

Trafficking in Persons Report 2009

June 16, 2009

GUATEMALA (Tier 2 Watch List)

Guatemala is a source, transit, and destination country for Guatemalans and Central Americans trafficked for the purposes of commercial sexual exploitation and forced labor. Human trafficking is a significant and growing problem in the country, particularly the exploitation of children in prostitution. Guatemalan women and children are trafficked within the country, and to Mexico and the United States, for commercial sexual exploitation. NGOs report nascent child sex tourism in certain tourist areas such as Antigua and Guatemala City. Young Guatemalan girls are also subject to forced labor within the country as domestic servants. Guatemalan men, women, and children are trafficked within the country, as well as to Mexico and the United States, for forced labor, particularly in agriculture. In the Mexican border area, Guatemalan children are exploited for forced begging on streets and forced labor in municipal dumps; Guatemalan men, women, and children are trafficked for forced agricultural work, particularly on coffee plantations. Guatemala is a destination country for victims from El Salvador, Honduras, and Nicaragua, trafficked for the purpose of commercial sexual exploitation. Border areas with Mexico and Belize remain a top concern due to the heavy flow of undocumented migrants, many of whom fall victim to traffickers.

The Government of Guatemala does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the past year, the Guatemalan Congress unanimously approved a bill to strengthen Guatemalan laws against human trafficking and other forms of sexual exploitation and violence. In addition, the government strengthened its investigative efforts during the first year of operation of a prosecutorial unit dedicated to fighting human trafficking and illegal adoptions. Despite such overall significant efforts, Guatemala is placed on Tier 2 Watch List for failing to show increasing efforts to combat human trafficking, particularly in terms of providing adequate assistance to victims and ensuring that trafficking offenders, including corrupt public officials, are appropriately prosecuted, convicted, and sentenced for their crimes.

RECOMMENDATIONS FOR GUATEMALA

Implement and enforce the new anti-trafficking law; increase efforts to investigate and prosecute trafficking offenses, and convict and punish trafficking offenders, including public officials complicit with trafficking activity; pursue suspected cases of forced labor and domestic servitude crimes, in addition to suspected cases of adult sex trafficking; improve victim services and assistance; increase anti-trafficking training for judges and police; and increase funding for antitrafficking efforts, particularly for the country's dedicated prosecutorial and police units.

PROSECUTION

The government made limited efforts against trafficking offenders last year. While prosecutors initiated some trafficking prosecutions, they continued to face problems in court with application of Guatemala's earlier antitrafficking law, Article 194 of the Penal Code, which prohibited all forms of trafficking in persons, prescribing penalties of six to 12 years' imprisonment. During the reporting period, judges continued to dismiss charges under Article 194 in favor of more familiar

but less serious offenses, such as pandering or procuring, which prescribe inadequate penalties – only fines – to deter commission of trafficking crimes. The Guatemalan Congress, however, strengthened the country's antitrafficking legal framework by enacting a law, which came into force in April 2009, to clarify the statutory definition of trafficking in persons, in addition to increasing penalties for trafficking, trafficking-related crimes, and other forms of sexual violence and exploitation. Article 202 of the new law prohibits the transport, transfer, retention, harboring, or reception of persons for the purposes of prostitution, sexual exploitation, forced labor or services, begging, slavery, illegal adoptions, or forced marriage, in addition to other prohibited purposes. Penalties established under the new law are from eight to 18 years' imprisonment; under aggravated circumstances, such as when the crime involves kidnapping, threats, violence, weapons, or a public official, penalties increase by one-third. Such penalties are sufficiently stringent and commensurate with penalties prescribed for other serious crimes such as rape. During the reporting period, the government maintained small dedicated police and prosecutorial units to investigate and prosecute human trafficking cases. In 2008, the government initiated criminal proceedings under existing laws against 55 suspected trafficking offenders; seven of these 55 proceedings involved allegations of commercial sexual exploitation of children, which is even with results from 2007, when the government prosecuted eight trafficking-related cases. During the reporting period, the government focused most of its limited resources on prosecuting illegal adoptions, which are defined as a form of trafficking in persons under Guatemalan law and have a high incidence in the country. No prosecutions for forced labor crimes or sex trafficking crimes involving adult victims were reported, nor prosecutions of government officials complicit with trafficking activity. No trafficking convictions or sentences were obtained under Article 194 in Guatemala City, though prosecutors in Jalapa reported one trafficking conviction in an illegal adoption case, securing a sentence of six years in prison. Overall, anti-trafficking police and prosecutors remained plagued by a severe lack of funding and resources; for example, Guatemala's five-person anti-trafficking police unit had only one vehicle to investigate trafficking cases throughout the country. Police also remained crippled by high staff turnover and a lack of specialized training. Credible reports from international organizations and NGOs indicated that corrupt public officials continued to impede anti-trafficking law enforcement and facilitate trafficking activity by accepting or extorting bribes, sexually exploiting children, falsifying identity documents, leaking information about impending police raids to suspected traffickers, and ignoring trafficking activity in brothels and commercial sex sites. While the government made efforts to dismiss some public officials from their positions, it did not attempt to criminally investigate or prosecute any of them.

PROTECTION

The government made insufficient efforts to protect trafficking victims during the reporting period, relying largely on NGOs and international organizations to provide the bulk of victim services. Child victims are eligible for basic care at seven government-run shelters upon judicial order, but were typically referred to NGOs such as Casa Alianza for assistance. However, Casa Alianza announced closure of its Guatemala facilities in January 2009; the government referred an average of 300 sexually exploited youth, including child trafficking victims, to Casa Alianza each year. In December 2008, the government approved a budget increase for the Secretariat of Social Welfare to expand generalized child victim services, which should become available in 2009. Government-run services dedicated to adult trafficking victims remained virtually non-existent. Although Guatemalan authorities encouraged victims to assist with the investigation and prosecution of their traffickers, most victims did not file complaints due to fear of violence or reprisals, and lack of confidence in the country's criminal justice system and limited witness

protection program. The government did not detain, fine, or otherwise penalize victims for unlawful acts committed as a direct result of being trafficked. The government continued to operate a migrants' shelter in Guatemala City with separate space for foreign trafficking victims, though some foreign trafficking victims appear to have been deported. The new anti-trafficking law established procedures for repatriation of trafficked victims without detention. Guatemalan law does not, however, provide foreign.

PREVENTION

The government sustained efforts to prevent trafficking during the reporting period. The government continued anti-trafficking media campaigns and workshops, and operated a call center to provide information to citizens about the dangers of human trafficking and to refer victims for assistance. In July 2008, the government approved a 10-year national action plan to combat human trafficking, and the government's interagency committee met throughout the year. The government made no discernable efforts to reduce demand for commercial sex acts or forced labor. The government provided human rights training – including human trafficking – to Guatemalan troops deployed for international peacekeeping operations.