. Initiate an investigation on the implementation of the ILO agreements, within the framework for the SGP+.

In 2008, 11 trade unionists were assassinated, two more than the year before. In early 2009, from January to April, 4 trade unionists were assassinated. All of these cases remain in impunity¹.

The recent high-level mission sent from the ILO to Guatemala (February 09) noted the lack of compliance with agreements 87 and 98, the continued seriousness of deep-rooted impunity, the ineffectiveness of the judicial system, and the lack of implementation of trade union freedom. The ILO mission regrets that despite high levels of violence against trade unionists, there have been no effective trials or convictions in recent years. It also expresses concern regarding "the general lack of independence of judiciary and government organs in relation to penal cases".

¹ The Trade Union, Indigenous and Peasant Movement of Guatemala (MSICG), April 09.

Within this framework, we are concerned that the State of Guatemala has eliminated the office of the district attorney for crimes against trade unionists and journalists. This measure affects the investigation of crimes committed against trade unionists by cutting the budget and staff allocated to this.

According to the regulations of GSP+² and as recommended by the European Parliament³, we ask that the Council:

- Urge the Commission (DG Trade) to initiate an investigation of the implementation of the ILO agreements, in particular on impunity, the workings of the judiciary and the administration of employment, with the objective of issuing recommendations that would allow the adoption of any necessary measures in order to achieve a significant change in the current situation.

3. Monitor the EU Declaration on Guatemala in the Political Dialogue.

We congratulate the EU on its Declaration on Guatemala of May 09. The EU has sent a clear and authoritative message to Guatemala, articulating its concerns regarding impunity and violence in the country, and reaffirming its support of the International Commission against Impunity in Guatemala (CICIG).

That week's passing by Congress of a law on nomination committees for new judges for the Supreme Court of Justice constitutes a step forward in the fight against the chronic culture of impunity that is deeply entrenched in the country.

The impunity of past crimes has prevented the purge of the State and the punishment of those responsible for serious human rights violations (genocide, crimes against humanity and torture⁴), and this encourages the current extreme levels of violence to continue to escalate. The Special Rapporteur on extrajudicial, summary or arbitrary executions indicates that "the index of those sentenced for homicide is no greater than 10%"⁵.

We ask the Council, within the framework for political dialogue:

- To congratulate the State of Guatemala on the adoption of the new reforms. To urge the Congress to maintain its support for tackling impunity in the country, backing up the extension of the mandate of the CICIG agreed between the President of the Executive and the United Nations last year, as well as adopting all the legislative reforms needed in order for the CICIG to be able to fulfil its mandate.
- To urge the Public Ministry (MP) and the National Civil Police (PNC) to cooperate fully with the CICIG in its investigations and prosecutions. To urge the MP to investigate and prosecute the corrupt government officials who have links to organised crime, as well as the military and police forces accused of assassination of social leaders.
- To remind the State of its obligation to protect witnesses and to defend the right to truth, justice and reparations for victims.
- To welcome the exercise of the universal jurisdiction of the Spanish judiciary, in continuing to investigate the crimes of torture and genocide. To regret the decision of the Constitutional Court of Guatemala to declare ineffective the order for international capture with the aim of extradition as issued by the Audiencia Nacional Española⁶ against Ríos Montt and others, despite crimes of universal jurisdiction.
- To urge the Director of Public Prosecutions to investigate the criminal cases against military and police officers for past violations of human rights. For this purpose, to ensure that the Ministry of Defence allows access to all the archived documents of the armed forces.

4. Continue to watch over the implementation of the Guidelines on human rights

² Council Regulation (EC) No 732/2008, Article 17.

³ European Parliament Resolution of 7 May 2009 on the annual report of human rights in the world 2008 and European Union policy on the matter, §120.

⁴ National Court, Central Court of Instruction No 1, Inquiry 331/1999. Court Order, 16 January 2008.

⁵ 19 February 2007, A/HRC/4/20/Add.2

⁶ Ibid

defenders.

During the first three months of 2009, 53 attacks on human rights defenders were reported. In 2008, 220 attacks were reported, which suggests an increase of 11% on the attacks of the previous year. The attacks have especially targeted defenders of economic, social, cultural and environmental rights (ESCER)⁷. 98% of attacks on human rights defenders go unpunished⁸. In the light of this, we are deeply concerned about the threats, intimidation, community infiltration, and penal prosecution of community members affected by megaprojects, social leaders, NGOs and human rights defenders, representing a move towards the criminalisation of social protest⁹.

We congratulate the EU on its act of solidarity with ESCER defenders in December 2008. Bearing in mind the directives on human rights defenders, we demand that the Council of the European Union:

- Continue to monitor the situation for human rights defenders and show public support for their work, with particular emphasis on the ESCER rights defenders. Give continuity to the acts of solidarity with ESCER defenders, by carrying out similar acts at a local level. Demonstrate condemnation and serious concern regarding the increase in frequency and severity of the attacks.
- Support and strengthen the space for analysis and protection of defenders from the EU missions and the EC delegation. Continue to analyse the UDEFEGUA cases, and widen this work to include other cases that are characteristic of the attacks and threats on other organisations.
- Urge the Ministry of Government (MG) to strengthen and increase the human and financial resources of the Body for the Analysis of Attacks against Human Rights Defenders by means of a government agreement that will include The Presidential Commission on Human Rights (COPREDEH) and the Ombudsman on Human Rights (PDH), as well as the individuals who form part of these bodies. Urge the MP and MG to be more effective in the prosecution, investigation and sentencing of those responsible for the attacks, both in terms of planning and implementation.

5. Urge the Government to ensure effective implementation of the law against femicide and other forms of violence against women in Guatemala.

At the end of 2008, there were 658 cases of violent deaths of women, and the Ministry of Government reported 223 new cases during the first four months of 2009. The MP has received 6000 reports of female victims of intra-family violence and sexual crimes.

In the light of the new directives on violence against women, we ask the Council to:

- To congratulate the Congress on passing a law against femicide¹⁰, and encourage the Government to adopt the necessary reforms of the Penal Code, establishing the mechanisms for coordination and granting the necessary financial resources, as well as monitoring the judiciary in order to strengthen its role as prosecutor in cases of violence among women.
- The Council, in its role supervising the cooperation policy of the EU, to ensure the inclusion of the fight against violence against women in cooperation programmes with the State of Guatemala and with European and Guatemalan civil society.

6. Urge the Government of Guatemala to respect and promote the rights of the indigenous peoples and in particular ensure prior, free and informed consent.

Lack of information and consultation in communities affected by the concession of licences for exploration and exploitation of natural resources (minerals, oil, and hydroelectric power¹¹), creates strong social tension and protests. The local authorities have promoted community consultations in accordance with International Law on Indigenous Rights (C.169 of the ILO, and the United Nations Declaration on the Rights of Indigenous Peoples), constitutional rights (article 158) and the Agreement on Identity and

⁷ UDEFEGUA, Report on the situation for human rights defenders in 2008, At the core of impunity, Guatemala.

⁸ Report from the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani - Guatemala, February 2009. (p75)

⁹ See (among others): CIDSE, *Impact of the extraction industry on Latin America*, January 09.

¹⁰ Law against femicide and other forms of violence against women, Decree 22-2008.

¹¹ CIFCA, CIDSE, FIAN, Grupo Sur: *The Xalalá Project – Development for all?*, Dec 08.

Rights of Indigenous Peoples.

That is why we request that the Council:

- In respect of the Council Resolution¹² of 11 November 1998, ask the EC to provide information on progress in implementing the objective of the Agreement on Identity and Rights of Indigenous Peoples from the Country Strategy Paper 2007-2013¹³. In practical terms, hold consultations with indigenous people regarding policies and activities that affect them and the provision of help to key sectors through coordination with member states.
- Urge the Government to comply with its contractual duties in terms of compliance with ILO Agreement 169.

7. Support the promotion and protection of the right to food in Guatemala

The problem of hunger and malnutrition, and therefore the need to promote and protect the right to food for those most affected, continues to be one of the main challenges facing the State of Guatemala and international cooperation.

The EU has declared a commitment to implementation of the Voluntary Directives on the right to food¹⁴. For Guatemala in particular, the European Parliament has asked the EU for support in realisation of the right to food¹⁵.

The promotion of human rights, including economic, social and cultural rights, rural development and food security, are two of the specific objectives of European cooperation with Guatemala, as established in the Country Strategy Paper 2007-2013. In this respect, the European Commission should ensure that the cooperation programmes for rural development and food security contribute to the realisation of the right to food in Guatemala.

In accordance with the Development Cooperation Regulation¹⁶, we ask the Council to:

- Request that the Development Cooperation Committee evaluate the implementation of the food security programmes and their impact on realisation of the right to food, looking specifically at the activities established in the regulation such as agricultural policy, sustainable management of natural resources, and access to the same.
- Urge the Government of Guatemala to respect, protect and guarantee the right to food, paying particular attention to the groups most affected by hunger and malnutrition (rural women, indigenous communities, agricultural workers, landless peasants, smallholders, etc), through structural processes that facilitate access to and security on the land for these groups, and full protection of their rights as women, indigenous people and workers.

8. Monitor the Security Policy to ensure respect for human rights.

Guatemala has one of the highest homicide rates in the world for a country at peace (50 to every 100 000 inhabitants)¹⁷. Among the greatest obstacles to respect for the right to life and security are the development of organised crime, the overwhelming levels of crime and violence, and the weakness and incapacity of the State – PNC, MP and Supreme Court of Justice – to fulfil its obligations of investigation, prosecution, trial and sentencing of offenders. According to statistics from the PNC, there were 6244 violent deaths in 2008. We note with concern the high rate of assassinations of public bus drivers¹⁸, most

¹² Council Resolution of 30 November 1998. Indigenous peoples within the framework of the development cooperation of the Community and the Member States (8-10).

¹³ EC, Country Strategy Paper, 2007-2013, Strengthened public institutions, in particular those having a role in the promotion and protection of the economic and social rights of the indigenous peoples, as described in the Accord on the Identity and Rights of the Indigenous Peoples and enshrined in the ILO Convention 169.

¹⁴ Declaration by the Presidency on behalf of the EU at High-Level Meeting on Food Security, High-Level Meeting on Food Security for All (Madrid, 26-27 January 2009).

¹⁵ European Parliament, Resolutions 10-03-04 and 07-06-05.

¹⁶ Regulation (EC) No 1905/2006 of 18 December 2006 establishing a financing instrument for development cooperation (art 15)

¹⁷ Report of the United Nations High Commissioner for Human Rights on the activities of her Office in Guatemala in 2008.

¹⁸ From January to October 2008, 104 killings were reported (other sources indicate higher figures). Source: Report

of these crimes going unpunished.

The lack of institutional support for the process of purging and restructuring the PNC has favoured the growing use of the Armed Forces to carry out internal security measures. The Armed Forces should never replace the work of civil security forces, and should always be subordinate to civil authority, which should determine their temporal, functional and operative limits¹⁹ in accordance with the guidelines laid down in the Peace Accords.

In this respect, we have expressed our concern regarding the use of combined patrols and the reopening of some military detachments in the interior of the country, where there are megaprojects (mining, hydroelectrics, single-crop farming, oil etc). The fact that the Armed Forces were responsible for the majority of human rights violations during the internal armed conflict in Guatemala²⁰ remains fresh in the public memory.

We ask the Council, within the framework for political dialogue:

- To encourage the Government and in particular the Ministry of Government to reform and purge the PNC and to avoid deployment of the Armed Forces in managing social conflicts relating to development projects.
- To urge the Government of Guatemala to create the necessary conditions in order to fulfil the 'National Accord for the Advancement of Security and Justice' signed by the presidents of the three powers of the State this year.²¹

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on the situation of human rights in the PDH (Guatemalan Human Rights Ombudsman).

¹⁹ Myrna Mack Foundation, December 2008.

²⁰ CEH, Memory of Silence: Guatemala 1999. "The forces of the State, and related paramilitary groups, were responsible for 93% of the violations documented by the Commission for Historical Clarification".

²¹ The commitments of the Accord include number 77: 'at a prudent time (...) Government Ruling 178-2004 regulating joint patrols of the National Civil Police (PNC) and the Armed Forces of Guatemala shall be abolished.'