

To: Loan Review Team  
From: Kelsey Alford-Jones, Center for International Environmental Law  
Re: **Concerns about GU-L1086: Border Integration Guatemala Mexico**

The IDB has proposed a \$200 million loan to Guatemala. The overall project objective is to: "*Strengthen Guatemala's competitiveness and security through the implementation of fiscal, parafiscal and migratory controls at border crossings*, with the support of the necessary processes, infrastructure and equipment. The expected results of the program are: reducing the operational cost for international commercial entities, reducing the time required for products and people to pass border crossings between Guatemala and Mexico, and increasing the presence of authorities."<sup>1</sup> The executing agency is the Guatemala Ministry of Defense, which will be in charge of all technical, administrative and fiduciary duties of the program.

Those reviewing this should consider further analysis of the executing agency before voting on this project, as the program objectives fall largely outside the mandate of this Ministry. The Ministry presents other concerns, including restrictions on access to information and ongoing allegations related to corruption and links to criminal networks. Moreover, the border program should be reevaluated for its possible conflicts with US Congressional objectives in the region and reviewed to ensure it supports Guatemala's international legal obligations regarding freedom of movement and refugee rights.

### **Program Objectives Fall Outside Mandate of Defense Ministry**

Guatemalan law designates specific agencies the authority to carry out the initiatives described. For example, fiscal controls, policies on tariffs and trade, and the implementation of economic integration initiatives fall to the SAT<sup>2</sup> and the Ministry of the Economy<sup>3</sup>.

Guatemala suffered a 36-year internal armed conflict, during which time the Guatemalan government and the military carried out war crimes, acts of genocide, the systematic use of torture and sexual violence, and other crimes. Twenty years after the signing of the Peace Accords, Guatemala continues to struggle to appropriately limit the military's role in society. By placing the Defense Ministry as the lead agency to implement fiscal controls and promote economic initiatives, IDB funds could contribute to the Defense Ministry's encroachment upon the legal authority of other agencies. Guatemalan partners have raised concerns about the expanded mandate for the Defense Ministry and possible violations under [Guatemalan penal code](#) Article 335, regarding "usurpation of duties" (*usurpación de funciones*).

### **Other Concerns about the Guatemalan Defense Ministry as Executing Agency**

- **Limited Transparency and Accountability.** Transparency laws do not apply to all Guatemalan Defense Ministry contracts, raising concerns about access to information. The UN-backed International Commission against Impunity in Guatemala (CICIG), in its [investigative report](#) on the legal market and illicit trafficking of arms and munitions in Guatemala<sup>4</sup>, noted that the Law on State Contracting requires state agencies to comply with obligations regarding public bidding on contracts, but exempts the Defense Ministry from doing so for the purchase of arms, munitions, equipment, construction materials, vehicles, fuel, and contracts for services, among other things.<sup>5</sup> Furthermore, the Defense Ministry is not subject to the same oversight and regulation as civilian agencies, which limits access to information and avenues for redress.

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<sup>1</sup> Specific objectives include: (1) creating a system of norms for processes and tools for effective control (2) provide Guatemala-Mexico border crossings with the necessary infrastructure and equipment to respond effectively to these processes and the tools for controls of cargo and people. There are two components: to modernize capacity to implement border controls, creating new tools, new agreements and new bi-national infrastructure planning; and the construction (or remodel) and equipping of new facilities and border infrastructure.

<sup>2</sup> The [Superintendencia de Administración Tributaria \(SAT\)](#) is the agency responsible for fulfilling all customs-related functions (Decree 14-2013). This includes implementing the Central American Uniform Customs Code ("CAUCA") and its associated rules and regulations ("RECAUCA"); the collections of taxes and fees at ports of entry; and granting or denying entry of goods.

<sup>3</sup> The [Ministry of the Economy](#) is tasked with, amongst other duties: (1) formulating and executing policies for national and international investment, promoting competitiveness and the framework for its execution (2) formulating and executing tariff policies, analyzing and fostering Central American economic integration.

<sup>4</sup> CICIG, "Armas de fuego y municiones en Guatemala". Available at: [http://www.cicig.org/uploads/documents/informes/INFORM-TEMA\\_DOC01\\_20091201\\_ES.pdf](http://www.cicig.org/uploads/documents/informes/INFORM-TEMA_DOC01_20091201_ES.pdf)

<sup>5</sup> See Decree 57-92, Art. 44, 1.6.

- The Defense Ministry has not shown effective leadership on other border initiatives. For example, a [report](#) published by RAND and the National Defense Research Institute in 2015 regarding the Tecun Uman inter-institutional task force base on the Guatemala-Mexico Border found that two years after its creation, the force did not comply with its mission: the chain of command remained with the military (contrary to policies requiring the Interior Ministry/police to be lead agency); the brigades were unqualified and unable to complete border missions; there was evidence of misuse of intelligence.<sup>6</sup>
- Military links to corruption and organized crime. There have been ongoing concerns about corruption within the Guatemalan military, direct links to organized criminal activity, and illicit arms flows from the military to criminal actors. In the 1980s, DEA analysts found Guatemalan trafficking networks were “composed of military intelligence officials, their subordinates and former colleagues, and informants and partners.”<sup>7</sup> Clandestine criminal networks continued to operate after the Peace Accords were signed, leading to the creation of the CICIG. U.S. defense contractor CNA’s December 2011 report found there was “an abundance of evidence that criminal organizations engaged in trafficking have penetrated even the highest levels of the Guatemalan military and police.”<sup>8</sup> There are documented cases of weapons thefts from Guatemalan military bases, indicating a direct flow of arms from the military to criminal organizations. This is echoed by CICIG’s report on arms trafficking, which found evidence of “intentional diversion of military or police arsenals to the black market.”<sup>9</sup>
- Program contradicts US efforts to strengthen civilian institutions in Guatemala. The choice of the Defense Ministry as lead agency undermines both the letter and spirit of Congressional action seeking to strengthen civilian security and transparency in the region. Responding in part due to concerns discussed above, provisions in the FY16 appropriations bill allowed the US to withhold 50% of Alliance for Prosperity funds from Guatemala based on whether it was taking effective measures to, among other things:
  - Develop and implement a plan to create professional and accountable police forces and curtail the role of the military in civilian policing;
  - Establish an autonomous, publicly accountable entity to provide oversight of the Plan for the Alliance for Prosperity;
  - Implement reforms and policies to improve transparency and strengthen public institutions;
  - Strengthen customs agencies.<sup>10</sup>

### **Border Program’s Stated Objectives Could Violate Guatemala’s International Legal Obligations**

The IDB specifically states that the project will contribute to “better border control of migrants that cross the border on their way to the United States.” Guatemala is a signer to the American Convention of Human Rights, which recognizes every person’s right to leave any country freely, including his own (Article 22(2)) and every person’s right to seek and receive asylum in foreign territory (Art. 22(7)). Guatemala and Mexico have both signed the Convention on the Status of Refugees, and the accompanying Protocol, which recognize the principle of *non-refoulement*, which relates to a person’s right not to be deported if their life or personal freedom is at risk for reasons of racial, social group or political affiliation (etc).<sup>11</sup> The Inter-American Commission has concluded that these protections imply that “no one may be turned away at the border or expelled from another country without an adequate analysis of their petition on an individual basis” and that “States must ensure that the person who requests asylum is able to access appropriate international protections.”<sup>12</sup> These protections are particularly relevant at a time when thousands of Guatemalans and Central Americans are fleeing persecution and violence, and should be included in any border-related initiative.

Finally, the IDB document does not identify, in its legal framework, Guatemala’s obligations under ILO Convention 169 in regards to indigenous communities.

<sup>6</sup> “Building the Guatemalan Inter-agency Task Force Tecun Uman: Lessons Identified”. Available at: [http://www.rand.org/pubs/research\\_reports/RR885.html](http://www.rand.org/pubs/research_reports/RR885.html)

<sup>7</sup> CNA, “Criminal Organizations and Illicit Trafficking in Guatemala’s Border Communities.” Ralph Espach, Javier Melendez Quinonez, Daniel Haering, and Miguel Castillo Giron. CNA Analysis and Solutions, December 2011. Available at <http://www.cna.org/solutioncenters/cnas-center-naval-analyses/strategic-studies/latinamerican>, p. 14.

<sup>8</sup> Ibid, p. 14.

<sup>9</sup> See supra #4, p. 71.

<sup>10</sup> See the FY16 Consolidated Appropriations Act, Section 7045 (B)

<sup>11</sup> UNHCR, Convention and Protocol Relating to the Status of Refugees. Available at <http://www.unhcr.org/en-us/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

<sup>12</sup> IACHR, “Human Mobility, Inter-American Standards”, p. 207. Available at <http://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>.