

Human Rights Advocates

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Human Rights Council – Universal Periodic Review

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Human Rights Advocates (HRA) is an international human rights non-governmental organization with consultative status before ECOSOC and headquarters in Berkeley, California. HRA has long worked on a range of issues before the Council, and before that with the Commission on Human Rights and its Sub-commission. This statement is submitted on behalf of HRA in conjunction with the process of Universal Periodic Review of Guatemala as mandated under Resolution 5/1 adopted by the HRC on 18 June, 2007. Guatemala is scheduled to be considered by the Working Group on UPR as the fourth country to be reviewed during the Second Session.

The single biggest source as well as explanation of the persistence of human rights problems in Guatemala is the almost total impunity that exists for violations of established law, especially of grave crimes that also constitute violations of human rights. This impunity extends from the complete unwillingness and/or inability of the Office of the Prosecutor (Ministerio Público) to carry out serious and credible investigations into cases involving either past international crimes like genocide, torture, massacres and widespread enforced disappearances during the pre-1996 period, or to seriously and credibly investigate current crimes that evidence patterns and practices, like those involving the killings of over 2500 women in the last six years. While the lower courts have been at times willing to investigate and to act according to law, the country's highest courts, especially the Constitutional Court, have continually acted to promote a climate of impunity. After several years of resistance, the Guatemalan government has now accepted the creation of an international commission (CICIG) to investigate some of these violations, which is an encouraging step. However, Guatemala continues to be in violation of its international obligation to investigate, prosecute and, if warranted, punish serious violations of human rights and humanitarian law.

Of particular concern is the Constitutional Court's ruling of December 2007 denying the jurisdiction of the Spanish courts over high-level military and police officials for genocide, torture and related crimes. The ruling comes in a case filed in 1999 by Nobel Peace Prize winner Rigoberta Menchú and other survivors of massacres, most of them of Mayan indigenous descent. The Guatemalan court decision held, among other things, that it would not recognize Spain's (universal) jurisdiction over the crimes, that the crimes were connected to political crimes and therefore not extraditable, and that the crimes could not be prosecuted in Spain because Spain had been a guarantor of the 1996

Peace Accords. Although the Court did recognize Guatemala's obligation to prosecute the crimes if they did not extradite, they completely ignored the fact that a case alleging genocide against a similar group of high-ranking defendants has been languishing in the Guatemalan courts since 2001, with no progress.

Under these circumstances, the Guatemalan government is now in violation of its international obligations under conventional and customary law to either prosecute these defendants or to extradite them to a state that will do so. In particular, Guatemala is a party to the Genocide Convention, Articles 6 and 7, which require prosecution and that the crime of genocide not be considered a political crime for purposes of extradition. It is also a party to the Convention Against Torture, which requires that the crime of torture be prosecuted if the suspect is not extradited and requires judicial cooperation in the investigation and prosecution of torture, and to a number of Inter-American Conventions with similar requirements.

We ask the Human Rights Council, as part of the process of Universal Periodic Review, to raise the issue of the obligation to extradite or prosecute with the new Guatemalan government and to urge it to ensure that all the branches of government are in compliance with their obligations under international law. We ask the Council to express deep concern over the continuing impunity for international crimes including genocide and torture committed by State agents, and to request that the government explain in detail the steps it will take to begin to overcome this legacy.