

Trafficking in Persons Report 2010

June 14, 2010

GUATEMALA (Tier 2 Watch List)

Guatemala is a source, transit, and destination country for men, women and children subjected to trafficking in persons, specifically sexual servitude and forced labor. Guatemalan women and children are found in forced prostitution within the country, as well as in Mexico and the United States. Guatemalan men, women, and children are subjected to forced labor within the country, often in agriculture or domestic service, and particularly near the border with Mexico and in the highland region. Guatemalan men, women, and children are also found in conditions of forced labor in Mexico and the United States in agriculture and the garment industry. Indigenous Guatemalans are particularly vulnerable to labor exploitation. In the Mexican border area, Guatemalan children are exploited for forced begging on streets and forced labor in municipal dumps. Guatemala is a destination country for women and girls from El Salvador, Honduras, and Nicaragua, in forced prostitution. Migrants from these Central American countries transit through Guatemala en route to Mexico and the United States; some may become human trafficking victims. Child sex tourism is a problem in certain tourist areas such as Antigua and Lake Atitlan, and child sex tourists predominately come from Canada, Germany, Spain, and the United States. The border with Mexico remains a top concern due to the heavy flow of irregular migrants, some of whom are trafficked.

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. Despite these significant efforts, including prosecuting its first trafficking cases under the recent anti-trafficking law and establishing a new anti-trafficking office, the government did not show overall evidence of increasing efforts to address human trafficking through providing adequate victim services or addressing official complicity in trafficking; therefore, Guatemala is placed on Tier 2 Watch List, for the fourth consecutive year. Despite the significant number of foreign trafficking victims identified by the government, foreign victims were not generally offered asylum or temporary residency, although the anti-trafficking law provides that authority. As such, most foreign trafficking victims were deported or required to remain in locked migrant detention facilities with no access to specialized victim services.

RECOMMENDATIONS FOR GUATEMALA

Vigorously implement the anti-trafficking law; continue efforts to investigate and prosecute trafficking offenses, especially suspected cases of forced labor and domestic servitude, and convict and punish trafficking offenders; pursue suspected cases of official complicity with trafficking activity; conduct anti-trafficking training for judges, police, immigration officers, and other government officials; enhance victims services; provide foreign adult victims housed in migration detention centers with freedom of movement and specialized services, and create a plan, with identified funding, to eliminate reliance on migration detention centers to house foreign victims; and increase funding for anti-trafficking efforts, particularly for the country's dedicated prosecutorial and police units.

PROSECUTION

The government maintained anti-human trafficking law enforcement efforts during the last year and achieved its first convictions under its new anti-trafficking law. Article 202 of the Guatemalan penal code, which came into force in early 2009, prohibits the transport, transfer, retention, harboring, or reception of persons for the purposes of exploitation, including forced prostitution, sexual exploitation, forced labor or services, begging, slavery, illegal adoptions, or forced marriage, in addition to other prohibited purposes. Penalties prescribed under Article 202 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. Many trafficking cases, however, continued to be prosecuted under other statutes, such as corruption of minors or pandering, that carry lesser sentences. The government maintained a small prosecutorial unit to investigate and prosecute human trafficking cases; approximately 60 percent of this unit's investigations focused on illegal adoptions, which do not fall within the international definition of human trafficking. During the reporting period, authorities achieved seven convictions for human trafficking offenses, four of which were charged under the new anti-trafficking law, and one of which related to forced labor; sentences ranged from three to eight years' imprisonment. In comparison, during the previous year, the Guatemalan government reported no convictions for human trafficking offenses. Anti-trafficking police and prosecutors suffered from a lack of funding, resources, and training. Credible reports from international organizations, NGOs, and several government officials indicated that corrupt public officials continued to impede anti-trafficking law enforcement efforts and facilitated trafficking activity by accepting or extorting bribes, falsifying identity documents, leaking information about impending police raids to suspected traffickers, and ignoring trafficking activity in commercial sex sites. The government did not report prosecuting or convicting any officials complicit in human trafficking, although one congressman accused of corruption of children was stripped of his immunity. Guatemalan authorities collaborated with foreign governments on several trafficking investigations.

PROTECTION

Although Guatemalan authorities reported rescuing 387 suspected trafficking victims during the reporting period, the government made insufficient efforts to protect trafficking victims, relying largely on NGOs and international organizations to provide the bulk of victim services. In spite of existing protocols for identifying trafficking victims among vulnerable populations, such as prostituted women in brothels, there was no evidence that these were implemented systematically or proactively. Government-funded services dedicated to trafficking victims remained virtually non-existent, and authorities provided no funding or subsidies to organizations that provided these services. Child victims were referred to one NGO-operated shelter dedicated for girl trafficking victims, or placed in state-run group homes designed for orphans or homeless children. The government sought to place adult victims in shelters for victims of domestic violence operated by NGOs or religious groups, but these shelters were overburdened and underfunded. Of the 387 trafficking victims identified, 326 were adult women, and most foreign adult victims were placed in migration detention centers without freedom of movement or access to specialized victim services. 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 the inadequacy of the government's limited witness protection program. A recent advisory opinion issued by the Supreme Court allowing for victim testimony via video could improve low rates of victim participation in prosecutions. The government did not detain, fine, or otherwise penalize victims

for unlawful acts committed as a direct result of being trafficked. Many foreign trafficking victims, however, may not have had their victim status recognized by Guatemalan authorities before being deported as undocumented migrants. Guatemalan law establishes legal alternatives to removal of foreign victims who may face hardship or retribution upon repatriation. The authorities offered these alternatives on a case by case basis, but provided no evidence that any victims had accepted. In practice, any victim choosing to remain in Guatemala under an alternative legal status must stay in the closed migration detention center. Guatemalan consular officials in the United States and Mexico received training sessions on trafficking legislation and victim services. The government assisted in the repatriation of 14 Guatemalan trafficking victims from abroad and provided some care services to these victims, 12 of whom were children.

PREVENTION

The government sustained efforts to prevent trafficking during the reporting period. In collaboration with an international organization, the government carried out a public awareness campaign using radio announcements about trafficking in persons in seven departments near the Mexican border. The government conducted workshops on the commercial sexual exploitation of children in 20 public schools. During the reporting period the government established the Secretariat Against Sexual Violence, Exploitation and Trafficking in Persons to coordinate the government's anti-trafficking efforts; however, this office received under five percent of the designated funding and subsequently took no discernible actions beyond evaluating current government efforts. Despite reports of child sex tourism, there were no reported prosecutions of child sex tourists. The government made no discernible efforts to reduce demand for forced labor or commercial sexual acts. Authorities provided training on human trafficking to Guatemalan troops prior to their deployment for international peacekeeping operations.