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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF
GUATEMALA**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ submission to the Universal Periodic Review of Guatemala

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Guatemala. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) lack of independence of the judiciary; (2) impunity for gross human rights violations committed during the armed conflict; (3) lack of access to justice for indigenous people and impunity for human rights violations against them; (4) abolition of the death penalty; and (5) international instruments and mechanisms.

2. The context in Guatemala is one of generalised violence and impunity. General policies of different governments since the peace agreements were signed have brought institutions to a state of weakness and, in some instances, total incapacity. These policies facilitate impunity and prevent adequate responses by the State to address human rights violations. Perpetrators consequently feel free to commit criminal acts, safe in the knowledge that they will not be held to account. Organised crime has become infiltrated within State institutions.

LACK OF INDEPENDENCE OF THE JUDICIARY

3. The procedures for appointment and retention of judges and magistrates are deficient in respect of ensuring an independent judiciary. Judges are not well protected and lack a meaningful judicial career. Only a weak judicial career is available to first instance judges, while second instance magistrates and magistrates of the Supreme Court are elected directly by the Congress. Security of tenure for magistrates is therefore dependent on political will and authority. Protection mechanisms for judges and magistrates do not exist.

4. Lack of independence of the judiciary entrenches the general situation of impunity in Guatemala; and it affects the enjoyment of human rights, including the right to life and freedom from torture and ill-treatment, economic, social and cultural rights, and the rights of indigenous people.

IMPUNITY FOR GROSS HUMAN RIGHTS VIOLATIONS COMMITTED DURING THE ARMED CONFLICT IN GUATEMALA

5. In the case of transitional justice, even though the Attorney General's Office is trying to meaningfully address impunity in cases involving gross human rights violations, various methods have been successfully used to maintain impunity. Lawyers for accused persons make recourse to various means in order to place obstacles to the progression of cases and human rights defenders are threatened. In many recent cases brought before the tribunals, concerning a large number of persons alleged to have committed human rights violations against civilians during the internal armed conflict constituting crimes under international law, defence counsel have argued that "the enemy also committed gross human rights violations" (paraphrased), an argument also made before the Nuremberg Tribunals and also known in Latin America as the *teoría de los dos demonios*.

LACK OF ACCESS TO JUSTICE FOR INDIGENOUS PEOPLE AND IMPUNITY FOR VIOLATIONS OF HUMAN RIGHTS AGAINST INDIGENOUS PEOPLE

6. Persons from communities of indigenous people lack the right of access to justice concerning human rights violations. This situation prevails not only in cases affecting the right to life, but also in cases affecting economic, social and cultural rights. When indigenous people oppose so-called "megaprojects", justice is denied by disallowing their judicial claims or by providing impunity for those that act to suppress claims by indigenous people. For example, in a community of the Department of Petén, the killing of two community leaders has failed to result in any prosecution of the perpetrators.

7. In the case of "megaprojects", the State responds the indigenous communities with repression. It has established states of emergency to limit the exercise of human rights. There

is lack of meaningful consultation, and indigenous people are forcefully evicted from places where these projects are put in place. States of emergency are becoming normality rather than the exception through application of the *Ley de Orden Público 1966*, which is not in compliance with the International Covenant on Civil and Political Rights or with other international instruments.

8. The private sector, including transnational corporations, hire private police who commit human rights abuses against community leaders. For example, in the case of *Valle del Polochic*, community leaders were killed by private armed police. The case remains pending, thus entrenching the situation of impunity.

9. Where consultations with the indigenous communities take place, the authorities do not respect the outcomes of those consultations. Communities are usually opposed to these megaprojects, because they affect their economic, social and cultural rights. The State has failed to develop procedures for the implementation of agreements reached during the consultation process.

10. Forced evictions are still used by State institutions. For example, a forced eviction in the Department of Petén in August 2011 resulted in the forced displacement of 300 members of the community to México. In December 2011, approximately 150 persons, among them children and women, were returned by the Mexican authorities. They are now living in difficult conditions in Santa Elena, in the Department of Petén. It is not known where the rest of community members are.

ABOLITION OF THE DEATH PENALTY

11. Although Congress had approved a decree concerning the application of the death penalty, this decree was vetoed by former President Alvaro Colóm, pursuant to advocacy by civil society. The resulting *de facto* moratorium continues and the Supreme Court of the Criminal Chamber is commuting death penalty sentences for terms of imprisonment. Now the Congress of Guatemala could be in a position to abolish the death penalty according to the Constitution. Guatemala is not a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) Aiming at the Abolition of the Death Penalty.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

12. Guatemala is a party to several of the core human right treaties, but it has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearances (CPED) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR); and to become a party to the Second OP to the ICCPR, and the Third Optional Protocol to the Convention on the Rights of the Child (on Individual Communications).

13. Guatemala extended a standing invitation to Special Procedures in April 2001. It has yet to respond to requests for visits to Guatemala by two Special Procedure mechanisms, namely: the Independent Expert on foreign debt (requested in 2008); and the Special Rapporteur on the freedoms of association and of assembly (16 September 2011).

RECOMMENDATIONS

14. The ICJ calls upon the Working Group and the Council to urge the Government of Guatemala to:

Concerning the independence and functioning of the judiciary:

- i). Take the necessary measures to reinforce the independence of the judiciary by, for example, making provision for the security of tenure for judges, magistrates and judicial officers in general and adopting other measures regarding the career progression and development for judicial officers;

Concerning impunity and access to justice:

- ii). Establish specialised tribunals operating in accordance with international standards of due process to address claims concerning land conflicts;
- iii). Reinforce the fight against impunity in cases of gross human rights violations, including crimes under international law, committed during the armed conflict by undertaking effective investigations in relation to, and where appropriate prosecutions against, alleged perpetrators, including former military personnel or governmental officials;
- iv). Undertake effective investigations in relation to, and where appropriate prosecutions against, alleged perpetrators of crimes against community leaders from the Department of Peten and in Valle del Polochic;
- v). Immediately abrogate the State of Emergency under the *Ley de Orden Público*;
- vi). Undertake meaningful consultations with indigenous people in the case of proposed projects in areas where indigenous communities are present, and establish and apply procedures for the implementation of results from such consultations;

Concerning abolition of the death penalty:

- vii). Take immediate steps toward abolition of the death penalty in law;
- viii). Become a party to the Second OP to the ICCPR;

Concerning other international instruments and mechanisms

- ix). Become a party to the Third OP to the CRC, and ratify the CPED and the OP to ICESCR;
- x). Accept the requests of the Independent Expert on foreign debt and the Special Rapporteur on the freedoms of assembly and of association to undertake official missions to Guatemala, and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions;
- xi). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Guatemala, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- xii). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.