



International Network for Economic, Social & Cultural Rights  
Red Internacional para los Derechos Económicos, Sociales y Culturales  
Réseau international pour les droits économiques, sociaux et culturels  
الشبكة العالمية للحقوق الاقتصادية و الاجتماعية و الثقافية

**TO:**

His Excellency, Gen. Otto Pérez Molina, President of the Republic of Guatemala

**CC:**

Dr. Joshua Felipe Baquix, President of the Judiciary  
Thelma Aldana, Esq, Chief Prosecutor

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August 19, 2015

Your Excellency,

First, I would like to extend warm greetings.

I am writing in regard to your recent communication, Communication 1233, which we received on May 27 of this year. I appreciate your attention to our [previous letter](#), sent on March 23, in which we expressed our concern regarding the apparent criminalization of community leaders and human rights defenders living in the northern area of the Department of Huehuetenango, Guatemala.

In our letter we had underscored our concern, in particular with respect to the detention of three community leaders: Arturo Pablo, Francisco Juan and Adalberto Villatoro, who had participated in peaceful activities, such as community consultations, lobbying, and mediated dialogue regarding extractive projects such as Qanbalam I and II, Pojom I and el Arco, among others, promoted by the Hidralia, Econer-Hidro Santa Cruz and Enel- 5M S.A, companies, respectively.

We acknowledge receipt of the response sent to our office by Mr. Rony Eulalio López Contreras, President of the Judiciary of the Secretary General of the Presidency, in which it is suggested that due process is being complied with in this context, and that there is no violation of human rights.

On the basis of this response, we would like to invite you to share with us more information about the legal basis upon which the charges against these individuals are founded. It is important to note that, after our previous communication, we learned of the detention of Ermitaño López, another community leader from Barillas, when he was accompanying the family members of his detained fellow leaders in a public hearing in Guatemala City, on July 2, 2015. We have also learned of the detention of Rigoberto Juárez and Domingo Baltazar, community leaders from Santa Eulalia, as they completed a lobbying mission to the Human Rights Council of the Public Ministry in Guatemala City on 24 March of this year.

We note that the aforementioned detained individuals are all community leaders that have exercised their rights legally, including through community consultations. It seems that the charges against them have been motivated by their leadership, mediation capacity, opposition and vocation to defend the rights of their communities against natural resource extraction projects on their territory. Therefore, we request more information to understand the specific nature the charges against them.

We note with concern that to date the number of individuals that are currently held as political prisoners has reached nine (two from the community of Santa Eulalia and seven from Barillas): Adalberto Villatoro, Arturo Pablo, Francisco Juan, Ermitaño López,

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Rigoberto Juárez and Domingo Baltazar, in addition to Rogelio Velásquez, Saúl Méndez and Mynor López; all, allegedly, for attempt to commit a crime, coercion, threats, instigation to commit a crime, obstruction, abduction or kidnapping.

According to reports that we have received, an additional eight community leaders from Barillas were held as political prisoners during 2012, due to charges filed against them, and they are now on conditional release. Additionally, we know of the existence of at least 21 arrest warrants against other community leaders, including four individuals from Barillas, eight from Santa Eulalia, three from San Mateo Ixtatán, four from Pojom, one from Bella Linda, San Mateo and one from San Pedro Necta. All of these community leaders have been accused of serious crimes. We note that all these community leaders have participated in lawful acts of social mobilization against the aforementioned projects, which is why we request that you confirm that the charges against them do not reflect an act of reprisal for their activities in defense of their communities' rights.

Moreover, we have learned of the alleged existence of a document claimed to be in the hands of the Public Ministry, reportedly written by an attorney of the Hidralia Energia-Hidro Santa Cruz company, which identifies numerous community leaders, who have expressed their opposition to hydroelectric and mining projects in their territory, as members of a criminal network. This document is allegedly being used to justify legal action against these community defenders. We request that you confirm the existence or not of this document, and, in the case of its existence, that you confirm that it is not being used for the investigation and subsequent arbitrary detention of these leaders. Due to these circumstances, we are concerned of the possibility that the right to due process and related human rights may be at risk for these community leaders.

We respectfully remind Your Excellency of Guatemala's obligations to respect, protect, and fulfill internationally recognized human rights. Guatemala has been a State Party to the International Covenant on Civil and Political Rights (ICCPR) since 1992, when it assumed the obligation to respect, among others, the right to be free from torture and other cruel or inhuman treatment, the right to liberty and personal security, the right to be free from arbitrary arrest or detention, and the guarantees of due process established by law. However, we note that, in its review of Guatemala regarding compliance with the human rights established in the ICCPR in 2012, the United Nations Human Rights Committee expressed its concern regarding "the very high levels of violence against and attacks on human rights defenders (...)." The Committee also lamented the lack of sufficient mechanisms to protect human rights defenders, as well as recent campaigns to discredit the human rights activities of civil society organizations."<sup>1</sup>

Guatemala has also been a Party to the International Covenant for the Elimination of Racial Discrimination (CERD) since 1983, when it assumed the obligation to respect, among others, the right of all persons to equality before the law, without distinction with regards to race, color, or national or ethnic origin, especially in the enjoyment of the right to equal treatment in the administration of justice; the right to security of the person and State protection against violence or attack from third parties. I note that the United Nations Committee for the Elimination of Racial Discrimination expressed, in its 2010 review of Guatemala's compliance with CERD, that it was "gravely concerned about recent serious attacks on social activists and defenders of indigenous peoples' rights, in particular the murder of some of those defenders."<sup>2</sup>

The United Nations Committee on Economic, Social, and Cultural Rights has also issued several observations regarding the human rights situation in Guatemala, a State Party to the International Covenant on Economic, Social, and Cultural Rights since 1988. Among these, the Committee has been "in particular concerned that the indigenous peoples are still not effectively consulted, nor is their free, prior and informed consent obtained in the decision-making process concerning the exploitation of the natural resources within their traditional lands." The Committee urges the State Party to, within the sphere of mining and hydrocarbon exploration and exploitation, adopt expedited measures for the realization of consultations that include the free expression of consent regarding the appropriateness or not of a project of this nature, sufficient spaces, and time for reflection and decision-making, as well as measures to protect cultural integrity, and reparation measures, when necessary.<sup>3</sup> The United Nations Declaration on

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<sup>1</sup> CCPR/C/GTM/CO/3, 22

<sup>2</sup> CERD/C/GTM/CO/12-13, 9

<sup>3</sup> E/C.12/GTM/CO/3, 7

the Rights of Indigenous Peoples also recognizes the obligation to respect the right of indigenous peoples to demand States obtain their consent, expressed in a free and informed manner, in particular with respect to development, use, or exploitation of minerals, water, or other resources, including the right to determine and develop priorities and strategies for the development or use of their lands, territories, and other resources, including the law.

Finally, these allegations have been highlighted in several reports published by recognized organizations such as the Observatory for the Protection of Human Rights Defenders in its report, “Smaller than David: the Struggle of Human Rights Defenders, International Fact-Finding Mission Report”<sup>4</sup> and Amnesty International in its report, “Mining in Guatemala: Rights at Risk,”<sup>5</sup> among others. The observations that UN treaty bodies have expressed, as well as those made by international human rights organizations and the affected communities, have raised serious doubts regarding the impartiality and independence of the judicial system, and given rise to concerns about a pattern of criminalization and legal harassment in cases involving the persecution of indigenous leaders that have expressed their opposition to natural resource extraction projects in Guatemala. The frequency with which new charges against indigenous leaders are being presented, the seriousness of the charges against them, and the regular use of preventive or arbitrary detention in many of these cases is a serious cause of concern for organizations and individuals around the world.

Due to the gravity of the situation facing these community leaders, we urge the Government of Guatemala to:

1. Guarantee community leaders, who are detained or face charges, a fair trial in accordance with due process established by Guatemalan laws and international standards;
2. Halt the criminalization of human rights defenders in San Mateo Ixtatan, Barillas, and Santa Eulalia, with respect to their lawful activities to promote and protect the human rights of indigenous communities in Guatemala;
3. Provide protection to human rights defenders, community leaders, and others from human rights violations by non-State actors, including harassment, intimidation, threats, and acts of violence, and take steps to hold these actors accountable for such violations;
4. End the militarization of the Mayan territories of Huehuetenango, in particular of the municipalities of San Mateo Ixtatan, Barillas, and Santa Eulalia, and take immediate actions to withdraw the police and army personnel that currently occupy residential areas; and
5. Respect the rights of the indigenous peoples of Guatemala in accordance with the State’s international obligations regarding human rights, including the right to free, prior, informed consultation and consent with respect to any project that may affect their ancestral lands and the way of life of indigenous peoples.

Finally, I would be grateful if you could keep me informed regarding the evolution of this situation.

On behalf of ESCR-Net,

[signature]

Chris Grove, Director

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<sup>4</sup> <http://www.fidh.org/IMG/pdf/obsreportgtm2015eng.pdf>

<sup>5</sup> <http://www.amnesty.ca/sites/default/files/mining-in-guatemala-rights-at-risk-eng.pdf>